

Opinion No. 261.**Gasoline Tax—Refunds—Invoices,
Original Paid.**

HELD: The phrase "original paid invoice" denotes invoices, original in character and form, in contradistinction to copies, received from the dealer by the purchaser, which show on their faces that the latter has paid for the gasoline described in them.

March 30, 1936.
State Board of Equalization
The Capitol

In your communication of March 14 you have asked us what in our opinion is meant by the term "original paid invoices" found in Section 1 of Chapter 175, Laws of 1931.

The section, so far as pertinent, reads as follows: "That any person who shall purchase and use any gasoline, with reference to which there has been paid into the Treasury of the State of Montana, under the laws of this State licensing dealers in gasoline, a tax at the rate of five cents (5 cents) per gallon, for the purpose of operating or propelling stationary gas engines, tractors used for agricultural purposes other than on the public highways or streets of this State, motor boats, aeroplanes 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, and who has paid said tax either directly to the State of Montana or indirectly as a part of the purchase price of said gasoline, shall be allowed and paid as a refund or drawback an amount of money equal to five cents (5 cents) multiplied by the number of gallons of gasoline so purchased and used, upon presenting to the Board of Equalization of the State of Montana, within the time allowed by law, a sworn statement, accompanied by the original paid in-

voices showing such purchase and use, which statement shall set forth that the tax has been paid, the total amount of such gasoline so purchased upon which he has paid the tax and which has been used by such consumer other than for propelling vehicles operated upon any of the public highways or streets of this State, and which statement shall contain such additional information as may be required by the Board of Equalization of the State of Montana on forms to be furnished by said board; provided that such refund or drawback shall not exceed the tax imposed by law. All such applications for refunds or drawbacks shall be filed with the Board of Equalization of the State of Montana within six (6) months after the date on which such gasoline was purchased as shown by such paid invoices."

Section 10 of Chapter 19, Laws of 1927, provides: "Each dealer in this state handling any gasoline as defined in this Act, shall, at the time of such handling, make out and deliver to the purchaser or consignee thereof an invoice in which shall be stated the number of gallons of gasoline covered by such invoice and that the license tax on same has been paid or will be paid to the Treasurer of the State of Montana within fifteen (15) days after the current month, as provided in this Act."

According to Webster's New International Dictionary the word "invoice" means "a written account, or itemized statement, of merchandise shipped or sent to a purchaser, consignee, factor, etc., with the quantity, value or prices, and charges annexed." (33 C. J. 811; Cobb & Seal Shoe Store v. Aetna Ins. Co., 58 S. E. 1099; B. F. Sturtevant Co. v. Cumberland Dugan Co., 68 Atl. 351; Stone v. First Nat. Bank, 198 Pac. 244; Federal Ins. Co. v. Munden, 203 S. W. 917; Garner Mfg. Co. v. Cornelius Lumber Co., 262 S. W. 1011; Securities Inv. Co. v. International Shoe Co., 5 S. W. (2) 682.) The words "paid invoices," as used in the statute, must mean, if they mean anything, invoices that show on their faces that the gasoline described in them has been paid for by the purchaser. The phrases "original paid invoices" denotes, then, invoices, orig-

inal in character and form in contradistinction to copies, received from the dealer by the purchaser, which show on their faces that the latter has paid for the gasoline described in them. (Oregon-Washington R. & Nav. Co. v. Hoss, 274 Pac. 314.)