

Opinion No. 31**Taxation—Gasoline Tax—Collection
Gasoline Tax**

Held: Basic 5c tax, and additional 2½c tax, imposed by Referendum Measure 47 (House Bill No. 256, Laws of Montana, 1943) on gasoline of less than 46 degree Tangliandes Baume test, can only be collected for gasoline used to propel motor vehicles on the public highways or streets, and collection is made directly from owner or operator of vehicle.

April 1, 1943.

Honorable Sam C. Ford
Governor of Montana

State Capitol
Helena, Montana
Dear Governor Ford:

You have asked my opinion regarding the question of whom will be required to pay the additional two and one-half cents per gallon tax on motor fuel of less than forty-six degrees (46°) Tanglienbes Baume gravity test, in the event that Referendum Measure No. 47 (House Bill No. 256, Laws of Montana, 1943) is approved by the electors at the election to be held on the 8th day of June, 1943.

This additional tax is provided by Section 9 of the Bill, reading as follows:

"For the purpose of providing additional funds for the payment of the interest and maturing principal of the state highway treasury anticipation debentures herein provided for every distributor referred to and defined in the gasoline license tax laws of the State of Montana now in effect, shall, from the first day of July, 1943, and until the thirtieth day of June, 1945, pay to the State Board of Equalization for deposit in the state treasury, an additional excise or license tax for the privilege of engaging in and carrying on such business in this state in an amount equal to one cent (1c) for each gallon of gasoline or motor fuel of more than forty-six (46) degree Tanglienbes Baume gravity test, upon which such distributor is now required to pay the five (5c) cent gasoline license or excise tax, and it is further provided that the State Board of Equalization shall collect an additional license or excise tax of two and one-half cents (2½c) per gallon on motor fuel of less than forty-six (46) degree Tanglienbes Baume gravity test, said additional or supplemental license or excise taxes to be supplemental to and not in lieu of the five cent (5c) excise or license tax. It is further provided that such additional excise or license taxes shall be collected or paid only during the period between July 1, 1943 and the 30th day of June, 1945."

Section 2381.1, Revised Codes of Montana, 1935, defines "gasoline" as:

"(a) The volatile substance pro-

duced from petroleum, natural gas, oil shales or coal heretofore sold under the name of gasoline, and sold or used for producing motor power for internal combustion engines or for producing power for propelling motor vehicles;

"(b) Any volatile product or substance of not less than forty-six degrees Tanglienbes Baume test sold or used for producing motor power for internal combustion engines or for producing power for propelling motor vehicles;

"(c) Any other volatile substance, of less than forty-six degrees Tanglienbes Baume test when actually sold or used to produce motor power to propel motor vehicles upon public highways or streets within the State of Montana."

Subdivision (c) of said Section 2381.1, Revised Codes, above quoted, further provides the tax for the volatile substance, therein classed as gasoline, shall be collected from the owners or operators of motor vehicles by the State Board of Equalization, and Section 2381.23, Revised Codes of Montana, 1935, further confines the collection of this tax to volatile substance of less than forty-six degrees Tanglienbes Baume test actually sold or used to produce motor power to propel motor vehicles upon public highways or streets within the State of Montana.

It is to be seen the present tax laws confine the five cent tax, as it applies to motor fuel of less than forty-six degrees Tanglienbes Baume test to the fuel sold or used to produce motor power to propel motor vehicles upon public highways or streets within the state of Montana, and that the collection is made direct by the State Board of Equalization from the owners or operators of the motor vehicles.

Demonstration of the fact that the legislature in the adoption and submission of Referendum Measure No. 47 did not contemplate any change in the present system of taxation is found in Section 9 of the measure providing the five cent tax shall be paid by every distributor referred to and defined in the gasoline license tax laws of the state of Montana, and that the measure, in question, with the exception of the additional tax, in the main is a duplication of the Referendum adopted by the people at the election held on May 5th,

1931, and that the initiative adopted by the people at the election held on November 8th, 1938, providing for highway treasury anticipation debentures, the vote of the people being necessary by reason of the indebtedness created.

With the premise that the measure under consideration does not change the basic five cent tax and does not contemplate any change in the present gasoline tax system, other than the additional tax, the answer to your question becomes clear. It is provided the State Board of Equalization shall collect an additional license or excise tax of two and one-half cents ($2\frac{1}{2}c$) per gallon on motor fuel of less than forty-six (46) degree Tanglienbes Baume gravity.

Webster's International Dictionary defines additional as "added, coming by way of addition, extra, something added." The term has been legally defined as follows: "Additional means given with or joined to some other and embraces the idea of joining or uniting one thing to another, so as to form an aggregate." *Kadderly v. City of Portland*, 74 Pac. 710, 44 Ore. 118; *State to use Baird v. Hull*, 53 Miss. 626; *Brooks v. Whitmore*, 31 N. E. 731, 139 Mass. 356.

It is therefore my opinion the basic five-cent tax, and the additional two and one-half cent tax, imposed on motor fuel of less than forty-six (46) degree Tanglienbes Baume gravity, provided in Referendum Measure 47, may only be collected when actually sold or used to produce motor power to propel motor vehicles upon public highways or streets within the state of Montana, and that the collection thereof will be made directly from the owners or operators of such vehicles.

Sincerely yours,

R. B. BOTTOMLY,
Attorney General