

Refund—Counties—Gasoline—Tax—Licenses.

A county using gasoline in tractors in repairing or building roads is entitled to a refund for license taxes paid.

State Board of Equalization,
State Capitol Building,
Helena, Montana.

June 11, 1927.

Gentlemen:

You have requested my opinion whether a county is entitled to a

refund for gasoline license taxes paid on gasoline used by the county in tractors for the purpose of grading roads.

The refund law, chapter 17, laws 1927, permits a refund to any person using gasoline for the purpose of operating or propelling "tractors used for agricultural purposes other than on the public highways or streets of this State, motor boats, airplanes or aircraft, or for cleaning or dyeing, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this State."

The tractors in question were used by the county in grading highways. They were used upon the highways. However, the primary use of the gasoline was not for the purpose of operating or propelling the tractors over the highways but the tractors were incidentally propelled over the highways for the primary purpose of grading the same. Under the spirit of chapter 17, if not by its letter, the county should be allowed a refund on gasoline used in tractors for the purpose of grading highways.

It is therefore my opinion that the county is entitled to a refund of the gasoline license tax paid on gasoline used in tractors for the purpose of grading a public highway.

Very truly yours,

L. A. FOOT,
Attorney General.