AUDITOR OF STATE: Whether "certificates of use" can be used in the case of naphtha.

January 9, 1933.

Hon. Floyd E. Williamson,
Auditor of State of Indiana,
Indianapolis, Indiana.

Dear Sir:

In reply to your request of the 7th inst. for an opinion with regard to "certificates of use" being used in the case of naphtha, I would refer you to an official opinion of this office dated December 23, 1932, covering this same question.

It is my belief that the opinion then given was and is correct and, in view of the same, we do not believe that "certificates of use" can be used in the case of naphtha.

I appreciate the fact that the payment of tax by users of naphtha and the filing of application for refund when the same is not used for fuel for motor vehicles, may occasion a great deal of inconvenience and seemingly needless expense, however, that is a matter which should be remedied by the legislature in the amendment of the motor vehicle fuel tax law.

It is indeed unfortunate if the dealers have failed to collect the proper tax from the purchasers, but however that may be, it is of no concern to the State of Indiana. The State of Indiana is entitled to receive the tax from the dealers, whether the dealers collect from the ultimate consumer or not.

AUDITOR OF STATE: Proper method of refunding gasoline tax to licensed dealer of Indiana.

January 10, 1933.

Hon. Floyd E. Williamson,
Auditor of State of Indiana,
Indianapolis, Indiana.

Dear Sir:

In response to your request dated January 9, 1933, for an opinion concerning the proper method of refunding tax to be paid to a licensed dealer of the State of Indiana, who purchased a quantity of gasoline and paid the tax thereon and then trucked a large amount of the same into the State of Illinois for sale at a station in Illinois and upon which the
State of Illinois has levied and is entitled to a levy of gasoline tax under its laws, I would report as follows:

An examination of the statutes of Indiana fail to disclose any authority for the giving of credit in future reports upon gasoline tax improperly or erroneously paid in the past.

However, section 5 of chapter 68 of the Acts of the General Assembly at the special session of 1932 (Acts 1932, page 256), amends section 5 of the original act, by providing among other things, that any person who shall purchase any motor vehicle fuel for any other commercial use, except for propelling motor vehicles operated in whole or in part upon any of the public highways of the state, shall be reimbursed and repaid the amount of such license fee paid by him, etc.

In construing the language of this section, it is my opinion that gasoline purchased for resale to the ultimate consumer in the State of Illinois, comes under the provisions of this section and would not be subject to tax.

In other words, it is my opinion that the place of sale to the ultimate consumer would indicate in what state of the Union, the gasoline is to be used, and since this gasoline was to be sold at a retail station in the State of Illinois to various persons coming to such station for the same, it would be presumed that the gasoline was not to be used for propelling motor vehicles operated in whole or in part upon any of the public highways of the State of Indiana.

Hence, it is my opinion that the proper method of securing reimbursement from the State of Indiana for such gasoline so delivered for sale in Illinois, would be by filing a necessary statement and supporting invoices and evidence required under the section of law referred to above.

AUDITOR OF STATE: Procedure in case of Mid-Continent Petroleum Corp., who overpaid kerosene tax by failing to turn in “certificates of use.”

January 10, 1933.

Hon. Floyd E. Williamson,
Auditor of State of Indiana,
Indianapolis, Indiana.

Dear Sir:

In reply to your request for an opinion upon the procedure to be followed in the case of the Mid-Continent Petroleum