MOTOR VEHICLE FUEL:
GASOLINE TAX:

Authority granted the Oil Inspector to waive penalties on the use tax imposed on diesel, butane and propane does not authorize him to waive a penalty on the excise tax imposed upon the sale of gasoline.

March 17, 1942

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Mr. George Metzger
State Oil Inspector
Jefferson City, Missouri

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Dear Sir:

This will acknowledge receipt of your letter of March 10, 1942, which is as follows:

> "Upon the assessment of penalties against distributors who have been delinquent in making payment of motor fuel tax, in several instances we have been referred to paragraph (c) Section 5, House Bill No. 516, effective October 10, 1941.
>
> "Several persons have stated that this Act amends the Motor Fuel Law and gives the Inspector authority to waive all penalties.
>
> "We would appreciate an opinion on this matter."

As we understand the foregoing letter, when you refer to the "Motor Fuel Law" you have reference to House Bill No. 516, appearing in Laws of 1941, page 448, and Article II, Chapter 45, R. S. Missouri, 1939. We do not think there are any grounds for the contention that the provision of House Bill No. 516, Section 5, subsection c, gives the Oil Inspector authority to waive the penalties which may accrue under the provisions of Article II, Chapter 45, R. S. Missouri, 1939. This becomes apparent when it is understood

what was to be accomplished by the amendments to the Motor Vehicle Fuel Law appearing in Laws of 1941, pages 447 and 448.

House Bill No. 515, Laws of 1941, page 447, repealed and reenacted Section 8411, R. S. Missouri, 1939, and redefined the term "Motor Vehicle Fuels," so as to apply a scientific definition. The definition there given excludes from its scope certain products which are commonly known as diesel, butane and propane. The underlying reason for this exclusion was the fact that only a small percentage of these petroleum products are used in propelling vehicles upon the highways, yet under the former definition of motor vehicle fuels, these products were subject to be used in computing the tax due from the licensed distributors and then the state and taxpayer were burdened with having the tax paid on ninety-five percent or more of this fuel, subject to be refunded under the provisions of Section 8423, R. S, Missouri, 1939, because most of it is used for domestic purposes, such as heating and lighting, and the operation of stationery engines.

However, due to the fact that a small persent of said products were used to propel motor vehicles upon the highways of this state, the Legislature enacted House Bill No. 516, appearing in Laws of 1941, page 448. In Section 1 of that Act the term "fuel" is defined and the scientific defintion there given includes all products excluded from the definition contained in Section 8411, Laws of 1941, page 447. The tax levied under House Bill No. 516, is a tax separate and distinct from that levied on gasoline under the provisions of Article II, Chapter 45, R. S. Missouri, 1939. The penalties under the Act last cited accrued by reason of the provisions of Section 8419 and 8420, R. S. Missouri, 1939, while the penalties on the tax imposed under House Bill No. 516, accrued by reason of Section 5 of that Act appearing in Laws of 1941, page 450. In connection with the penalties imposed in House Bill No. 515, the Act provides that if:

> "* * * if be established that such delay was due to accident or justifiable oversight, the Inspector is authorized to waive the ten (10%) per cent penalty."

It is at once apparent that the authority there granted to waive penalties is confined solely to the penalties which accrue by reason of failure to report and pay the tax that is imposed under House Bill No. 516. We find no rule of construction which supports or authorizes a conclusion that that authority would authorize the Inspector to waive penalties which would accrue under the provisions of Sections 8419 and 8420, R. S. Missouri, 1939.

CONCLUSION.

It is, therefore, our opinion that the authority granted the State Oil Inspector, under the provisions of Section 5, subsection c, Laws of 1941, page 450, with respect to waiving penalties that accrue for failure to pay the tax there imposed, does not authorize said Inspector to waive the penalties that accrue, under Sections 8419 and 8420, R. S. Missouri, 1939, for failure to pay tax that is imposed under Sections 8413 and 8414, R. S. Missouri, 1939.

Respectfully submitted,

LAWRENCE L. BRADLEY
Assistant Attorney-General

Approved:

ROY McKITTRICK
Attorney-General

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