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B-154266, Jun. 25, 1964

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B-154266, JUN. 25, 1964

TO MR. REED H. JENSEN, AUTHORIZED CERTIFYING OFFICER, FOREST SERVICE:

REFERENCE IS MADE TO YOUR LETTER OF MAY 1, 1964, WITH ENCLOSURES, REFERENCE NUMBER 6540, REQUESTING OUR DECISION AS TO WHETHER YOU MAY PROPERLY CERTIFY FOR PAYMENT THE CLAIM OF THE STATE OF WASHINGTON IN THE AMOUNT OF $25.36 REPRESENTING A DISALLOWANCE OF MOTOR VEHICLE FUEL TAX REFUNDS PREVIOUSLY MADE TO THE UNITED STATES BY THE STATE OF WASHINGTON.

WHEN REQUEST IS MADE BY A CERTIFYING OFFICER UNDER SECTION 3 OF THE ACT OF DECEMBER 29, 1941, 55 STAT. 876, 31 U.S.C. 82D, FOR A DECISION OF THE COMPTROLLER GENERAL ON ANY QUESTION OF LAW, THE VOUCHER SUBMITTED TO HIM FOR CERTIFICATION MUST ACCOMPANY THE REQUEST FOR DECISION. 21 COMP. GEN. 1128; 26 ID. 797; 31 ID. 314. IN THE PRESENT CASE YOU HAVE NOT SUBMITTED A VOUCHER AND THE CITED DECISIONS ARE CALLED TO YOUR ATTENTION FOR OBSERVANCE IN THE FUTURE. HOWEVER, SINCE THE QUESTION PRESENTED APPEARS TO HAVE ARISEN IN CONNECTION WITH A VOUCHER WHICH WAS PREPARED FOR YOUR CERTIFICATION, AND THE CLAIMANT IS PRESENTLY REQUESTING PAYMENT OF THE AMOUNT CLAIMED, THOSE DECISIONS WILL NOT, IN THIS INSTANCE, BE CONSIDERED AS PRECLUDING A DECISION IN THE MATTER.

THE RECORD BEFORE OUR OFFICE INDICATES THAT THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE, CLAIMED AND RECEIVED A MOTOR VEHICLE FUEL TAX REFUND ON 338 GALLONS OF MOTOR FUEL IN THE AMOUNT OF $25.36 FROM THE STATE OF WASHINGTON. YOU STATE THAT THE MOTOR FUEL WAS PURCHASED WITH UNITED STATES FUNDS AND WAS USED IN COMMERCIALLY-OWNED AND LICENSED MOTOR VEHICLES WHICH WERE RENTED AND OPERATED BY THE UNITED STATES. ALSO, YOU STATE THAT THE RENTED VEHICLES WERE OPERATED OFF THE PUBLIC HIGHWAYS AND WERE UNDER THE COMPLETE CONTROL OF THE UNITED STATES.

THE CLAIM BY THE STATE OF WASHINGTON REPRESENTING A DISALLOWANCE OF THE AFOREMENTIONED REFUND IS SUBMITTED ON THE BASIS THAT WASHINGTON STATE LAW PROVIDES FOR A REFUND OF THE TAX ON MOTOR FUEL USED BY VEHICLES OWNED BY THE UNITED STATES AND NOT VEHICLES RENTED BY THE UNITED STATES.

SECTION 82.36.280, REVISED CODE OF WASHINGTON, ENTITLED "REFUNDS FOR NONHIGHWAY USE OF FUEL" PROVIDES, IN PERTINENT PART, AS FOLLOWS:

"* * * NO REFUND SHALL BE MADE FOR MOTOR VEHICLE FUEL CONSUMED IN ANY MOTOR VEHICLE AS HEREIN DEFINED LICENSED TO BE OPERATED OVER AND ALONG ANY PUBLIC HIGHWAY EXCEPT THAT REFUND SHALL BE ALLOWED FOR MOTOR VEHICLE FUEL CONSUMED IN A MOTOR VEHICLE OWNED BY THE UNITED STATES AND OPERATED OFF THE PUBLIC HIGHWAYS FOR THE OFFICIAL USE THEREOF.'

THE WASHINGTON MOTOR VEHICLE FUEL TAX AS SET FORTH IN CHAPTER 82.36 OF THE REVISED CODE OF WASHINGTON IS IMPOSED UPON THE DISTRIBUTOR OF MOTOR VEHICLE FUEL AND NOT UPON THE ULTIMATE CONSUMER OR VENDEE. 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.' SINCE THE WASHINGTON MOTOR VEHICLE FUEL TAX IS IMPOSED UPON THE DISTRIBUTOR, THE RIGHT OF THE UNITED STATES, AS VENDEE, TO A REFUND IN THE INSTANT CASE, IS PREDICATED UPON THE ABOVE-QUOTED STATE LAW.

IN VIEW OF THE FOREGOING, THE UNITED STATES WOULD NOT HAVE A RIGHT TO A REFUND ON MOTOR VEHICLE FUEL THAT WAS USED IN MOTOR VEHICLES THAT WERE NOT OWNED BY THE UNITED STATES. SINCE THE MOTOR VEHICLES IN THE INSTANT CASE WERE RENTED RATHER THAN OWNED BY THE UNITED STATES, THE UNITED STATES IS NOT ENTITLED TO REFUND ON MOTOR VEHICLE FUEL CONSUMED IN SUCH VEHICLES UNDER SECTION 82.36.280 OF THE REVISED CODE OF WASHINGTON.

THEREFORE, YOU ARE HEREBY AUTHORIZED TO PAY TO THE STATE OF WASHINGTON THE AMOUNT CLAIMED, IF OTHERWISE CORRECT.