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OPINION NO. 73

TAXATION - Coal Severance Tax, distribution of revenues formula, application; COAL - Coal Severance Tax, distribution of revenues, formula, application; REVISED CODES OF MONTANA, 1947 - Sections 43-1001, 43-1002, 84-1312, 84-1319, 83-1323.

HELD: The distribution formula embodied in chapter 540, Laws of Montana (1977) applies only to taxes assessed on coal mined after July 1, 1977.

5 October 1977

B.J. "Swede" Goodheart, Chairman  
Montana Coal Board  
Department of Community Affairs  
Capitol Station  
Helena, Montana 59601

Dear Mr. Goodheart:

You have requested my opinion on the following question:

Does the coal tax distribution formula embodied in chapter 540, Laws of Montana (1977) apply to taxes assessed on coal produced before July 1, 1977, but paid after that date?

The Forty-fourth Montana Legislature adopted a formula allocating the proceeds of the coal severance tax among a number of funds and agencies. Chs. 501, 502, 525, Laws 1975, see section 84-1319, R.C.M. 1947. That formula became effective on July 1, 1975, but was only applied to taxes assessed on coal produced after that date. The same Legislature proposed a constitutional amendment to dedicate a portion of the severance tax to a trust fund. Ch. 499, Laws 1975. The proposed amendment was approved by the voters in the November 1976 general election.

The new section of the Constitution (Art. IX, § 5) provides:

The legislature shall dedicate not less than one-fourth (1/4) of the coal severance tax to a trust fund, the interest and income from which may be appropriated. The principal of the trust shall forever remain inviolate unless appropriated by vote of three-fourths (3/4) of the members of each house of the legislature. After December 31, 1979, at least fifty percent (50%) of the severance tax shall be dedicated to the trust fund.

Since this section directs the Legislature to dedicate a portion of the severance tax to the trust fund, while the 1975 legislation has apportioned the entire severance tax for other purposes, the Forty-fifth Legislature enacted

[a]n Act to bring the coal tax distribution formula into compliance with the Montana Constitution as amended in 1976 by creating a trust fund; revising the percentages distributed to local governments and state programs and the programs funded thereunder...

Ch. 540, Laws 1977. This Act, like the constitutional amendment, became effective on July 1, 1977. Section 43-507, R.C.M. 1947.

The issue here is whether this new distribution formula applies to taxes accrued on coal produced between April 1, 1977, and June 30, 1977. The question arises because those taxes accrued while the original allocation formula was in effect, but were not actually collected until after July 1, 1977, when the new allocation formula was in effect. The delay in collection is in accordance with section 84-1315, R.C.M. 1947, which provides:

Each coal mine operator shall compute the severance tax due on each quarter-year's worth of production on forms prescribed by the department. The statement shall indicate the tonnage produced, the average BTU value of the production, the contract sales price received for the production, and such other information as the department may require. The completed form in duplicate, with the tax payment, shall be delivered to the department not later than thirty (30) days following the close of the quarter.

If the new formula applies to the accrued tax on coal produced between April 1, 1977 and June 30, 1977, then the beneficiaries of the coal tax revenues, especially the counties, will lose a substantial amount of revenue which they anticipated under the coal tax allocation of section 84-1319 prior to its 1977 amendments.

The constitutional amendment establishing the trust fund is silent on the issue of whether it applies to taxes on coal mined between April 1 and June 30, 1977. It merely directs the Legislature to "dedicate not less than one-fourth (1/4) of the coal severance tax to a trust fund...." The Legislature implemented this provision by adopting chapter 540, Laws 1977 amending section 84-1319, effective July 1, 1977, which provides in part:

Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana Constitution, 25% of total collections a year. After December 31, 1979, 50% of coal severance tax collections are allocated to this trust fund. The trust fund moneys shall be deposited in the fund established under 79-309(5) and invested by the board of investments as provided by law.

(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:....

The difficulty with this statute arises from the Legislature's use of the word "collections" in the allocation formula. In the taxation area, the term "collection" ordinarily refers to the actual receipt of tax money, as distinguished from the term "assessment." See e.g., Denny v. Wooster, 27 P.2d 328, 329 (Wash., 1933); United States v. Krapf, 180 F.Supp. 886, 890 (D.N.J., 1960). This, however, is not always the case, and the term "collection" has been construed as an ambiguous term. See, e.g., Board of Commissioners v. Hazelwood, 192 P. 217, 218 (Okla., 1920); Parsons v. People, 76 P. 666, 669 (Colo., 1904). In section 84-1323, for example, the term "collected" is used in conjunction with the seizure and sale of property to enforce tax liens.

The problem occasioned by the use of the term "collections" in section 84-1319 is exacerbated here by the legislative and administrative history. The Legislature intended the distribution formula embodied in chapter 540 to apply only to coal mined after July 1, 1977. The Department of Revenue did not apply the 1975 formula to taxes on coal mined between April 1 and June 30, 1975, although those taxes were paid after July 1, 1975, and the formula allocated "taxes collected." Section 8, chapter 525, Laws 1975. Previous legislative history made this a reasonable procedure for the department to adopt. The Forty-fourth Legislature had revised not only the distribution formula but the coal tax base and tax rate as well. Section 3, chapter 525, Laws 1975. If the Department of Revenue had applied the new distribution formula to all taxes paid (as opposed to taxes on coal mined) after July 1, 1975, the result would have been the application, for one month only, of the new distribution formula to the old coal tax.

The Legislature's understanding that the 1975 distribution formula was to be treated in conjunction with the new coal tax is reflected in the fact that both were assigned to the same conference committee (Senate Jour., 44 Legis., 1345; House Jour., 44 Legis., 1491) and to the interim Coal Tax Oversight Committee (§ 15, chapter 502, Laws 1975). The Oversight Committee was informed of the Department of Revenue's decision to restrict the new distribution formula to taxes on coal produced after July 1, 1975. Minutes of the Coal Tax Oversight Committee, October 16, 1975. The Committee voted to recommend a new formula to the Forty-fifth Legislature, but did not recommend any change in the Department of Revenue's practice concerning the time of applying a new formula. Minutes of the Coal Tax Oversight Committee, November 30, 1976. This formula was adopted by the Legislature. Chapter 540, Laws 1977.

The Legislature was not simply left to infer from the 1975 procedure that the Department of Revenue would restrict the 1977 distribution formula to coal mined after July 1. The Legislature had an even more persuasive reason to expect the former procedure to be repeated. In accordance with sections 43-1001 and 43-1002, R.C.M. 1947, the Legislature was presented with a fiscal note to indicate the fiscal impact of the proposed distribution formula. The note applied the 1975 formula to taxes on coal produced between April 1 and June 30, 1977, and only applied the new formula to taxes on coal produced after July 1, 1977. With this fiscal note before it, the Legislature clearly intended to adopt the distribution formula embodied therein.

One of the purposes of the coal tax is to "stabilize the flow of tax revenue from coal mines to local governments...." (section 84-1312). In furtherance of this purpose each county was allocated for local expenditure a certain percentage of the coal tax on coal "mined for each calendar year" in the county (section 84-1319, prior to 1977 amendments). While the Legislature was not bound to maintain this allocation formula, many affected counties had relied upon this percentage of coal tax revenue in their budgeting and spending. Construing the 1977 amendments to section 84-1319 to apply only to taxes assessed after July 1, 1977, will soften the impact of the statutory reduction in county income, and will further the stated purpose of stabilizing tax flows.

THEREFORE, IT IS MY OPINION:

The distribution formula embodied in chapter 540, Laws of Montana (1977) applies only to taxes assessed on coal mined after July 1, 1977.

Very truly yours,

MIKE GREELY  
Attorney General