

## Opinion No. 38-1908

March 15, 1938

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. John D. Bingaman Commissioner of Revenue Santa Fe, New Mexico.  
Attention: Mr. P. E. Culver, Director, Gasoline Tax Division

{\*219} This opinion is in answer to your written request dated March 11, 1938. Apparently you desire a construction of Chapter 101, New Mexico Session Laws of 1935, dealing with the refunding of excise tax paid on gasoline or motor fuel.

I gather your inquiry to be whether or not refunds should be allowed in cases where gasoline is used in airplanes, which gasoline has had no {\*220} identifying chemical or dye placed in it. It appears from your letter that aviators are dubious about using dyed or colored gasoline in their planes, apparently as a safety measure.

Any person, firm, partnership, corporation or association purchasing gasoline and using the same solely and exclusively in airplanes is entitled to a refund under Section 1 of said Chapter 101 regardless of whether such gasoline is mixed with any identifying dye or chemicals.

The determining feature is not necessarily whether the gasoline is dyed but rather whether such gasoline "was purchased and used solely and exclusively by such persons, etc. \* \* \* **other than** in motor vehicles operated or intended to be operated upon any of the public streets or highways in the State of New Mexico." Clearly, an airplane falls within the refunding feature of the statute.

The provision in regard to coloring of gasoline found in Section 2 of the Act is not per se mandatory but is merely a safeguard to prevent unlawful evasion of the refund tax law. The matter lies wholly in the discretion of the Bureau of Revenue to make reasonable rules and regulations concerning the nature and use of the identifying chemicals. The legislature has seen fit to expressly permit clothes-cleaning establishments to buy dye-free gasoline for refund purposes. In all other cases the matter is left in the sound discretion of the Bureau and the Bureau can and should adopt a rule or regulation allowing refunds on purchases of gasoline used solely in airplanes without requiring that the same be dyed or colored with chemicals which might hamper or interfere with the safety of airplane travel.

See also opinion written to you by this office dated September 7, 1937, being our Opinion No. 1750.

Trusting the foregoing sufficiently answers your inquiry, I am

By: FRED J. FEDERICI,

Asst. Atty. Gen.