

Royalties—Taxation—Lessor—Lessee—Net Proceeds.

Both the lessor and lessee of an oil lease are liable for the tax on royalty provided for by chapter 140, laws of 1927, regardless of whether the royalty consists of an interest in the oil extracted or of the proceeds derived therefrom and regardless of the ownership of the royalty.

May 29, 1928.

State Board of Equalization,
Helena, Montana.

Gentlemen:

You have submitted to me the following questions:

“A. In case the lease provides that the lessor retain an interest in the oil extracted: 1. Who is to pay the tax under chapter 139 on such portion of oil? 2. Who is to pay the royalty tax under chapter 140?”

“B. In case the lease provides that the lessee will pay the lessor a certain portion of the oil extracted: 1. Who is to pay the net proceeds tax on this portion of the oil? 2. Is such portion of the oil subject to the royalty tax, and, if so, by whom should it be paid?”

In answer to your question number A-1, it is my opinion that the portion retained by the lessor constitutes royalty within the meaning of chapter 140 of the laws of 1927, and that both the lessor and the lessee are liable for the payment of the tax. This also answers question A-2.

In answer to question B-1, it is my opinion that the portion paid by the lessee to the lessor under B constitutes royalty within the meaning of chapter 140 of the laws of 1927 and that under the said chapter both the lessor and the lessee are liable for the payment of the tax. This also answers question B-2.

Very truly yours,

L. A. FOOT,
Attorney General.