

Opinion No. 13-1053

June 3, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Raymond R. Ryan, Silver City, N. M.

TAXATION OF NET PRODUCT OF MINES.

Net product of mines may be taxed.

OPINION

{*222} I have today received your letter of May 29th in which you say that the board of county commissioners of Grant County have asked {*223} your opinion relative to the statutory authority to tax the net product of mines, and you ask my opinion in the matter.

To make this clear a brief review of some statutory provisions seems necessary. Section 4018 of the Compiled Laws of 1897 provides that "All property in this territory, not exempt by law, shall be subject to taxation." The next section as a definition declares "The term real estate includes all lands within the territory to which title or right to title has been acquired, all mines, minerals and quarries in and under the land, and all rights and privileges appertaining thereto, and improvements."

It is therefore apparent that all property is subject to taxation unless specially exempted by law. This leads us to examine Section 1756 of the Compiled Laws in connection with Chapter 60 of the Laws of 1899. Section 1756 in the enumeration of subjects exempt from taxation, sets out "mines and mining claims bearing gold, silver and other precious or useful metals (but not the net product and surface improvements thereof) for a period of ten years from the date of the location thereof." Chapter 60 of the Laws of 1899 provides that no tax shall be levied upon a mining claim nor upon the shaft or workings therein until after patent has been issued and for one year thereafter, adding "but nothing herein contained shall be held or considered to exempt from taxation, as now provided by law, the improvements upon any such mining claim, other than the shafts and other workings as aforesaid, nor the net product of any such mining claim."

It would seem from this course of legislation that in excepting from the exemptions the net product of mines the legislature took the view that such net product is property and taxable under Section 4018 of the Compiled Laws, and was careful not to include such net product in the exemptions. I find nothing to indicate that these provisions have been superseded in any way and they are not in conflict as far as I can find with anything in the constitution which, by Section 2 of Article VIII gives the legislature power to levy "taxes upon the production and output of mines." All the statutes of the territory not inconsistent with the constitution are continued in force by Section 4 of Article XXII, so that the validity of any territorial statute is to be judged the same as would be a statute

of the state. In addition to the statutes already cited attention should be called to Section 6 of Chapter 84 of the Laws of 1913, which says that "All property, real and personal, in the state shall be subject to taxation, except as in the constitution and existing laws otherwise provided." This clearly shows the intention to leave the taxability of property and any exemptions from taxation just as already provided by law.