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May 18, 1943

Mr. Bernard Toohey, State Engineer
Arizona Highway Department
Phoenix, Arizona

Attention M. A. Goodwin, Motor Vehicle Superintendent

SUBJECT: Taxation of aviation gasoline sent to Army Air Forces.

Gentlemen:

This opinion is intended to cover only the facts suggested in the letter of Phillips Petroleum Company to the Arizona State Highway Department of April 27, 1943, as follows:

The Phillips Petroleum Company ships aviation gasoline to the Army Air Forces in Arizona. The shipments are made by rail and originate from Borger, Texas. The gasoline is used exclusively by the Army Air Forces in their airplanes and is suitable only for such use.

1. Is the Phillips Petroleum Company a distributor required to apply for a distributor's license, give bond and make reports required of distributors?

2. Is the Railroad Company or the Government required to make reports as distributors?

A "distributor" means a person who refines, manufactures, produces, compounds, blends or imports motor vehicle fuel. Such distributor pays a license tax of 5¢ per gallon upon motor vehicle fuel processed, refined, manufactured, produced, blended or compounded in the State, or motor vehicle fuel imported into the State by such distributor. It is thus clear that the only theory upon which the Petroleum Company could be held to be a distributor is upon the theory that it imports fuel into the State. The Petroleum Company is a non-resident of the State so far as the present information discloses and apparently either produces, processes or purchases fuel outside of the State and turns it over to a common carrier, the Railroad Company, at a point outside of the State, by which carrier it is delivered to the Army Air Forces in Arizona. It does not distribute fuel in the State; that is, divide it up among dealers, service stations, and other purchasers.

While it may technically be considered an importer it is apparently not a distributor, hence is not subject to the license provisions or the provisions relative to reports and payment of taxes.

It is clear that the Government is not a distributor. The Government uses the fuel, it does not sell it or distribute it to others for sale. We could hardly figure out how the Government could be a distributor under any condition and certainly not under the condition shown here. It is a rule of almost universal application that the sovereign is not bound by the terms of a general law unless the law specifically so provides. We could

see how the law could provide that a County, City or possibly a State could come within a statutory definition of distributor but we do not see how the U. S. Government could come within the terms of such a general statute.

Is the carrier (the Railroad Company) a distributor required to take out a distributor's license, make reports and the like?

We think it is clearly not such a distributor. It is required to make certain reports under the provisions of Sec. 66-322, Arizona. Code Annot., 1939. Under the conditions above outlined the filing of such reports might be informative to the vehicle division but we do not see where they would be of any benefit to the State in a financial way. We assume that the carrier merely receives the fuel in Texas and transports it to the Army Air Forces in Arizona, as a common carrier and nothing else. But insofar as the collection of the license tax is concerned the reports are intended to afford a basis upon which the amount of the tax can be computed. The reports might be necessary to enable the Vehicle Superintendent to ascertain the amount of carrier's gross receipts tax but are not of any value so far as the gasoline tax is concerned. This is for the following reason:

There is no theory upon which such fuel can be taxed at all under the gasoline tax law. Under the provisions of Sec. 66-313 motor vehicle fuel sold to the United States or any Department thereof for official use is not subject to the license tax. The Army Air Forces are a part of the U. S. Army, which is of course a department of the United States; hence no matter whether the Petroleum Company, the Railroad Company, or the Government could be defined as distributors under the strict letter of our law, no tax could be collected. Consequently we could see no logical reason why a distributor's license would be required or the reports required of other distributors.

We are therefore of the opinion that the Phillips Petroleum Company is not required to take out the distributor's license nor to make distributor's reports, nor to pay the excise tax required of distributors. This subject does not involve the question of refunds of gasoline tax. The taxes are simply not chargeable in the first instance, hence the question of refund does not come into the picture.

We are further satisfied that the Government or the Army Air Forces are not required to take out licenses nor make reports, also that the Railroad Company is not required to take out a distributor's license nor to make any further report than is required of it under Sec. 66-322 whenever it transports gasoline into the State.

Very truly yours,
JOE CONLAN
ATTORNEY GENERAL

A. R. Lynch
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ASSISTANT ATTORNEY GENERAL

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