

March 11, 1940.

Mr. Nick Langshausen  
County Attorney  
Winnett, Montana

Dear Mr. Langshausen:

You have requested my opinion on the question whether people owning oil royalties on non-producing land, where the royalty deeds permit the royalty holders to have ingress and egress to the land, may be taxed on such royalty interest, or, in other words, whether the royalty may be separately assessed and taxed.

It is the settled law in this state that the mineral contents of a mine may not be taxed in place but that the taxation must be on the annual net proceeds.

*Byrne v. Fulton Oil Company*, 85 Mont. 329, 278 Pac. 514;

*Hinz v. Musselshell County*, 82 Mont. 502, 267 Pac. 1113.

In the first cited case the Supreme Court was considering the taxation of oil royalties. However, where the owner of an interest in the mineral in the ground has the right to go upon the property and remove the mineral, such right is an independent estate and may be separately taxed.

*Superior Coal Company v. Musselshell County*, 98 Mont. 501, 41 Pac. (2) 14;

*Hinz v. Musselshell County*, *supra*.

Where the assignment of a royalty or conveyance of a royalty merely gives the royalty owner the right to go upon the premises, presumably for the purpose of seeing whether there is any production, it would appear to be a right or an estate in the land which is of little value until such time as the lands produce oil. Technically, while this right might be the subject of taxation, the royalty itself, that is, the right to receive a portion or percentage of the oil produced, can only be taxed under the Constitution and decisions of the Supreme Court in conformity therewith through the amendment of the net proceeds tax. This right, until the lands are productive, would have to be assessed at a nominal figure and would have to be assessed as a right and not as royalty.

**Opinion No. 211.**

**Taxation—Oil and Gas Royalty—  
Right of Ingress and Egress.**

**HELD:** Where oil royalty deeds on non-producing land permit the holder to have ingress and egress to the land involved, the royalty may not be taxed for the reason that the mineral contents of the mine may not be taxed in place but the taxation must be on the annual net proceeds. While the right of ingress and egress is a right which is subject to taxation, such right would be of only nominal value where there is no production.