

Opinion No. 45-4676

March 8, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. Victor E. Salazar Director, Gasoline Tax Div. State Capitol Santa Fe, New Mexico

{*36} I have a letter of March 1, 1945 in which reference is made to my Opinion No. 4661, wherein I stated that a distributor may purchase tax free gasoline if he complies with all requirements of the act. It is further stated that since this opinion has been released, certain distributors are under the impression that they can purchase gasoline from refiners within the state tax free.

I call your attention to Section 68-1201 of the 1941 Compilation which defines the word "distributor" as well as the words "received" and "sale".

It is noted from the definition contained in the statute that a distributor may be a refiner in the State of New Mexico; and that, further, a distributor is a person making a first sale of motor fuel imported into the state after the same has been received within the state, within the meaning of the act as defined.

Section 68-1202 further provides that the tax shall only be collected once. The act further provides for the payment by distributors handling the tax and allows a 2% shrinkage. However, Section 68-1205 provides, in part, as follows:

"Each such report must be accompanied by a remittance of the amount of excise taxes provided by law upon the motor fuel so sold or used in this state, except motor fuel purchased by such distributor, wholesale dealer or retail dealer from some other licensed distributor in this state who has paid or is liable for the excise taxes thereon and {*37} the excise taxes so to be remitted shall be computed as follows: * * *"

Therefore, it would appear that the first person making a sale in the state of New Mexico, who is a distributor, must pay the tax and is liable for the tax, subject only to the regulation hereinafter discussed, and any subsequent distributor handling such gasoline products may not pay the tax and may not claim the 2% shrinkage.

It is further noted, however, that the Gasoline Tax Department has issued a regulation wherein one bonded distributor may deliver gas to another bonded distributor by filling out a certain report in compliance with such regulation, without the distributor paying the tax. In such event, the second distributor is, of course, liable for the tax and would also be entitled to the 2% shrinkage provided in Section 68-1205.

Hoping that the foregoing fully answers your inquiry, I remain

By HARRY L. BIGBEE,

Asst. Atty. General