

Gasoline—Tax—License Tax—Dealers—Distributors.

A dealer in gasoline who bought the gasoline from a distributor in 1926 and on which the distributor paid a tax of two cents per gallon must pay an additional tax of one cent per gallon under the 1927 laws when the dealer sells the gasoline in 1927.

State Board of Equalization,
Helena, Montana.

April 16, 1927.

Gentlemen:

You have submitted to me a statement of facts, substantially as follows:

A number of dealers in gasoline during the last few days of December, 1926 purchased large quantities of gasoline from Montana refiners of gasoline and held the same in storage until after January 1, 1927, and thereafter sold the same to consumers charging the latter prices which included a tax of 3 cents per gallon. The Montana refiners paid to the state only 2 cents a gallon tax on the same gasoline which was according to the law in effect at the time it was sold to the dealers.

You desire to know whether under the foregoing facts the dealers may be compelled to pay to the state the additional one cent per gallon

tax imposed by initiative measure number 31 and by chapter 19 of the laws of 1927.

Initiative measure number 31; after imposing a tax of 3 cents per gallon upon dealers in gasoline, contains this clause, "provided, however, that no gasoline sold by such dealer, which was purchased by him from a producer or distributor who had paid the tax thereon, shall be included or considered in determining the amount of such license tax to be paid by such dealer." Initiative measure 31 became effective on January 1, 1927.

By its terms the tax on distributors was also made 3 cents per gallon. You state that most of the dealers have paid to the state the additional one cent per gallon tax but that some of them refuse to do so, basing their refusal upon the language of the statute above quoted.

It should be noted that the whole of initiative measure 31 has to do with a tax of 3 cents per gallon. When section 2 of the act excepted from the tax dealers in gasoline purchased from producers or distributors "who had paid the tax thereon," it was intended that the term "the tax" meant the tax of 3 cents per gallon. The language when read in connection with the entire act is not open to any other reasonable construction. It does not say a tax but **the tax**. This evidently meant the 3 cents per gallon tax. Chapter 19 of the laws of 1927 contains a like clause which reads as follows:

"provided, further, that no thing herein contained shall impose any license tax, or require the payment of more than three cents (3c) per gallon as license tax upon any gasoline handled within the State of Montana, nor upon any such gasoline after having once been included in the computing of such license tax hereunder;"

This language also in connection with the other provisions of chapter 19 in my opinion was clearly intended to subject every gallon of gasoline sold in Montana after its passage and approval to a tax of 3 cents per gallon and that if some of the gasoline had been purchased by a dealer in December, 1926, the distributor having paid but 2 cents per gallon tax to the state, the dealer, when he thereafter sells it, is liable to the payment of an additional one cent per gallon tax.

The construction that I have thus placed upon the two acts accords also with what may be termed the equitable and just interpretation. Dealers selling gasoline in 1927 which was purchased in 1926 collect from the consumer a price inclusive of the 3 cents per gallon tax. It was never intended that the dealers should thus profit at the expense of the consumers of gasoline. Furthermore, it is worthy of note that by chapter 17, laws of 1927, the state is obliged to refund 3 cents per gallon on such gasoline as is purchased by farmers for use in tractors and for other industrial purposes.

It would obviously be unfair for the state to be obliged to refund 3 cents per gallon on gasoline on some of which it only received a tax of 2 cents per gallon.

Hence, it is my opinion that dealers in gasoline who purchased gasoline from producers and distributors who had paid a tax of only 2 cents per gallon under the laws then in effect, must pay the additional one cent per gallon tax imposed by initiative measure number 31 and chapter 19, laws of 1927, upon the sale of said gasoline in 1927 by said dealers.

Very truly yours,

L. A. FOOT,
Attorney General.