

Opinion No. 18-2129

September 13, 1918

BY: HARRY L. PATTON, Attorney General

TO: Hon. J. E. Saint, State Tax Commission, Santa Fe, New Mexico.

Taxation of Mines on the Theory of Depreciation of Resources.

OPINION

I have your recent favor, wherein you submit to me a proposition for placing a tax or royalty on the exhaustible resources of the state, and ask for an opinion as to whether a statute providing for such a tax would be constitutional.

As I understand your question, it relates primarily to the taxation of mines on the theory that the removal of ore depreciates the resources of the state, and that some sort of restitution might properly be demanded by means of taxation.

You may recall that on August 28th of last year I wrote to the State Tax Commission concerning the present mining tax law of the state. In that letter I pointed out that the present tax paid by mines is not a tax upon the value of the mines at all, but is merely a tax upon the net production of the mine, which virtually amounts to a tax upon the net profits of the mine. I further pointed out that under this law a distinction resulted in favor of mining property which amounted to a discrimination against all other kinds of property. In that letter I expressed the opinion that the present mining tax law, because of these features and others which I pointed out, is contrary to the constitution of the state.

In answering the question that you ask I will naturally take into consideration my views on the present mine tax law it seems to me that a tax such as you suggest does not call for any new or novel enactment or any new scheme of taxation. The result that you desire will be accomplished by an output tax. You point out that mining property is a peculiar class and different from nearly every other class of property because its development results in the depreciation of the resources of the state, and because the products of mines do not reproduce themselves. This situation, it seems to me, is an argument in favor of an output tax, and does not form the basis of any new variety of taxation; hence, in my opinion, the result that you seek can best be accomplished by the enlargement of the scope of the present output tax on mines. The situation that you suggest might very well justify the enlargement of the measure of output from net output to gross output, or the enlargement of the tax in any other way, so long as such enlargement would not impose a tax on more than the full value of the mine. A tax on the output of a mine, as I pointed out in my former letter, is in reality a tax on the mine, but the output is employed as the measure of computation. Such a method of taxation of mines is commonly used in the western states because it is a convenient and fair

method of arriving at the value of mining property. The theory which you suggest is merely another reason for the use of this method of taxation.

In my former opinion I indicated that an output tax which is based on more than the mere net output would be a constitutional tax. It is possible that in view of the argument you make that the legislature might be induced to amend the present mining tax law by enlarging the measure of output on which the tax is to be computed. If this would be done many of the objections which I raised in my former letter would be overcome.

In view of the foregoing it is my opinion that a tax such as you suggest is merely a form of output tax, or in other words, the theory you advance is an argument in favor of an output form of taxation on mining property. I think that the results you seek can be accomplished by the enlargement of the scope of the present mine tax law, and that such enlargement would serve the double purpose of compensation for the depreciation of the state's resources, and of rendering the mine tax law constitutional by providing that mining property shall bear its just burden of taxation.