

Royalties—Net Proceeds—Taxation.

House bills 221 and 222 are not retroactive because basing the 1927 tax on the 1926 returns.

State Board of Equalization,
Helena, Montana.

April 28, 1927.

Gentlemen:

You have referred me to house bills 221 and 222 passed by the legislature in 1927, and have requested my opinion on the following questions:

“Can royalties be deducted under the provisions of house bill 222 on net proceeds returns covering 1926 operations, such returns, under the old law, being due not later than March 10, 1927—some few days after house bill 222 was passed?”

“Can royalty interests be assessed and taxed this year (1927) under the provisions of house bill 221?”

Under section 3 of article XII of our constitution the net proceeds of mines are taxable as provided by law. In order to ascertain the purpose of house bills 221 and 222 it is helpful to consider the method of taxing the net proceeds of mines prior to their passage in order to ascertain the changes that the legislature desired to make.

Conformable to the rule announced by the supreme court of this state in the case of Northern Pacific Ry. v. Musselshell County, 74 Mont. 81, it has been the practice since that decision to tax the operator of a mine, including the operator of oil wells upon all of the net proceeds taken from the mine even though a part of the proceeds was paid to royalty holders. House bill 222 now permits the operator of the mine to deduct from the gross yield "all royalty paid or apportioned in cash or in kind" and by house bill 221 it is provided that the royalty interests shall be taxed as net proceeds and for convenience the same shall be entered on the personal property assessment list under the name of the operator of the mine but it is provided that the operator of the mine may recover or withhold from proceeds of the royalty any tax paid by him upon the royalty interest.

Both of these acts took effect on January 1st, 1927, and both provide the method for the taxation of the net proceeds owned or claimed on the first Monday in March, 1927.

By section 2089, as amended, the operator of the mine must, before the 31st day of March in each year, make out a statement showing the gross yield "during the year preceding the first day of January."

Since house bill No. 222, amending sections 2089 and 2090, became effective on January 1st, 1927, the statement provided for must relate to the gross yield for the year 1926. The act is in no sense retroactive. The royalty owner has an interest in property. Instead of taxing the property according to its actual value the net proceeds are taxed in lieu thereof. It is a substitute for a tax upon the value of the property. In order to determine the value of the interest of the royalty owner on the first Monday in March, 1927, the proceeds yielded as royalty in 1926 are taken as the basis.

It is therefore my opinion that neither of these bills are open to the objection that they are retroactive and that both should be followed in making the assessments for the year 1927.

Very truly yours,

L. A. FOOT,
Attorney General.