

**Opinion No. 26-3891**

May 24, 1926

**BY:** ROBERT C. DOW, Assistant Attorney General

**TO:** Hon. J. E. Owens, Chief Tax Commissioner, Santa Fe, New Mexico.

This Office is in receipt of your letter of May 22nd wherein you request an opinion as to whether or not coal produced from lands leased from the United States Government can be taxed.

Property belonging to the United States Government is not subject to taxation, but when the Government leases land then the right title or interest held by the lessee becomes subject to taxation. Chapter 133 of the New Mexico Laws of 1921, in § 505 provides a method for valuing mineral property, and under sub-section 2, Class Three, provision is made as follows:

"(2) Mineral property, any interest therein, and any products thereof, for the purpose of taxation, shall be divided into the three following classes:

\* \* \*

Class Three: The severed mineral products from leasehold and contract mineral rights in lands, the fee of which is in the United States of the State of New Mexico."

In the case of *Garland County v. Gaines*, reported in 19 S. W. 602, wherein the question of whether or not the interest of the lessee in lands leased from the United States was subject to taxation, the court said:

"But when the government parts with its title, or any interest therein, the property or interest which the government parts with becomes subject to taxation. When it makes a lease to an individual of any interest or privilege in its lands within the reservation, the interest of the lessee, whatever it may be, may be taxed, subject however, to all the rights and interests which the United States retains in the property.'

It is true that the Constitution of New Mexico provides that property belonging to the United States shall be exempt from taxation but when the government leases land the interest of the lessee thereby becomes taxable; should there be any royalties due the government under said lease, the Commission should deduct from the gross product such royalties that belong to the United States as provided in § 12, Chapter 133, Laws of 1921.