Text as published on gao.gov, https://www.gao.gov/products/b-152995, archived 2026-07-17. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-152995, Jan. 30, 1964

Number: B-152995

Date: 1964-01-30

B-152995, JAN. 30, 1964

TO LT. COLONEL J. E. BATTISTA:

BY LETTER OF NOVEMBER 29, 1963, THE FINANCE CENTER, U.S. ARMY, INDIANAPOLIS, INDIANA, FORWARDED YOUR REQUEST OF OCTOBER 31, 1963, (2ND IND. AMNPR-FIN (8 OCT. 63) (, FOR OUR DECISION ON TWO QUESTIONS ARISING IN CONNECTION WITH A VOUCHER FOR THE PAYMENT OF $8,871 TO THE CONTROLLER OF THE STATE OF CALIFORNIA. THE QUESTIONS, INVOLVINGCALIFORNIA'S MOTOR VEHICLE FUEL LICENSE TAX LAW (REVENUE AND TAXATION CODE ANNOTATED OF THE STATE OF CALIFORNIA, SECTION 7301, ET SEQ.) ARE AS FOLLOWS:

(1) DOES HEADQUARTERS, PRESIDIO OF SAN FRANCISCO, HAVE A RIGHT TO CLAIM A REFUND OF CALIFORNIA'S MOTOR VEHICLE FUEL LICENSE TAX FOR ALL ON-POST MILEAGE WITHOUT REGARD TO THE ONE MILE RULE PRESCRIBED BY THE CALIFORNIA TAX LAW.

(2) DOES A RIGHT EXIST TO A REFUND FOR GASOLINE CONSUMED BY OFFICIAL VEHICLES USING THE GOLDEN GATE BRIDGE AND ACCESS ROADS CONSTRUCTED ON FEDERAL LANDS.

CALIFORNIA'S MOTOR VEHICLE FUEL LICENSE TAX LAW PROVIDES THAT "FOR THE PRIVILEGE OF DISTRIBUTING MOTOR VEHICLE FUEL A LICENSE TAX IS HEREBY IMPOSED UPON DISTRIBUTORS AT THE RATE OF SIX CENTS ($0.06) FOR EACH GALLON OF FUEL DISTRIBUTED.' SECTION 7351. THE "ONE MILE RULE," REFERRED TO IN THE FIRST QUESTION, IS CONTAINED IN SECTION 8101, AUTHORIZING TAX REFUNDS TO THE ULTIMATE BEARER OF THE TAX IN ENUMERATED SITUATIONS. SO FAR AS APPEARS PERTINENT HEREIN THE SECTION PROVIDES: "THAT THE TAX SHALL BE REPAID TO A PERSON WHO USES THE FUEL IN A MOTOR VEHICLE OPERATED EXCLUSIVELY OFF THE HIGHWAY, OR IN AN OPERATION PARTLY OFF THE HIGHWAY AND PARTLY ON THE HIGHWAY IN A CONTINUOUS TRIP WHEN THE DISTANCE TRAVELED OFF THE HIGHWAY EXCEEDS ONE MILE, THE TAX SHALL BE REPAID WITH RESPECT TO THE GALLONAGE OF FUEL USED IN OPERATIONS OFF THE HIGHWAY IN EXCESS OF ONE MILE.'

THE CALIFORNIA LICENSE TAX IS LEVIED AGAINST THE DISTRIBUTOR OF MOTOR FUEL AND NOT THE CONSUMER OR VENDEE. RIO GRANDE OIL CO. V. CITY OF LOS ANGELES, 44 P2D 451. THAT THE STATE LAW PROVIDES FOR A TAX REFUND IN CERTAIN SITUATIONS TO THE CONSUMER OR VENDEE, THE ULTIMATE BEARER OF THE TAX, DOES NOT TRANSFER THE LEGAL INCIDENCE OF THE TAX FROM THE DISTRIBUTOR TO THE CONSUMER OR VENDEE, THE ULTIMATE BEARER OF THE TAX, DOES NOT TRANSFER THE INCIDENCE OF THE TAX FROM THE DISTRIBUTOR TO THE CONSUMER OR VENDEE. SEE 27 COMP. GEN. 179. THE TAX BEING IMPOSED UPON THE DISTRIBUTOR, THE RIGHT OF THE UNITED STATES, AS VENDEE, TO A REFUND IS PREDICATED UPON STATE LAW. IN A DECISION OF APRIL 14, 1954, 33 COMP. GEN. 453, WE STATED: "WHERE THE INCIDENCE OF THE TAX IS ON THE VENDOR, THE UNITED STATES HAS NO RIGHT- - APART FROM STATE STATUTES OR REGULATIONS

PROMULGATED THEREUNDER BY STATE AUTHORITIES--- TO PURCHASE GASOLINE WITHIN THE TERRITORIAL JURISDICTION OF THE STATE ON A TAX FREE BASIS. SEE ALABAMA V. KING AND BOOZER, 314 U.S. 1, AND 24 COMP. GEN. 150.'

THE RIGHT TO A REFUND FOR VEHICLES OPERATED ON AND OFF THE PUBLIC HIGHWAYS OF THE STATE IN A CONTINUOUS TRIP STEMS FROM SECTION 8108 OF THE STATE MOTOR VEHICLE FUEL LICENSE TAX LAW. A BASIS FOR ACCEPTING THE BENEFITS OF THE SECTION WITHOUT THE LIMITATION OF THE "ONE MILE RULE" IS NOT APPARENT. ACCORDINGLY, THE FIRST QUESTION IS ANSWERED IN THE NEGATIVE; AND WE NOTE OUR CONCURRENCE WITH THE OPINION OF THE JUDGE ADVOCATE GENERAL FORWARDED WITH THE REQUEST FOR DECISION.

AS TO THE SECOND QUESTION WE ALSO CONCUR IN THE OPINION OF THE JUDGE ADVOCATE GENERAL THAT A TAX REFUND CANNOT BE CLAIMED FOR GASOLINE CONSUMED BY OFFICIAL VEHICLES USING THE GOLDEN GATE BRIDGE AND ITS ACCESS ROADS.

THE GOLDEN GATE BRIDGE AND THE ACCESS ROADS, ALTHOUGH ON FEDERAL LANDS BY PERMITS GRANTED PURSUANT TO SEC. 6 OF THE ACT OF JULY 5, 1884, (23 STAT. 104), WERE CONSTRUCTED AND ARE OPERATED AND MAINTAINED BY THE STATE OF CALIFORNIA AND THE GOLDEN GATE BRIDGE AND HIGHWAY DISTRICT. THEY ARE PART OF THE SYSTEM OF HIGHWAYS OF THE STATE AND TRAVEL THEREON CANNOT BE CONSIDERED AS GIVING USE TO A RIGHT TO REFUND UNDER SECTION 8101. CF. B- 150285, APRIL 24, 1963. NOR DO WE FIND THAT THE ACT OF JULY 5, 1884, OR THE GOVERNMENT PERMITS FOR THE CONSTRUCTION OF THE GOLDEN GATE BRIDGE AND ACCESS ROADS PROVIDE A BASIS FOR CLAIMING FEDERAL EXEMPTION FROM THE ECONOMIC BUT REMOTE BURDEN OF THE TAX IN TERMS OF UTILIZATION OF THE GOLDEN GATE BRIDGE AND ITS ACCESS ROADS. SEE 15 U.S.C. 1002.

THE VOUCHER GIVING RISE TO THE TWO QUESTIONS PRESENTED IS RETURNED HEREWITH AND MAY BE PAID, IF OTHERWISE CORRECT.