

**motor vehicle propulsion over
the public highways or streets
within the State of Montana.**

September 29, 1952.

Mr. A. E. Simon, Chairman
State Board of Equalization
Capitol Building
Helena, Montana

Dear Mr. Simon:

You have requested my opinion on the following question:

If Initiative Measure No. 55, providing for an increase in the rate of the present gasoline license tax, is carried by the voters and becomes law, will the Board of Equalization be required to collect an equivalent tax on diesel fuel and any other volatile liquid of less than forty-six degrees (46°) Taglianbes-Baume gravity test when such motor fuel is actually sold or used for motor vehicle propulsion over public highways or streets within the State of Montana?

Initiative Measure No. 55 was placed on the ballot for the general election as a result of petitions signed by the required number of voters and filed with the office of the Secretary of State pursuant to the provisions of Section 1, Article V of the Montana Constitution and Sections 37-101 through 37-110, Revised Codes of Montana, 1947. As stated in its title, Initiative Measure No. 55 is an amendment to Chapter 39, Laws of Montana, 1945, known as the "State Highway Treasury Anticipation Debenture Act of 1945", as amended by Chapter 167, Laws of Montana, 1949. The 1945 act provided for the issuance of debentures for highway purposes and imposed a license tax on dealers for the privilege of engaging in and carrying on business in this State, the tax to be measured by the number of gallons of gasoline handled by the dealers at the rate of five cents on each gallon. This act was amended by the Legislature in 1949 and the five cent rate was increased to six cents. A careful study of Initiative Measure No. 55 reveals that the only change contemplated by said measure is to increase the present gasoline license tax

Opinion No. 120

**Diesel Fuel, Taxation of—Gasoline
License Tax—Initiative Measure
Number 55—State Board of
Equalization.**

Held: That if Initiative Measure No. 55 does become law and the rate of the gasoline license tax is thereby increased, the Board of Equalization will be required to collect an equivalent tax on diesel fuel and any other volatile liquid of less than forty-six degrees (46°) Taglianbes-Baume gravity test when such motor fuel is actually sold or used for

one cent per gallon, i.e., from six cents to seven cents.

Section 84-1813, Revised Codes of Montana, 1947, provides as follows:

"Tax to be collected on motor fuel, when. The state board of equalization shall, under the provisions of rules and regulations issued by said board, collect a tax **equivalent to the lawful tax on gasoline** upon any other volatile liquid, of less than forty-six degrees (46°) Taglianbes-Baume gravity test, when actually sold or used to produce motor power to propel motor vehicles upon the public highways or streets within the State of Montana." (emphasis supplied)

The substance commonly known as "diesel fuel" is a volatile liquid, of less than forty-six degrees (46°) Taglianbes-Baume gravity test and would come within the provisions of Section 84-1813, supra. See Sections 84-1827 and 84-1829, Revised Codes of Montana, 1947.

The language of Section 84-1813, supra, is clear and its provision is mandatory. Whatever the rate for the gasoline license tax per gallon, the tax on diesel fuel and other volatile liquid, of less than forty-six degrees (46°) Taglianbes-Baume gravity test, must be "equivalent". If the gasoline license tax is increased or reduced, the tax on diesel fuel must be likewise increased or reduced. It is therefore my opinion that if Initiative Measure No. 55 does become law and the rate of the gasoline license tax is thereby increased, the Board of Equalization will be required to collect an equivalent tax on diesel fuel and any other volatile liquid of less than forty-six degrees (46°) Taglianbes-Baume gravity test when such motor fuel is actually sold or used for motor vehicle propulsion over the public highways or streets within the State of Montana.

Very truly yours,
ARNOLD H. OLSEN
Attorney General