

Opinion No. 39-3224

July 31, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. P. E. Culver, Director, Gasoline Tax Division, Bureau of Revenue, Santa Fe, New Mexico.

{*88} We are in receipt of your letter dated July 25 relating to applicable deductions under the gasoline tax law.

You inquire whether distributors receiving imported motor fuels in tank car shipments are limited in their deductions to the flat 2% rate prescribed by statute or whether they are entitled to any additional deductions for loss by evaporation, etc., in transit to point of receipt.

Section 2 of Chapter 104, New Mexico Session Laws of 1939, sets out the manner of computing the motor fuel excise tax. Said section (subsection (1)) provides that from the total number of gallons of motor fuel "received" by the distributor there shall be made the following deduction: (sub-paragraph (c)):

"A deduction of two per cent (2%) {*89} of the net taxable gallonage so reported for evaporation, shrinkage, and losses resulting from unknown causes, this deduction being a flat allowance to cover evaporation, shrinkage, and losses resulting from unknown causes, irrespective of the actual amount thereof."

It will be noted that the statute allows the 2% deduction from the total number of gallons of motor fuel "received."

Section 1, sub-section (h), and sub-paragraph (3) of Chapter 83, New Mexico Session Laws of 1937, defines the receipt of motor fuels as follows:

"(h) Motor fuel shall be deemed to be 'received' within the meaning of this or any other act now or hereafter enacted pertaining to an excise tax on the sale or use of motor fuel in the following cases:

* * *

(3) Motor fuel imported from any other state, territory or foreign country **in a tank car** which shall be unloaded in the state of New Mexico shall be deemed to be 'received' **at the time when and the place where such tank car comes to rest in the state of New Mexico and the interstate or foreign shipment is completed, by the person who shall at such time be the owner thereof, but not before.**"

From the foregoing express provisions of our pertinent statutes it seems clear that the distributor is entitled to a 2% deduction from the total number of gallons of motor fuel unloaded from the tank car in the State of New Mexico, at the time and place where such tank car comes to rest in the state and the interstate and foreign shipment is completed.

We call your attention, however, to the Manifest required in cases where motor fuel is transported as set out in Section 11 of Chapter 83, New Mexico Session Laws of 1937, in which Manifest your Division may require the distributor at the time of receipt of the motor fuel to unequivocally specify the actual total gallonage received, which signed receipt should be binding on the distributor in the absence of a specific showing of error to the satisfaction of your Division.

Trusting the foregoing sufficiently answers your inquiry, I am

By: FRED J. FEDERICI,

Asst. Atty. Gen.