

Opinion No. 32-509

September 2, 1932

BY: E. K. Neumann, Attorney General

TO: Hon. Juan N. Vigil, State Comptroller, Santa Fe, New Mexico.

{*176} Your letter of August 30th, 1932 states that under Chapter 31, Laws of 1931, any one entitled to a refund of gasoline taxes paid must file his claim for same within four months after the date of the first purchase of any portion of the fuel constituting any portion of the 200 gallons for which refund may be claimed. The Act further states in Section 3 thereof as follows:

"No application filed after the four months period prescribed in this section shall be considered for any purpose by the State Comptroller or the Treasurer of the State of New Mexico."

You also state that during the time this Act was in litigation many people were advised by the former State Comptroller that the forms which must be filed by the claimant, and which the Comptroller must furnish, would not be furnished until the litigation was finally determined and that it would not be necessary for them to file their claims until that time. Actually, blank forms were not furnished until May of this year.

The statute is very plain and is in the nature of a statute of limitation which you must strictly construe, unless some act has intervened which would suspend same or {*177} suspend the ability of claimants to present their claims.

The fact that the act was in litigation would not, standing alone, suspend the ability of the claimants to present their claims within the four months limitation period. In most cases, however, the failure of the Comptroller's office to furnish suitable blanks for filing claims would operate, in our opinion, as causing the loss of ability upon the claimants' part to properly present their claims.

In all such cases, even in the face of the statute quoted, we are of the opinion that it is your duty to adequately care for same. We do not believe that you can accept all such claims at this late date, but believe that you can legally allow any and all of such claims as were filed with you within a reasonable time, a matter which is to be determined by you, after the proper blanks for presenting such claims were furnished by the Comptroller's office as provided by law.