

ADAM PAUL LAXALT
Attorney General



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701

J. BRIN GIBSON
First Assistant Attorney General

NICHOLAS A. TRUTANICH
Chief of Staff

KETAN D. BHIRUD
General Counsel

December 27, 2018

OPINION NO. 2018-09

NET PROCEEDS OF MINERALS
TAX; TAXATION OF ROYALTIES
RECEIVED FROM MINING
PROPERTY: State University is not a
“person” to whom the statutory
requirements relating to taxation of
royalties received on mining property
apply.

Bryan L. Wright, Esq.
Assistant General Counsel
University of Nevada, Reno
1664 N. Virginia Street/MS 0550
Reno, NV 89557-0550

Dear Mr. Wright:

On behalf of the Board of Regents of the Nevada System of Higher Education, and at the direction of the Nevada Tax Commission, you have requested an opinion from the Office of the Attorney General whether the University of Nevada, Reno (University) is obligated to report and pay tax on the royalties it receives from mining operations, specifically:

QUESTIONS

Is the University required to (1) file the annual statement required by NRS 362.110, or (2) pay the tax on net proceeds of minerals with respect to any royalties the University receives?¹

¹ An opinion addressing these questions was previously issued on December 21, 2018; however, footnote 3 in that opinion contained a typographical error. This corrected opinion supersedes the version issued on December 21, 2018.

Mr. Bryan L. Wright, Esq.
Assistant General Counsel
University of Nevada, Reno
Page 2
December 27, 2018

SHORT ANSWER

NRS 362.110 requires the recipient of mineral royalties to report certain information to the Department of Taxation (Department) so that the Department can calculate and verify the amount of net proceeds tax due on those royalties. Further, NRS 362.120(4) levies the applicable tax specifically against the recipient of the royalties, and not against the mining property from which those royalties derive. According to both of these statutes, the recipient of mineral royalties is not subject to these obligations unless the recipient is a “person.” Since the University is not a “person” under Nevada law, the University is not required to report or pay Nevada’s tax on the net proceeds of minerals with respect to its receipt of mineral royalties.

BACKGROUND

“NRS Chapter 362 imposes a property tax on the net proceeds of minerals extracted within Nevada.” *Sierra Pac. Power Co. v. State, Dep’t of Taxation*, 130 Nev. 940, 945, 338 P.3d 1244, 1247 (2014); *see also* Nev. Const. Art. 10, § 5(1) (directing the Legislature to provide “for a tax upon the net proceeds on all minerals . . . extracted in this state, at a rate not to exceed 5 percent of the net proceeds.”). Like property taxes generally, the tax on the net proceeds of minerals is an *ad valorem* tax assessed in proportion to the property’s value. *See, e.g., City of Virginia v. Chollar-Potosi Gold & Silver Mining Co.*, 2 Nev. 86, 92 (1866) (“[W]ilst the body of the mine remains untaxed, the ore taken out [for that is the primary proceeds of the mine], shall be subject to the same *ad valorem* taxation as other property.”); *Consolidated Coppermines Corp. v. State of Nev.*, 68 Nev. 298, 300-01, 231 P.2d 197, 198-99 (1951) (“It is recognized by all parties that the tax [on net mineral proceeds] is an *ad valorem* tax rather than an income tax or occupational license; that the tax is not upon the mine itself nor upon the mining enterprise but is solely upon the proceeds of the mine.”).

The tax on the net proceeds of minerals is levied against property in the form of a “lien on the mines from which minerals are extracted for sale or reduction, and also on all machinery, fixtures, equipment and stockpiles of the taxpayer located at the mine site or elsewhere in the State.” NRS 362.150. The value of a mine’s net proceeds are determined by subtracting enumerated

Mr. Bryan L. Wright, Esq.
Assistant General Counsel
University of Nevada, Reno
Page 3
December 27, 2018

deductions from the mine's gross yield.² NRS 362.120(3); *Goldfield Consolidated Mines Co. v. State of Nev.*, 60 Nev. 241, 246, 106 P.2d 613, 615 (1940).

Among the deductions allowed in determining the net proceeds of minerals is “[a]ll money paid as royalties by a lessee” of a mine. NRS 362.120(3)(m). Royalties are “part of the net proceeds of the minerals extracted,” NRS 362.120(4), and represent a “portion of the proceeds from extraction of a mineral which is paid for the privilege of extracting the mineral.” NRS 362.105(1). Unlike the net proceeds realized by the operator of the mine, a royalty “is delivered without operating costs, . . . [and] must necessarily be determined on the basis of the cash value of the same.” *Koyen v. Lincoln Mines*, 63 Nev. 325, 328-329, 171 P.2d 364, 365 (1946).

Although a royalty is a component of the value of the net proceeds of minerals, the tax on that component of value “must be levied against the person to whom the royalty has been paid,” NRS 362.120(4), rather than through a lien against property. All persons receiving such a royalty must file with the Department an annual list “showing each of the lessees responsible for taxes due” in connection with a statement filed by a person extracting any mineral. NRS 362.110(3). Further, a person to whom a royalty has been paid must be taxed on that royalty at a rate of 5 percent. NRS 362.120(4); NRS 362.140(3).

The documents attached to your request for an opinion state that the University owns the surface and mineral rights to real property in Humboldt County on which a mine has been operated by Marigold Mining Company (and its predecessors in interest) since 1988. Pursuant to the University's lease agreement with Marigold, Marigold pays royalties to the University for the privilege of conducting mining operations on the property. Prior to 2017, Marigold remitted tax on the University's royalty stream, deducting a percentage from each royalty payment to the University and remitting the funds to the Department on the University's behalf. In 2017, Marigold informed the University that amendments to NRS Chapter 362 required the

² A “mine” is “an excavation in the earth from which ores, coal or other mineral substances are extracted, or a subterranean natural deposit of minerals located and identified as such by the staking of a claim or other method recognized by law,” including “a well drilled to extract minerals.” NRS 362.010(1).

Mr. Bryan L. Wright, Esq.
Assistant General Counsel
University of Nevada, Reno
Page 4
December 27, 2018

University to begin filing the annual statements described in NRS 362.110 and remitting taxes directly to the Department. *See* Act of June 9, 2015, ch. 487, § 103(5), 2015 Nev. Stat. 2953; Act of June 11, 2013, ch. 495, § 14, 2013 Nev. Stat. 3122-23; Act of December 9, 2008, ch. 4, § 16, 2008 Nev. Stat., 25th Special Session, 15.

The University petitioned the Department for an advisory opinion on whether it was required to file the annual report or pay tax on its royalties. *See* NAC 360.190. In its advisory opinion, the Department concluded that the University was not subject to these requirements because the requirements apply to persons receiving royalties and the University is not, under Nevada law, a person. *See* NRS 0.039; NAC 360.200.

After receiving the advisory opinion, the University claimed a refund of the net proceeds of minerals tax previously paid on its behalf, and the Department and the University entered into a settlement agreement on that claim, subject to the approval of the Nevada Tax Commission (Commission). At a hearing on August 13, 2018, the Commission postponed its consideration of the agreement in order to allow the University to request this opinion pursuant to NRS 228.150.

ANALYSIS

An unambiguous statute is interpreted “based on its plain meaning by reading it as a whole”; each word and phrase must be given effect. *JED Prop. v. Coastline RE Holdings NV Corp.*, 131 Nev. 91, 94, 343 P.3d 1239, 1240-41 (2015). Examining the language of NRS 362.110 and NRS 362.120(4) reveals that the requirements relating to the payment of net proceeds of minerals taxes on royalties and filing documents related to such royalties apply to “persons.”

Specifically, the annual statement of gross yield and claimed net proceeds in NRS 362.110 is required of “[e]very *person* ... receiving any royalty.” NRS 362.110(1) (emphasis added). Similarly, NRS 362.120(4) provides that “[r]oyalties deducted by a lessee or sublessee constitute part of the net proceeds of the minerals extracted, upon which a tax must be levied against the *person* to whom the royalty has been paid.” (emphasis added).

“Person” has a specific meaning in the Nevada Revised Statutes:

Except as otherwise expressly provided in a particular statute or required by the context, “person” means a natural person, any form of business or social organization and any other nongovernmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization. *The term does not include a government, governmental agency or political subdivision of a government.*

NRS 0.039 (emphasis added). The University is a state governmental agency, *see Nev. Const. art. 11, § 4* (providing for the establishment of a state university); art. 11, § 6(1) (directing Legislature to provide for “support and maintenance” of state university, in part “by direct legislative appropriation from the general fund”); NRS 293.109(12) (including a regent of the University of Nevada as a state officer); *Cuzze v. Univ. & Cmty. Coll. Sys.*, 123 Nev. 598, 605, 172 P.3d 131, 136 (2007) (determining that a Nevada university and the University and Community College System of Nevada³ are “state entities”); *cf. Krainski v. Nevada ex rel. Bd. of Regents*, 616 F.3d 963, 968 (2010) (“the Nevada University system and its constituent institutions are agencies and instrumentalities of the State of Nevada within the meaning of the Eleventh Amendment.”); and as such, it is not a “person” to whom the provisions of NRS Chapter 362 apply. *See also Hearing on S.B. 61 Before the Joint Committees on Taxation*, 1989 Leg., 65th Sess. 6 (February 2, 1989) (indicating the Legislature relied on definition of “person” set forth in NRS 0.039 for purposes of NRS Chapter 362, as legislator’s question about defining the word “person” in that chapter was answered with statement that a definition already appeared in the statutes and there was no further discussion of issue); *Simonian v. Univ. & Cmty. Coll. Sys. of Nev.*, 122 Nev. 187, 191, 128 P.3d 1057, 1060 (2006) (“[U]nless a statute expressly indicates otherwise, we will presume that the statute does not confer ‘person’ status on a state entity.”).⁴

³ The University and Community College System of Nevada has been renamed the Nevada System of Higher Education. *See Act of May 18, 2005*, ch. 119, §§ 1-34, 2005 Nev. Stat. 349-73.

⁴ Notably, nongovernmental legal entities, such as corporations, are included in the definition of “person” in NRS 0.039, and thus the requirements of NRS 362.110 and NRS 362.120(4) would apply to such entities.

Mr. Bryan L. Wright, Esq.
Assistant General Counsel
University of Nevada, Reno
Page 6
December 27, 2018

This conclusion is consistent with authorities determining in other contexts that state entities are not “persons,” *see, e.g., Northern Nev. Ass’n Injured Workers v. SIIS*, 107 Nev. 108, 114, 807 P.2d 728, 732 (1991) (state and its officials are not “persons” for purposes of 42 U.S.C. §§ 1983 and 1985); *Simonian* at 193, 128 P.3d at 1061 (holding that state entities are not subject to liability under the False Claims Act), as well as with the general exemption of governmental entities like the University from various forms of taxation. *See, e.g., NRS 372.325(3)* (exempting instrumentalities of the State of Nevada from state sales tax); *see also State v. Lincoln Co. P. D.*, 60 Nev. 401, 407, 111 P.2d 528, 531 (1941) (“When public property is involved exemption is the rule and taxation the exception.”).

Accordingly, the University is not required to file the annual statement with regard to royalties described in NRS 362.110, nor is it required to pay net proceeds of minerals tax on any royalties it receives from mining property.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: 
Brandee Mooneyhan
Deputy Attorney General
Bureau of Business and State Services
Business and Taxation

BMM/klr