

OPINION
55-128

June 27, 1955 (OPINION)

TAXATION - R.E.A.

RE: What Are "Gross Receipts"?

This opinion is in reply to your letter of June fifteenth requesting an opinion on the question of what constitutes gross receipts of rural electric cooperatives within the meaning of chapter 57-33, N.D.R.C. of 1943, as amended, which imposes a tax on the gross receipts of such cooperatives in lieu of personal property taxes.

Your specific question is whether reimbursements for actual costs are gross receipts subject to the tax in circumstances described as follows in one letter received by you:

". . . this amount represents revenues received for labor, transportation and overhead of service performed not in the course of general operation."

"The services performed were those of cutting, raising or lowering our lines to permit buildings, oil rigs and other large objects to pass through our lines. In accordance with established regulations of the Public Service Commission, these services are performed at actual cost. These costs do not include lost revenue caused by these outages."

The term "gross receipts" upon which the tax is levied is nowhere defined in chapter 57-33. Section 57-3303 provides that: "Each cooperative annually on or before May first in each year shall file a report with the tax commissioner in such form and containing such information as the tax commissioner may prescribe and demand. Such report shall state the amount of gross receipts derived from the furnishing of electric energy during the preceding calendar year: "The tax commissioner shall levy on each cooperative a tax on its gross receipts for the preceding calendar year." The section does not add any qualification that the gross receipts shall be derived from the furnishing of electric energy.

It is my opinion that reimbursements received by an electric cooperative for such costs as you describe are gross receipts which are subject to the tax imposed by section 57-3304.

This conclusion is based on the following reasons. First, section 57-3304, in imposing the tax on gross receipts, does not define or qualify the meaning of that term, nor is it defined anywhere in chapter 57-33. Second, the rule of statutory construction that ambiguous provisions for exemptions or deductions in tax laws should be strictly and narrowly construed must be applied. Third, since the term "gross receipts" is not defined in the law, it should be given the same meaning as is given it by ordinary and common usage.

Black's Law Dictionary, Fourth Edition, defines "gross" as before or

without diminution or deduction", "whole; entire; total". Funk and Wagnalls New Standard Dictionary of the English Language defines "gross" as "undiminished by deduction; entire," and it defines "receipt" as "that which is received; usually in the plural; as, cash receipts."

In Fort Smith Gas Co. v. Wiseman, 74 S.W. 2d. 789, 792, 189 Ark. 675, the court in defining the statutory term "gross earnings" said that it "meant the entire receipts, without deduction for any expenditure, or any cost of operation, or other expense or cost of the service."

To the extent that the phrase "derived from the furnishing of electrical energy" as used in section 57-3303 might be looked to as qualifying the meaning of gross receipts on which the tax is imposed, receipts from operations necessarily connected with the furnishing of electrical energy even though those operations may be only of an incidental nature are in my opinion derived from the furnishing of electrical energy. The cost of cutting, raising or lowering transmission lines to permit large objects to pass through is perhaps only incidental to the furnishing of electrical energy but it is nevertheless necessarily connected therewith.

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