Opinion No. 64-102

August 4, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Joel M. Carson, Assistant Attorney General

TO: Mr. Jesse Kornegay, Chief, State Tax Commission, State of New Mexico, Santa Fe, New Mexico

QUESTION

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Should royalties paid the United States for the benefit of the Navajo Indians be deducted from the valuation of the production of coal mined on the Navajo Indian Reservation by a non-Indian lessee for the purpose of computing the ad valorem tax due by the lessee?

CONCLUSION

No.

OPINION

ANALYSIS

By the treaty of 1868, a tract of land, subject to the control of the federal government, was set aside for the use and occupation of the Navajo Indians. Treaty with Navajo Indians, 15 Stat. 667 (1868). Some of this land was found to contain coal and has been leased to a non-Indian lessee who mines the coal and pays a royalty to the United States as trustee for the Navajo Indians.

Section 72-6-7(12) directs the State Tax Commission to:

determine the average annual output value, being the market value of such average annual output, including any bonus or subsidy payments, less the deductions provided for in subsection 6 hereof, to be the taxable value of such year of all properties falling in classes (2) and (3) enumerated in subsection (2) hereof. **In calculating the average output value of the severed products falling in class 3, the commission shall first deduct from the gross product any royalties belonging to the state or United States.** (Emphasis supplied)

The question which we must answer is whether royalties paid the United States in trust for the Indians may be deducted by the lessee in computing the value of the severed minerals for ad valorem tax purposes.

The mineral lease which was executed by the non-Indian lessee was undoubtedly entered into pursuant to the provisions of 25 U.S.C.A. 3 which provides among other things that all monies received from royalties and rentals shall be deposited in the treasury of the United States to the credit of the Indians. It is thus clear that the money which the lessee pays to the United States is not money which belongs to the United States in the usual sense of the word, but rather it is money which the United States holds for the Indians. It is by this time well established that an exemption from taxation follows the beneficial title of the owner of the money rather than the legal title of a trustee. **Northside Canal Co. v. State Board of Equalization,** 8 F.2d 739, reversed on other grounds, 17 F.2d 55 (1926), **Ken Realty Co. v. Johnson,** 138, F.2d 809 (1943).

We must therefore hold that royalties received for the benefit of an Indian tribe are not "royalties belonging to the . . . United States," and should not be deducted for the purpose of computing the value of severed minerals under Section 72-6-7 N.M.S.A.