

Opinion No. 12

**Highway Debenture Bonds—Bonds,
Highway Debenture—Gasoline Tax,
Refund and Drawbacks—Refunds
and Drawbacks, Gasoline.**

Held: The proposed amendment does not affect the validity of highway debenture bonds, nor does it increase the rate of five cents per gallon upon all gasoline used, allowable as refunds and drawbacks under the provisions of the act.

February 15, 1947.

Honorable J. B. Bourassa
Senator from Daniels County
State Capitol
Helena, Montana

Dear Senator Bourassa:

You have submitted the following question:

“Would the proposed amendment contained in Senate Bill No. 29, now pending before the Thirtieth Legislative Assembly, affect the validity of highway debenture bonds, including those which have been issued or in the future will be issued?”

Senate Bill No. 29 is identical with Section 2396.4 of the Revised Codes of Montana, 1935, as amended by Chapter 96 of the Session Laws of the Twenty-fifth Legislative Assembly of 1937, and Chapter 67 of the Laws

of the Twenty-Sixth Legislative Assembly of 1939, save and except as to the following amendment:

"However, in cases of lost or destroyed invoices, where such loss or destruction was caused by fire, tornado or flood, and, in the discretion of the Board, where such loss or destruction was otherwise caused in instances where neither the claimant nor his agent or employee, was guilty of negligence or carelessness in connection with the loss or destruction of such invoice the claims may be supported by certified copies of such invoices, obtained from the dealers, but the Board may withhold approval of such claims for payment until the expiration of the six months period after the date of purchase shown on the latest of certified copies, provided, however, that the Board in such cases (other than in instances of loss or destruction from fire, flood or tornado) approve none of such claims arising by virtue of a lost or destroyed invoice, unless it first determined that such loss or destruction occurred through no negligence or carelessness of the claimant, or some other person or persons acting for him, or in his behalf."

Section 2396.4, Revised Codes of Montana, 1935, as amended by Chapter 96, Laws of 1937 and Chapter 67, Laws of 1939, provides in part:

"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 (5c) per gallon, for the purpose of operating or propelling stationary gas engines, tractors used for 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 draw-

back an amount of money equal to five cents (5c) multiplied by the number of gallons of gasoline so purchased and used, provided that counties, incorporated cities, towns and school districts of this state shall be entitled to said refund or drawback of said tax by any such county, city, town or school districts upon gasoline used by it in the performance of any of its governmental and proprietary functions, or either, imposed or authorized by law, including construction, maintenance and repair of all roads, highways and public places within the county limits and all streets, avenues, alleys and other public places within the corporate limits of such city or town. . ."

Thus, it can be seen that, other than counties, cities, towns and school districts, those affected by the provisions of the act and the proposed amendment thereto, are those using gasoline for non-highway purposes, i.e., for the purpose of operating or propelling stationary gas engines, tractors used for 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 public highway or streets of this state.

As to counties, incorporated cities, towns and school districts, refunds and drawbacks are allowable only when gasoline is used in the performance of any governmental and proprietary function, or either, imposed or authorized by law, including construction, maintenance and repair of all roads, highways and public places within the county limits and all streets, avenues, alleys and other public places within the corporate limits of such city or town.

Therefore, it would appear that the act to be amended and the proposed amendment thereto does not in anywise affect the validity of highway debenture bonds, including those which have been issued or in the future will be issued.

I believe, and it is therefore my opinion, that the proposed amendment does not affect the validity of highway debenture bonds, nor does it increase the rate of five cents (5c) per gallon upon all gasoline used, al-

lowable as refunds and drawbacks under the provisions of the act. It affects only the proof to be submitted to the board in cases of lost or destroyed invoices, where such loss or destruction was caused by fire, flood or tornado, and in instances where neither the claimant nor his agent or employee, was guilty of negligence or carelessness in connection with the loss or destruction of such invoices. In such cases, claims may be supported by certified copies of such invoices, obtained from dealers, rather than upon the production of the original invoice or invoices as required under the provisions of said Section 2396.4, as amended.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General.