

TAXATION:
MOTOR VEHICLE FUEL TAX
COUNTIES:

Counties which purchase motor fuel or diesel fuel are required to pay the tax imposed by H.B. 516 Laws of Missouri 1941 page 448.

March 2, 1942

Hon. George N. Davis
Prosecuting Attorney
Macon County
Macon, Missouri

3-5
FILE
21

Dear Sir:

This is in reply to your letter of recent date, wherein you request an opinion from this department on the following statement of facts:

"State Inspector of Oils, George Metzger, sent W.A. Tibbs, Circuit Clerk of Macon County, Missouri, a user's license, 20-098, under House Bill 516. The vehicles intended to be covered by this license are roadgraders using diesel fuel. It is contemplated that the monthly report will have to be furnished by the county showing the total gallons of such fuel used. This is for the purpose of assessing tax against the county which will probably amount to approximately \$100 a month for roadwork on the county highways.

"I am doubtful as to the right of the legislature to assess such tax against Macon County, and I am writing to ask your opinion as to whether or not Macon County can be required to pay such taxes."

The pertinent portion of H.B. 516 which applies to your question is found in Laws of Missouri 1941 page 448, as follows:

"For the purpose of this article: 'Motor Vehicles' shall mean and include all vehicles, engines, machines, or mechanical contrivances which are propelled by internal combustion engines or motors.

"'Fuel' shall mean and include all volatile and inflammable liquids totally refined, partly refined or unrefined, (1) 10% of which has not been recovered when the thermometer reads 347 degrees F. and (2) 95% of which has not been recovered

when the thermometer reads 464 degrees F. when subject to distillation in accordance with 'Standard Method of Tests for Distillation of Gasoline, Naphtha, Kerosene, and similar Petroleum Products' (ASTM designation: D-86) of the American Society for Testing Materials. Fuel shall also mean and include liquefied gases which are in a gaseous state at 60 degrees F. at a pressure of 14.7 pounds per square inch absolute, denatured alcohol, wood alcohol, Ethyl, Alcohol, ether, turpentine, acetate, and products having a Reid Vapor Pressure of 30 pounds or more at 100 degrees F.

"'Public Highways' shall mean and include every way or place, of whatever nature, generally open to the use of the public as a matter of right for the purpose of vehicular travel and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair.

"'Person' shall mean and include natural persons and partnerships, firms, associations, joint stock companies, syndicates, and corporations, and any receiver, trustee, conservator, or other officer appointed pursuant to law or by any court, state or federal; also counties, municipalities, and other political subdivisions of this state, singular or plural and the State of Missouri. The use of the singular number shall include the the plural number.

"'Use' shall mean and include the consumption of fuel by any person in a motor vehicle for the propulsion thereof upon the public highways of this State.

"'User' shall mean any person who uses or consumes fuel within this state in an internal combustion engine for the generation of power to propel motor vehicles upon the public highways of this State.

"'Duly Licensed User' shall mean and include any user holding an unrevoked license issued under this Act."

By the definition of the term "person" supra, there can be no doubt that the lawmakers have intended to impose this tax on counties in cases where they purchase "Diesel Fuel" to be used in internal combustion engines for the generation of power to propel motor vehicles on the public highways of the state.

Your inquiry seems to go more to the authority of the Legislature to impose this tax on counties than to the question of whether or not the tax is imposed by the act.

This is an excise tax and we think the question of whether or not such a tax may be imposed on the State and political subdivisions such as counties, municipalities etc., has been considered by the Supreme Court of this state, in the case of State ex rel v. Smith 90 S. W. (2d) 405. The court in speaking of the nature of the "Missouri Sales Tax" said l. c. 406:

"* * * Under these general definitions of the term, as well as upon the authority of many adjudicated cases, we think it so clear as not to be open to question that the tax in controversy is an excise, and not a property, tax.* * * *"

By the same rule the tax here under consideration is an excise tax.

On the question of the authority of the State to impose the provisions of the "Sales Tax" on the State and its agencies, the court in the Smith case supra, said l.c. 406:

"It is elementary that the power of the Legislature in matters of taxation for public purposes is unlimited, except in so far as restrained by the State or Federal Constitution or inherent limitations on the power to tax.* * * *"

If the State is authorized to make the tax applicable to itself and its agencies then it would be authorized to make the tax applicable to any political subdivision of the state. Also in the case of State v. Hallenberg-Wagner Motor Co., 108 S.W. (2d) 398, 402, the court in speaking of the authority and limitation of the General Assembly to levy taxes said:

"The inherent power of the Missouri General Assembly to levy taxes, independent of constitutional grant, is subject only to limitations prescribed in the Federal and State Constitutions."

Hon. George N. Davis

-4-

March 2, 1942

We find no provisions of the Federal or State Constitution which would prohibit the state from making this tax applicable to counties.

CONCLUSION

From the foregoing, it is the opinion of this department that the General Assembly is not prohibited by the provisions of the Federal and State Constitutions from making the provisions of the Motor Fuel Tax imposed under H. B. 516 Laws of Missouri 1941, page 448 applicable to counties, and that the act does apply to counties.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

Roy McKittrick
Attorney General

TWB:AW