



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

August 4, 1961

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

Opinion No. WW-1103

Re: Whether, under the facts
stated, the Comptroller
can legally pay the claim
for a refund of tax on
motor fuel.

Dear Mr. Calvert:

You have requested an opinion as to whether or not you can legally pay a claim filed for refund of motor fuel tax paid on gasoline used on a farm under a stated set of facts.

We quote from your letter request the following statement of facts:

"The foreman stated that the Jeep which bears 1960 highway license was used to haul hay, feed and fertilizer from the meadow to the farm, a distance of seven-tenths (7/10) of a mile over the highway, as well as the other travel over the highway from one entrance gate to another as set out in the letter.

"The claim was rejected for failure to keep a record of the travel over the highway and failure to deduct the fuel used on the highway in such travel and a copy of Opinion WW-199, holding that where no such record is kept and such motor fuel is not deducted from the claim a tax refund is not authorized."

The claimant has submitted a brief as to the facts and law in connection with this claim.

In his statement of facts he states that the farm is crossed by a county road running East and West through the farm.

We quote from the brief submitted as follows:

". . . Upon a more careful examination, the jeep is located in a garage on the north side of the road that runs east and west. It crosses the road to that part of the farm on the south side of the road in front of the residence, in doing so using the public highway for a distance of some twenty (20) steps or yards, and this is the main and principal use, in the crossing of the public road.

"A second use: the jeep proceeds from the same garage down to the same road and turns east one hundred and twenty (120) steps or yards, and then leaves the road. This is used perhaps on an average once a week during the year, and the first one is used on the average of at least once daily.

"A third entrance into the farm south of the road, about six hundred (600) yards west of the residence and garage. This is used only semi occasionally on an average of once a week.

"A fourth entrance about 900 yards west of the garage from the public road is a gate that is kept locked. This is wholly used by the jeep, possibly at times during the winter months."

To merely cross the road is not "being operated" upon the highways within the meaning of the statutes in our opinion and it is our understanding that the Comptroller's Office has so construed the law in the past. When a person enters the highway with a motor vehicle at one point and then travels along the roadway for any distance the person is operating a motor vehicle upon the highway within the meaning of our statutes.

If it can be said that traveling along the roadway for one hundred yards is not operating a motor vehicle on the highway then it could be said that two hundred yards is acceptable and so on and on. There would be no stopping point.

The Courts have uniformly held that tax exemptions are to be strictly construed. Refunds of gasoline taxes in a manner of speaking is a tax exemption. Quoting from 40 Tex.Jur. 109, Taxation, § 74:

"It is a universal rule, applicable to constitutional and statutory provisions exempting property from taxation, that

"'when an exemption is found to exist it shall not be enlarged by construction. On the contrary, it ought to receive a strict construction; for the reasonable presumption is that the state has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute, the favor would be extended beyond what was meant.'

"Furthermore, the exemption of certain property throws a greater tax burden on property that is taxable; therefore, any exemption derogates from the common right of equality of burden, and for this reason, also, both the constitutional provision authorizing the exemption and the statute granting it must be found to cover a claimed exemption unambiguously. For if the construction of the law be doubtful, the doubt will be resolved in favor of the taxing power and against the claim." Morris v. Lone Star Chapter No. 6, R. A. Masons, 68 Tex. 698, 702, 5 S.W. 519 (1887).

Opinion No. WW-199 answers almost an identical set of facts. About the only material difference is the distance traveled on the public road. In Opinion WW-199 the distance traveled was 22 miles and in this case the longest distance traveled was 7/10 of a mile. As previously pointed out, however, the distance is not the determining factor.

It is therefore our opinion that in compliance with the former opinion above mentioned, a copy of which is enclosed herewith, under the facts stated in this request the claim for refund was properly denied.

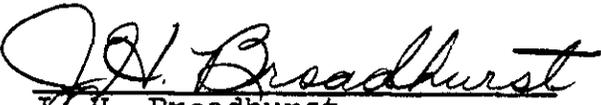
S U M M A R Y

Under the facts stated the operation of a jeep over the highway of this state as a matter

of convenience to get from one point on the roadway to another does not permit a tax refund for gas used on farm where no record is kept of amount used in jeep while traveling on roadway or of distance traveled on roadway.

Yours very truly,

WILL WILSON
Attorney General of Texas


J. H. Broadhurst
Assistant Attorney General

JHB:jp

APPROVED:

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REVIEWED FOR THE ATTORNEY GENERAL
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