

**OPINION
59-271**

June 8, 1959 (OPINION)

TAXATION

RE: Refund Motor Fuel Tax - Assignment of Refund Claim

This is in reply to your request for an opinion on Senate Bill No. 115 of the 1959 Legislature which amended and reenacted section 57-5011 of the 1957 Supplement to the N.D.R.C. of 1943. The question is:

Whether or not the assignments of refund claims on motor fuels can be legally made even though the product is not paid for by the purchaser, during the period set forth in the new Act."

The Senate Bill No. 115 adds additional language to section 57-5011.

This new language is not a restriction or limitation on the existing law but is an enlargement or addition thereto. The amendment does not repeal, amend, or modify the previous existing manner of assigning refund claims but sets up and adds another additional manner of assigning refunds. The new language added to section 57-5011 by Senate Bill No. 115 is as follows:

In addition, refund claims on motor fuel tax resulting from sales of motor fuel occurring during the period from the first day of April through the thirty-first day of August may be assigned to the seller of the fuel when any sales receipt for the purchase of motor fuel on which a tax refund is owing under chapter 57-50 of this title becomes thirty days or more old. The purchaser may assign to the seller his claim for refund by attaching the assignment agreement and sales receipts to the refund claim form to be submitted by claimant in accordance with section 57-5002 of the 1957 Supplement to the N.D.R.C. of 1943. Where such assignment is made the seller may forward it to the state auditor for credit on his fuel tax return in the amount of the refund owing on the assigned sales receipt. Any purchaser who shall assign his claim for refund under the provisions of this Act shall file an annual report with the state auditor. Such report forms shall be furnished by the state auditor in substantially the same form as is prescribed in section 57-5002 of the 1957 Supplement to the N.D.R.C. of 1943."

Under the original provisions of section 57-5011 which is still in effect the purchaser of motor fuel, who is entitled to a tax refund under chapter 57-50, may assign to a seller on open account his claim for refund, after the seller first pays the refundable fuel tax. The claimant then may submit the claim for refund attaching said assignment agreement to the claim form in accordance with section 57-5002 of the N.D.R.C. of 1943, and Supplements thereto. Section 57-5002 provides among other things, that the product and the tax must both be paid before a refund claim will be allowed. The warrant

or check issued therefor is then made payable to both the claimant and his assignee. This law is clear and unambiguous, and no questions have arisen, as to the constructive effect of the language used.

It is a fair and reasonable presumption that the Legislature had no intentions whatsoever to modify or amend the existing provisions and that it merely intended to provide an additional manner of assigning refunds. In examining the new language it is noted that the purchaser during a certain period may assign to the seller when the sales receipt for purchase of motor fuel becomes thirty days or more old. Further it is noted that where such an assignment is made the seller may send it to the state auditor for credit on his returns in the amount of refund owing on the assigned sales receipt. Nothing in this provision either by inference or otherwise indicates that the fuel must be paid for before an assignment can be made.

North Dakota being an agricultural state of which the legislators are personally and fully aware deemed it proper to provide an assignment of gas tax refunds or refundable gas taxes by "credit rather than by the method of payment and then claim refund at a later date." The periods during which such assignments can be made are during the busy operational farm seasons, from seeding through harvesting time. It is also recognized that many farm operations are carried on a credit basis from seeding time to harvesting time. The provisions of Senate Bill No. 115 seem to follow the same credit pattern.

As pointed out before provisions of Senate Bill No. 115 amending section 57-5011 of the Supplement to the N.D.R.C. of 1943 provides for the assignments of motor fuel tax refund claims by the purchaser to the seller during the period of April first to August thirty-first without paying the purchase price of the product.

LESLIE R. BURGUM

Attorney General