

1980 S.C. Op. Atty. Gen. 57 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-28, 1980 WL 81912

Office of the Attorney General

State of South Carolina

Opinion No. 80-28

March 11, 1980

***1 SUBJECT: Property Tax—Taxation of Mineral Rights**

When mineral rights are owned separately from the fee and the minerals are actually mined the mineral rights are to be taxed upon the proceeds of the minerals that are mined. If the minerals are not mined there is no separation from the land and the same are to be taxed as a part of the land.

TO: Honorable George A. Williams
Aiken County Auditor

QUESTION:

When mineral rights are owned by a person other than the owner of the fee, are the same subject to taxation?

QUESTION:

[§ 12–37–630, 1976 Code of Laws](#); [Article X, Sections 1 and 2 of the Constitution of South Carolina](#).

DISCUSSION:

Prior to the recent amendment to [Article X, Section 1 of the South Carolina Constitution](#), mining claims were not taxable except upon the products. The section provided for the assessment of property and stated in part:

‘* * * except mines and mining claims, the products of which alone shall be taxed * * *.’

This language is not found in the amended constitutional provision. [Article X, Section 1](#) now provides for the classification of property, however, [Section 2\(c\)](#) provides:

‘Statutes pertaining to the methods of assessment of property for ad valorem taxation not in conflict with this article shall continue in force until changed by an act of the General Assembly.’

It is thus necessary to examine the statutory provision here applicable to ascertain if any conflict exists with the amended constitutional provision.

[Section 12–37–630](#) provides:

‘When the fee of the soil in any tract or lot of land is in one person and the right to any minerals therein or structures thereon in another, the proceeds of the minerals or such structures shall be valued and taxed as personal property to the owners thereof, respectively.’

We must consider these provisions together and to harmonize the same, if possible. If the statutory provision is to be construed to exempt the mineral rights unless mined, then the same was repealed by [Article X, Section 3 of the South Carolina Constitution](#). It is not necessary, however, to so conclude. The mineral rights when actually mined are to be assessed and taxed separately from the real property. The taxation is under the provisions of [§ 12-37-630](#) and it is the products from the mine that are taxed as personal property.

If the minerals are not being mined, then there would be no products and hence no personal property tax. There likewise would be no separation of the minerals from the land and the minerals would be taxed as a part of the land. The value of the land should include and reflect the value of the minerals located therein.

CONCLUSION:

When mineral rights are owned separately from the fee and the minerals are actually mined, the mineral rights are to be taxed upon the proceeds of the minerals that are mined. If the minerals are not mined there is no separation from the land and the same are to be taxed as a part of the land.

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