Licenses—Coal Mines License Tax—Taxes—Lignite Coal.

Persons associating themselves together for the purpose of mining coal for their own use are required to pay the coal mines license tax. The fact that the coal is mined from the public domain under permit from the Secretary of Interior does not exempt said persons from payment of said tax. Lignite coal fit for domestic heating purposes is merchantable coal within the tax law.

State Board of Equalization, October 14, 1930.
Helena, Montana.

Gentlemen:

You have referred to me a letter from Claude A. Berry of Brockway, Montana, in which he states that a number of farmers in the vicinity of Brockway have associated themselves for the purpose of mining lignite coal to be used by them only and that they pay one Teodor Fode wages for digging the coal for them as a laborer. Mr. Berry claims that under the circumstances the coal mines license tax need not be paid and also for the further reason that the coal is being mined from the public domain under authority granted by the Department of the Interior of the United States, free of royalty. He also maintains that the license tax law is only applicable to a commercial coal dealer.

The act does not contain any provision which could be construed to limit its application to the mining of coal for sale in a commercial way. It specifically states that any person who mines coal for use by himself or other persons other than for use in the mining operations is subject to the tax. If Mr. Berry's statement is correct all of the parties who have gone into the joint venture of operating this coal mine for their own use are liable for the tax. If Mr. Fode is one of these parties he is also liable but if he is just a laborer and not a member of the joint venture then he would not be liable for the tax but the persons for whom he works would be liable to the extent of the coal mined and used for purposes other than in the mining operations themselves.

Neither does the fact that the coal is being mined from the public domain by authority granted by the Secretary of the Interior relieve these parties from paying the tax. The tax levied is not upon the coal nor upon the land but it is a tax upon the privilege of mining coal; therefore, no property of the United States is taxed. Neither do these parties nor their operations constitute them agencies or instrumentalities of the United States engaged in doing governmental work for the United States in its sovereign capacity. They are merely granted a privilege by the United States in its proprietary capacity; therefore, these parties cannot escape taxation upon the theory either that the property of the United States or an agency or instrumentality of the government is being taxed.

In Mid-Northern Oil Company vs. Walker et al, 65 Mont. 414, 211 Pac. 353, and affirmed by the United States Supreme Court in 268 U. S.

45, it was held that the extraction of oil from lands leased from the government did not constitute the producer of the oil an agency of the United States. It was further held that such producer was required to pay the license tax required by the state law. In that case the land was leased under the act of February 25, 1920, which, according to Mr. Berry, is the same act under which these parties procured their lease or license from the Department of the Interior. A review of that act shows that it includes not only oil but coal deposits as well, and it is provided in that act, "that nothing in this act shall be construed or held to affect the rights of the states or other legal authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States."

Both the State and United States Supreme Courts held that this in itself was sufficient to authorize the state to levy an occupational license tax upon the producer of oil from lands leased from the government and as the same act also applies to coal deposits it is apparent without any doubt whatever that this provision is sufficient to authorize the collection of the coal mines license tax. In fact, such tax would have been collectable without such express authorization. Neither is the coal mined required to be "commercial coal." The statute uses no such term. It is sufficient if it is merchantable, and any lignite coal that is fit for domestic heating purposes is merchantable coal.

It is therefore my opinion that there is nothing in the state of facts presented by Mr. Berry which in any manner relieves these parties from the necessity of paying the coal mines license tax.

Very truly yours,

L. A. Foot,
Attorney General.