

Date Issued: February 5, 1982 (AGO 82-9)

Requested by: John Steven Lesmeister, State Treasurer

- QUESTION PRESENTED -

Whether penalties and interest collected on delinquent payments of oil and gas gross production taxes imposed pursuant to chapter 57-51 of the North Dakota Century Code must be apportioned in the same way as the oil and gas gross production tax is apportioned.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that penalties and interest collected on delinquent payments of oil and gas gross production tax imposed by chapter 57-51, N.D.C.C., should not be apportioned in the same way as the oil and gas gross production tax is apportioned but, instead, should be apportioned entirely to the state general fund.

- ANALYSIS -

Section 57-51-15, N.D.C.C., provides for apportionment of the oil and gas gross production tax to the state general fund and to various local governments. It was amended in 1981 by Section 4 of House Bill No. 1365 (1981 N.D. S.L., Chapter 383) and by House Bill No. 1529 (1981 N.D. S.L., Chapter 611). The first clause of section 57-51-15, N.D.C.C., was not changed by these amendments and it provides as follows:

57-51-15. APPORTIONMENT AND USE OF PROCEEDS OF TAX. The gross production tax provided for in this chapter shall be apportioned as follows, to wit: . . .

This provision relates to apportionment of the gross production "tax" that is provided for in chapter 57-51, N.D.C.C., rather than to apportionment of all "revenues" or "moneys" received under that chapter. It therefore does not purport to prescribe how penalties or interest received under that chapter shall be apportioned. In a similar case, Burlington County v. Martin, 25 A.2d. 17 (N.J. 1942), the court held that the state inheritance tax that was apportioned in part by statute to the county of the decedent's residence in New Jersey applied only to the tax and not to the interest collected on the delinquent tax; therefore, the state retained the interest collected on the state imposed tax. In other words, the interest collected was not a part of the tax and could not be apportioned in the same way as the tax without an express provision to that effect in the law. We believe the same reasoning must be applied here.

It is noted that section 57-51-17, N.D.C.C., of the oil and gas gross production tax law provides for a penalty that is apportioned to the state general fund. Section 57-51-07, N.D.C.C., also prescribes penalties that "shall be apportioned as other gross production

tax penalties." Section 57-51-10, N.D.C.C., prior to the 1981 amendment of it, provided that a delinquent gross production tax "shall, as a penalty for such delinquency, bear interest at the rate of twelve percent per annum." That provision was changed by Section 5 of House Bill No. 1198 (1981 N.D. Session Laws, Chapter 583) to provide that where the tax becomes delinquent

. . . there is hereby imposed a penalty of five dollars, or a sum equal to five percent of the tax due, whichever is greater, together with interest at the rate of one percent per month on the tax due, for each calendar month or fraction thereof during which such delinquency continues, excepting the month within which such tax became due. . . .

A provision expressly apportioning the interest or penalty prescribed in section 57-51-10, N.D.C.C., was not included in that section prior to the 1981 amendment of it nor did the 1981 amendment include such a provision. Our understanding, however, is that the penalty or interest prescribed by that section has always been apportioned to the state general fund. Because there is no indication that the Legislature intended to change that apportionment when it enacted the 1981 amendment of section 57-51-10, N.D.C.C., and because section 57-51-15, N.D.C.C., relates only to apportionment of the tax as explained above, we conclude that the penalty and interest prescribed in section 57-51-10, N.D.C.C., must be apportioned to the state general fund.

We also conclude that the penalties prescribed by sections 57-51-07 and 57-51-17, N.D.C.C., must also be apportioned to the state general fund because of the express provisions in those sections to that effect.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

ROBERT O. WEFALD
Attorney General

Prepared by: Kenneth M. Jakes
Assistant Attorney General