

VOLUME NO. 38

OPINION NO. 67

DEPARTMENT OF REVENUE - Distribution of proceeds from
Distributor's Gasoline License Tax Act;
TAXATION AND REVENUE - Distribution of proceeds from
Distributor's Gasoline License Tax Act;
MONTANA CODE ANNOTATED - Section 60-3-201.

HELD: The percentages of the distributor's gasoline
license tax to be deposited in the state park
account and in the snowmobile account should be
derived from the gross taxes collected by the
Department of Revenue under the license tax.

6 February 1980

Morris L. Brusett, C.P.A.
Legislative Auditor
Office of the Legislative Auditor
State Capitol
Helena, Montana 59601

Dear Mr. Brusett:

You have requested my opinion concerning whether the distribution of gasoline dealers license tax receipts should be based on gross receipts, or on net receipts after refunds have been determined for off-highway use.

Section 60-3-201, MCA, provides in pertinent part:

(1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of revenue's suspense account for gasoline tax refund, shall be used and expended as provided in this section. So much of that money on hand at any time as may be needed to pay highway bonds and interest thereon when due and to accumulate and maintain a reserve therefor, as provided in laws and in resolutions of the state board of examiners authorizing such bonds, shall be deposited in the highway bond account in the sinking fund established by 17-2-102. Subject to that provision, 9/10 of 1% of all money shall be deposited in the

state park account and $\frac{1}{2}$ of 1% of all money shall be deposited in a snowmobile account in the earmarked revenue fund. The remainder of the money shall be used by the department of highways on the federal-aid highways in this state selected and designated under Title 23, U.S.C., and on highways leading from each county seat in the state to the federal highway system of federal-aid roads where the county seat is not on the system and on the other roads which have been or may be authorized by the laws of Montana and for collection of the license taxes and the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state.

* * *

(4) Money credited to the state park account in the earmarked revenue fund shall be used only for the creation, improvement, and maintenance of state parks where motorboating is allowed, except for the payment of refunds under 15-70-221 through 15-70-226. The legislature finds that of all the fuel sold in the state for consumption in internal combustion engines, not less than $\frac{9}{10}$ of 1% is used for propelling boats on waterways of this state.

(5) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost and to promote snowmobile safety. For the 2 years following July 1, 1977, 15% of the amount deposited in the snowmobile fund each year shall be used to promote snowmobile safety. Thereafter, 10% of the amount deposited in the snowmobile fund shall be used to promote snowmobile safety. The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, not less than $\frac{1}{2}$ of 1% is used for propelling snowmobiles on public lands of this state.

(Emphasis added.)

The ambiguity of this statute arises because it is not clear whether the term "all money" in the third sentence of the

first paragraph means "all money received in payment of license taxes" or "all money received in payment of license taxes..., except those amounts paid...for gasoline tax refund."

The first sentence in subsection (4) of the statute favors the latter interpretation of the statutory language.

Money credited to the state park account in the earmarked revenue fund shall be used only for the creation, improvement, and maintenance of state parks where motorboating is allowed, except for the payment of refunds under 15-70-221 through 15-70-226.

(Emphasis added.)

However, the concluding sentence of that subsection, as well as the concluding sentence of subsection (5) favor the former interpretation of the statute.

The legislature finds that of all the fuel sold in the state for consumption in internal combustion engines, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(Emphasis added.)

and,

The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, not less than 1/2 of 1% is used for propelling snowmobiles on public lands of this state.

(Emphasis added.)

The figures mentioned in these two sentences correspond to those found in the third sentence of subparagraph (1), the sentence wherein the ambiguity originates.

The ambiguity cannot be resolved by simply applying well-settled rules of statutory interpretation. It is an ambiguity which should be presented to the Legislature for resolution at the next opportunity. In the interim "great deference must be shown to the interpretation given the

statute by the officers or agency charged with its administration." Udall v. Tallman, 380 U.S. 1, 16 (1965), Dept. of Revenue v. Puget Sound Power and Light, ___ Mont. ___, 587 P.2d 1282, 1286 (1978).

Here, the Department of Revenue has interpreted the statute to mean that the term "all money" as used in the third sentence of subparagraph (1) is not to be adjusted by first subtracting the gasoline tax refund. In other words, the percentages found in the third sentence should be applied to the gross amount of money paid under the Distributor's Gasoline License Tax Act. At least two previous audits have approved this interpretation. This is a reasonable construction of the statute in question, especially in light of the fact that the incorporated legislative "findings" speak in terms of "all the fuel sold in the state for consumption in internal combustion engines" rather than in terms of all the fuel sold subject to the Distributor's Gasoline License Tax Act.

Concurring in the opinion of the Department of Revenue, it is my opinion that the distribution of gasoline dealers license tax receipts should be based on gross receipts. Furthermore, I suggest that this problem be presented to the Legislature as soon as possible for a more definite resolution.

THEREFORE, IT IS MY OPINION:

The percentages of the distributor's gasoline license tax to be deposited in the state park account and in the snowmobile account should be derived from the gross taxes collected by the Department of Revenue under the license tax.

Very truly yours,

MIKE GREELY
Attorney General