

**Opinion No. 59****Taxation—Cigarette Tax—  
Surety Bonds.**

**Held:** The procedure for cash payment of meter machine settings is within the authority of the state board of equalization as follows:

1. Remittance by the distributor or dealer of the amount of tax to be set in the machine;

2. Issuance by the state board of equalization of a tax receipt for said payment to the distributor or dealer;

3. Instruction to the proper county treasurer to set the meter machine in accordance with the amount of payment. The state board of equalization may adopt rules and regulations requiring security in addition to the \$5,000.00 surety bond provided in Section 9 of Chapter 289, Laws of 1947, when distributors or dealers of cigarettes require tax stamping meter machine settings which will cause the amount of tax due on the packages of cigarettes for which tax stamping meter machines are set to stamp for the month to be in excess of \$5,000.00.

August 20, 1947

Hon. Sam D. Goza, Chairman  
State Board of Equalization  
Capitol Building  
Helena, Montana

Dear Mr. Goza:

You have asked my opinion on two questions arising out of the administration of Chapter 289, Laws of 1947, the act providing for a tax on cigarettes.

1. May a distributor or dealer of cigarettes, as those terms are defined in Chapter 289, Laws of 1947, who desires to operate a tax stamping meter machine in lieu of using the stamps provided by the Board of Equalization, and who wishes to avoid the expense and trouble of securing a bond as required by Section 9 of Chapter 289, pay cash in advance of the setting of the meter and not be required to furnish such surety bond?

2. When distributors or dealers who use tax stamping meter machines desire a setting of the machine for an amount in excess of \$5,000.00 (the machines have a capacity of \$19,999.98), and are bonded only in the amount of \$5,000.00, as required by Section 9 of Chapter

289, may the Board of Equalization require additional bond for the amount in excess of \$5,000.00?

I.

Section 19 of Chapter 289, Laws of 1947, provides:

"The board (of equalization) shall have power and authority to prescribe all rules and regulations not inconsistent with the provisions of this act, for the detailed and efficient administration thereof." (Emphasis and parenthetical material mine.)

The use of a tax stamping meter machine by any manufacturer, distributor, or dealer of cigarettes is discretionary with the board of equalization. The board may require manufacturers, distributors or dealers to use paper stamps if it so desires, and believes the use thereof is in the best interests of the state. (Section 9, Chapter 289).

Section 1 of the chapter defines the word "stamp" to mean the stamp provided by the state board of equalization, and the word "insignia" to mean the impression or mark approved by the state board of equalization and used in lieu of stamps. Under the act stamps and insignia are used for the same purpose, viz., as evidence of payment of the required tax to the state of Montana.

In Section 9 of Chapter 289, the legislative assembly provided a credit basis for payment of meter settings—probably for the reason meter machine operators are required to deal with county treasurers in having their machines set rather than directly with the state board of equalization as they do in purchasing the paper stamps provided by the board. Since the legislature did not desire to charge the county treasurer with the duty of collection for the meter setting at the time of setting, it provided the county treasurer shall immediately report the amount of the meter setting to the board of equalization, and the distributor or dealer for whom the meter is set shall remit the proper amount to the state board of equalization within ten days from the first day of the month following. Since,

under such a method of operation, there can be money owing to the state board of equalization for a maximum period of forty days, the legislature provided a surety bond in the amount of \$5,000.00—conditioned “for the payment of the tax due on packages of cigarettes stamped by said tax stamping meter machines”—shall be required of distributors or dealers using such machines.

The distributor or dealer who desires to pay his money in advance of the setting of his machine is offering the best of protection to the state of Montana—cash on the line. Since the legislature did not make specific provision for such method of payment, I am of the opinion the state board of equalization, by regulation, may prescribe the method of cash payment in advance of meter machine settings under the authority granted to it by Section 19, *supra*. The legislature has acknowledged by the language of Section 19 that it has not set forth in Chapter 289, all the details of administration of the act.

It is, therefore, my opinion the procedure for cash payment of meter machine settings which you have outlined to me is within your authority, thusly:

1. Remittance by the distributor or dealer of the amount of tax to be set in the machine;
2. Issuance by the state board of equalization of a tax receipt for said payment to the distributor or dealer;
3. Instruction to the proper county treasurer to set the meter machine in accordance with the amount of payment.

## II.

When a distributor or dealer of cigarettes uses a tax stamping meter machine and furnishes a surety bond in the amount of \$5,000.00, in accordance with Section 9 of Chapter 289, there can be no doubt he is entitled to credit for meter machine settings until the 10th day of the following month up to and including \$5,000.00 in amount. To allow him to purchase machine settings in excess of \$5,000.00 without additional security is poor business as well as poor law.

As I have pointed out in discussing your first question, Section 19 of Chapter 289 authorizes your board to prescribe all rules and regulations not inconsistent with the provisions of Chapter 289 for the detailed and efficient administration thereof. Efficiency is not achieved if tax stamping meter machines are set in amounts in excess of the security provided by the distributor or dealer using such machines.

I am mindful of the rule laid down by our Supreme Court in the case of *State ex rel. Tillman v. District Court*, (1935) 101 Mont. 176, 181, 53 Pac. (2d) 107, that “when the statute declares the remedy or method of collecting taxes, it is exclusive, if adequate. . .” Here the legislature has laid down the method of collecting the tax from those using meters, i.e., by posting bond and payment within forty days. However, as pointed out, such method is not adequate nor is it reasonable in view of the fact that the purpose of the requirement for furnishing bonds is to protect the money due the state. To say that the legislature, while not limiting the amount of credit which can be extended, only intended to protect up to the amount of \$5,000.00 is not warranted by the language of the whole act. It is reasonable to assume that by giving the board powers to make rules and regulations “for the detailed and efficient administration . . .” of the act, the legislature intended to confer upon the board authority to protect the interests of the state to the full amount of the credit extended.

Your board, to be sure, has no law making power; and it cannot attempt to create for itself authority and discretion not given by the legislature. Your rules and regulations must be limited in their purpose and effect as aid in the administration of the law. (*McFatrige, et al v. District Court, et al*, (1941) 113 Mont. 81, 88, 89, 122 Pac. (2d) 834).

Since you are charged with the efficient administration of Chapter 289, rules and regulations adopted by your board to provide security to the state for tax stamping meter machine settings in excess of \$5,000.00 will certainly fall within the requirements of

our Supreme Court that they be in aid of the administration of the law.

It is, therefore, my opinion the state board of equalization may adopt rules and regulations requiring security in addition to the \$5,000.00 surety bond provided in Section 9 of Chapter 289, Laws of 1947, when distributors or dealers of cigarettes require tax stamping meter machine settings which will cause the amount of tax due on the packages of cigarettes for which tax stamping meter machines are set to stamp for the month to be in excess of \$5,000.00.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General