

**OPINION
72-452**

June 9, 1972 (OPINION)

Mr. Byron L. Dorgan

Commissioner

State Tax Department

RE: Taxation - Special Fuel Refund - Time for Filing

This is in response to your letter in which you state the following:

"On May 18, 1972, the Tax Department received a claim for a refund of special fuels tax for fuel purchased in 1971. Since the claim was filed after the deadline of March 31, 1972, as provided in section 57-50-03, we rejected this claim on May 22, 1972. Since that time officials from Kidder County have contacted this department and advise me that the late filing was due to the fact that the county auditor was new at her job and was unaware of the limitation on filing.

"Considering the extenuating circumstances of this claim and the fact that the claimant is a political subdivision of this state, I respectfully request your opinion as to whether or not I am able to grant any relief to the claim of Kidder County, referred to above."

The section in question, 57-50-03, provides as follows:

"CLAIM FOR REFUND - LIMITATION ON FILING. Such claim for refund must be filed for all purchases during a calendar year of such motor vehicle fuel from January first and before March thirty-first of the year next following, or the claim for refund shall be barred. However, any claim for refund may be filed in the calendar year of motor vehicle fuel purchase when:

1. The business is being discontinued;
2. No further purchases subject to fuel tax refund will be made in the remainder of the calendar year; or
3. The claim for refund exceeds one thousand dollars.

No claim for refund shall be made or approved unless the amount of the claim is in excess of ten dollars."

It should be noted that this section uses the term "that a claim must be filed within a certain time or if not, the claim shall be barred."

The statute uses mandatory language in a clear manner. We further recognize that the term "must" is by degree more mandatory than the term "shall." The section does not provide for any exception. We are not authorized to legislate, but must accept and interpret legislation as enacted. The act in question does not provide for any

modification or exception as the result of extenuating circumstances.

It is therefore our opinion that the language and provisions of the act are controlling in every respect.

HELGI JOHANNESON

Attorney General