Gasoline License Taxes—Gasoline Taxes—Federal Land Bank—Board of Equalization.

The gasoline license tax is a tax imposed upon the dealer for the privilege of doing business and is not a direct burden upon the bank so as to interfere with its operation, and therefore the exemption in the federal statute does not forbid the imposition by the state of the excise upon dealers on account of gasoline sold to the bank or its employees for use in the business of the bank.

State Board of Equalization, September 29, 1932.
Helena, Montana.

Gentlemen:

I have your request for an opinion. You submit a communication from the Federal Land Bank of Spokane and a memorandum of authorities submitted by its general counsel relative to the authority of the state to collect gasoline dealer's license taxes on account of gasoline sold by them to the Federal Land Bank of Spokane, or their employes, for use in automobiles owned by the bank and operated in connection with the bank's business.

It is claimed that because the Federal Land Bank is an instrumentality of the federal government, under certain decisions rendered by the Supreme Court of the United States a gasoline dealer selling gasoline to it may do so without paying the gasoline dealer's license taxes to the state on account of such sales. Reliance in particular is placed upon the case of Panhandle Oil company vs. Mississippi, 277 U. S. 218, 72 L. Ed. 857, 48 Sup. Ct. 451, 56 A. L. R. 583.

The above mentioned case held that a dealer in gasoline who sold gasoline to the United States fleet and the veterans' hospital could sell the same free of the state gasoline tax and that the state could not require the dealer to pay the taxes as in effect it would amount to a direct taxation of the United States itself. I do not think that this case can be pointed to as authority that a dealer in gasoline may not be required to pay taxes to the state on account of sales made to the Federal Land Bank. Sales to the United States fleet and the veterans' hospital are sales that are made to the government itself, that is, to departments of the United States government. The Federal Land Bank is not a department of the United States government but is a corporation organized under the Federal law to render certain services in accordance with the policy adopted by the congress of the United States. It is, at most, only an instrumentality employed by the United States for the purpose of carrying out the policies of the government.

The rule that government instrumentalities are immune from state taxation is applied only with regard to consequences that would result to the operations of the government if the instrumentality was taxed by the state. (Educational Films Corporation, 282 U. S. 379, 51 Sup. Ct. 170, 75 L. Ed. 400). A tax which only remotely affects the operations of the government and which cannot be considered as directly interfering with it, cannot be held to be a tax upon the government itself. Thus, a state tax upon the property of a mail carrier such as his automobile and other personal property used in the performance of his contract with the federal government was held by the United States Supreme Court to affect the operations of the federal government only remotely and therefore it was within the power of the state to subject the property to the state tax. (Alvord vs. Johnson, 282 U. S. 509, 31 Sup. Ct. 273, 75 L. Ed. 496). In this case the Panhandle Oil case is referred to and distinguished in that the court points out that in the last mentioned case the tax was held to directly interfere with or burden the exercise of the federal right.

The distinction between the remote and direct effect of taxation by states is also invoked in the case of Eastern Air Transport company vs. South Carolina, 76 L. Ed., Vol. 9, Adv. Opinions at page 470, wherein an air transport company operating in interstate commerce claimed the right to purchase its gasoline free of the state tax but the court said that the mere purchase of supplies or equipment for use in connection with a business which constitutes interstate commerce, is not so identified with that commerce as to make the sale immune from a non-discriminatory tax imposed by the state upon intrastate dealers.

I do not believe that the imposition of the gasoline dealer's license tax in this state, which is an excise upon the right to deal in gasoline, when applied to sales made to the Federal Land Bank, or its employes in connection with the business of the bank, so directly affects the exercise of the federal right by that bank as to make the tax a burden upon the right or to interfere with its exercise. It appears to me to be only remotely connected with the exercise which according to the decisions of the United States Supreme Court, is insufficient to stay the taxing power of the state.

Neither in my opinion does section 23 of the Federal Farm Loan Act, providing that every land bank shall be exempt from state taxation except taxes upon real estate, forbid the imposition of the gasoline dealer's license taxes on account of sales made to the Federal Land Bank for, as stated above, these taxes are imposed upon dealers in this state for the privilege of doing business and the tax will not be held to be a tax upon the Federal Land Bank unless it so directly affects that bank as to be a burden upon, or interfere with its operation. If the tax as imposed upon the dealer on account of sales to the Federal Land Bank, or its employes, only remotely affects the operations of the bank, it could not be held to be in effect a direct tax upon the bank such as would be forbidden under the statute above mentioned. Being of the opinion that the tax does not directly affect those operations, but only remotely, if at all, I do not believe that the exemption in the federal statute forbids the imposition by the state of the excise upon the dealers on account of gasoline sold to the Federal Land Bank, or its employes, for use in the business of the bank.

Very truly yours,
L. A. FOOT,
Attorney General.