

Opinion No. 67-81

June 21, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Russell D. Bradley, Director Central Accounting Division Bureau of Revenue
Santa Fe, New Mexico

QUESTION

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1. Under Senate Bill 166 are license fees and permit fees to be included in the distribution to municipalities and counties?
2. Will special fuel users and dealers be required by Senate Bill 166 to submit a schedule by county and municipality for allocation purposes, or can the distribution be based on the ratio arrived at from the schedule submitted by motor fuel distributors and wholesalers.
3. Must the one-cent tax paid on beginning inventory by wholesalers and dealers be distributed during the first part of August or can it be held until the end of August or the first part of September when a ratio can be arrived at?
4. Is the one-cent tax paid by retailers on the beginning inventory to be distributed based on reporting location?
5. Is the one-cent tax reported and paid in subsequent months to be distributed based on a ratio arrived at from the wholesalers and dealers reports although the amount of tax will not agree with the amount sold to retailers or used by wholesalers and dealers?

CONCLUSIONS

1. See analysis.
2. No.
3. See analysis.
4. No.
5. See analysis.

OPINION

{*117} ANALYSIS

Most of the questions asked can be answered by explaining the distribution system set forth in Section 64-26-19, N.M.S.A., 1953 Compilation. Sections 64-26-19(A) provides that an amount equal to nine-tenths of one cent (\$.009) per gallon on motor fuels and special fuels as imposed by Sections 64-26-2 and 64-26-68 and Section 6 of this act (Laws 1967, Chapter 170), less applicable deductions, shall be paid to the treasurers of municipalities and H-class counties. This amount to be distributed to the municipalities and H-class counties is not computed on taxes collected or license fees collected. It is merely an amount to be distributed in accordance with the ratio discussed below. The amount to be distributed to the treasurers of the counties including H-class counties, is one-tenth of one cent (\$.001) times the same number of gallons except for the gallons set forth in Section 6 (Laws 1967, Chapter 170).

Section 64-26-19(A), supra, provides that the amount computed above will then be distributed in the proportion that the taxable motor fuel sales in each of the political subdivisions bears to the aggregate taxable motor fuel sales in all the respective political subdivisions. For example, the municipality of Albuquerque will receive the percentage that Albuquerque taxable motor fuel sales bears to the total taxable motor fuel sales in all municipalities and H-class counties. Similarly, the County of Bernalillo will receive the percentage that taxable motor fuel sales outside incorporated municipalities for the County of Bernalillo bears to the total taxable motor fuel sales outside of incorporated municipalities for all the other counties including H-class counties.

After the municipalities and counties have received the portion set forth in Section 64-26-19(A), the remainder of the monies collected shall be credited in accordance with Section 64-26-19(B). Therefore, in answer to your first question, Section 64-26-19 does not contemplate that the distribution be tied to any particular fees or taxes which are collected. Section 64-26-19 simply provides that of the amount collected, a certain portion will be distributed to the municipalities and counties and the remainder goes to the state road fund.

Since the amount to be distributed is based on gallons sold in the state and the distribution ratio is based only on taxable motor fuel sales, your second question must be answered in the negative. The taxable sales of a special fuel user and dealer are not taken into consideration. It is only necessary that the number of gallons sold in the state be recorded.

The one-cent tax paid on beginning inventory by wholesalers and dealers pursuant to Law 1967, Chapter 170, Section 6, must be paid by no later than July 25, 1967. That section provides as follows:

TEMPORARY PROVISION -- EQUALIZING TAX. -- There is imposed a tax of one cent (\$.01) a gallon upon all motor fuel upon which a tax of six cents (\$.06) a gallon has been imposed and that is owned by any distributor, wholesale and retail dealer at 12:01

a.m. on July 1, 1967. On or before July 25, 1967, every distributor, wholesale dealer and retail dealer shall make a report to the bureau of revenue on a form furnished by the bureau showing the number of gallons of motor fuel owned by him at 12:01 a.m. on July 1, 1967, accompanied {*118} by payment of the tax thereon imposed by this section.

Section 64-26-19 requires that the state treasurer distribute monies on a monthly basis. It is our opinion that a distribution based on Section 6 (Laws 1967, Chapter 170) should be included with the month of July, 1967 distribution because the number of gallons on which the one-cent equalizing tax is imposed is included in Section 64-26-19(A) in arriving at the amount to be distributed to the municipalities and H-class counties. Please note that the distribution to counties of one-tenth of one cent (\$.001) per gallon is only on motor fuels and special fuels as imposed by Sections 64-26-2 and 64-26-68 and does not include the gallons referred to in Section 6 of this act (Laws 1967, Chapter 170).

Your fourth question based on the above analysis would be answered in the negative because the reported location has nothing to do with the formula for distribution.

Your fifth question is also answered by the above analysis. It is our opinion that the amount of tax actually collected was not intended to agree with the amount to be distributed or to be used in the formula of distribution to the municipalities and counties.

By: Tom Overstreet

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