



STATE OF KANSAS

## Office of the Attorney General

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*Curt T. Schneider*  
Attorney General

July 26, 1978

ATTORNEY GENERAL OPINION NO. 78- 247

H. Scott Beims  
Rawlins County Attorney  
Rawlins County Courthouse  
Atwood, Kansas 67730

RE: Oil and Gas Properties - Taxation - Where  
Severance - Where Production. K.S.A. 79-329-334;  
K.S.A. 79-420.

SYNOPSIS: Where the fee to the surface of land and the fee to oil and gas in place therein are severed and each owned separately, the surface of the land and the minerals are separately listed and taxed as real estate for ad valorem tax purposes, so long as there is no production. When production occurs in paying quantities, the surface continues to be taxed as land, but the minerals together with all equipment used in that production are listed and valued as personal property, the valuation being based on the entire lease, following the statutory valuation formula and the manual prescribed by the Director of Property Valuation. This total personal property valuation is then apportioned between the land owner lessor, the working interest, royalty interest, overriding interest, and production payments, as such fractional interests appear of record.

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Dear Mr. Beims:

You ask if royalties are taxable as real estate under K.S.A. 79-420. You cite a case where a father leaves land to Child

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A, but with a provision that in the case of production of oil and gas Child B shall be entitled to one-half of such production. You also cite an instance where there has been a "non-participating interest in minerals" which denies the holder to any right to lease or to lease payments, but only to share in royalty payments if and when production occurs.

There are two statutes involved: K.S.A. 79-420 and K.S.A. 79-329 et seq. The first applies when the surface and the minerals therein are severed and each owned separately. In such case, the surface and the minerals are listed and valued as real estate for taxation separately for each owner. But this continues only so long as there is no production.

Where the landowner has granted, devised or reserved only rights to royalties, keeping the right to lease for oil and gas and to receive all lease rentals, and there is no production, then K.S.A. 79-420 continues to apply.

A "royalty" grant or devise is not a realty conveyance of oil and gas in place. It is only a grant of a right or interest in money, personal property, when production takes place. Lathrop v. Eyestone, 170 Kan. 419, 227 P.2d 136 (1951).

When production occurs, then there is a change as to the taxation of the mineral interests and production properties. K.S.A. 79-329 et seq. provides that the lease shall be valued and listed as personal property for ad valorem taxation, and the assessment apportioned between the landowner lessor, the working interest, royalty interest, overriding interest and production payments, as they exist. This includes the mineral reserves as well as all equipment used in production. It is not a production tax, even though production is a criteria of valuation. Angle v. Board of County Commissioners, 214 Kan. 708, 713, 522 P.2d 347 (1974).

We are attaching a copy of our Opinion No. 77-296 which bears on the administration of K.S.A. 79-329 et seq. We also call attention to the Manual of the Director of Property Valuation for the Assessment of Minerals where there is production, prescribed under K.S.A. 75-5105a(d), and which the County Appraiser must follow. K.S.A. 79-1412a (Seventh).

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To answer your specific question, in our opinion, the rights to royalties in oil and gas production if and when production occurs are not to be listed and valued for ad valorem taxation under K.S.A. 79-420. But, when production occurs, such rights to participate in royalties will then be listed and taxed under K.S.A. 79-329 et seq. as personal property.

Very truly yours,



CURT T. SCHNEIDER  
Attorney General

CTS:CJM:gw  
Enclosure