

1969 O. A. G.

OFFICIAL OPINION NO. 1

March 28, 1969

Mr. James O. Mathis
Commissioner
Department of Revenue
State Office Building
Indianapolis, Indiana

Dear Mr. Mathis:

I am in receipt of your request for an Official Opinion concerning the collection of Motor Fuel Taxes from distributors pursuant to the provisions of House Enrolled Act 1026. [Acts of 1969, Ch. 319, as found in Burns' (1969 Supp.), Sections 47-1535 and 47-1540] Your specific question is:

“Under House Enrolled Act No. 1026, should the Department of Revenue require the distributor as defined in the act to remit an additional two (2) cents per gallon fuel they possess in their inventory as of April 1, 1969, the effective date of the bill?”

To answer this question, we must first look to the text of the law which follows: House Enrolled Act 1026 amends Acts 1943, Ch. 73, Secs. 4 and 9, Burns' Sec. 47-1535 and Sec. 47-1540, and Section 9, as amended, reads in part as follows:

“Section 9. For the purpose of determining the amount of his liability for the tax herein imposed, each distributor shall, not later than the twentieth day of the month next following the month in which this act becomes effective and not later than the twentieth day of each calendar month thereafter, file with the administrator on forms prescribed by the administrator monthly reports sworn to by the distributor which shall include the following:

“(1) An itemized statement of the number of invoiced gallons of motor fuel received (within the meaning of the term ‘received’ as defined in section 2 of this act) by such distributor within this state during the preceding calendar month. Such statement shall show the date, place and quantity of each receipt of motor fuel, the point of origin, the

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method by which and the name of the person from whom motor fuel was received and such other detail of each transaction or operation by which motor fuel was received as may be necessary for the proper administration of this act.

“(2) An itemized statement showing the deductions authorized in section 4 of this act, together with such supporting details of each such deduction as may be required for the proper administration of this act.

“In addition to the data required hereinabove, the report rendered by any distributor for the first calendar month after the effective date of this act shall contain a statement of the number of gallons of motor fuel on hand within this state (other than at refineries or marine or pipeline terminals) and not reported for taxation under this or any prior act. Such motor fuel shall be deemed to have been received by such distributor on the effective date of this act.

“At the time of filing each monthly report with the administrator, each distributor shall pay to the administrator the full amount of the motor fuel tax due from such distributor for the preceding calendar month which shall be computed as follows:

“(1) From the total number of invoiced gallons of motor fuel received by such distributor within this state during the preceding calendar month shall be made the following deductions:

(a) First, those authorized in section 4 of this act; and

(b) The number of gallons of motor fuel which shall be equal to two per centum (2%) of the net number of invoiced gallons of motor fuel received by the distributor within this state during the preceding calendar month after deductions authorized by this act have been taken, such percentage being a flat allowance to cover evaporation, shrinkage, and losses other than those covered by section 4 (5) of this act, also such distributors' expenses

and losses in collecting, accounting for, and paying over the tax herein imposed.

“(2) The number of invoiced gallons remaining after the deductions hereinabove set forth shall be multiplied by eight hundredths (.08) and the resulting figure shall be the amount of motor fuel tax in dollars and cents due from such distributor for the preceding calendar month * * *”

For the purpose of determining a distributor's tax liability under the Motor Fuel Tax Law, said Section 9 provides for the filing of a report upon gallonage received, less certain deductible items, for the preceding month. The tax rate due and payable upon the distributor's report, due to be filed in April, 1969, is stated to be \$.08 per gallon received.

The requirement for filing a monthly report, and the language so providing, has been in the Motor Fuel Tax Law since its original passage. The wording of this requirement has not been changed in any substantial manner and was not changed by the wording of House Enrolled Act 1026, which, in that portion above set forth, changed only the rate of tax applicable to the distributor's report of gallonage received for tax purposes from \$.06 per gallon to \$.08 per gallon. Section 3 of the Act declared an emergency, and provided that the Act shall take effect on and after April 1, 1969. There were minor changes also made by House Enrolled Act 1026 in respect to the reporting procedure.

The distributors' reports due in April, 1969, will be made pursuant to this Act as amended, and the effective tax rate included in said reports will be \$.08 per gallon.

This Act contains no provision or authority giving the Department of Revenue the power to collect the Motor Fuel Tax upon any basis or in any other manner than as provided therein. There is no authority for the determination of the tax upon an inventory taken upon a specified day of the month of March or any other month, nor for the application of any other rate in the reports to be filed in April, 1969, and thereafter, other than the \$.08 rate.

The General Assembly could have provided that the tax to be included in the distributors' reports to be filed in April,

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1969, would be the former rate of \$.06 per gallon, but no such provision was made; and there is nothing in the Constitution of the State of Indiana or the Constitution of the United States which prevents the levy of an excise tax based upon a state of facts which has occurred prior to the levy of the tax, or to the levy of an increased rate.

In conclusion, it is my opinion that the April, 1969, report to be filed by the distributors and the tax liabilities therein determined must be based upon the rate of \$.08 per gallon as now provided by Section 9 of the Motor Fuel Tax Law pursuant to the amending provisions of House Enrolled Act 1026.