

**New York State Department of Taxation and Finance  
Taxpayer Services Division  
Technical Services Bureau**

TSB-M-84 (3)M  
Motor Fuel Tax  
March 29, 1984

Subject: Motor Fuel Tax Exemption  
American National Red Cross

A question has recently been raised concerning the applicability of the Motor Fuel Tax imposed pursuant to Article 12-A of the Tax Law to sales of motor fuel to the American National Red Cross ("Red Cross"). In response, our Law Bureau issued a legal opinion on December 5, 1983 which determined that the Red Cross is exempt from the payment of this tax.

Section 284 of Article 12-A provides that an excise tax of \$.08 per gallon be imposed on motor fuel sold within this state by a distributor except when sold under circumstances which preclude the collection of such tax by reason of the United States Constitution and of the laws of the United States enacted pursuant thereto.

Accordingly, the question presented is whether the constitution or laws of the United States preclude the State of New York from imposing such tax on sales of motor fuel to the Red Cross. The United States Supreme Court has long held that a state may not directly tax "instrumentalities" of the federal government, unless consent to such taxation is given." McCulloch v Maryland, 4 Wheat 316, (1819).

The American National Red Cross was organized under Title 36 of the United States Code, and is designated therein a "body corporate and politic" of the District of Columbia (§ 1a). Pursuant to section 3 of Title 36 of the United States Code, the Red Cross has acquired the right and the obligation to meet this nation's commitments under various Geneva Conventions (36 USC §3, para. First), to perform a variety of functions indispensable to the workings of the Armed Forces (36 USC § 3, para. Fourth), and to assist the Federal government in providing disaster assistance to the States and relief in times of great national calamity (36 USC § 3, para. Fifth). In Department of Employment v United States, 385 US 355, 358 (1966), the Supreme Court stated:

"On the merits, we hold that the Red Cross is an instrumentality of the United States for purposes of immunity from state taxation levied on its operations, and that this immunity has not been waived by congressional enactment."

It is, therefore the opinion of the Department of Taxation and Finance that the Motor Fuel Tax may not be imposed upon the Red Cross when the Red Cross purchases motor fuel for use in official Red Cross vehicles in furtherance of its official duties under section 3 of the United States Code.

However, it should be noted that section 285 of the Tax Law provides as follows:

§ 285. Special provisions as to imposition of tax on certain motor fuel. If a person, firm, association or corporation shall receive any motor fuel in such form and under such circumstances as shall preclude the collection of such tax from a distributor by reason of the constitution and laws of the United States, and shall thereafter sell any such fuel in such manner and under such circumstances as may subject the fuel sold to the taxing power of this state, such person, firm, association or corporation shall be considered a distributor, with respect to such sale, and shall make the same reports, pay the same taxes and be subject to all other provisions of this article relating to distributors.

Accordingly, if the Red Cross were to sell motor fuel purchased without payment of tax or were to use such fuel in a vehicle not owned by the Red Cross and not operated for its exempt purposes, the Red Cross would be considered a distributor for the purpose of that sale and would be required to make the same reports, pay the same taxes and meet all other provisions of this article relating to distributors.