

**Opinion No. 31****Taxation—Exemption From Tax—  
Aviation Gasoline, Ex-  
emption Of.**

HELD: 1. The State Board of Equalization is the proper agency to administer the provisions of Chapter 17, Laws of 1955.

2. Chapter 17, Laws of 1955, does not contravene the 14th Amendment to the U. S. Constitution.

3. Chapter 17, Laws of 1955, is not class legislation or a special law, and is not in violation of Section 26, Article V, Montana Constitution.

4. Chapter 17, Laws of 1955, does not unlawfully delegate legislative authority.

5. The Title of Chapter 17, Laws of 1955, is not defective, and does not bring the Act into conflict with Section 23, Article V, Montana Constitution.

6. Chapter 17, Laws of 1955, is a valid existing law of the State of Montana.

August 3, 1955.

Mr. J. Reid, Chairman  
State Board of Equalization  
State Capitol Building  
Helena, Montana  
Dear Mr. Reid:

You have asked my opinion regarding the validity of Chapter 17, Laws of 1955, which chapter deals with the exemption from payment of the gasoline license tax of dealers and certain users of aviation gasoline. This chapter has been codified and can now be cited as Sections 84-1801 and 1802 (2), R.C.M., 1947, as amended by Chapter 17, Laws of 1955.

This opinion treats your questions in the order presented. Several of them receive brief consideration because the legal principles involved in their solution are so well established that detailed analysis is not warranted.

(1) Does the Act authorize the State Board of Equalization to administer the amendatory provisions?

Your question in part contained the answer. The Act amended is the "Gasoline Dealers' License Tax" which was administered by the State Board of Equalization. In no way does Chapter 17, Laws of 1955, amend this Act so as to change the governmental body responsible for its administration. In fact, in its amended version Section 84-1802 (1), R.C.M., 1947, we find that each month the dealer shall report to the **State Board of Equalization**. Under Section 84-1802 (2), supra, we find application for a permit shall be made to the **State Board of Equalization**, and that the **Board** can require payment of a fee for the permit and the **Board** can revoke the permits issued for cause.

It is very clear that the legislature intends that the State Board of Equalization continue as administrator of the entire Act.

(2) Is the Act arbitrary and void as being in contravention of the 14th Amendment?

Your particular reference with this question probably is that the exemption of aviation gasoline is an arbitrary classification in violation of the "equal protection" clause of the federal constitution.

The rule is that a classification for tax purposes which is arbitrary under the State Constitution is arbitrary under the federal "equal protection" clause. (Marion County River Transp. Co., v. Stokes, 117 S.W. (2d) 740, 173 Tenn. 347.)

Our Montana court has stated the inhibition of the 14th Amendment "was designed to prevent any person, or class of persons, from being singled out as a special subject for discrimination and hostile legislation," (Hilger v. Moore, 56 Mont. 146, 174).

On the subject of classification for tax purposes this case is still authority for this test:

"It is not essential to a valid classification that it depends upon scientific or marked differences in the subjects classified. It suffices if it is practical, and it is not reviewable unless palpably arbitrary." (Hilger v. Moore, supra, p. 175.)

Measured by this test, I cannot see that an exemption of gasoline designed for aircraft use is arbitrary in an act intended to provide revenue for highway construction by highway users. It is well known that aviation gasoline is not adaptable to automobile use.

(3) Does the Act constitute class legislation in violation of Section 26, Article V of the Montana Constitution?

This constitutional provision forbids the passage of special laws in certain enumerated cases, among them being "exemption of property from taxation."

A special law has been well defined in *Leuthold v. Brandjord*, 100 Mont. 96, 105:

"However, a law is general and uniform in its operation when it applies equally to all persons embraced within the class to which it is addressed, provided such classification is made upon some natural, intrinsic or constitutional distinction between the persons within the class and others not embraced within it, but is not 'general' and makes an improper discrimination if it confers particular privileges or imposes peculiar disabilities upon a class of persons arbitrarily selected from a larger number of persons all of whom stand in the same relation to the privileges conferred or the disabilities imposed. The difference on which the classification is based must be such as, in some reasonable degree, will account for and justify the particular legislation. (Cases Cited.)"

Using this definition, we can well justify the exemption of aviation gasoline dealers from the tax. No

belabored explanation is needed to show that these dealers do not "stand in the same relation to the privileges conferred or the disabilities imposed." Their customers do not use the highways to be benefited by the tax, the use of which is measured by gasoline.

(4) Does the Act delegate legislative authority in violation of the law?

There can be no doubt that the authority conferred on the Board of Equalization is well within the power of the legislature to delegate, and it is difficult to see where any legislative authority has been delegated to private individuals.

Dealers and certain large users of aviation gasoline may apply for permits to issue exemption certificates. But when issued, these permits do not grant the exemption. The legislature, by Chapter 17, has created the exemption in favor of aircraft users. Certain of these users and dealers in this product can qualify for this exemption by following certain prescribed steps, each of which is ministerial and not discretionary. The execution of these procedural acts no more amounts to a usurpation of a legislative function than in other instances does the filling and transmitting of forms to qualify for refund of taxes to which one is eligible, whether gasoline tax refund or federal income tax refund. The method is not unusual and is not novel at law.

To insure, however, that the procedure doesn't result in lost revenue and that the final decisions on individual exemptions be in the State Board of Equalization, the Act provides:

"The application for a permit, the permit itself, and any exemption certificates issued pursuant thereto shall all be in such form and shall contain such information as the board may from time to time require."

That express power, together with broad powers the Board already has, should suffice to enable it to police this Act so that no abuse ensues.

(5) Does the Act violate Section 23, Article V, of the Montana Constitution?

This section requires that legislative bills be limited to one subject which shall be clearly expressed in the title.

In *Western Ranches v. Custer County*, 28 Mont. 278, our Supreme Court early gave an interpretation of this section which is still followed:

“ . . . If the title of an Act is single, and directs the mind to the subject of the law in a way calculated to direct the attention truly to the matter which is proposed to be legislated upon, the object of the provision is satisfied.”

The title to Chapter 17, Laws of 1955, reads:

“An Act to exempt aviation gasoline used in aircraft from the gasoline dealers' license tax except the portion thereof allocated to the state aviation fund and providing penalties for false statements in connection with claims for exemption, and amending sections 84-1801, 84-1802, 84-1818 and 84-1819, Revised Codes of Montana, 1947, as now amended, and repealing all acts or parts of acts in conflict herewith.”

The reader of that title is put on notice that the Act will exempt aviation gasoline from the Gasoline Dealers' License Tax. That is what the Act does, and the title gives fair notice of that fact. A title would not be a title if it repeats the provision of the Act. And in *State v. Anaconda Copper Mining Co.*, 23 Mont. 498, our Supreme Court ruled that the title need not embody the exact limitations or qualifications contained in the bill itself. That rule is true here—the title suffices as notice of what the Act deals with. It need not refer to every procedural step in claiming the tax exemption.

Very truly yours,  
ARNOLD H. OLSEN  
Attorney General