

**OPINION
47-226**

April 11, 1947 (OPINION)

TAXATION

RE: Gasoline Tax Act - Applicability of to Gasoline Used by Railroads

This office has had under consideration your letter of some time ago in which you state:

"The Northern Pacific Railway Company ships in a certain amount of gasoline for their own use. They advise that most of their gasoline is purchased in the state but that they do bring in a certain amount in supply trains four times a year from Brainerd, Minnesota, for their own exclusive non-highway use.

"The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, likewise, ships in a certain amount of gasoline for their own use which appears to be all for non-highway purposes."

Subsection 3 of section 57-4101 of the 1943 Revised Code defines "dealer" in motor vehicle fuel as follows:

"'Dealer' means any person, firm, association, or corporation importing or causing to be imported from any other state or country any motor vehicle fuel for operating or propelling motor vehicles for use, distribution or sale, in and after the same reaches the State of North Dakota and any person, firm, association, or corporation producing refining, manufacturing, or compounding any motor vehicle fuel in this state for use, distribution or sale therein."

According to the statement in your letter, the railway companies mentioned import certain quantities of gasoline for their own use. That they purchase most of their gasoline in this state, but that they do bring in a certain quantity on supply trains four times a year from Brainerd, Minnesota, for their own exclusive non-highway use.

You will notice that the definition of a "dealer" is broad.

It would appear from the definition that any person, firm, association, or corporation importing or causing to be imported from any other state or country any motor vehicle fuel for operating or propelling motor vehicles for use in and after the same reaches the state of North Dakota would be a dealer.

However, subsection 2 of section 57-4201 of the 1943 Revised Code defines the word "use" so far as the same applies to motor fuel tax as follows: "'Use' shall mean the consumption of fuel in internal combustion engines in generating power to propel motor vehicles upon the public highways of this state, or to propel motor vehicles used in the construction, reconstruction, or repair of state or county highways, but shall not include fuel purchased by the state or any municipality for use in any state or municipality owned vehicle where

public funds are directly expended in purchasing such fuel for use in the construction, reconstruction, repair, or maintenance of any public highway, street, or airport;"

Subsection 3 of said section provides: "'User' shall mean any person who uses fuel in this state, within the meaning of the term 'use' as above defined;"

Since the railway companies to which you refer are not using the gasoline which they import for any of the purposes mentioned in subsection 2 of said section 57-4201, it is my opinion that they do not come within the definition of "dealer" under subsection 3 of section 57-4101.

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