

**OPINION
77-78**

May 17, 1977 (OPINION)

The Honorable Water Christensen
State Treasurer
State Capitol
Bismarck, ND 58505

Dear Mr. Christensen:

This is in reply to your letter of May 10, 1977, in which you set forth the following facts and questions:

"The 1977 legislature changed the distribution formulas of both the coal conversion facilities tax and the coal severance tax.

The money collected from these two taxes is collected on a quarterly basis and is submitted to the State Treasurer's Office for distribution the quarter following the period for which it was collected.

I respectfully request your opinion as to whether the State Treasurer's Office should distribute the moneys from these collections which are for the quarter ending June 30th and the money is received by this office during the following quarter which falls after July 1st, 1977, under the formulas as they were passed by the 1975 Legislature or under the formulas which were passed by the 1977 Legislature."

The coal severance tax was enacted by Chapter 563 of the 1975 Session Laws. Section two thereof provides that the tax shall be due within thirty days after the end of each quarter. Section 18 of the Act provides:

"PROVISIONS OF ACT TEMPORARY. Sections 1 through 15 of this Act shall be effective for the period beginning July 1, 1975, and ending June 30, 1977, and thereafter shall be of no force and effect unless reenacted by the legislative assembly."
(Emphasis supplied).

While the 1977 Legislature did enact House Bill No. 1262 which is in some respects similar to Chapter 563 of the 1975 Session Laws, it did not specifically reenact Chapter 563 of the 1975 Session Laws. There are many different provisions in the new law, effective July 1, 1977, including a change in the distribution formula which gives rise to your questions.

Since section 2 of Chapter 563 of the 1975 Session Laws provides that the tax from a given quarter is not due until thirty days after the end of the quarter, which for the last quarter of this biennium would be July 30th, and since section 18 of the 1975 Law provides that after July 1, 1977, the 1975 Act would have no effect, we believe the distribution must be governed by the new law contained in House Bill No. 1262 effective July 1, 1977.

This conclusion does not affect the payment of such taxes, however, since the new law contains a provision (also section 2) requiring payment of the taxes within thirty days after the end of the quarter in exactly the same language as the current law. The distribution formula has, however, been changed and since there is no provision in the 1975 Act or the new law as to which distribution formula governs, we believe the new distribution formula must govern since the current law is ineffective after July 1, 1977.

The coal conversion tax is not as easy a matter since the statute providing for the coal conversion tax is a permanent statute found in Chapter 57-60 of the N.D.C.C. Two bills, House Bill No. 1587 and Senate Bill No. 2343 amend that chapter although only House Bill No. 1587 amends section 57-60-14, the section providing for the allocation of revenue by the State Treasurer. However the formula contained in section 57-60-14 as it was enacted in 1975 contains a formula based on the amount of annual revenue. Thus the statute provides:

"ALLOCATION OF REVENUE. The state treasurer, on or before July fifteenth of each year, shall allocate all moneys received pursuant to the provisions of this chapter and moneys received for those taxes for which a credit is allowed pursuant to section 57-60-06, notwithstanding the provisions of section 57-33.1-08, in the following manner:

1. The first one hundred Thousand dollars of annual revenue received from the taxation of each coal conversion facility in each county pursuant to this chapter shall be allocated one hundred percent to the county.
2. The second one hundred thousand dollars of annual revenue received from the taxation of each coal conversion facility in each county pursuant to this chapter shall be allocated fifty percent to the state general fund.
3. All annual revenue in excess of two hundred thousand dollars but not in excess of five hundred thousand dollars received from the taxation of each coal conversion facility in each county pursuant to this chapter shall be allocated twenty-five percent to the county and seventy-five percent to the state general fund.
4. All annual revenue in excess of five hundred thousand dollars but not in excess of one million dollars received from the taxation of each coal conversion facility in each county pursuant to this chapter shall be allocated fifteen percent to the county and eighty-five percent to the state general fund.
5. All annual revenue in excess of one million dollars received from the taxation of each coal conversion facility in each county pursuant to this chapter shall be allocated ten percent to the county and ninety percent to the state general fund."

That section as amended by House Bill No. 1587 will merely provide

that thirty-five percent of the revenue shall be distributed to the county and sixty-five percent to the state general fund. We also note that the type of formula contained in the 1975 Act for coal conversion facilities was substantially different from the coal severance tax, i.e., the coal severance tax was distributed on a straight percentage basis without regard to amounts. Furthermore the taxes, except for those on electrical generating plants, are due June 15th of the year in which they are levied, (see section 57-60-04) before the effective date of the amendment in House Bill No. 1587. The conversion tax on electrical generating plants is due within thirty days after the end of each calendar quarter. (See section 57-60-05 of the N.D.C.C.). Section 57-16-14 requires the State Treasurer to make the distribution "on or before July fifteenth of each year."

On July 11, 1968, this office addressed an opinion to you concerning the highway tax distribution fund. In that opinion we indicated that the formula in that instance contemplates that the revenue developed and received for a given period be allocated to said period. That conclusion was prompted by the provisions in that formula which froze the amount to be distributed to the county to the amount they received during the fiscal year ending June 30, 1965. While the formula under the 1975 coal conversion tax is somewhat similar it does not contain that provision and we further note the 1968 opinion was concerned primarily with money received during particular quarters and not an amendment relative to the distribution formula. Thus we do not believe that opinion is applicable in this instance.

In 73 Am. Jur. 2d. 483, Statutes, Section 383, we find the following comment: "Strictly speaking, an amendatory act is not regarded as an independent statute. Of course, the statute in its old form is superseded by the statute in its amended form, the amended section of the statute taking the place of the original section for all intents and purposes as if the amendment had always been there. Unless a contrary intent is clearly indicated, the amended statute is regarded as if the original statute had been repealed, and the whole statute reenacted with the amendment. However, insofar as the two acts are the same, the new act is regarded as a mere continuation of the earlier one, and as speaking as of the time of the adoption of the original enactment, so that only the new provisions are to be considered as having been enacted at the time of the amendment."

We believe that the enactment of the two bills providing for a change in the distribution formula indicated an intent that all moneys received and collected thereunder be distributed according to the new formula since there is no basis for distributing the funds on the basis of the old formula after July 1, 1977, the date the new bills become effective.

We therefore conclude that the State Treasurer's Office should distribute the moneys from these collections which are for the quarter ending June 30th and which money is received by your office after July 1, 1977, using the formulas they were enacted by the 1977 Legislature and effective July 1, 1977.

Sincerely,

ALLEN I. OLSON

Attorney General