

Opinion No. 21-2772

January 8, 1921

BY: HARRY S. BOWMAN, Attorney General

TO: Electric Garage, Clayton, New Mexico.

Gasoline Sold Out of Original Containers Subject to Gasoline Excise Tax.

OPINION

{*13} Your letter of the 6th instant addressed to the Secretary of State regarding the operation of the two cent excise tax on gasoline, has been referred to this office for reply.

{*14} You ask if you purchase gasoline in Texas and it is delivered into your tank from the original container in which it enters the state, if it is subject to the two cent excise tax.

In my opinion, if the law is valid, (and it is the contention of this office that it is valid,) that you would be compelled to pay the tax upon gasoline under the circumstances mentioned, since you are not selling it to your customers in the original package in which it came into the state.

It will be necessary for the gasoline to be delivered to the ultimate purchaser in the original package in order to escape the payment of the tax.

You also ask to whom the tax should be paid and how often.

The wholesale dealer is made responsible for the payment of the tax to the State Treasurer and must make payments to the State Treasurer once each month.

The State Treasurer has been restrained by court order from collecting the tax, but an appeal has been taken to the Supreme Court of the United States, and it is our opinion that the tax will be held to be collectible as above indicated.