

N.D.A.G. Letter to Conrad (Dec. 1, 1986)

December 1, 1986

Honorable Kent Conrad
Tax Commissioner
State Capitol
Bismarck, ND 58501

Dear Commissioner Conrad:

Thank you for your letter of November 24, 1986, questioning the ability of the Tax Commissioner to require producers and purchasers of oil and gas, and royalty owners to furnish additional information deemed necessary for the purpose of correctly computing the amount of the oil and gas gross production tax. Apparently, during the past year, producers and purchasers have refused to provide certain information requested by the Tax Commissioner .

As I understand your inquiry, you are most concerned over the following categories of documents:

1. Purchase information and subsequent purchase information.
2. Lease records.
3. Transportation records.
4. Oil and gas quality information.
5. Downstream marketing information.
6. Accounting information.

The State Tax Commissioner enjoys broad authority to summon witnesses and to require the production of books, records, papers, and documents relating to any manner in which he may have the authority to investigate or determine. N.D.C.C. §57-01-02(6). Furthermore, N.D.C.C. §57-51-07 authorizes the Commissioner to require the production of further documents with respect to oil or gas tax matters. That statute provides as follows:

57-51-07. POWERS OF COMMISSIONER. The commissioner shall have power to require any person engaged in such production and the agent or employee of such person, or purchaser of such oil or gas, or the owner of any royalty interest therein to furnish any additional information by him deemed to be necessary for the purpose of correctly computing the

amount of said tax, and to examine the books, records, and files of such person, and shall have power to conduct hearings and compel the attendance of witnesses, the production of books, records, and papers of any person, and full authority to make any investigation or hold any inquest deemed necessary to a full and complete disclosure of the true facts as to the amount of production from any oil or gas location, or of any company or other producer thereof, and as to the rendition thereof for taxing purposes.

Both of these statutes are sufficiently broad so as to provide necessary authority to the Tax Commissioner to require the production of any records which, in his discretion, are necessary to correctly compute the oil and gas gross production tax and, as a result, to effectively administer the tax laws of our state. It would be difficult if not impossible for me to attempt to delineate all records which could be required by the Tax Commissioner to be produced pursuant to these statutory authorities. Instead, I believe that so long as the Tax Commissioner can make a showing that the production of any records, including those listed above, are necessary to correct compute the oil and gas gross production tax and administer the tax laws, such records must be produced.

This conclusion has been adopted by a district court in the South Central Judicial District considering the question of whether N.D.C.C. §57-51-07 authorizes the Tax Commissioner to request and to acquire additional records from a gas processing company so as to accurately compute the gas production tax. In the Matter of Administrative Subpoena Issued by the North Dakota Tax Commissioner Against Ecological Engineering Systems, Inc., as managing general partner of Western Gas Processors, Ltd. (Civil No. 37614). In that case, the district court ordered the company to comply with the request of the Tax Commissioner on the basis of this particular statute.

In summary, it is my opinion that any additional information required by the Tax Commissioner and deemed necessary by him for the purpose of correctly computing the amount of the gross production tax must be produced and provided to the Tax commissioner. I cannot, however, resolve individual factual questions concerning the production of tax related documents by the issuance of a general legal opinion. Instead, the individual factual questions will have to be resolved by applying the previously described statutes to the precise facts presented in each case.

Sincerely,

Nicholas J. Spaeth

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