

Opinion No. 356**Taxation—Net Proceeds—Oil and Gas
—Mines and Mining**

HELD: The Ohio Oil company is liable for the taxes levied according to the provisions of Chapter 161, Laws

of 1933, upon its net proceeds of 1932 although such levy is retroactive and the company has not operated in 1933.

October 6, 1933.

In your letter to us of recent date you made the following statement:

"During a portion of the year 1932 The Ohio Oil Company operated an oil lease in the Kevin-Sunburst Field, obtaining therefrom certain quantities of oil upon which it paid the landowner's royalties without deducting therefrom any amounts for the purpose of paying net proceeds taxes which might be levied in 1933 upon the 1932 production. Some time after January 1st, 1933, it made a report to the State Board of Equalization, the contents of which are not now available to me. For some reason—possibly on account of the allowance by the board of the cost of abandoning wells as a deductible item—no net proceeds tax was levied upon the operator's interest but taxes amounting to around \$40.00 were levied upon the various royalty interests. Some time in 1932 the lease was abandoned by the Oil Company, the wells plugged and a release of the lease executed and delivered to the landowner. There has been no production of any character from the lease during 1933."

You then added that "the attorney for the Ohio Oil Company now takes the position that since the Ohio Oil Company is not now and has not been in 1933 the operator or producer, it is not responsible for payment of any net proceeds tax and also suggests that the royalty owners themselves may not be responsible for payment of any tax by reason of the fact that there are no operations even though the amount of the 1933 tax is measured by the 1932 production," and concluded by requesting our opinion as to "the liability of the operator in such cases."

It is apparent, we think, that the State Board of Equalization determined from an examination of the statement furnished by the Ohio Oil Company that it had no net proceeds, other than royalties paid, to assess and tax for the year 1932. In that connection, it will be presumed, in the absence of evidence to the contrary,

that official duty has been regularly performed. (Subd. 15, Sec. 10606, Rev. Codes 1921; *Great Northern Utilities Co. v Public Service Com.*, 88 Mont. 180; *State v Phelps*, 93 Mont. 277.)

There cannot be any doubt that Chapter 161, Laws of 1933, has entirely superseded Chapters 139 and 140, Laws of 1927, and Chapter 133, Laws of 1931. According to its terms it "shall govern the assessment and taxation of net proceeds of mine and mining claims yielded in the year 1932 and thereafter." It provides that "the operator or producer shall be liable for the payment of the taxes assessed against the net proceeds of the mine or mines, including all royalty taxes", and that the taxes so assessed "shall constitute a lien upon all of the right, title and interest of such operator in or to such mine or mining claim and upon all of the right, title and interest in or to the machinery, buildings, tools and equipment used in operating said mine or mining claim." It further provides that the county treasurer shall notify the operator when the taxes fall due, and he may enforce collection thereof in the manner specified by Section 2095, Revised Codes 1921, as amended by Chapter 143, Laws of 1925.

The statute is retroactive, but retroactive legislation is not prohibited by the Constitution. (*Sullivan v City of Butte*, 65 Mont. 495.) Furthermore, it has been repeatedly held that the legislature has plenary power to pass any law not forbidden by the Constitution of the United States, or the Constitution of this state. (*State ex rel. Sam Toi v. French*, 17 Mont. 54; *Missouri River Power Co. v. Steele*, 32 Mont. 433; *In re Pomeroy*, 51 Mont. 119; *State ex rel. Evans v. Stewart*, 53 Mont. 18; *Hilger v Moore*, 56 Mont. 146; *State v. State Board of Equalization*, 56 Mont. 413; *The Veto Case*, 69 Mont. 325; *State ex rel. Corry v Cooney*, 70 Mont. 355; *Butte & Superior Min. Co. v. McIntyre*, 71 Mont. 254; *State ex rel. Jones v Erickson*, 75 Mont. 429; *O'Connell v. State Board of Equalization*, 95 Mont. 91.)

So far as taxation is concerned, there is no vested right to the continuance of any particular tax, or particular apportionment of taxes. So a tax-

payer has no vested right under a statute fixing a certain portion of the actual value of property as a basis for assessment. Moreover, a tax statute which is made retrospective does not necessarily nor ordinarily disturb vested rights. (Durret v. Davidson, 93 S. W. 25, 8 L. R. A. (n. s.). 546; People v. Chicago & E. I. R. Co., 93 N. E. 761; 1 Cooley on Taxation, Sec. 134; 12 C. J. 968.)

The authority to impose taxes is confided exclusively to the legislature. That authority is absolute, except as restricted by the Constitution of the state or nation. Within constitutional restrictions, its determination is final upon all matters involving the purpose of a tax, its extent and apportionment, the persons and property affected by it, and the time and manner of its collection. The power of taxation rests upon necessity, and is an essential and inherent attribute of sovereignty, belonging as a matter of right to every independent state or government, and it is as extensive as the range of subjects over which the power of that government extends. (Cruse v. Fischl, 55 Mont. 258; Butte & Superior Min. Co. v. McIntyre, supra; Pardee v. Rayfield, 182 N. Y. S. 3; 61 C. J. 76.)

If, then, the royalties paid were a part of the actual net proceeds and the same were assessed and taxed in accordance with the provisions of Chapter 161, it is our view that the Ohio Oil Company is liable for the taxes so levied. (Byrne v. Fulton Oil Co., 85 Mont. 329.)