

CHAPTER 57-33.1
TAXATION OF COOPERATIVE ELECTRICAL GENERATING PLANTS

[Repealed for taxable years beginning after December 31, 2009]

57-33.1-01. Definitions. As used in this chapter, unless the context or subject matter otherwise clearly requires:

1. "Commissioner" means the state tax commissioner.
2. "Cooperative" or "cooperatives" means nonprofit corporations owning or operating an electrical generation plant or plants located within this state.
3. "Electrical energy generating or generation plant" means all buildings, fixtures, machinery, tools, appliances, or all other things, located within a confined site in the state of North Dakota, used, useful, or necessary in the generation of electrical energy and which has at least one, single electrical energy generation unit with a capacity of one hundred thousand kilowatts or more; which property and any transmission lines with a carrying capacity of two hundred thirty kilovolts or larger and related substations owned or operated by cooperatives subject to the provisions of this chapter and carrying energy the gross receipts of which are subject to the tax imposed by subsection 1 of section 57-33.1-02, shall be classified as personal property.
4. "Generating capacity" means the actual amount of electrical energy measured in kilowatts an electrical energy generating plant is capable of generating, and not necessarily the generation or nameplate rating placed upon generation equipment by its manufacturer.
5. "Gross receipts" means all revenue valued in money, whether received in money or otherwise, derived by a cooperative subject to the provisions of this chapter from the sale of electrical energy generated by an electrical energy generation plant, and shall further include the fair market value of all electrical energy from such plant or plants traded by a cooperative subject to the provisions of this chapter, to any person, firm, corporation, limited liability company, association, or other organization, whether or not subject to the provisions of this chapter, and, in addition includes the fair market value of electrical energy generated and consumed by the generating plant or cooperative.

57-33.1-02. Imposition of taxes - In lieu of ad valorem taxes. Each cooperative operating an electrical energy generating plant shall pay an annual franchise tax for the privilege of operating such plant, which must be computed and determined according to the following procedures:

1. Each year for the first two years during which a cooperative operates an electrical energy generating plant the commissioner, on or before April fifteenth, shall levy a tax of one percent upon the gross receipts derived from the operation of such electrical energy generating plant or plants for the preceding calendar year and thereafter the tax imposed must be levied upon the gross receipts derived from the operation of such plant or plants at the rate of two percent of the gross receipts. The taxes levied by this subsection are in lieu of any ad valorem taxes upon personal property, except transmission lines, of an electrical energy generating plant the gross receipts of which have been subjected to such tax, and the procedures relating to the ad valorem method of levying property taxes are not applicable to the taxation of such electrical energy generating plants. For the purpose of determining when the two percent rate shall be applied, the first calendar year in which a cooperative is operating an electrical energy generating plant shall be the first year in which such plant earns gross receipts.

2. In addition to the tax imposed under subsection 1, the commissioner shall levy a tax upon transmission lines of two hundred thirty kilovolts or larger, owned by cooperatives subject to the provisions of this chapter and chapter 57-60 and carrying electrical energy the gross receipts or production of which have been subjected to the tax imposed by subsection 1 of this section or subsections 2 and 3 of section 57-60-02, at the rate of two hundred twenty-five dollars per mile [1.61 kilometers] or fraction thereof of such lines located in this state, except that the rate of tax under this subsection for a transmission line of two hundred thirty kilovolts or larger which is initially placed in service on or after October 1, 2002, is three hundred dollars per mile [1.61 kilometers] or fraction thereof of such lines located in this state. The tax imposed under this subsection does not apply to a transmission line initially placed in service on or after October 1, 2002, for the first taxable year after the line is initially placed in service, and the tax imposed under this subsection on a transmission line initially placed in service on or after October 1, 2002, must be reduced by:
 - a. Seventy-five percent for the second taxable year of operation of the transmission line.
 - b. Fifty percent for the third taxable year of operation of the transmission line.
 - c. Twenty-five percent for the fourth taxable year of operation of the transmission line.

The tax imposed by this subsection is in lieu of any property tax on such lines and any substation used in delivering electrical energy, the gross receipts or production of which have been subjected to the tax imposed by subsection 1 of this section or subsections 2 and 3 of section 57-60-02. The proceeds derived from the taxing of transmission lines must be allocated to each county in which such transmission lines are located in the proportion that the miles [kilometers] of such lines in a county bear to the total miles [kilometers] of such transmission lines located within this state. Revenues received by each county must be deposited in the county general fund.

For purposes of this subsection, "initially placed in service" includes both new construction and substantial expansion of the carrying capacity of a preexisting line, and "substantial expansion" means an increase in carrying capacity of fifty percent or more.

57-33.1-03. Report. Each cooperative annually on or before April first in each year shall file a report with the commissioner in such form and containing such information as the commissioner may prescribe and demand. Such report must state the total amount of gross receipts derived by such cooperative from each electrical energy generating plant it may own or operate during the preceding calendar year and the total miles [kilometers] of transmission lines of two hundred thirty kilovolts or larger, owned by such cooperative and carrying electrical energy the gross receipts of which are subject to the tax imposed by subsection 1 of section 57-33.1-02, located within this state and within each county of this state. Gross receipts derived from electrical energy traded or consumed must be listed separately and the value thereof must be determined by each cooperative by applying the fair market value to the power at such time as it was traded or consumed. The determination of the fair market value of power traded or consumed must be reviewed by the commissioner and is subject to change by the commissioner if found to be unreasonable.

57-33.1-04. Notification of tax liability - Appeal to commissioner. On or before May first of each year, the commissioner shall notify in writing each cooperative whose electrical generating plant or plants and transmission lines are to be taxed under the provisions of this chapter of the amount of tax levied against each plant and the transmission lines. Any cooperative aggrieved by the amount of tax levied against its plant or plants or transmission lines may make application in writing within fifteen days of its notification to the commissioner for an

abatement hearing which must be granted not later than fifteen days after the receipt of the application. The commissioner may grant or reject in whole or in part any plea for abatement and upon conclusion of the hearing shall proceed to make a final levy against the applicant.

57-33.1-05. Date when taxes due - Payable to tax commissioner - Penalties. The taxes levied under the provisions of this chapter become due and payable to the commissioner on the fifteenth day of June following the year in which such taxes were levied. Such taxes become delinquent on the first day of July following and, if not paid on or before such date, are subject to a penalty of one percent, and on August first following an additional penalty of one percent, and on September first following an additional penalty of one percent, and for every month thereafter of the year in which such taxes are due and payable an additional penalty of two percent must be levied. From and after January first of the year following the year in which the taxes become due and payable, simple interest at the rate of twelve percent per annum upon the principal of the unpaid taxes must be charged until such taxes and penalties are paid, with such interest charges to be prorated to the nearest full month for a fractional year of delinquency.

57-33.1-06. Lien for tax. The tax herein provided for must, at all times, be and constitutes a first and paramount lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to the taxpayer and such lien may be foreclosed in the same manner provided for mortgages on real or personal property.

57-33.1-07. Moneys to be deposited with state treasurer. It is the duty of the commissioner to immediately deposit with the state treasurer all moneys collected by the commissioner under this chapter and to accompany each remittance with the necessary information to allow the state treasurer to allocate the moneys received as provided by this chapter.

57-33.1-08. Allocation by state treasurer. The state treasurer, by July thirty-first of each year, shall allocate all moneys received under the provisions of this chapter in the following manner:

1. During the first two years during which a cooperative operates an electrical energy generating plant, all of the annual revenue received from the taxation thereof in each county must be allocated to that county.
2. Thereafter, the first fifty thousand dollars of annual revenue received from the taxation of electrical energy generating plants located in each county, pursuant to subsection 1 of section 57-33.1-02, must be allocated one hundred percent to that county. The second fifty thousand dollars of annual revenue received from the taxation of electrical energy generating plants, pursuant to subsection 1 of section 57-33.1-02, located in each county must be allocated fifty percent to that county and fifty percent to the state general fund. All annual revenue in excess of one hundred thousand dollars received from the taxation of electrical energy generating plants, pursuant to subsection 1 of section 57-33.1-02, located in each county must be allocated twenty-five percent to that county and seventy-five percent to the state general fund.
3. All revenue derived from the taxation of transmission lines must be allocated as provided in subsection 2 of section 57-33.1-02.

57-33.1-09. Duty of county treasurer - Allocation to political subdivisions. Moneys received by counties under the provisions of subsection 1 of section 57-33.1-08 must be apportioned as follows:

1. Fifteen percent of all revenues allocated to any county must be paid by the county treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official decennial federal census.

2. Forty percent of the revenues allocated to any county must be deposited by the county treasurer in the county general fund to be used for general governmental purposes.
3. Forty-five percent of all revenues allocated to any county must be apportioned by the county treasurer to school districts within the county on the average daily attendance distribution basis, as certified to the county treasurer by the county superintendent of schools.

57-33.1-10. Rules and regulations - Bond - Reports - Actions. The commissioner is hereby authorized and empowered to prescribe and promulgate all necessary rules and regulations for the purpose of making and filing of all reports required hereunder and otherwise necessary to the enforcement of this chapter and may require a sufficient bond from any cooperative charged with the making and filing of reports and the payment of the taxes herein imposed. The bond must run to the state of North Dakota and must be conditioned upon the making and filing of reports as required by law or regulation, and for the prompt payment, by the principal therein, of all taxes justly due the state by virtue of the provisions of this chapter. When any reports required have not been filed, or may be insufficient to furnish all the information required by the commissioner, the commissioner may institute any necessary action or proceedings in the courts having jurisdiction, to enjoin such person from continuing operations until such reports have been filed as required, and in all proper cases, injunction shall issue without bond from the state of North Dakota. Upon showing that the state is in danger of losing its claims or the property is mismanaged, dissipated, or concealed, a receiver must be appointed at the suit of the state.

57-33.1-11. Appeals from decision of tax commissioner. Any person aggrieved because of any action or decision of the commissioner under the provisions of this chapter may appeal therefrom to the district court of Burleigh County in accordance with the provisions of chapter 28-32.

57-33.1-12. Penalty. Any person who willfully fails to comply with the provisions of this chapter is guilty of a class A misdemeanor.