STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
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September 14 , 1977

ATTORNEY GENERAL OPINION NO. 77- 296

Honorable Patrick B. Augustine
Representative, 110th District
713 Ross Street
Ellis, Kansas 67637

RE: Taxation - Oil and Gas - Royalty Interests - 1977 Amendments, K.S.A. 79-330 as amended.

SYNOPSIS: The Legislature has established special statutes to value and assess for ad valorem taxation oil and gas properties and royalty interests therein as personal property. This has been done lease by lease, breaking down the total value of each lease on the percentage royalty ownership for each owner, using the statutory formula of valuation. The 1977 amendments have not changed this method of tax valuation and assessment.

* * *

Dear Representative Augustine:

You ask for a clarification and ruling of the effect of Chapter 326 (Senate Bill No. 384) of the 1977 session of the Kansas Legislature amending K.S.A. 79-330 by adding this sentence:

> "When the aggregate amount of tax owed by any taxpayer on any such royalty interest or royalty interests having a tax situs in the same taxing district is less than two dollars ($2), such tax shall be cancelled and the amount not included on the personal property list."

Your district comprises more than one county and you say that this amendment is being interpreted differently by some counties in the district than others. Some are following the existing method of making of separate valuations and assessments of each lease, whereas others are now under the amendment lumping together all royalty interests owned in all leases with the same taxing district. This arises when one land owner owns more than one quarter section within the taxing district, and has different leases on different quarters. The words in the amendment giving rise to the divergent interpretations are "aggregate" and "royalty interests".

Valuation and assessment of oil and gas properties, under K.S.A. 79-331, take into consideration the quantity and quality of production and other factors. The "Division Order", made for each lease by the producing company, is a primary tool of the County Assessor, not only in getting the names, addresses and percentage ownership of each owner, but, where there is more than one producing well on a single lease, it aggregates the total production for the whole lease.

Where there is more than one oil and gas lease within a taxing district, there is no certainty that the percent ownership of all royalty ownerships will be identical. This in itself necessitates the valuation and assessment of each lease.

The legislative intent of separating each lease for valuation and taxation is evidenced by the sentence which preceeds the language quoted above amending K.S.A. 79-330. It says that the "lessor's interest or royalty interest therein shall be assessed to the owner thereof and the remaining portion or working interest therein shall be assessed to the owner of the lease, ..." There can be no mistake about the "singularity" of the language used. This is again reflected in K.S.A. 79-331, providing for changes by the County Board of Equalization. It provides that any change shall apply equally to all 8/8th interests "for any oil or gas well or lease." Again, the word "lease" is singular.

It is our opinion that the amendment use of the words "aggregate" and "royalty interests" mean only in those instances where on a single lease there is more than one producing well, then the "aggregate" production of the entire lease must be figured, and if the tax does not amount to $2.00, then it should be stricken. Production orders automatically aggregate such production from multiple wells on a single lease. We do not believe that such words indicate a legislative intent to lump together all leases within a taxing district. This would completely change the existing method of valuation and taxation of oil and gas properties and require amendment of several other sections of the law.

Secondly, you inquire about the effect of the last clause of the amendment language that "such tax shall be cancelled and the amount shall not be included on the personal property list." You suggest that if the valuation is not also stricken from the tax abstract, tax revenues will be short.

We believe that when the tax liability is removed, the assessed value must also be stricken from the tax abstract. Budgets and levies rely upon the tax base. We think that the county clerk should treat any valuation, assessment and tax of an oil and gas royalty interest or interests under a specific lease, which produces less than $2.00 of tax, the same as if it were "exempt" property.

Later, in the 1977 session, the Kansas legislature amended K.S.A. 79-330 a second time. By Chapter 327 (Senate Bill 480) a second additional sentence was added: "Upon written request or consent submitted annually prior to April 1 by the owner of a gas lease where the gas is being delivered into interstate commerce, the entire valuation may be assessed to such owner."

By use of the singular when referring to a gas lease in this second amendment, the legislature fortifies our opinion that it intended to retain the present procedure of valueing and assessing oil and gas interests in Kansas on a lease by lease basis.

Very truly yours,

Curt Schneider

CURT T. SCHNEIDER
Attorney General

CTS:CJM:gw