

116.

APPROVAL, DEEDS TO MIAMI AND ERIE CANAL LANDS IN THE CITY  
OF CINCINNATI—6 GRANTEEES.

COLUMBUS, OHIO, February 25, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of recent date, submitting for my examination and approval six deeds of the State of Ohio, conveying certain parcels of surplus Miami and Erie canal lands relinquished by the city of Cincinnati to the State of Ohio, pursuant to the provisions of the act of April 20, 1927, 112 O. L. 210. The deeds transmitted are as follows:

<i>Parcel No.</i>	<i>Names and Addresses of Grantees</i>	<i>Consideration</i>
45	Goldie V. Slippy, c/o J. E. Matthews, Atty., 1006 Ingalls Building, Cincinnati, Ohio.....	\$17 00
107-A	The Model Laundry Co., c/o C. M. Leslie, Atty., 1607 Union Central Bldg., Cincinnati, Ohio .....	3,382 00
118	Edward Baumann, College Hill, E. Van Zandt Road, Cincinnati, Ohio.....	252 00
120	Edward Aufdemkamp, 3450 Colerain Avenue, Cincinnati, Ohio.....	220 00
121	Joseph J. Best, 3452 Colerain Ave., Cincinnati, Ohio.....	207 00
192	Rudolph Schumacher, 116 Washington Ave., St. Bernard, Ohio.....	20 00

I have examined the deeds submitted and I am of the opinion that they are in conformity with law. You are accordingly advised that these deeds have my approval as to form.

By virtue of the provisions of Section 9 of the act of the General Assembly above referred to, the sales of these tracts of land are made by you subject to the approval of the Governor and Attorney General. These sales meet with my approval and I have accordingly endorsed my approval upon the deed forms submitted, which are herewith returned.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

117.

TAX AND TAXATION—MOTOR VEHICLE FUEL—PURCHASED FROM  
DEALER AND SOLD IN ORIGINAL FORM—NO REFUNDER OF TAX.

**SYLLABUS:**

*A person who purchases, in large quantities, motor vehicle fuel tax paid, from a dealer in this state, and sells the same in its original form, in small quantities, is not entitled, under the provisions of Section 5534, G. C., to a refunder of said tax, as said sale does not come within the provisions of said Section wherein a refunder is granted to those who shall use any such motor vehicle fuel for any other purpose than the propulsion of motor vehicles operated, or intended to be operated, in whole, or in part, upon the highways of this state.*

COLUMBUS, OHIO, February 25, 1929.

*The Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your recent communication which reads as follows:

“We are somewhat at a loss to know just how to handle a certain matter before us and kindly request that you give us your opinion on it. The facts in the case are as follows:

“A manufacturer and sales company in Ohio purchases motor vehicle fuel in large quantities, with the Ohio three cent gasoline tax included in the purchase price. The motor vehicle fuel in its original form is then placed by this manufacturing company in four ounce containers, which are labeled, distributed and sold in Ohio and other states as fluid for cigar and cigarette lighters.

“The question is, may the manufacturing company, under the provisions of the Ohio Gasoline Tax Law, secure a rebate on the motor vehicle fuel which it purchases tax paid and sells in its original form as cigar and cigarette lighter fluid.”

Refunder of tax paid on motor vehicle fuel is provided for in Section 5534, General Code, as amended in 112 Ohio Laws, page 191, and reads as follows:

“Any person, firm, association, partnership or corporation who shall use any motor vehicle fuel, as defined in this act, on which the tax herein imposed has been paid, for the purpose of operating or propelling stationary gas engines, tractors not used on highways, motor boats or aircraft, or who shall use any such fuel upon which the tax herein provided for has been paid, for cleaning or dyeing, or any other purpose than the propulsion of motor vehicles operated or intended to be operated in whole or in part upon the highways of this state, shall be reimbursed to the extent of the amount of the tax so paid on such motor vehicle fuel in the following manner; provided however that such applications for refunds must be filed with the tax commission of Ohio within ninety days from the date of the purchase or invoice.

Such person, firm, association, partnership or corporation shall file with the tax commission of Ohio a statement of the quantity of fuel used for purposes other than propulsion of motor vehicles, as set out in this section. Such statement shall be accompanied by the original invoice showing such purchase. On filing of such statement and invoice in form herein prescribed, the tax commission of Ohio shall determine the amount of refund due and within thirty days from the time of filing the same shall certify such amount to the Auditor of State. The Auditor of State shall thereupon draw a warrant on the Treasurer of State in favor of the person claiming such refund. Such refund shall be paid by the Treasurer of State from the rotary fund hereinafter provided for. The tax commission shall require the statement provided for herein to be supported by the affidavit of the claimant.”

It is clear from the provisions of this section, that it was the intent of the Legislature in cases where the motor vehicle fuel tax has been paid, and the said motor vehicle fuel shall have been used, for the purposes therein expressly specified, or used for any purpose other than the propulsion of motor vehicles operated, or intended to be operated, in whole or in part upon the highways of this state, to refund said tax so paid on such motor vehicle fuel.

It is noted that it is the use of the said motor vehicle fuel that determines whether or not the taxes paid thereon shall be refunded, and the question arises as to whether or not the sale of said tax paid motor vehicle fuel by said manufacturing company is such a use of said fuel as is comprehended within the provisions of said section.

The specific exceptions provided in Section 5534 of the General Code are as follows:

- (a) for the purpose of operating or propelling stationary gas engines;
- (b) tractors not used on highways;
- (c) motor boats or aircrafts;
- (d) cleaning or dyeing.

It will be noted that in each one of the uses specified the motor vehicle fuel is consumed in its use.

The section then sets forth a blanket exception as to the use for "any other purposes than the propulsion of motor vehicles operated or intended to be operated in whole or in part upon the highways of this state." Since, as you state, in each of the specified exceptions enumerated the use involves consumption of motor vehicle fuel, it is reasonable to assume that those additional uses not enumerated were also intended to be of such a character as results in the consumption of such fuel.

In view of the fact that the one using the fuel is the only one entitled to the refunder, the question to be determined is whether the sales company, in this instance, is using motor vehicle fuel within the contemplation of the statute when it sells it in its original form after placing it in small containers, such sales being obviously intended for use in cigar and cigarette lighters, but not precluding the subsequent use of the fuel in motor vehicles. The four ounce containers are labeled as fuel for lighters and, of course, the sale of four ounce containers is in one sense a use, but in my opinion is not such use as is contemplated by the statute. It in no respect precludes the use of the fuel for the propulsion of motor vehicles upon the highways of this state. The sales company does not consume the fuel in its use thereof but merely sells it in its original form. The company cannot, therefore, say whether the motor vehicle fuel is actually used as cigar or cigarette lighter fluid. The only one in a position to so state being the one who actually consumes the fluid in lighters, it logically follows that such person, and not the company, is the one entitled to a refunder of the tax thereon. Generally speaking, the refunder is only authorized to the one actually consuming the motor vehicle fuel in one of the manners noted in the exceptions contained in Section 5534 of the Code, *supra*.

While this statement might be qualified in instances wherein there is such a blending of motor vehicle fuel with other ingredients as to render it incapable of further use in motor vehicles, such qualification would obviously not cover the present case where no change is made at all in the motor vehicle fuel except that it is placed in small containers.

In consideration of the foregoing, it is my opinion, that the manufacturer who buys motor vehicle fuel tax paid, and sells the same in its original form, in small containers, is not entitled to the refunder of the motor vehicle fuel tax paid thereon, as said sale does not come within the provisions of Section 5534, General Code, wherein the refunder is granted to those who shall use any such fuel upon which said tax has been paid for any other purpose than the propulsion of motor vehicles operated or intended to be operated in whole or in part upon the highways of this state.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*