

OPINION
66-364

April 22, 1966 (OPINION)

Honorable Curtis Olson

State Auditor

RE: Taxation - Importer for Use Tax - Refund

This is in reply to a letter from your office dated April 19, 1966, relative to the Importer for Use Tax Act enacted by the 1965 Legislative Assembly as Chapter 57-54.1 of the North Dakota Century Code, as amended.

You state the following facts:

Our office is experiencing some difficulty relative to refunds to trucking companies for fuel purchased in North Dakota and used in other states.

As you will note by the enclosed Importer for Use Tax Report form, trucking companies are required to list total miles traveled (A), and total gallons of tax paid fuel purchased in North Dakota (C). Trucking firms must pay a tax only on total gallons of fuel used in North Dakota operations (B), less the total gallons of tax paid fuel purchased in our state.

If the total gallons of fuel purchased in North Dakota exceeds the fuel used in this state, the trucking company is entitled to a credit or refund. However, a tax must be paid to the neighboring state in which the North Dakota fuel was used. In order to ensure that the trucking concern is eligible for a refund and that the tax has been paid to a nearby state, our office is interested in adopting a practice used by other states in our region.

Therefore, we ask that your office approve the following regulation under the authority granted to the state auditor in section 57-54.1-13 of the North Dakota Century Code:

That in order for a trucking firm to obtain a refund from the state auditor's office for fuel purchased in North Dakota and used outside of our state, the company must submit an application for tax refund, made in duplicate, with such information as to the number of gallons used in other states and the state to which the fuel tax has been paid.

The duplicate copy will be mailed by our office to the state to which the trucking concern claims they have paid tax for verification. The purpose of this application is twofold: To ensure accurate claims and to help surrounding states collect the tax due and owing them.

We ask that you approve this regulation for the above-mentioned reasons."

Section 57-54.1-05 of the North Dakota Century Code, as amended, provides:

COMPUTATION. The amount of fuel used in interstate fleet operations shall be determined by using a factor the numerator of which shall be the total miles operated in this state, and the denominator of which shall be the total miles operated by the importer for use both within and without this state applied to the total such fuel used by the importer for use both within and without this state."

Section 57-54.1-14 of the North Dakota Century Code, as amended, provides:

CREDIT FOR NORTH DAKOTA PURCHASES - REFUNDS. If the credit for tax paid on fuel purchased or acquired by the importer for use from sources within this state for the propulsion of motor vehicles exceeds the tax which would otherwise apply to fuel used for the propulsion of motor vehicles on the public highways of this state, such excess credit shall be refunded, or credit applied for such amount against any subsequent tax return."

It is apparent from reading the above-cited provisions that some method of verification of the number of miles traveled without this state is necessary to determine the amount of refund to which the applicant may be entitled for taxes paid on fuel purchased in this state but used in other states.

Section 57-54.1-13 of the North Dakota Century Code, as amended, provides in part:

* * * * The auditor further may formulate such reasonable rules and regulations as he may deem necessary for the administration and enforcement of this importer for use tax law."

While we have some doubt concerning the authority of the state auditor to adopt regulations designed solely to assist surrounding states to collect the taxes due and owing them, we have no doubt that the auditor has the authority under this Act to ensure accurate claims for refunds. Since the obvious purpose of the proposed regulation would be to verify the information contained on the refund application, it is our opinion the above regulation is proper and within the authority granted the state auditor under the provisions of Chapter 57-54.1 of the North Dakota Century Code, as amended.

HELGI JOHANNESON

Attorney General