

Oil—Royalties—Net Proceeds—Lessee—Owner—Taxation.

A net proceeds tax assessed against the owner of royalties should be cancelled and the tax assessed against the lessee.

State Board of Equalization,
Helena, Montana.

January 14, 1926.

Gentlemen:

You have requested my opinion on the following questions:

"1. Can net proceeds taxes be legally collected on royalties assessed prior to the year 1925 in cases where such taxes are now delinquent?"

"2. If such taxes cannot be collected, has the state board of equalization authority to order them cancelled?"

In the case of Northern Pacific Railway Co. vs. Musselshell County, 238 Pac. 872, the court held that the amount paid by a lessee of coal mines to the owner of such mine as rental or royalty is part of the "net proceeds" but that the lessee and not the owner of the leased mine is the proper entity to which the net proceeds of the mines are assessable.

Thus the net proceed taxes on royalties assessed prior to the year 1925 and which were assessed to the owner of the mine instead of the lessee were assessed against the wrong person and as stated in the case of Northern Pacific Railway Co. vs. Musselshell County, supra. "Taxes cannot be levied against a person for property he does not own."

It necessarily follows that these delinquent taxes cannot be collected and your first question is therefore answered in the negative.

In answer to your second question, it having been decided by the supreme court that the assessments in question were made against the wrong persons, the assessments are void and should be cancelled. This property then is in the position of property that has never been assessed.

Section 11 of chapter 3, laws of 1923, provides in part as follows:

"Assessment of omitted property. Whenever the state board of equalization shall, in any year, discover that any taxable property of any person has not been assessed in such year, or

that it has been omitted from taxation during any previous year or years, the state board may assess the same for such year or such previous years * * *

This applies to net proceeds as well as other property taxes. (Butte & Superior Mining Co. vs. McIntyre, 71 Mont. 254.)

It is, therefore, my opinion that the assessments of this property which have been made to the wrong parties should be cancelled and the property assessed to the proper person or persons, as above provided.

Very truly yours,

L. A. FOOT,

Attorney General.