

No. 423

GASOLINE DEALER—REFUND—LOSS BY EVAPORATION AND OTHER LOSS—STATE BOARD OF EQUALIZATION

Held: No refund may be had by a dealer for loss of gasoline by evaporation and other loss of gasoline handled by a dealer.

June 10, 1942.

Mr. Albert G. Harvey
County Attorney
Liberty County
Chester, Montana

Dear Mr. Harvey:

You have submitted the following question:

The Farmers' Union Cooperative Association of Joplin, Liberty County, Montana, sells gasoline and other petroleum products. In June, 1941, through negligence or otherwise, 2000 gallons of gasoline escaped from its storage tank and soaked into the ground, a complete waste and loss.

The gasoline license tax of five cents per gallon was paid to the State Board of Equalization and thereafter a properly sworn claim for refund was filed with the Board and rejected.

Is the Farmers' Union Cooperative Association as such dealer entitled to a refund?

Section 2381.11, subdivision (7), Revised Codes of Montana, 1935, defines a dealer in gasoline:

"(7) The word 'dealer' means and includes any person who engages in the business in the state of Montana of producing, refining, manufacturing or compounding gasoline and using it or selling it in less than railway tank car lots, or of importing gasoline into the state of Montana or purchasing gasoline within the state of Montana for sale or for one's own use. Such gasoline, for the purpose of this act, shall be deemed to be 'handled' by such dealer."

Chapter 30, Laws of 1939, provides in part and as pertinent to your inquiry as follows:

" . . . every distributor referred to and defined in the gasoline license tax laws of the State of Montana now in effect, shall, for the year beginning April 1, 1939, and ending March 31, 1940, and each year thereafter until the principal and interest of all debentures issued under the authority of this act shall have been paid the state board of equalization for deposit in the state treasury, an excise or license tax for the privilege of engaging in and carrying on such business in this State, in an amount equal to five cents (5c) for each gallon of gasoline . . . sold by him in the State, two per centum (2%) of the amount of such tax shall be deducted as an allowance for evaporation and other loss of gasoline handled by such distributor . . . "

The statutes make no other provision for the dealer. The deduction of 2% of the amount of the tax must cover all loss by evaporation and all other loss.

Chapter 67, Laws of 1939, provides for refunds but no provision is made for refunds to dealers.

Therefore, it is my opinion no refund may be had by a dealer for loss of gasoline by evaporation and other loss of gasoline handled by a dealer.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General