

Opinion No. 16-1718

January 22, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Howell Earnest, Secretary, State Tax Commission, Santa Fe, New Mexico.

Taxation of the output of coal mines.

OPINION

{*290} I have received a letter making two inquiries, from Mr. Guilfoil, which requests me to forward my opinion to you.

{*291} The first question is stated by Mr. Guilfoil as follows:

"A mining company owning coal lands in this state and operating upon such coal lands and in every sense of the word a productive mining company, leased to other companies and individuals certain other tracts of land owned by them on a royalty basis, -- that is, a tonnage charge is paid by the lessee for the mineral product removed from the land of the lessor. If the lessee is permitted to return the royalty paid the lessor as a production expenditure, should not the lessor be required to show the revenue derived from royalty as an earning in addition to the sale of coal, its own product and mined directly by the lessor company from mines operated by it and entirely independent of the mines operated by the lessee."

It appears to me that there cannot be the slightest doubt that the revenue derived by payment of such a royalty from a lessee to a lessor must be taxed if the lessee is permitted to deduct it as a production expenditure. If this were not so, resort might be had to leases for the purposes of evading payment upon a large part of the revenue of the owner.

The second matter submitted by Mr. Guilfoil is stated in his letter as follows:

"Second, a mining company who is in every sense of the word a productive company, maintains a regular sales department or sales force to dispose of its product. This company also acts as selling agent for other companies operating in the same field and for the coal sold for such other companies it makes a flat tonnage charge for this service. This charge usually varies from fifteen cents per ton to thirty-five cents per ton, dependent upon the kind of product sold. The company in this case uses its own selling force to dispose of the product of other companies. Should not this company be required to offset against the total cost of its sales force or sales department any amounts received by such company for the sale of product of independent companies, it being presumed that the amounts paid by independent companies would be by them returned as a sales cost under production expenditures? The theory is that the selling

company would include in its production expenditures the entire cost of its sales organization which would sell not only the product of this company, but the product of other companies and upon which it would receive a tonnage fee for the selling service."

It seems to me perfectly plain that in the supposed case, if the selling company does include in its production expenditures the entire cost of its sales organization, engaged in selling not only its own products but the products of other companies, whatever revenue is derived from those other companies should be deducted from the total cost of its sales department. It is true that those other companies would include as part of their production expenditure, the tonnage charge for the service rendered, but to allow the selling company, in effect, to repeat this tonnage as a part of its production expenditure, would be a duplication of the same charge. It cannot be that any revenue thus derived from other companies is to be {*292} considered as any part of the production expenditure of the selling company. In acting as the agent of the other companies in making sales, the selling company, so far as the sales made under that agency are concerned, is in no different position than would be a selling agent not engaged in the mining business.