



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

July 19, 1957

Hon. Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. WW-199
Re: Motor Fuel Tax Refund

Dear Mr. Calvert:

You have requested an opinion as to whether you are authorized to pay a Motor Fuel Tax Refund. You refer to Article 7065b, Vernon's Civil Statutes, and particularly subdivision (g) of Section 13 of said Article, as last amended by Acts, 1951, 52nd Legislature, page 695, Chapter 402, Section XXII, Section 4.

You set forth the pertinent facts as follows:

"A rancher operates a 200,000 acre ranch in King County, Texas which is bisected North to South by State Highway No. 83, and East to West by State Highway No. 82, on which trucks, pickups and power wagons are used for all general ranch purposes. A power wagon is a truck upon which is installed a separate unit used for lifting purposes.

"In the course of the ranch work these vehicles, which are all licensed for highway use by the State Highway Department travel daily or frequently over the bisecting highways in moving such vehicles from one division of the ranch to another. They travel from short distances up to and as far as 22 miles per trip between entrances to the ranch divisions. The Comptroller has declined to pay a tax refund claim filed by said rancher because no record was kept of the travel over the bisecting state highways and the refund motor fuel used in such travel was not deducted from the claim.

"The rancher contends that such vehicles are used entirely on the ranch (off the highway) except for incidental travel necessary to move the vehicles from one ranch property to another, and that such highway travel is so incidental to the basic ranch or non-highway use of such vehicles that it does not constitute a taxable use within the intent of the Legislature.

". . .

". . .

"Will you please advise whether the Comptroller may, under the existing law, approve a claim for tax refund in which the claimant has failed to deduct motor fuel used on the highway in incidental travel from one division of his ranch to another?"

It is our opinion, based on these facts, that you properly declined to pay the tax refund claim for the reason that no record was kept of the travel over the public highway, and the refund motor fuel charged to travel over the public highway was not deducted from the claim.

Subdivision (f) of said Section 13 of Article 7065b, as last amended by the same Act of the 52nd Legislature which last amended subdivision (g) of this Article is also applicable.

The first paragraph of subdivision (g) of Section 13 of said Article 7065b, as last amended in 1951, reads as follows:

" (g) No tax refund shall be paid on motor fuel used in automobiles, trucks, pick-ups, jeeps, station wagons, buses, or similar motor vehicles designed primarily for highway travel, which travel both on and off the highway except as hereinafter provided. (a) If any such motor vehicles are used entirely for non-highway purposes except when propelled over the public highway to obtain repairs, oil changes, or similar mechanical or maintenance services, or when propelled over the public highway for other incidental purposes, or (b) if any such motor vehicles are operated exclusively during the period covered in any

refund claim over prescribed courses lying between fixed terminals or bases, in which such vehicles travel the same mileage on the highway on each trip and the same mileage off the highway on each such trip, then in such cases a tax refund claim may be approved for the motor fuel used off the public highway in such vehicles, only when the claimant has kept a complete record of each trip traveled over any part of the public highway showing the date, the highway mileage traveled and the quantity of motor fuel used in each of said vehicles during the period of such travel." (Underscoring added)

While the syntax of this paragraph might be altered for more ready comprehension, still it is evident that the portion of this paragraph beginning with the first underscoring qualifies all the preceding portion of this paragraph. This portion of the law means just what it says: That a "complete record of each trip traveled over any part of the public highway" must be kept, including all trips for incidental purposes. This record furnishes the basis of the deduction for motor fuel used on the public highway in the claim for motor fuel tax refund.

The third paragraph of said subdivision (g) prescribes definite and exact methods by which

"A claimant may account for any part of refund motor fuel used upon the public highway, and not eligible for tax refund, . . ."

These methods are clearly described and just as clearly require exact recorded measurement of gasoline or mileage charged to use upon the public highway and deducted from the refund motor fuel covered by any invoice of exemption in the claim.

The fourth and last paragraph of said subdivision (g) reads as follows:

"The records prescribed hereinabove shall be kept for a period of six (6) months from the date any claim, to which such records are pertinent, is filed in the Comptroller's office, and no tax refund shall ever be paid in whole or in part when a part of the motor

fuel purchased on any invoice of exemption contained in the claim has been used to operate a motor vehicle, tractor, or other conveyance of any kind or description upon any public highway for which a tax refund is not authorized herein, unless the claimant has kept for the time and in the manner herein provided a complete record of all such uses for which no tax refund is authorized." (Underscoring added)

This fourth paragraph of said subdivision (g), like the first paragraph thereof quoted above, is clear and unambiguous in requiring a complete record of every trip traveled over any part of the public highway, irrespective of the purpose of the trip.

The second sentence of the second paragraph of subdivision (f) of said Article 7065b, Section 13, is in harmony with the various provisions of subdivision (g) of that Article wherein it states:

"The claim for tax refund shall include a statement that the information shown in each duplicate invoice of exemption attached to the tax refund claim is true and correct, and that deductions have been made from the tax refund claim for all motor fuel used on the public highway of Texas and for all motor fuel used or otherwise disposed of in any manner in which a tax refund is not authorized herein." (Underscoring added)

Subdivision (a) of said Section 13, of said Article 7065b requires no interpretation and reads as follows:

"In all refund claims filed under this section the burden shall be on the claimant to furnish sufficient and satisfactory proof to the Comptroller of the claimant's compliance with all provisions of this Article; otherwise, the refund claim shall be denied."

This opinion does not consider nor relate to any type of tractor usage upon a public highway, in that your inquiry covers only trucks, pick-ups and power wagons. (Paragraph 2 of the quotation from your inquiry).

SUMMARY

When no record is kept of "refund motor fuel" used by trucks, pick-ups, or power wagons while traveling upon a public highway between divisions of a ranch, and such motor fuel is not deducted from the claim, as required under the various Sections of Article 7065b, no tax refund on any part of such refund motor fuel purchased and covered by a particular invoice of exemption and used off of a public highway is authorized.

Yours very truly,

WILL WILSON
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By


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WEA:gs

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