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B-100300, Jun. 7, 1956

Number: B-100300

Date: 1956-06-07

B-100300, JUN. 7, 1956

TO HONORABLE Z. D. ATKINS, COMMISSIONER, DEPARTMENT OF FINANCE AND TAXATION, STATE OF TENNESSEE:

REFERENCE IS MADE TO YOUR LETTERS OF FEBRUARY 27 AND MARCH 21, 1956, RELATIVE TO THE CLAIM OF THE UNITED STATES AGAINST THE STATE OF TENNESSEE FOR REFUND IN THE SUM OF $1,731.97 REPRESENTING THE AMOUNT OF GASOLINE TAX PAID ON 24,741.9 GALLONS OF GASOLINE PURCHASED DURING THE PERIOD MARCH 14, 1947, THROUGH APRIL 8, 1953, BY THE DEPARTMENTS OF AGRICULTURE, THE AIR FORCE, THE ARMY, AND THE INTERIOR OF THE FEDERAL GOVERNMENT FOR USE IN THE PERFORMANCE OF ESSENTIAL GOVERNMENTAL FUNCTIONS. THE CLAIM WHICH WAS FILED WITH YOUR DEPARTMENT BY OFFICE LETTER OF OCTOBER 6, 1954, REPRESENTS A CONSOLIDATION AND REVISION OF CLAIMS BY SUCH FEDERAL AGENCIES.

YOUR DEPARTMENT RETURNED THE CONSOLIDATED CLAIM TO US BY LETTER OF JUNE 29, 1955, FOR FURTHER REVISION ON THE BASIS THAT CERTAIN ITEMS INCLUDED THEREIN WERE NOT FILED WITHIN THE PERIOD PRESCRIBED THEREFOR BY THE STATUTE OF LIMITATIONS OF THE STATE OF TENNESSEE. WE RETURNED THE CLAIM BY OUR LETTER OF FEBRUARY 10, 1956, TO YOU, IN WHICH WE POINTED OUT THAT THE STATUTE OF LIMITATION OF THE STATE OF TENNESSEE MAY NOT OPERATE AS A BAR TO THE CLAIM OF THE FEDERAL GOVERNMENT FOR THE REFUND OF THE GASOLINE TAXES IN QUESTION.

WHILE YOU DO NOT QUESTION THE CORRECTNESS OF OUR INTERPRETATION OF THE LAW, YOU STATE THAT AS AN ADMINISTRATOR OF A STATE LAW YOU ARE BOUND BY SUCH STATE LIMITATION. YOU FURTHER SAY THAT YOU HAVE BEEN ADVISED BY THE OFFICE OF THE ATTORNEY GENERAL OF TENNESSEE THAT THE CLAIM MAY BE APPROVED BY RELATING THE CONSOLIDATED CLAIM BACK TO THE FILING OF THE SEPARATE CLAIMS FOR REFUND TO THE EXTENT THAT THE SEPARATE CLAIMS FOR REFUND WERE FILED BY THE VARIOUS FEDERAL AGENCIES WITHIN THE PERIOD PRESCRIBED BY STATE LAW FOR THE MAKING OF CLAIMS FOR REFUND. IN VIEW THEREOF, YOU REQUEST THAT WE FURNISH YOU WITH A COPY OF THE ORIGINAL CLAIMS FILED BY THE FOUR FEDERAL AGENCIES INCLUDED IN THE CLAIM OF OCTOBER 6, 1954, AND YOU STATE THAT UPON RECEIPT OF SUCH INFORMATION YOU WILL HANDLE THE CONSOLIDATED CLAIM IN ACCORDANCE WITH THE ATTORNEY GENERAL'S OPINION.

WE ARE, IN RESPONSE TO YOUR REQUEST, ENCLOSING A COPY OF A LETTER OF JANUARY 23, 1953, WITH ATTACHED LIST OF EXEMPTION CERTIFICATES, FROM THE GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR, TO YOUR STATE TREASURER MAKING SUCH AGENCY'S ORIGINAL CLAIM FOR REFUND OF GASOLINE TAXES. THE TAX EXEMPTION CERTIFICATES WERE FORWARDED TO YOU WITH OUR LETTER OF FEBRUARY 10, 1956. WHILE WE DO NOT PRESENTLY HAVE A COPY OF THE ORIGINAL CLAIM OF THE DEPARTMENT OF AGRICULTURE, OUR RECORDS INDICATE THAT SUCH CLAIM WAS FILED ON MAY 11, 1948. OUR PRESENT RECORDS DO NOT REFLECT THE DATES THAT THE CLAIMS OF THE DEPARTMENTS OF THE AIR FORCE AND THE

ARMY WERE FILED WITH YOUR STATE.