

Opinion No. 44-4437

January 11, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Charles E. Bassett, Director, Gasoline Tax Division, Bureau of Revenue, Santa Fe, New Mexico

Re: W. L. Hare, Bloomfield, N.M.

OPINION

I have your letter of January 8, 1944, wherein you set out the following fact situation:

"The above captioned pumps three small wells; their production is such that they are spoken of as gallons produced not barrels produced. When sufficient crude has been taken from these wells Mr. Hare runs them through a small topping plant and receives only white gasoline. This gasoline is sold only through his own retail pump (one) and is not sold to any other except through the retail channel.

"For the year 1943 Mr. Hare produced and refined only enough gasoline to owe and pay to the State of New Mexico \$ 410.66 in taxes at the rate of five cents per gallon. Like operations have been made since October 1936; the tax varying only a few dollars from year to year. * * *"

In view of this situation, you request an opinion concerning whether or not under the third paragraph of Section 68-1207 of the N.M. 1941 Compilation Mr. Hare should file a distributor's bond in the amount of \$ 2,000.00, or refiners' bond in the amount of \$ 5,000.00.

Under the fact situation that you have disclosed, it would appear under the provisions of Section 68-1201 (c) (3) that the operations which you described are those of a distributor and not of a refiner, within the provisions and intent of our gasoline tax laws.

By HARRY L. BIGBEE,

Assistant Attorney General