

December 2019

## Royalty Interest - Real or Personal

Harvey J. Landers

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### Recommended Citation

Harvey J. Landers, *Royalty Interest - Real or Personal*, 7 Wyo. L.J. 145 (1953)  
Available at: <https://scholarship.law.uwyo.edu/wlj/vol7/iss3/6>

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residuary devise or legacy under this will shall lapse, such devise or legacy shall pass to the surviving devisees or legatees in proportion to their respective interests in such residue" would suffice.

BOB DUNCAN

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ROYALTY INTEREST—REAL OR PERSONAL

Lessee was the producer of oil and gas. The lease expressly provided that the lessee was to pay all taxes assessed and levied upon said lands. For a period of several years the lessee deducted from the account with the lessor a proportionate amount of the gross products tax levied by the State on the oil and gas produced. Suit was then brought to recover this deduction, the lessor claiming that the gross products tax was upon realty. *Held*: that the gross products tax is on personalty. *Oregon Basin Oil and Gas Co. v. Ohio Oil Co.*, 248 P.2d 198 (Wyo. 1952).

The Supreme Court states in this case that the question as to whether or not a royalty interest in oil lands is real or personal property, if discussed in general terms, may prove to be more confusing than helpful.<sup>1</sup> The Court chose instead to look at the principles of law applicable in Wyoming which are the result of its own constitutional<sup>2</sup> and statutory<sup>3</sup> construction.<sup>4</sup>

In the case of *State v. Snyder*,<sup>5</sup> it was held that the royalties should be considered as realty. However, this case dealt with the constitutional provision<sup>6</sup> that all moneys from the sale or lease of school lands should belong to the perpetual funds for school purposes. The Court said that oil and gas, while in situ, are a part of the realty. If taken and disposed of the effect is clearly a permanent disposition of land.<sup>7</sup>

The Wyoming Constitution provided that there should be a tax on the gross products of mines and mineral claims as may be prescribed by law instead of a tax upon the real estate.<sup>8</sup> The original statute<sup>9</sup> provided for taxation of the gross products of, among other things, oil and gas, and for

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1. *Oregon Basin Oil and Gas Co. v. Ohio Oil Co.*, 248 P.2d 198 (Wyo. 1952).

2. Wyo. Const. Art 15, Secs. 1 & 3.

3. Wyo. Comp. Stat. 1945, secs. 32-1001 to 1006.

4. See 4 Wyo. L. J. 250 for a discussion of Wyoming's Gross Products Tax.

5. *State v. Snyder*, 29 Wyo. 163, 212 Pac. 758 (1923).

6. Wyo. Const. Art. 7, Sec. 2.

7. *State v. Snyder*, 29 Wyo. 163, 212 Pac. 758 (1923).

8. Wyo. Const., Art. 15, Sec. 3.

9. Wyo. Comp. Stat. 1945, sec. 32-1001 (enacted in 1903): "The gross product of all mines and mining claims from which . . . coal, petroleum, or other crude mineral oil, or natural gas, or other valuable deposit is, or may hereafter be produced, while the same are being worked or operated, but not while the same are simply in the course of development, shall be returned by the owner, owners, lessee, or operator thereof for assessment for taxation, and taxed in the manner provided for in this Article, and such tax shall be in addition to any tax which may be assessed upon the surface improvements of such mines or mining claims, and in lieu of taxes upon the land of such claims while the same are being worked or operated: . . ."

the method of assessing such tax. This was to be in lieu of taxes upon the land while such claims were being worked.

It was held in *Miller v. Buck Creek Oil Co.*,<sup>10</sup> that when a lease is silent on the subject, the obligation to pay taxes would ordinarily rest upon the lessor; but this general rule yields to a contrary presumption when overbalancing considerations lead to that result. The gross products tax, which is normally paid by the lessee, is in lieu not only of the tax on his interest in the mining claim but also of the tax on the lessor's royalty interest. It would seem no more than just that in the absence of a contract, the tax ought ultimately to be borne by the parties in proportion to the respective interests in the production that is the basis for the tax. Dictum was to the effect that the tax was evidently on the property and not a license, privilege or occupation tax. In referring to this case, the Federal Court was of the opinion that the Wyoming Supreme Court "leans toward the doctrine announced by so many other courts, that the mineral when severed from the land becomes personal property and is taxable as such."<sup>11</sup>

An amendment in 1933 to this statute<sup>12</sup> on the taxation of the gross products of mineral production provided that said tax shall be a first and prior lien upon the products so levied upon. The Court in construing the pertinent constitutional and statutory provisions<sup>13</sup> said that if the legislature had thought that the product was realty, there would have been no reason for the amendment. Such construction<sup>14</sup> has been declared to mean that the tax is upon the severed product.<sup>15</sup> The Court found further that because the lessor had accepted statements from the lessee over a period of time when the products tax deduction was made, and when there was no controversy between the parties, there seems to be an admission the deduction was proper.<sup>16</sup> The present determination is that in Wyoming while the oil is in place it is realty,<sup>17</sup> but royalty oil is personalty.<sup>18</sup> The tax imposed upon the oil and gas produced is a personal property tax.

HARVEY J. LANDERS

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10. *Miller v. Buck Creek Oil Co.*, 238 Wyo. 505, 269 Pac. 43; 73 A.L.R. 821 (1928).
  11. *First National Bank of Chicago v. Central Coal & Coke Co.*, D. C. 3 F. Supp. 433 (D. Wyo. 1933).
  12. Wyo. Comp. Stat. 1945, sec. 32-1001 (amended by Spec. Sess. Laws 1933, c. 54, par. 1): ". . . and said tax shall be first and prior lien upon the products so levied upon, and the tax thus levied shall be so collected from the person against whom the same was levied, if such person has real or personal property within the State, out of which payments can be enforced, and it shall be the duty of the County Treasurer by distraint, attachment or otherwise, to first endeavor to collect the tax from the person assessed therefor; provided, however, that if the tax cannot be so collected, said tax may be enforced against the land from which such products shall be extracted, and said tax from the date of its assessment shall be a lien on the land."
  13. *Oregon Basin Oil and Gas Co. v. Ohio Oil Co.*, 248 P.2d 198 (Wyo. 1952).
  14. *Board of County Commissioners of Sweetwater County v. Bernadin*, 74 F.2d 809 (D. Wyo. 1934).
  15. *Ibid.*
  16. 6 R.C.L., p. 853.
  17. *Oregon Basin Oil and Gas Co. v. Ohio Oil Co.*, 248 P.2d 198 at 201 (Wyo. 1952).
  18. *Summers Oil & Gas Permanent Edition*, Vol. 3, 351.