AUDITOR OF STATE: Motor Fuel Tax Law—failure to register transportation equipment subjected foreign corporation to penal provisions of Act—Fuel Use Tax Law held constitutional and enforceable by assessment and warrant.

February 9, 1944.

Opinion No. 15

Hon. Richard T. James, Auditor of State,
State House,
Indianapolis, Indiana.

Dear Mr. James:

Your letter of January 6th received in which you request the procedure required in compelling compliance with (a) the Motor Fuel Tax Law, and (b) the Fuel Use Tax Law. Your questions will be discussed in the order named.

The corporation named in your letter is not qualified to do business in Indiana as a foreign corporation according to the records in the office of the Secretary of State.

(a) Your specific question relative to the Motor Fuel Tax Law, which is Chapter 73 of the Acts of 1943, 47-1532 Burns 1940 Replacement, Supplement, et seq, involves a corporation which has complied with the provisions requiring reports from carriers (47-1546 Burns, supra), but which has ignored requests for the registration of transportation equipment (47-1545 Burns, supra). You ask what steps should be taken to compel the corporation to comply with said provisions.

In answer to your inquiry, it is my opinion that the corporation's failure to comply with the section relative to the registration of transportation equipment would result in the violator being subject to the general penalty provisions of said Act, to-wit:

"* * *

"Other Violations. Penalty. Any person violating any of the provisions of this act for which a specific penalty is not provided, or any member of any firm or officer of any corporation knowingly suffering or permitting such firm or corporation to violate any of such provisions of this act, or any agent, employee or repre-
sentative of such person, firm or corporation, who violates or aids or assists in the violation of any of such provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars ($25.00) nor more than one thousand dollars ($1,000), to which may be added imprisonment in the county jail or at the Indiana state farm for not less than ten (10) days nor more than three (3) months."

47-1560 Burns 1940 Replacement, Supplement.

Under Section 2 of the Motor Fuel Tax Law (47-1533 Burns, supra), the word "person" is defined as follows:

"'Person' shall mean and include natural persons, partnerships, firms, associations, and corporations, any representative appointed by any court, the state and its political subdivisions, and the use of the singular number shall include the plural number."

From the definition of the word "person" as set out in the act, together with the provisions of the penalty section (47-1560 Burns, supra), it is my opinion that the corporation in its corporate capacity and also the agent, employee or representative of such corporation, is amenable and subject to the provisions of the penalty section herein referred to.

Your procedure, in the event of violations of the provisions of the act which amount to criminal violations, would be the same as for the violations of any other criminal statutes. The matter should be referred to the Prosecuting Attorney of the county where the violation occurred so that the corporation, agent, employee or representative of such corporation may be prosecuted.

I pointed out heretofore that the subject of your letter was not qualified as a foreign corporation to do business in Indiana. I should like to point out that this failure to qualify does not excuse the corporation, its agents or employees or representatives from the penalty section. On the contrary, a foreign corporation is amenable to the criminal statutes of the state which is foreign to its residence. It has been said in Fletcher Encyclopedia, Corporations, Vol. 18, at page 64:
“Both domestic and foreign corporations doing business in the state are subject to criminal liability.”


(b) There seems to be little question about the constitutionality of the Fuel Use Tax Law of Indiana. The Supreme Court of the United States has held in many cases, that where a tax has been imposed by a state which is a direct burden on interstate commerce, the said tax is invalid. However, the Indiana Fuel Use Tax Law bases the tax on the estimated gallonage of fuels to be used within the state during the next preceding calendar month. It is noted that the tax is not based on the amount carried, but is based on the amount used. Also, the tax levied is for the same purpose as the tax imposed by the Motor Fuel Tax Law of this state, which is, that the tax shall be used for the purpose of paying refunds, payment and costs and expenses of the administrator, his agents and employees, incurred in the administration and the enforcement of the act, and the balance shall be transferred to the motor vehicle highway account. The Supreme Court of the United States on November 12, 1940 in 311 U. S. 702 denied a writ of certiorari in a case decided by the Supreme Court of Florida on July 5, 1940 entitled Acme Freight Lines, Inc. v. Lee, State Comptroller, found in 143 Fla. 635 and 197 So. 499. The statute in question here was a fuel tax statute and the tax was imposed by the state on the use of such fuel within the State of Florida only. The state imposed an excise tax of 7¢ per gallon on the use of such fuel by any person within the State of Florida only when such fuel is used in an internal combustion engine for the generation and power to propel motor vehicles of any kind and character on the public highways. The court in holding the tax valid said:

“There is no claim that the revenues from the tax are not used for the proper construction, maintenance, operation and supervision of the public roads of the state. The tax is clearly intended as compensation for the use of the public roads of the state. This being so the tax is legal under the decision of the United States Supreme Court in Bingaman v. Golden Eagle Western Lines, Inc., 297 U. S. 626, 80 L. Ed. 928. See Dixie
Ohio Express Co. v. State Revenue Commissioner of Georgia, 306 U. S. 72, 83 L. Ed. 495, and authorities therein cited."

See also:


Obviously from the above and foregoing, the Fuel Use Tax Law of Indiana is not a burden on interstate commerce and is levied only for the purpose of exacting a reasonable compensation for the use of the highways of the State of Indiana.

Turning now to your specific question relative to the Fuel Use Tax Law, it is my opinion that the procedure required in compelling compliance with the Fuel Use Tax Law, which is Chapter 74 of the Acts of 1943, is as follows:

1. Section 47-1610 Burns, supra, of said act provides detail, and complete procedure, which the administrator must follow in setting up the charge of a user who has neglected to file the reports required, or who has filed fraudulent reports. The administrator, after investigation, is authorized to fix a charge including a penalty. After fixing such assessment the administrator shall notify such user accordingly, setting a time and place for hearing not less than ten (10) days after the date of such notice.

2. If any amount due as shown by the reports filed by the user be not paid by the end of the calendar month in which such report should be filed, or, if any amount be unpaid of the assessment made by the administrator fifteen (15) days after such decision upon hearing, the administrator shall issue a warrant under his official seal, directed to the sheriff of any county of the state commanding the said sheriff to levy upon and sell the real and personal property of the delinquent user, with penalties and damages, plus cost, as provided in the act. These enforcement provisions are analogous to those in the Gross Income Tax Act.

I have not analyzed every provision of the act as interpretation is not required, however, all provisions should be very carefully followed and technically pursued.