

Assessment—Counties—Mines and Mining—Oil—Royalties—Taxation—Valuation.

Oil royalties, which have been properly assessed as net proceeds of mines and entered upon the assessment roll, are properly considered in determining the valuation of property in connection with the question of the creation of new counties.

Edgar J. Baker, Esq.,
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My dear Mr. Baker:

You have submitted to me the following question, and ask my opinion thereon:

“May oil royalties (the oil having been taken from the ground), which have been entered upon the assessment books of Fergus county as net proceeds of mines, be considered in determining the valuation of property in the case of the proposed creation of a new county?”

Oil has been uniformly held by the courts of the various states to be a mineral, as will appear from the following cases:

Isom v. Rex Crude Oil Co., 147 Cal. 659, 82 Pac. 317;
Berentz v. Belmont Oil Co., 148 Cal. 577, 84 Pac. 47;
Poe v. Ulrey, 233 Ill. 56, 84 N. E. 46;
Ohio Oil Co. v. Daughetee, 240 Ill. 361, 88 N. E. 818;
People v. Bell, 237 Ill. 402, 86 N. E. 593;
Weaver v. Richards, 156 Mich. 320, 120 N. W. 818;
Wagner v. Mallory, 169 N. Y. 510, 62 N. E. 584;
McIntosh v. Ropp, 233 Pa. 497, 82 Atl. 949;
Gill v. Weston, 110 Pa. 305, 1 Atl. 921;

Nonamaker v. Amos, 73 Ohio 163, 76 N. E. 949;
Murray v. Allred, 100 Tenn. 100, 43 S. W. 355;
Swayne v. Lone Acre Oil Co., 98 Tex. 597, 86 S. W. 740;
Wilson v. Youst, 43 W. Va. 826, 28 S. E. 781;
Mid-Northern Oil Co. v. Walker, 65 Mont. 414-427.

The Constitution of Montana, Article XII, Section 3 thereof, relating to the taxation of mines and mining claims, is as follows:

"All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal and other valuable mineral deposits, after purchase thereof from the United States, shall be taxed at the price paid the United States therefor, unless the surface ground, or some part thereof, of such mine or claim, is used for other than mining purposes, and has a separate and independent value for such other purposes, in which case said surface ground, or any part thereof, so used for other than mining purposes, shall be taxed at its value for such other purposes, as provided by law; and all machinery used in mining, and all property and surface improvements upon or appurtenant to mines and mining claims which have a value separate and independent of such mines or mining claims, and the annual net proceeds of all mines and mining claims shall be taxed as provided by law."

Section 2088, R. C. M. 1921, relating to the taxation of mines, is merely a re-statement of the above constitutional provision.

The Supreme Court of Montana, in construing the above constitutional and statutory provisions, has held that the expression "all mines," as used in the last clause thereof, applies to all mineral deposits, and that the effect of said last clause is to exempt from taxation the subsurface contents so long as they should not prove a source of profit by being extracted and converted into personal property, but, when so extracted and converted, the minerals are taxed according to their productive value after development.

"The purpose of Section 3 was to provide a special method for the assessment and taxation of mining property. * * * The theory adopted was that it should be regarded as of mixed quality—real as to the surface value, and personal as to the subsurface contents of it. * * * As to the subsurface contents, the theory was adopted that they should be regarded as having no taxable value other than so far as they might add to the resources of the owner by the yielding of a profit. Hence the last clause was added which in effect made an exemption of the contents from taxation so long as they should not prove a source of profit by being extracted and converted into personal property. This theory necessitated the devising of a method of ascertaining the net profits, and a mode by

which their taxable value might be ascertained, a levy thereon made and the collection of it enforced at a rate uniform with that laid upon all personal property. * * * The language of the section is not expressed in the most apt or appropriate terms; but we are of the opinion that the expression 'all mines' as used in the last clause of it, was intended to apply to all mineral deposits, and to put them in the category of personal property; the margin over and above the cost of extraction only to be taxed at a value to be ascertained by visual inspection or mathematical calculation."

Northern Pacific Ry. Co. v. Musselshell County, 54 Mont. 96.

As oil is a mineral, and as our Supreme Court has declared that all minerals are embraced within the provisions of the constitution and statute above mentioned, it follows that the method of taxing oil extracted and converted into personal property is the same as in the case of all other minerals extracted in the State of Montana, which method is set forth in said constitutional and statutory provisions, to-wit: by taxing the annual net proceeds as other personal property is taxed.

This office, in an opinion to the State Board of Equalization, Vol. 9, page 140, has held that royalties are properly taxable as net proceeds of mines and while that opinion did not expressly deal with oil royalties, from what is said hereinbefore in this opinion I am of the belief that oil royalties are likewise taxable as such.

Section 4391, R. C. M. 1921, relating to the creation of new counties, is as follows:

"For the purposes of this act the assessed valuation of all property, whether included within the boundaries of a proposed new county, or remaining within the boundaries of any existing county or counties from which territory is taken, shall be fixed and determined on the same basis as is used for the imposition of taxes in the State of Montana, to-wit: By taking that percentage of the true and full value of all taxable property in any county specified by Section 2000 of this code. Whenever in this act the term 'assessed valuation' or 'valuation based on the last assessment roll' is used, said terms shall be construed as meaning taxable valuation determined as herein provided, not the full and true valuation of property."

In the case of Esmeralda County v. Mineral County, 141 Pac. 73, the Supreme Court of Nevada held that a tax upon the net proceeds of a mine was a tax upon property. The Court in its opinion said:

“The ‘assessment roll of each county,’ as used in Rev. Laws, Sec. 4902, supra, means the assessment roll upon which appears all property subject to an ad valorem tax, and this includes proceeds of mines.”

As it is the valuation of all taxable property that enters into the question of the creation of new counties, and not of any certain species or classes, and as net proceeds are taxable property, it follows that they should be included in the valuation if they are upon the assessment roll.

It is, therefore, my opinion that oil royalties which have been properly assessed as net proceeds of mines and entered upon the assessment roll are properly considered in determining the valuation of property in connection with the question of the creation of new counties.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.