

**Net Proceeds Tax—On Royalties—Payment of by Lessee  
—Payment by Lessor or Royalty Owner.**

The lessee of a mining claim is liable for the net proceeds tax on his part of the output of the mine as provided in Chapter 237 of the Laws of the 17th Legislative Assembly, and is permitted to show as a deduction the royalty he pays to the owner.

The lessor, or owner, should be assessed for the net proceeds tax on the royalties he receives from the lessee.

Both the lessor and lessee should render a net proceeds statement.

The lessor or owner of a mine is liable to a metals license tax under Chapter 200 of the Laws of the 17th Legislative Assembly, upon the royalties he receives from the lessee, and the lessee is liable for a like tax upon his part of the output of the mine, and both should pay the license fee of \$1.

The lessee is entitled to make the same deductions in his report under Chapter 200 as are allowed under Chapter 237.

State Board of Equalization,  
Helena, Montana.

Gentlemen:

You have requested my opinion as to the operation of Chapters 200 and 237 of the 17th Session Laws relating to the license tax on metal mines and net proceeds of mines in the following particulars:

A. Under Chapter 237 of the 17th Session Laws:

(1) Is the lessee of a mining claim liable to a net proceeds tax, or are royalty payments to the owner a proper item of deduction under Section 2 of said Act?

(2) Can the lessor or owner of mining ground be assessed for the net proceeds tax on royalty received from the lessee?

(3) Is lessee alone liable to render a net proceeds statement and to the payment of such tax?

B. Under Chapter 200 of the 17th Session Laws:

(1) Is the lessor liable to a metals license tax upon royalty returns from the property, or is the lessee alone liable for such license tax?

(2) What are allowable deductions under said Chapter 200?

Chapter 237 above repealed Sections 2563 to 2571, inclusive, Revised Codes of 1907, relative to the taxation of net proceeds of mines, and enacted a new law on that question. It requires every person, corporation or association engaged in mining gold, silver, copper, coal, lead, or other valuable mineral or mineral deposit to make an annual statement of the gross yield and value thereof of each mine worked by such person, corporation or association during the year preceding the first day of June. In Section 2 thereof is found the procedure to be followed in arriving at the amount on which such tax is to be computed. Royalty payments to the owner of a leased mine or mining claim are not listed as items of deduction. Neither did Section 2565, Revised Codes, which is repealed and supplanted by Section 2 above, list royalty as allowable deductions, yet the Supreme Court of Montana in *Tong v. Maher*, 45 Mont. 142, held that the royalty paid to the owner of a mine was taxable to him as net proceeds under Section 3, Article XII of the Constitution of Montana and, Sections 2563 to 2571 of the Revised Codes of 1907, and required such owner to pay the tax. This royalty being taxable to the owner thereof, it necessarily follows that the lessee is entitled to show it on his return as a deduction from the proceeds on which he personally pays a tax. Thus the lessee of a mining claim would be liable for the net proceeds tax on his share of the output, and the lessor would be liable for the same on his royalty, and the tax of both would be a lien on the mine itself until paid, under the holding of *Tong v. Maher*, above.

While the law requires the person, corporation or association engaged in the mining business to make a report on which the tax is computed, if he fails so to do, the State Board of Equalization may make an estimate and fix a tax. (Sec. 4, of Chap. 237.) If the owner of the mine or mining claim does not make a report, the Board may estimate and compute his tax from the return of the lessee.

In Volume 1, Opinions of Attorney General, page 355, we find an opinion holding that the net proceeds of a mine operated under lease should be assessed to the lessee, and the tax is not a lien against the mine. However, this opinion is completely overruled by *Tong v. Maher*, supra.

It is, therefore, my opinion that:

1. The lessee of a mining claim is liable only for the net proceeds tax on his part of the output of the mine, and is permitted to show, as a deduction on his report, the royalty he pays to the owner.
2. The lessor or owner should be assessed for net proceeds tax on the royalties he receives from the lessee.
3. Both lessor and lessee should render a net proceeds statement, but if lessor does not do so, he may be assessed on the royalties shown by lessee's statement.
4. That net proceeds tax of both lessor and lessee are liens on the mine itself until paid.

Chapter 200, Laws of 1921, requires every person, individual, firm, copartnership, association, joint-stock company, syndicate and corporation engaged in or carrying on the business of working any mine or mining property, from which is produced gold, silver, copper, lead or any other metal or metals or precious or semi-precious gems or stones, to pay an annual license tax of \$1, and in addition a sum equal to 1½ per cent of the net proceeds of such mine during the year ending May 31st of each year.

Section 2 of Chapter 200, above, requires this tax to be paid by persons engaging in such work or occupations as owner, lessee, trustee, possessor, receiver or in any other capacity, and the last paragraph of said section reads as follows:

"Any person, or persons, firm, co-partnership or corporation, who shall lease or rent any mining property in consideration of a royalty or percentage of the yield thereof, or of the value of the yield thereof, shall be considered as engaged in and carrying on the business of working and operating such mine or mining property."

This is clearly an expression by the Legislature of an intent to bring a lessor, who obtains his returns from his property through royalties, under the provision of the Act. This interpretation is necessary in order to give any force or meaning to the above language, inasmuch as the lessee must of necessity be engaged in mining if anything is produced from the mine. It was undoubtedly incorporated in order to remove any question that the Legislature intended to include the lessor. He is to be considered as carrying on the business of mining and his percentage of the output of the mine, received as a royalty, is subject to the tax. This is squarely within the rule laid down in *Tong v. Maher*, supra.

Section 4 of Chapter 200 above provides as follows:

"The net proceeds derived by such person from such business shall be reported to the State Board of Equalization, in the same manner, and shall be calculated and computed in the same manner and upon the same basis as the net proceeds of mines are determined for purposes of general taxation, as provided by law in this State. The State Board of Equalization, shall require reports upon forms to be by them prepared, on the same basis and within the same time for the same period of time, and in the same manner as net proceeds of mines are reported. Such statement and return shall be sworn to by the individual, or by the president, vice-president, or treasurer or assistant treasurer of the association, company, syndicate or corporation making the same."

You will note that the net proceeds, upon which the tax is to be computed, are to be calculated and computed in the same manner and upon the same basis as are the net proceeds of mines for general

purpose of taxation. The law, under which the latter are computed, is Chapter 237, Laws of 1921. Hence, the report under Chapter 200 above would list as deductions the same items allowed under Chapter 237 above, which under the above interpretation would allow the royalty to be paid to the owner or lessor as a deduction from the net income of the lessee, and which would be taxable to the lessor as provided in *Tong v. Maher*, supra.

Therefore, it is my opinion:

1. That the lessor or owner of a mine is liable to a metals license tax under Chapter 200, above, upon the royalties he receives from the lessee, and that the lessee is liable for a like tax upon his part of the output of the mine, and that both should pay the \$1 license fee.

2. That the lessee is entitled to make the same deductions in his report under said Chapter 200 as are allowed under Chapter 237, 17th Session Laws.

The oil license tax is provided for in Chapter 266, Laws of 1921. This Act was modeled on the metal mines tax, Chapter 200, Laws of 1921, above discussed.

It is my opinion that the same general methods should be followed in computing the oil license tax as outlined above in said Chapter 200, and that lessor and lessee each should be assessed on his respective part of the output of the oil well.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.