

Oil Producer's License Tax—Method of Computation as to Production Paid to the State as Royalty.

Chapter 266 of the Laws of 1921 held to require the license tax therein provided for, to be collected on that portion of the production paid to the State as royalty.

J. W. Walker, Esq.,
State Treasurer,
Helena, Montana.

My dear Mr. Walker:

You have asked whether in the administration of the oil producer's license tax, as provided for in Chapter 266, Laws of 1921, the license should be collected on that portion of the production paid the State as a part of the rental or royalty demanded in the lease.

Section 2 of this Act (Section 2398, R. C. M. 1921) provides, in part, as follows:

"Every person engaging in or carrying on the business of producing, within this state, petroleum, or other mineral or crude oil, or engaging in or carrying on the business of owning, controlling, managing, leasing or operating, within this state, any well or wells from which any merchantable or marketable petroleum or other mineral or crude oil is extracted or produced, sufficient in quantity to justify the marketing of the same, must, for the year 1921, and each year thereafter, when engaged in or carrying on any such business in this state, pay to the State Treasurer, for the exclusive use and benefit of the State of Montana, license tax for engaging in and carrying on such business, in an amount equal to one per centum (1%) of the total gross value of all petroleum and other mineral or crude oil produced by such person within this state during such year."

This license tax is required for engaging in and carrying on the business of producing, within the State, petroleum or crude oil. To produce means to bring forward, to manufacture, to make. It would seem axiomatic to say that oil must first be produced before it is available to turn over to the State in satisfaction of the terms of the lease. The State is not then producing oil—the lessee is producing it, and must deliver to the State one-eighth of all he produces. The State stands in no different relation in this regard than does any other lessor of oil lands.

The tax is imposed on the privilege of engaging in the business, the amount of oil produced being merely the basis for determining the amount of tax to be paid by the person enjoying the privilege taxed.

It is, therefore, my opinion that the license tax should be collected on that portion of the production paid to the State as royalty.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.