

Taxation—Licenses—Coal Mines.

Allotted members of the Fort Peck Indian Agency who lease coal mines located on Fort Peck Indian Reservation and operate the same upon a royalty basis are subject to the coal mines license tax of 5c per ton.

H. D. McCullough, Esq.,
Superintendent, Fort Peck Agency,
Poplar, Montana.

October 28, 1930.

My dear Mr. McCullough:

You state that certain tribal Indian lands were withdrawn as a coal reserve for the United States Reclamation Service and that coal mines on these premises are leased to allotted members of the Fort Peck Agency who mine coal and pay a royalty of 25c per ton for all coal mined, except that sold to Indians on the reservation. You state that

inasmuch as the coal belongs to the Indians of the Fort Peck Reservation and is on land belonging to them you have some doubt as to whether the state can levy a tax "on this coal."

I presume you refer to the coal mines license tax of 5c per ton, which persons must pay to the state upon all merchantable and marketable coal mined by them except that used in the mining thereof. This tax is not a tax on the coal but is an occupation tax which the person mining the coal must pay for the privilege of so doing.

From the facts stated in your letter I do not believe that the mining operations carried on by these lessees or permittees are instrumentalities or agencies of the United States so as to exempt them from taxation by the state. The tax is placed only upon the lessees or permittees for the privilege of engaging in the business of mining coal within the State of Montana and the tax of 5c per ton on coal mined is merely the measure of the tax to be paid rather than a tax upon the coal itself.

It is therefore my opinion that these lessees and permittees are, insofar as the facts stated in your letter disclose, subject to the payment of said coal mines license tax.

Very truly yours,

L. A. FOOT,
Attorney General.