

**OPINION  
76-175**

August 4, 1976 (OPINION)

Mr. Walter Christensen  
State Treasurer  
State Capitol  
Bismarck, ND 58505

Dear Mr. Christensen:

This is in reply to your letter of July 2, 1976, regarding the correct method of allocating coal conversion facilities tax revenues under section 57-60-14 of the North Dakota Century Code, insofar as those revenues consist of moneys received for those taxes for which a credit is allowed pursuant to section 57-60-06, N.D.C.C.

A cooperative electrical generating plant taxed under chapter 57-60 is given (in section 57-60-06) a credit against that tax for taxes imposed on it pursuant to either chapter 57-33 or 57-33.1 and payable after July 1, 1975. The reference in section 57-60-06 to chapter 57-33 is, however, superfluous since the only cooperative electrical generating plants that would be taxed under chapter 57-33 are those having a generating capacity of 100,000 kilowatts or less (See, section 57-33-01) whereas chapter 57-60 applies only to electrical generating plants having at least one single electrical energy generation unit with a capacity of 120,000 kilowatts or more (See, section 57-60-01(2)(b)). Therefore, the credit that is provided for in the last two sentences of section 57-60-06 is in reality a credit only for taxes imposed under chapter 57-33.1 that are payable after July 1, 1975; this is recognized in section 57-60-14 by the fact that it refers to only section 57-33.1-08 and no reference is made there to section 57-33-05.

In order to answer your question it is necessary to determine the meaning of "annual revenue" as used in each of the five subsections of section 57-60-14. The term is not defined in chapter 57-60 but we conclude for the reasons set out below that it means the revenue received from the taxes imposed by chapter 57-60 on the production during a calendar year of a coal conversion facility of any of the three classes of facilities described in the three subsections of section 57-60-02.

Section 57-60-02 reads as follows:

"57-60-02. IMPOSITION OF TAXES. - Each coal conversion facility shall pay an annual tax for the privilege of producing products of such coal conversion facility. The rate of the tax shall be computed as follows:

1. For all coal conversion facilities, other than electrical generating plants and coal gasification plants as provided in subsections 2 and 3 of this section, the tax shall be measured by the gross receipts derived from such facility for the preceding calendar year and shall be in the amount of two and one-half percent of such gross receipts;

2. For electrical generating plants, the tax shall be at a rate of twenty-five one-hundredths of one mill on each kilowatt hour or electricity produced for the purpose of sale; and
3. For coal gasification plants, the tax shall be either the amount provided in subsection 1 or ten cents on each one thousand cubic feet of synthetic natural gas produced for the purpose of sale, whichever is greater."

As the first sentence of section 57-60-02 states, the coal conversion facility tax is an annual tax for the privilege of producing products from coal. Since that annual tax for the class of coal conversion facilities described in subsection 1 of section 57-60-02 is measured by the gross receipts of each such facility for the preceding calendar year, it seems clear that the annual tax for those plants is an annual calendar year tax. Similarly, since the annual tax on coal gasification plants, the class of coal conversion facilities described in subsection 3 is measured either by a plant's gross receipts for the preceding calendar year or by the amount of synthetic gas it produced, it seems equally clear that the annual tax for such a plant is also an annual calendar year tax. Although the annual tax on an electrical generating plant, the class of coal conversion facilities described in subsection 2 is never measured by its annual gross receipts but only by the kilowatt hours of electricity produced annually, the conclusion that it also is an annual calendar year tax seems inescapable since there is no indication that the legislature intended it to be different in this regard from the tax on the classes of facilities described in subsections 1 and 3 of section 57-60-02. From this we conclude that the term "annual revenue" as used in the revenue allocation provisions of section 57-60-14 means the annual revenue received from the tax on the production in a calendar year of a coal conversion facility regardless of when that annual revenue is received.

Since the coal conversion facilities tax first became effective on July 1, 1975, the only 1975 production of a coal conversion facility, including an electrical generating plant to which it applied was the production in the last six months of calendar year 1975; the tax on that production constitutes the 1975 annual revenue from coal conversion facility that is to be allocated under section 57-60-14. The 1976 annual revenue received from a coal conversion facility that is to be allocated under section 57-60-14 will, of course, be the annual revenue derived from the production during calendar year 1976 of that facility.

Relating the above to the credit allowed in section 57-60-06 for taxes imposed under chapter 57-33.1 and received in June of this year pursuant to section 57-33.1-05, we conclude that the amount you received in June for a particular electrical generating plant should be credited against any unpaid tax liability that accrues under chapter 57-60 for that plant on its production during calendar year 1976. Since an electrical generating coal conversion facility pays its annual calendar year privilege tax under chapter 57-60 on a calendar quarterly basis, the credit allowed by section 57-60-06 for taxes paid under chapter 57-33.1 by the plant will, in effect, be a

credit against its 1976 calendar taxes imposed by chapter 57-60 but not yet received for the last three calendar quarters of 1976.

Sincerely,

ALLEN I. OLSON

Attorney General