

Opinion No. 29**Cigarette Stamps—Exclusive Use of Tax Meter Machines—Operation of Machines in Montana—Chapters 18, 44, 222, Laws of 1957—
Sec. 84-5601, et seq., RCM, 1947**

Held: Chapters 18 and 222, Laws of 1957, prohibit the State Board of Equalization from authorizing the sale of cigarette stamps and require tax stamping machines to be used exclusively in affixing the insignia approved by the Board.

The State Board of Equalization can not authorize the use of tax stamping machines outside the state of Montana.

September 9, 1957

Mr. J. F. Reid
State Board of Equalization
Capitol Building
Helena, Montana

Dear Mr. Reid:

You have requested my opinion whether the State Board of Equalization can authorize the sale of cigarette stamps under the provisions of Chapter 18 and Chapter 222, Laws of 1957. Also, whether tax stamping machines can be used outside the state of Montana.

Chapter 18, Laws of 1957, amended Sections 84-5601, 84-5602, 84-5606, 84-5607, 84-5608 and 84-5609, RCM, 1947. The amendments struck any reference to cigarette stamps and required the use of an insignia to affix the cigarette tax provided by this Chapter.

Section 84-5601, RCM, 1947, defined stamps and this definition was abolished by Chapter 18, Laws of 1957. Similarly, Chapter 18 defined insignia and deleted the phrase "used in lieu of stamps" which had formerly been included in Section 84-5601, RCM, 1947.

Section 84-5602, RCM, 1947, provided in part that "Distributors and dealers . . . have in their possession, only such cigarettes upon which has the stamp or insignia . . ." Chapter 18 now requires an insignia only to be affixed to the cigarettes. Section 84-5606, RCM, 1947, required stamps to be affixed to cigarettes within seventy-two hours after receipt of the cigarettes. Chapter 18 amended this by requiring an insignia to be attached. Section 84-5607, RCM, 1947, authorized the sale of stamps to out of state distributors. Chapter 18 now provides that insignia shall be affixed and there is no reference to selling stamps to out of state distributors. Section 84-5608, RCM, 1947, authorized the sale of stamps and Chapter 18 now permits the sale of insignia. Section 84-5609, RCM, 1947, permitted the use of tax stamping meters "in lieu of said stamps." Chapter 18 struck this phrase and required insignia to be attached to the cigarettes.

The title of Chapter 18, Laws of 1957, recites in part: ". . . to Provide for the Exclusive Use of Tax Stamping Meter Machines . . .". The amending sections of Chapter 18 do not expressly provide that tax stamping machines are to be used exclusively. However, the title of the bill is an indication of the legislative intent. In *State v. Bradshaw Land & Livestock Co.*, 99 Mont. 95, 113, 43 Pac. (2d) 674, the court stated: "The title of an Act may be resorted to in order to determine the legislative intent . . ."

The title of Chapter 18 and the deletion of any reference to stamps indicates a decisive legislative intent to prohibit the use of stamps and require a board approved insignia to be exclusively used in affixing the cigarette tax.

Chapter 222, Laws of 1957, amended Section 84-5606, RCM, 1947, and required an insignia to be affixed in place of stamps. There is no conflict between Chapter 18 and 222, Laws of 1957, with reference to the amended provisions of Section 84-5606, RCM, 1947.

Chapter 44, Laws of 1957, approved after Chapter 18, Laws of 1957, and prior to Chapter 222, Laws of 1957, also amended Section 84-5606, RCM, 1947. The amendment provided a tax to pay the Korean bonus bonds and retained the provision of the old section's reference to affixing stamps within seventy-two hours after receipt by the distributors and dealers. Chapters 18 and 222, Laws of 1957, in their amendments of this section, required an insignia to be affixed. In *State ex rel. Hay, Jr., v. Hindson*, 40 Mont. 353, 358, 106 Pac. 362, the court stated:

" . . . it is quite uniformly held that, where two amendatory statutes are passed at the same session of the legislature, neither of which refers to the other, they will both be held to be effective, unless the amendatory portions are irreconcilable. . ." See, also, *State v. Rotwitt*, 17 Mont. 41, 48, 41 Pac. 1004; *State ex rel. Normile v. Cooney*, 100 Mont. 391, 397, 47 Pac. (2d) 637.

The intent of the legislature to authorize the sale of stamps cannot be construed from this one isolated retention referring to stamps. In *State v. Board of Commissioners*, 89 Mont. 37, 87, 296, Pac. 1, the court stated:

" . . . this intention of the legislature may not be ascertained from the wording of any particular section of a statute, but only from a consideration of the Act as a whole; the division of a statute into sections being merely a matter of convenience for the purpose of reference."

Chapter 222, Laws of 1957, was approved March 12, 1957. Chapter 44, Laws of 1957, was approved February 26, 1957. The last reference to affixing the cigarette tax within seventy-two hours was Chapter 222 and this required an insignia to be affixed. The overall intent of the legislature, as shown particularly by Chapter 18, Laws of 1957,

was to prohibit the use of stamps and require the exclusive use of insignia. As stated in *State ex rel. Federal Land Bank v. Hays*, 86 Mont. 58, 65, 282 Pac. 32: ". . . It will be presumed that the legislature, in adopting the amendment, intended to make some change in the existing law, and therefore the courts will endeavor to give some effect to the amendment . . ." The single reference in Chapter 44, Laws of 1957, cannot and does not defeat this intent.

Your second inquiry is whether a tax stamping machine may be used outside the State of Montana. Section 84-5601, et seq., RCM, 1947, and amendatory Chapters 18, 44 and 222, Laws of 1957, neither expressly authorized nor prohibit the use of tax machines outside the state. Chapter 18, Laws of 1957, requires:

". . . The operator of such machine, before using the same, shall take the meter thereof to the county treasurer, of the county in which the machine is operated, who is authorized to, and shall set said meter for the number of packages specified and required by the operator. Prior to setting said meter the county treasurer shall collect from said operator the amount of money proper for said setting . . ."

Section 84-5607, RCM, 1947, permitted out of state distributors to purchase stamps. Section 84-5609, RCM, 1947, authorized the use of tax stamping machines in lieu of stamps. Chapter 18, Laws of 1957, require tax stamping machines to be used exclusively and does not authorize the sale of stamps. There is no provision which would permit the Board to allow a tax stamping machine to be used outside the state of Montana. The enforcement provisions of Section 84-5611, 84-5615, 84-5618, and 84-5619, RCM, 1947, have no effect outside the territorial limits of this state. An unscrupulous distributor could easily tamper with a tax machine and affix the approved insignia without payment of the tax. The regulation of this conduct can be regulated if the acts occur within the State. The absence of legislative authority permitting their use outside the state is a recognition of the control factor as well as their inability to authorize treasurers located in other states to collect Montana taxes. Therefore, the Board cannot authorize the use of tax stamping machines outside the state of Montana. This prohibition applies even though the meter is set by a county treasurer of Montana and then used outside the state.

It is therefore my opinion that Chapters 18 and 222, Laws of 1957, prohibit the State Board of Equalization from authorizing the sale of cigarette stamps and require tax stamping machines to be used exclusively in affixing the insignia approved by the Board. Further, the Board cannot authorize the use of tax stamping machines outside the state of Montana.

Very truly yours,
FORREST H. ANDERSON
Attorney General