

**AUDITOR OF STATE: Right of Auditor of State to make refunds where gasoline has been lost in flood.**

February 3, 1937.

Hon. Laurence F. Sullivan,  
Auditor of State,  
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of February 1, 1937, wherein you request an opinion relative to your power and duty in the collection of the state motor vehicle fuel tax. You state that you have been receiving numerous requests for information relative to reimbursing motor vehicle fuel dealers for taxes paid on products which have since been lost in large quantities by reason of flood and other casualties.

Your question relates to two different situations and grows out of the method of procedure set out by the statute for the computation of the tax due. The first of these situations is the situation of the licensed dealer who pursuant to Section 47-1502 of Burns Indiana Statutes, Annotated, 1933, has paid the tax less a tare of 3 per cent to cover evaporation and unaccountable loss prior to the actual sale to the user, and who has suffered the further loss or destruction of some part thereof so that it cannot be sold to a user.

The second situation is where the motor vehicle fuel has been sold to a retailer who has paid the tax to the vendor who in turn has either paid the tax or becomes liable for the payment of it, and which retailer has suffered the loss or destruction of some part thereof after delivery to him.

Your question goes to your right to reimburse such persons to the extent of the tax paid or to the extent for which liability has been assumed where the motor vehicle fuel has been lost or destroyed and consequently has not been used for the propulsion of motor vehicles on the public highways of the state; and also, if such reimbursement can be made, the proper method for doing so.

I have examined the statute carefully and apparently there is no express provision which authorizes a reimbursement in such a case where the motor vehicle fuel is *gasoline* other than the allowance of the tare of 3 per cent to cover evaporation and unaccountable loss. The loss to which you refer is of course not a loss of that character. As to other motor vehicle

fuels, the Auditor of State is authorized and empowered in his discretion to remit any portion of such license taxes upon the proper showing to his satisfaction and approval that the same was actually lost or destroyed through causes to be set out in detail in such showing, and that the same was not used for the propulsion of motor vehicles upon the highways of the State of Indiana.

I am not advised as to what the reason was for making a distinction between gasoline and other motor vehicle fuels with respect to this reimbursement provision and I am merely calling your attention to it because the statute does make the distinction.

Burns Indiana Statutes, Annotated, 1933, Section 47-1502.

It is true, however, that the license fee imposed by the Act is on the *use* of motor vehicle fuel from which it would seem to follow that motor vehicle fuel not used would not be subject to the tax.

Burns Indiana Statutes, Annotated, 1933, Section 47-1501.

Gaffill v. Bracken, Auditor, 195 Ind. 551, at page 559.

While, as already stated, there is no express provision authorizing an allowance or refund of tax in the case of *gasoline* on account of its loss or destruction, the fact that the tax is on its *use* would seem to preclude the collection and retention of a tax on gasoline which has been destroyed or lost and which has not been used.

With this thought in mind, in my opinion the provisions of the statute setting out the form of report and the method of arriving at the amount of tax payable, are only provisions with reference to procedure and do not prevent an actual allowance in the case of the loss of motor vehicle fuel upon the basis of which a tax has been paid. The provision of the statute authorizing the prepayment of gasoline tax prior to its use is for the mutual benefit of the parties, but in my opinion it was not intended that it should operate in such a way as to authorize the state to collect and retain a tax upon a gallonage which had not actually been used.

It is my opinion, therefore, that the licensed dealer under conditions set out in the first situation above and the person who has paid the tax to the vendor who has assumed liability for its payment or has already paid the tax set out in the second situation is entitled to relief in the case of loss of gasoline upon which the tax has thus been paid.

The question remains as to how the problem should be handled in your office. It seems to me that it is entirely proper that the licensed dealer in such a situation would be entitled to take credit for the amount lost or destroyed in its next monthly report, provided the department shall adopt a rule setting out the details of how this may be done.

As to those covered by the second situation above described, it seems to me that some method should be found by which a direct refund could be made upon proper showing and in conformity with the rules of the department. In making such a refund, however, a deduction of 3 per cent should be made because of the original method of computing the tax payable to the state which allowed a deduction of a tare of 3 per cent to cover evaporation and unaccountable loss.

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**MEDICAL REGISTRATION AND EXAMINATION, STATE BOARD OF: Duty of Board to issue a license to practice chiropractic upon evidence of graduation from chiropractic school; also required evidence of such graduation.**

February 3, 1937.

William R. Davidson, M. D.,  
Secretary, Indiana State Board of Medical Registration  
and Examination,  
Room 5, State House Annex,  
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion as to the duty of the Board with respect to the issuance of a license to practice chiropractic upon the application and supporting papers enclosed with your letter. This application seeks the issuance of a license to practice chiropractic pursuant to that part of section 2 of chapter 248 of the Acts of 1927, which provides that: