AUDITOR OF STATE: Gasoline tax exemption of federal employees. November 1, 1933.

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

Dear Sir:

I have before me your letter of November 1st in which you ask the following questions:

"Would an employee of the Federal Land Bank, of Louisville, Kentucky, be entitled to Indiana state tax exemption on gasoline used in automobiles when appraising Indiana land, the gasoline so used being purchased in Indiana?

"In the event your answer is in the affirmative, should we accept form 6 (gasoline license fee exemption to United States government) forms, or should we require form 44 in connection with form 6? Should we, however, under any circumstances, permit a dealer to take exemption when such exemption is supported only by an improvised form?

"The governmental branches who have been provided with form 44 also have form 45, which is an identification card. In case we are to accept other than form 44, what means of identification should we require? Would the division of public health be classed as a United States governmental branch? Just what means do we have of knowing whether or not the person purchasing gasoline from our dealer is entitled to tax exemption?"

Replying to the first question, I desire to advise you that an employee of the Federal Land Bank is not an employee of the United States government. He is employed by the bank and receives compensation for his services from the bank. Hence, any gasoline which may be purchased by him for use in operating a motor vehicle upon the business of the bank, would be subject to the state motor vehicle fuel tax.

The second part of this first question, however, refers to the act of appraising Indiana land. I am informed that appraisers of land for Federal Land Banks are not employees of such bank, but are directly employed by the Department of Agriculture and are paid by voucher checks issued by the
United States Treasury Department. Under these circumstances, such appraisers, being directly employed by the United States government and receiving reimbursement for their expenses while engaged in such work from the United States government, the gasoline purchased by them would be exempt from the Indiana gasoline tax.

It is my opinion that the test to be applied in any case where the question of exemption from the Indiana motor vehicle fuel tax arises, is whether the gasoline so purchased is paid for by the United States government. In other words, if the person claiming such exemption, receives reimbursement for such gasoline so paid by him from the United States Treasury, so that it actually becomes an expenditure of the Federal government itself, no state gasoline tax could be collectible. If, on the other hand, the reverse is true, then the mere fact that such claimant to exemption is doing some sort of work connected in some way or manner with the Federal government, would not entitle him to such exemption.

The theory of exemption is that the state government has no right to levy any taxes of any kind against the Federal government, since such would be in derogation of the sovereignty of the Federal government, and in like manner, the Federal government cannot levy any tax against the state government for the same reason.

Since the tax is payable as a general rule and since the exemption to be granted is an exception to such rule, the burden is upon the claimant of such exemption to prove that he is entitled to the same. Heretofore, arrangements have been made for claimants to such exemption to identify themselves by means of the identification card (form No. 45) and to support their right to such exemption by the execution of form No. 44. To this, the state has agreed.

Therefore, until some satisfactory arrangements have been made between the Federal government and the state government for a different method of determining whether such exemption shall be granted to any particular applicant, it is my opinion that you should adhere to these requirements and that it would be improper for you to recognize an improvised form in lieu of form No. 44 or to permit claim of exemption without such identification.

The general principles expressed in this opinion will be sufficient to answer the specific questions contained in your letter.