

## **Opinion No. 68-63**

June 17, 1968

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** New Mexico State Tax Commission Mr. Anthony Albert Commissioner State Capitol Building Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

"Under Section 76-6-7 (6) 1953 Statutes as amended is the taxpayer required to make an election at the end of the first year's production as to whether he wishes to have his output valuation on an annual or 5 year average basis, or can he wait until the end of the second year before making his decision?"

#### CONCLUSION

See analysis.

### **OPINION**

#### **{\*104} ANALYSIS**

Section 72-6-7 (6), N.M.S.A., 1953 Compilation reads in pertinent part as follows:

"From such returns and statements, and such other information as may be available, the commission shall ascertain and determine the market value of the average annual output of such productive mineral property, including any bonus or subsidy payments, less the actual cost of producing and bringing the output to the surface and of milling, treating, reducing, transporting and selling the same, over the period of five (5) years (or so much of such period as the property has been in operation) next preceding the year in which such return is required to be made. Provided, however, that any person may elect to have his output valuation computed on an annual basis instead of on a five-year average basis. If such election is exercised, such person may not change from the one-year basis except with the approval of the commission."

The valuation of output of productive mineral property is determined on a five year average basis (or so much of such period the property has been in operation) unless and until an election is made to have it valued on a one year basis. Any election to place it on a one year basis would be prospective and not retroactive in view of the language of the Section. It would thus have to be made at the same time as or prior to the time when the tax return for the year is filed, i.e., before February 1 of the year.

Once an election to place such valuation on a one year basis is made it can only be changed in accordance with Opinion No. 68-54 (as yet unpublished).

By: James V. Noble

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