

Opinion No. 63-37

April 22, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Carroll J. Lee Executive Director Oil and Gas Commission Santa Fe, New Mexico

QUESTION

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If a purchaser of oil and gas products is required to withhold severance tax from payments due to interest owners, but fails to do so, and is subsequently adjudged a bankrupt, may the operator be required to pay the tax?

CONCLUSION

No.

OPINION

{*77} ANALYSIS

Under Section 72-19-4, N.M.S.A., 1953 Compilation, the severance tax is imposed directly on the interest owner. However, the tax is actually collected by either the operator or the purchaser.

Under Section 72-19-9, N.M.S.A., 1953 Compilation, an operator making a monetary payment to an interest owner is required to withhold the tax from the payment. However, if a purchaser agrees, expressly or impliedly, to make the monetary payment to the interest owner, then the purchaser is required to withhold the tax {*78} from the payment. The same statute provides that the Commission may require such a purchaser to withhold the tax.

Hence, it is clear that an operator is only required to withhold and remit the tax if the operator is himself making the monetary payments to the interest owner. Where that function has been assumed by a purchaser by an agreement with the operator, then the law places the burden of withholding and remitting the tax on the purchaser, and relieves the operator of any duty to do so. Since the operator does not owe the tax and is not required to collect it, he cannot be required to pay it in case the purchaser becomes bankrupt after having failed to withhold the tax.

However, it should be remembered that the interest owner is liable for the tax. The mere fact that the purchaser has failed to withhold the tax does not relieve the interest owner of his liability. Therefore, in our opinion the State could hold the interest owner liable for

the tax where the purchaser has failed to withhold it, and has subsequently become bankrupt.

By: Norman S. Thayer

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