



**OFFICE OF
THE ATTORNEY GENERAL
AUSTIN, TEXAS**

PRICE DANIEL
ATTORNEY GENERAL

April 28, 1947

Hon. George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Opinion No. V-170

RE: The refund of
motor fuel tax
to one converting
naphtha to light-
er fluid for mark-
eting in small
containers.

Dear Mr. Sheppard:

In your letter of April 9, 1947, you request the opinion of this department upon the application of the Gibson Products Company, Seagoville, Texas, for refund of motor fuel taxes paid by said concern upon naphtha (coming clearly within the definition of motor fuel) which it purchased and put up in small containers for sale as cigarette and cigar lighter fluid.

Section ^{13a} Article 7065b, provides as follows:

"Any person who purchases motor fuel in the State of Texas, and any distributor who appropriates motor fuel for use when such motor fuel purchased by such person or used by such distributor for operating or propelling any stationary gas engine or tractor used for agricultural purposes, motor boats, aircraft, or for any purpose other than use in a motor vehicle operated or intended to be operated in whole or in part upon any of the public highways, roads, or streets of the State of Texas, on which motor fuel tax has been paid, either directly or indirectly, shall be refunded the amount of such taxes so paid, by the distributor, exclusive of the one (1) per cent deduction allowed distributors upon the first sale, distribution or use of said

motor fuel, for collecting and remitting the tax and for evaporation and other losses in the manner and subject to the limitations and conditions described herein. Provided, however, that no greater amount shall be refunded than has been paid into the Treasury on any motor fuel. The tax actually paid by any distributor or person shall be refunded as provided herein on motor fuel not subject to the tax."

Clearly before the Gibson Products Company is entitled to a refund, it must establish its right thereto under the terms of said statute. The only basis upon which the Gibson Products Company can qualify for a refund is that portion of the statute reading as follows:

". . . . or for any purpose other than use in a motor vehicle operated or intended to be operated in whole or in part upon any of the public highways, roads, or streets of the State of Texas, on which motor fuel tax has been paid, either directly or indirectly. . . ."

Concededly, the use to which this concern appropriates the naphtha, namely, converting it into cigarette and cigar lighter fluid sold in small quantities is a use for some other purpose other than use in a motor vehicle operated or intended to be operated in whole or in part on any of the public highways, etc., of the State.

We are of the opinion that the Gibson Products Company is in truth the consumer as contemplated under the statute rather than the purchaser of the small quantities of cigarette and cigar lighter fluid converted by the consumer into these small quantities and sold promiscuously to the ultimate users of this fluid. It follows that the Gibson Products Company is entitled to a refund as a qualified consumer for a purpose other than use in a motor vehicle operated or intended to be operated in whole or in part upon any of the public highways, roads, etc., of this State. We assume, of course, that it has met the other provisions of the statute in regard to timely filing application for refund and has made use of the naphtha, a motor fuel, within the time prescribed by other provisions of the statute.

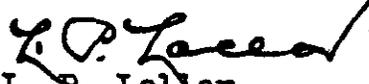
SUMMARY

If naphtha, a motor fuel, is converted into cigarette and cigar lighter fluid and sold as the latter product, one who converts such motor fuel into such use is under the terms of Article 7065b a consumer and entitled to a refund as a consumer for use other than in a motor vehicle operated or intended to be operated in whole or in part upon any of the public highways, roads or streets of the State of Texas; provided, such consumer can qualify under the other provisions of the act in timely presenting a claim for refund and in the timely use of the motor fuel thus converted.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By


L. P. Lollar
Assistant

LPL/lh/wb

APPROVED APRIL 28, 1947


ATTORNEY GENERAL OF TEXAS