

Opinion No. 31-119

April 9, 1931

BY: E. K. Neumann, Attorney General

TO: Hon. A. P. Hill, Assistant State Comptroller, Santa Fe, New Mexico.

{*60} Pursuant to our conversation of April 8th, and in response to your letter of said date in which you wish to know whether or not Naphtha is taxable under the gasoline excise taxing laws of this state, wish to advise you as follows:

Section 60-101 New Mexico Statutes Annotated, 1929 Compilation imposes the tax upon the use of gasoline and motor fuel, while section 60-203 imposes the tax upon the sale of all gasoline.

We, of course, must be governed by the statutory definition of the terms "gasoline" and "motor fuel." These definitions are set forth in section 60-201 and gasoline is defined to be first, the Volatile substance produced from petroleum, natural gas, oil shales or coal, heretofore sold under the name of gasoline; second, any volatile substance of not less than 46 degrees Tagliaubes (Tagliabus) Baume test derived wholly or in part from petroleum, natural gas, oil shales, or coal; third, any volatile substance of not less than 46 degrees Tagliaubes (Tagliabue) Baume test sold or used for generating power in internal combustion engines.

The Act then carries a proviso to the effect that gasoline as defined shall not be construed to include any petroleum, natural gas, oil shales or coal derivative which must be further refined or processed before it can be used in internal combustion engines

Under the statute motor fuel is any volatile substance derived or compounded wholly or in part from gasoline, petroleum, natural gas, oil shales, coal, alcohol, or other elements or substances which is practically and commercially usable in internal combustion engines for generating power. It is then provided that it does not include kerosene oil or distillates except if and when so refined or mixed with other volatile liquid or substance that the refined product or resultant mixture or compound is practicably and commercially useable for generating power for propelling motor vehicles.

In the case of U. S. vs. Gulf Refining Co. 45 S. Ct. 597; 268 U.S. 542; 69 L. Ed. 1082, we find a definition of Naphtha and the court said in that case that this is a generic term and embraces the lighter or more volatile parts of crude oil down to, and sometimes including, kerosene, and takes in all the elements of finished gasoline; the words "naphtha" and "gasoline" being often used interchangeably to include the unfinished product of which gasoline of commerce is made.

Under the second part of the definition of gasoline above quoted which is, "any volatile substance of not less than 46 degrees Tagliaubes (Tagliabue) Baume test derived

wholly or in part petroleum, natural gas, oil shales or coal", it is our opinion that naphtha is in reality nothing more nor less than gasoline, provided it meets the requirements of volatility, and tests also not less than 46 degrees Tagliabue's (Tagliabue) Baume test.

Naphtha would also fall under the third part of the above definition if it meets the above requirements and is sold or used for generating power in internal combustion engines without the necessity of any further refining or processing and if this is true, it only adds strength to the position above assumed.

If, as we are informed, naphtha is practically and commercially useable in internal combustion engines for generating power, then it would fall also under the definition of motor fuel and not under the exception which is to the effect as heretofore stated that motor fuel does not include kerosene oil or distillates unless refined or mixed with some other volatile liquid or substance so that such refined product or resulting mixture or compound is practically and commercially usable for generating power for propelling motor vehicles. The statute does not define the word "distillates". However, it can only refer to those substances which are related to gasoline and sold in the usual run of business under the name of "Distillates". It would not mean naphtha.

{*61} In view of all the foregoing then, it is the opinion of this office that if the facts regarding naphtha show that such product meets the requirements of our statutory definition of gasoline and motor fuel as herein set forth and explained, then naphtha would be subject to the excise tax under the laws of this state.

By Frank H. Patton,

Asst. Att'y General