

## Opinion No. 15-1684

November 22, 1915

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr T. J. Guilfoil, Chief Accountant, State Tax Commission, Santa Fe, New Mexico.

**Interpretation of mining tax law of 1915.**

### OPINION

{\*254} I have before me your letter of the 20th inst. in which you say that the State Tax Commission has requested you to obtain my opinion as to several matters enumerated in your letter concerning the new mining tax law, which is published as Chapter 55 of the Laws of 1915, and I will try to answer your questions as briefly as possible.

You first call attention to Paragraph 5 of Section 2 of the act. That section is the one which requires every person, corporation or association of persons engaged in actual mining, to make out and forward to the State Tax Commission at sometime during the month of January a sworn statement in writing concerning the operation of each mine or group of mines worked by such person, corporation or association during the year preceding the first day of January, and the matters to be contained in that statement are set out in six numbered sub-divisions of the section, the fifth of which requires a true and correct statement and account of the actual expenditures of money and labor in extracting ore or mineral from the mine and transporting the same to the mill or other treatment or reduction or refining works, and of the cost of the preparation, treatment, reduction, refining and handling of the same and conversion thereof in money or its equivalent. You ask whether the phrase "actual expenditures of money" excludes from this statement items unpaid, the expenditure of which had been incurred at the time of the filing of the required report. As I understand this question, you desire to know whether items of cost of production of the output of the mine during the preceding calendar year, liability for which has been incurred but which has not been actually paid during the year, can be considered as part of the actual expenditures mentioned in the statute.

Taking the statute as a whole, it is obvious that the legislative intention is to impose a tax upon the net value of the mining product. In order to ascertain that net value, the statute authorizes the deduction from the gross value of the output, of the cost of creating that output. I am unable to see any reason why all expenditures necessary to create the output of the mine, whether actually paid before the end of the year or standing merely as liabilities which {\*255} must be paid, should not be taken into consideration and deducted from the gross value of the output.

I do not believe that by the use of the word "expenditures" the intention was to limit its meaning to actual disbursements of money, as clearly the legislative intent is to tax the

net value of the output of the mine, and in order to ascertain that net value, not only money actually disbursed should be taken into account, but also the unpaid bills for expenses necessary to create the output.

You next ask whether the same wording of the statute excludes amounts set aside as a reserve by a mining company for depreciation of property of such companies, such reserves being usually rated as expenditures, although not involving any actual expenditure of money. I have no doubt that anything taken into account by a mining company on account of depreciation in the value of property cannot be considered as a part of the expenditures mentioned in Paragraph 5 of Section 2 of the act. Provision is made in the act for the taxation of property of mining companies in addition to the taxation of the net produce, and any depreciation in value of such other property could be taken into account only in fixing the valuation of such other property as is mentioned in Section 7 of the act, which, in effect, provides for the taxation of improvements, buildings, erections, structures and machinery placed upon any mine or used in connection therewith, or used in the transportation, reduction or refining of the product thereof, and for the taxation of the value which lands may have for other than mining purposes, all such property being taxable in the same manner as other property of like kind.

You next call attention to Section 3 of the act which provides, among other things, that such expenditures as are mentioned in the preceding section "shall not include the salaries, or any portion thereof of any person or officer not actually engaged in the working of such mine or in the reduction, transportation, sale or refinement of such mineral, or personally superintending the management thereof," and you ask whether this language excludes expenditures for the bookkeeping or the accounting departments of mining companies where they are maintained as such, and also whether it excludes the salary of a general manager of a mining company where such mining company employs in addition to a general manager, a mining superintendent, who is in direct charge of mining operations, and as such, reporting to the general manager.

As to the first part of this question, it seems quite clear that employes engaged in keeping the accounts of mining companies cannot be considered as actually engaged in the working of the mine. It cannot be possible that men who are engaged in keeping books of account, whose work must necessarily be based upon information brought to them from others, who may or may not be actually engaged in mine work, can be considered as engaged in the working of the mine. This applies equally to the other language about persons actually engaged in the reduction, transportation, sale or refinement of the mineral.

{\*256} The other portion of your question cannot be answered so as to cover every possible case. The circumstances of operation and management may be so different with different companies that a general rule cannot be made applicable. There might be cases where a company would have a mine superintendent and possibly a number of them, who would be sub-ordinate to the general manager and yet by its method of conducting its business that general manager would personally superintend the

management of the mines. In other cases the general manager might not come in actual contact with the management of the mines except through the subordinate mining superintendent, and in such case his salary could not figure as a part of the expenditures we are considering, while in the case first supposed, it might be included.

You next ask, in addition to the question previously given as to the including of expenditures for depreciation or depletion of property, whether the statute does not also prohibit the including of expenditures or reserves for depreciation, depletion, interest, insurance and taxes, and as to this, which only adds to the previous question the consideration of interest, insurance and taxes, I am of opinion that the same question must be given as to the earlier question. Interest, insurance and taxes cannot be considered as a part of the actual expenditures mentioned in Paragraph 5 of Section 2 of the act.

You finally ask whether it would not be proper, in order to arrive at the value of mineral production, to adopt the following plan:

"To the gross sales of product sold during year 1915, add thereto the amount of product on hand and unsold as at Dec. 31st, 1915, (close of the year for which mining companies are reporting and upon which their assessment is based,) at not less than the market value thereof."

It appears to be clear that this proposed method is not only proper but is absolutely required by the language to be found in the second paragraph of Section 4 of the act. That paragraph defines what is meant by the net value of mineral output as the term is used in the act, and declares that it means the difference between the actual cost of production, transportation, treatment, shipment and sale of same, such cost evidently being the actual expenditures mentioned in Paragraph 5 of Section 2, and the amount realized if sold "or which could be realized at the time of making such report, by the sale of the same," not to be less than the true market value thereof. It is perfectly plain that the legislature intended to include the value of the product, whether sold or unsold, and therefore it would be proper to proceed in the manner you have indicated.