

ATTORNEY GENERAL OPINION NO. 93-13

To: Ms. Susan Renfro
Benewah County Assessor
County Courthouse
St. Maries, ID 83861

Per Request for Attorney General's Opinion

QUESTIONS PRESENTED

1. Are the Idaho State Tax Commission's property tax rules IDAPA 35.01.03.585.04 and 585.05, which require applying a multiplier of five to the net profits of mines when valuing mining property under chapter 28, title 63, Idaho Code, valid?
2. If Rules 585.04 and 585.05 are not valid what is the proper method of assessing the net profits of mines?

CONCLUSION

1. Paragraphs .04 and .05 of Rule 585 are invalid because they conflict with the clear language of the statute they purport to implement. So, too, is the similar provision of IDAPA 35.01.03.580 requiring a similar multiplier to the price of patented mining claims.
2. The proper method of assessing net profits of mines is to apply Idaho Code § 63-2801 on its face. The "factor of five" required by rules 585 and 580 should be ignored.

ANALYSIS

1. Is the Rule Valid?

Chapter 28, title 63, Idaho Code, provides special rules for applying Idaho's property tax to mining property. It is commonly referred to as the "net profits of mines tax." The Idaho State Tax Commission's administrative rules relating to property taxes provide in IDAPA 35.01.03.585 (hereafter "Rule 585") administrative guidance and construction to be followed by county officers who administer and collect the net profits of mines tax. The Commission's rulemaking authority is found in Idaho Code §§ 63-2801 and 63-513(25).

Idaho Code § 63-2801 directs how the county assessor determines the value of mining property. It provides:

Valuation of mines for taxation.--All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal or other valuable mineral or metal deposits, after purchase thereof from the United States, shall be taxed at the price paid the United States therefor, unless the surface ground, or some part thereof, of said mine or mining claim is used for other than mining purposes, and has a separate and independent value for such other purposes, in which case said surface ground or any part thereof so used for other than mining purposes, shall be taxed at its value for such other purposes, and all machinery used in mining, and all property and surface improvements upon mines or mining claims, which have a value separate and independent of such mines or mining claims and the net annual proceeds of all mines and mining claims shall be taxed: provided, that nothing in this chapter contained must be construed so as to be exempt from taxation improvements, buildings, erections, structures or machinery placed upon any mining claims, or used in connection therewith: provided that all mineral rights reserved to any grantor, except the United States or the state of Idaho, by the terms of any conveyance of lands other than lands acquired under the mining laws of the United States [shall] be assessed for taxation purposes at the rate of not less than five dollars (\$5.00) per acre of the mineral rights so reserved, to be assessed against the recorded owner thereof. When, in the opinion of the county assessor, the value of reserved mineral rights does not warrant the expenditure to appraise and assess such value, such de minimis values need not be appraised or assessed, but the failure to assess such values does not constitute a failure to pay such taxes on the part of the owner, and does not constitute a delinquency on the part of the owner.

The case law interpreting this statute recognizes the legislature's intent and the effect of this statute:

Instead of directly assessing the ore bodies, which usually constitute the chief actual value of the property, the statute contemplates the assessment only of the net output, and this is its most distinctive feature.

Hanley v. Federal Mining & Smelting Co., 235 F. 769 (D.C. Idaho 1916). Thus, this section provides for different ways to value different kinds of mining property. These properties and their method of valuation can be summarized as follows:

<u>Property</u>	<u>Valuation Method</u>
1. Patented mining claims	Price paid the United States
2. Patented claims not used for mining	Market value of the property
3. Equipment and improvements	Market value
4. Ore bodies	Net profits ¹ from mining
5. Reserved mineral rights	Not less than \$5.00 per acre

The total value determined under Idaho Code § 63-2801 is multiplied by the property tax levies that apply where the mining property is located to compute the property tax payable by the mining property.

The Tax Commission's Rule 585.04 provides:

Since net profits of mines were set by statute so as to represent assessed value rather than market value, and since it was consequently at a level less than market value, an acceptable multiplier is necessary to convert these values to market value representative of the statutory base date.

Rule 585.05 provides:

The Commission hereby sets as the proper multiplier, five (5). Therefore, the net profits as reported shall be multiplied by five (5) to convert reported profits to market value for assessment purposes.

The statute sets the value of mining property by including the annual net profits as part of the value. Rule 585 requires the value of mining property to include five times the annual net proceeds. The issue presented by the request for an opinion is whether the rule, by requiring the net profits be multiplied by five, is consistent with the statute. In our opinion, it is not.

Rule 585 is an attempt to amend the statute by applying a factor of five to the statutory rate of taxation for patented mining claims and net profits of mines. Where conflict exists between a rule and a statute the rule must give way. Curtis v. Canyon

¹ Idaho Code § 63-2801, quoted *supra*, says the value includes the "net annual proceeds" from mining. The next section, § 63-2802, provides a definition of "'net profits', as employed in this chapter." It is clear from the rules, the case law and from practice that the term "net annual proceeds" has been understood to mean "net profits."

Highway Dist. No. 4, 122 Idaho 73, 831 P.2d 541 (1992) ("In order for an administrative regulation to be valid, it must be adopted pursuant to authority granted to the adopting body."). *See also* Pumice Products v. Robinson, 79 Idaho 144, 312 P.2d 1026 (1957). That is because rules may be given the force and effect of law but they do not rise to the level of statutory law and are not equal in dignity or status with statutory law. Mead v. Arnell, 117 Idaho 660, 791 P.2d 410 (1990). A rule conflicting with any statute must fall. K-Mart Corporation v. Idaho State Tax Commission, 111 Idaho 719, 727 P.2d 1147 (1986). Therefore, Rules 585.04 and 585.05 are invalid because they conflict with the statutes they interpret and must give way to the statute.

Although the request for an opinion asks only about the multiplier found in Rule 585, the Commission's rules contain a similar requirement as to the value of patented mining claims. See IDAPA 35.01.03.580 (hereafter "Rule 580"). That rule states:

580. VALUATION OF MINES FOR TAXATION. The prices referred to for patented lode and placer claims are five dollars (\$5) and two dollars fifty cents (\$2.50), per acre, respectively. These prices are to be multiplied by five (5); per acre market values for assessment purposes are then twenty-five dollars (\$25) for patented lode claims and twelve dollars fifty cents (\$12.50) for patented placer claims.

For the reasons expressed above, the multiplier required by Rule 580 is also invalid.

2. What is the Proper Method of Assessing the Net Profits of Mines?

The proper method of valuing mining property according to the statute is to include net profits of mines computed in accord with Idaho Code § 63-2802 and to value patented mining claims at the price paid the United States. This amount is determined by Rule 580 to be five dollars for lode claims and two dollars and fifty cents for placer claims.

AUTHORITIES CONSIDERED

1. Idaho Code:

§ 63-2801.
§ 63-2802.

2. Idaho Cases:

Curtis v. Canyon Highway Dist. No. 4, 122 Idaho 73, 831 P.2d 541 (1992).

Hanley v. Federal Mining & Smelting Co., 235 F. 769 (D.C. Idaho 1916).

K-Mart Corporation v. Idaho State Tax Commission, 111 Idaho 719, 727 P.2d 1147 (1986).

Mead v. Arnell, 117 Idaho 660, 791 P.2d 410 (1990).

Pumice Products v. Robinson, 79 Idaho 144, 312 P.2d 1026 (1957).

3. Idaho Administrative Procedure Act:

35.01.03.580.

35.01.03.585.

DATED this 3rd day of December, 1993.

LARRY ECHOHAWK
Attorney General

Analysis by:

LAWRENCE G. WASDEN
THEODORE V. SPANGLER, JR.
Deputy Attorneys General