



**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

January 21, 2003

Mike Marsh, Executive Deputy Director  
Oregon Department of Transportation  
355 Capitol Street NE, Room 101  
Salem, OR 97301-3871

Re: Opinion Request OP-2003-1

Dear Mr. Marsh:

You have asked us to address a question regarding the manner in which the Use Fuel Tax Law applies to transactions at “cardlock” fueling facilities. We set out your question and our short answer, followed by our full discussion.

**QUESTION PRESENTED**

Is the operator of a cardlock facility a “seller” of use fuel for the purposes of the Use Fuel Tax Law?

**ANSWER GIVEN**

Yes.

**DISCUSSION**

Your question involves interpretation of provisions of the Use Fuel Tax Law of 1943 (UFTL), ORS 319.510 to 319.880. In interpreting the UFTL, our goal is to discern the intent of the legislature. ORS 174.020; *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). To do this, we first examine the text and context of the statute. The context includes other provisions of the same statute, related statutes, and earlier versions of the statute at issue. *Id.* at 611; *SAIF v. Walker*, 330 Or 102, 108-09, 996 P2d 979 (2000). When reviewing the text and context, we consider dictionary definitions, rules of grammar and statutory and judicially developed rules of construction that bear directly on how to read the text, such as “words of common usage typically should be given their plain, natural, and ordinary meaning.” *PGE*, 317 Or at 611. At this first level, we also consider case law interpreting the statute at issue and related statutes, including earlier versions of those statutes. *SAIF*, 330 Or at 109. If the legislative intent is clear from the text and context, the search ends there. Only if the legislative intent is not clear from the text and context of the statute, will we look to the legislative history to attempt to discern that intent. *PGE*, 317 Or at 611-612. If, after considering text, context and

legislative history, the intent of the legislature remains unclear, we may resort to general maxims of statutory construction to resolve any remaining uncertainty as to the meaning of the statute. *Id.* at 612.

The UFTL imposes an excise tax “at the rate of 24 cents per gallon on the use of fuel in a motor vehicle.” ORS 319.530(1).<sup>1/</sup> The collection and reporting of these taxes are largely the responsibility of the “seller” of fuel for use in a motor vehicle.<sup>2/</sup> The seller must “collect the tax provided by ORS 319.530 at the time the fuel is sold, unless the vehicle into which the seller delivers or places the fuel bears a valid permit or user’s emblem issued by the Department of Transportation.” ORS 319.665(1). The seller must “report to the Department of Transportation, on or before the 20th day of each month, the amount of fuel sold, during the preceding calendar month, subject to the tax provided by ORS 319.530 and such other information pertaining to fuel handled as the department may require,” and must “remit to the Department of Transportation with each report required by ORS 319.675 all the tax due on the amount of fuel sold less four percent, which the seller shall retain.” ORS 319.675; ORS 319.681.

At issue is whether the operator of a cardlock fueling station is a “seller” for purposes of the UFTL. The UFTL defines a “seller” as “a person who sells fuel to a user.” ORS 319.520(9). ORS 319.520(10) provides that “[t]o sell fuel for use in a motor vehicle’ means to *deliver or place fuel for a price* into a receptacle on a motor vehicle, from which receptacle the fuel is supplied to propel the motor vehicle.” (Emphasis added.) The answer to your question turns, then, on whether the transaction that occurs at a cardlock facility constitutes the sale of fuel for use in a motor vehicle within the meaning of ORS 319.520(10).

The principal distinguishing characteristic of a cardlock operation is that it is entirely self-service. A customer of the facility inserts an encoded access card (or multiple cards) in a cardreader and operates the pump that delivers fuel into the vehicle. The cost of the fuel delivered and other salient information regarding the transaction is electronically recorded, and the customer is periodically billed for accumulated sales.

You explained that, at least since 1986, “[t]he card lock operator has not been held responsible for collecting the tax since the sites are unattended and the operators would have no way of knowing if the sale was taxable or not.” ODOT articulated this rationale in a 1986 letter responding to questions from an attorney representing a cardlock company, observing that “[i]n the case of a cardlock system, the fuel is withdrawn from a common storage tank by customers of the system; thus the site operator is not capable of knowing whether fuel is placed in a container for transport to a job site or into a motor vehicle.”

We find nothing in the UFTL limiting the obligations imposed by ORS 319.665(1), 319.675 and 319.681 to sellers with attendants on duty at the site of sale or permitting a seller to avoid the requirements of the UFTL simply by electing to employ a delivery system that makes it more difficult to comply with the law. The fact that a station operator elects to employ a delivery system that fails to distinguish taxable transactions from non-taxable transactions would not excuse the operator from its responsibility to comply with the law.<sup>3/</sup> Because the technical difficulty of identifying taxable transactions does not except cardlock facility operators from the

Use Fuel Tax Law, we must consider whether other characteristics of cardlock transactions take those transactions outside the statutory definition of sale of fuel for use in a motor vehicle.

As noted above, the only salient difference between a cardlock transaction and a transaction at an attended facility appears to be that the station operator or station employee is not physically present to execute the transaction. You have explained that, apart from that, “a cardlock user is billed for purchases from all affiliated cardlock sites just as a retail user would be billed by Chevron for all Chevron credit card purchases from independently owned stations affiliated with or accepting the Chevron card,” and that the “site owner is subsequently reimbursed for the cost of the use fuel sold from storage, plus profit, via the clearing house of the cardlock association.”

The mere absence of a station representative does not take the cardlock transaction outside the statutory definition of a sale of fuel for use in a motor vehicle. The definition of “deliver” that applies in this context is “GIVE, TRANSFER : *yield possession or control of* : make or *hand over* : make delivery of : COMMIT, *SURRENDER*, RESIGN.” WEBSTER’S THIRD NEW INT’L DICTIONARY, 597 (unabridged ed 1993). Through automated self-service mechanisms, the cardlock operator “hands over” and “yields possession” of use fuel to authorized customers. The customer is billed by the cardlock network on behalf of the station operator, which is compensated accordingly. Fuel to propel the vehicle is therefore “delivered” into the vehicle “for a price” within the meaning of ORS 319.520(10).

We therefore conclude that the transaction that occurs at a cardlock facility constitutes the sale of fuel for use in a motor vehicle within the meaning of ORS 319.520. The taxable sales transaction occurs at the pump. The operator of the cardlock facility from which the fuel is pumped is the “seller” for purposes of the UFTL, and is therefore responsible for reporting the transactions, collecting and remitting taxes on the transactions and performing the other responsibilities of a seller under the law.

Sincerely,

Donald C. Arnold  
Chief Counsel  
General Counsel Division

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<sup>1/</sup> For purposes of the Use Fuel Tax Law, “[fuel] means any combustible gas, liquid or material of a kind used for the generation of power to propel a motor vehicle on the highways except motor vehicle fuel as defined in ORS 319.010.” ORS 319.520(4). “Motor vehicle fuel,” in turn, “means and includes gasoline and any other inflammable or combustible gas or liquid, by whatever name such gasoline, gas or liquid is known or sold, usable as fuel for the operation of motor vehicles, except gas or liquid, the chief use of which, as determined by the department, is for purposes other than the propulsion of motor vehicles upon the highways of this state.” ORS 319.010(12).

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<sup>2/</sup> These duties were imposed on “sellers” by amendments to the UFTL enacted in 1959. Or Laws 1959, ch 188 (HB 243). Before those amendments, the user of the fuel was responsible for remitting the tax.

<sup>3/</sup> Moreover, it appears that technological advances have overcome whatever practical difficulty might once have attended the sorting of transactions at cardlock facilities. Cardlock networks now routinely offer billing services that distinguish between taxable and tax-exempt transactions and provide detailed information on each transaction and its tax ramifications. See <http://www.plavan.com/PCF/cardlock.htm>; <http://www.metrofueling.com/>; <http://www.associatedpetroleum.com/cardlock.htm>.