

INTERIOR BOARD OF LAND APPEALS

Marathon Oil Co.

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MARATHON OIL CO.

IBLA 90-510

Decided February 3, 1994

Appeal from decision of the Deputy to the Assistant Secretary, Bureau of Indian Affairs, affirming assessments of late payment charges. MMS-87-0469-IND.

Affirmed.

1. Oil and Gas Leases: Royalties: Interest

MMS is required by 30 CFR 218.54(a) and 30 CFR 218.150(c) to assess interest for late payment of royalties from the date the royalties were due until the date such payment is received in the appropriate MMS accounting office. Such a fee is properly assessed where late payment of royalties is due to erroneous withholding of royalty funds for internal revenue payments.

2. Evidence: Presumptions--Oil and Gas Leases: Royalties: Interest

When the presumption of regularity supporting the official acts of public officers in the discharge of their duties conflicts with the presumption that documents properly mailed are duly delivered, greater weight is accorded to the presumption of regularity. Thus, when Government files do not indicate that a document was received, an appellant must show that it was, in fact, actually received.

APPEARANCES: James B. Dodson, Esq., Findlay, Ohio, for appellant; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., Howard W. Chalker, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Marathon Oil Company has appealed a June 13, 1990, decision by the Deputy to the Assistant Secretary-Indian Affairs (Operations), affirming the assessment of late payment charges attributable to improper withholding of windfall profit taxes.

The Crude Oil Windfall Profit Tax Act of 1980 (26 U.S.C. § 4986-4998 (1982), repealed for oil removed on or after August 1988 (P.L. 100-418)),

imposed an excise tax on certain profits for taxable crude oil removed during each taxable period. For the period covered by the tax, "taxable crude oil" means "all domestic crude oil other than exempt oil." 26 U.S.C. § 4491(a) (1982).

Under the Act, the first purchaser of the oil or the operator was required to withhold from the purchase price an amount equal to the tax imposed for deposit with the U.S. Treasury. 26 U.S.C. § 4995 (a) and (b) (1982). Withholding requirements did not apply if the purchaser or operator had received certification that a share of the production qualified as "exempt oil."

By letter dated May 19, 1980, the Commissioner of Indian Affairs, Bureau of Indian Affairs (BIA) issued a "Windfall Profit Tax Indian Oil Exemption Certificate" to Marathon advising that the royalty portion of the production from lease No. 1-27-IND-013975 was exempt from the tax. The decision appealed indicates five royalty owners having interests in the lease also submitted individual exemption certificates to Marathon. Upon receipt of the certificates, Marathon recognized the exempt status of the interests and discontinued the withholdings. By letter of March 23, 1981, Marathon provided the royalty owners with copies of the "yearly windfall profit tax liability" (Form 6248) submitted for their interests, showing that windfall profit taxes had been withheld during calendar year 1980. Marathon advised the royalty owners of procedures available to them to file for refunds.

By letter of July 24, 1987, MMS' Tulsa Compliance Office, Royalty Management Program (RMP), notified Marathon that a reconciliation of lease accounts had been conducted and that Marathon had underpaid \$4,307.80 in royalties because it had withheld windfall profit taxes on exempt production during calendar year 1980. Marathon was directed to remit this amount to the BIA's Muskogee Area Office, and to forward a copy of the payment check to the Tulsa Regional Compliance Office, MMS.

By letter of October 6, 1987, MMS' Dallas Area Compliance Office advised Marathon that "Marathon submitted a payment of \$4,307.80 which was received on August 25, 1987," and that Marathon was being "assessed late payment charges of \$4,829.06."

In an August 7, 1989, letter to Marathon, the Dallas Area Compliance Office stated in part:

Marathon submitted to this office, copies of a check for \$4,307.80 and a transmittal letter to the Muskogee Area Office (MAO), Bureau of Indian Affairs. MMS recently found that the check was not received by the MAO. Discussions with Marathon officials indicate that the State of Oklahoma is holding the amount in escheat. However, under the impression that the payment had been made, MMS assessed late payment charges of \$4,829.06.

* * * * *

During the past year, MMS and MAO have worked together in an attempt to recover WPT [windfall profit tax] withheld from exempt Indian leases and paid to the Internal Revenue Service (IRS). A claim was submitted to the IRS by MAO for the amount withheld by Marathon. On June 21, 1989, MAO received the processed claim from IRS. The claim resolved in total the amount withheld by Marathon. IRS did not pay interest for \$2,196.53 of the claim because the Indian owners had not filed tax returns for this amount and IRS policy is to pay no interest on claims for which no individual tax return is filed.

The letter went on to advise that the late payment charges of \$4,829.06 were being reduced to \$3,443.25 (applicable to the \$2,196.53 on which the IRS had not paid interest), and that the time span of the charge was March 31, 1980 through June 14, 1989, the day before the IRS payment was received.

According to the decision appealed, the late charges at issue in this appeal relate to two of the five royalty interest owners. With respect to the exemption notices it received on August 21, 1980 and January 19, 1981, Marathon failed to adjust, prior to the filing date of March 31, 1981, Form 6284 so that subsequent royalty payments would correct previous overwithholding (Decision at 6). In this respect, the regulations at 26 CFR 51.4995-1(c)(ii) (1989) provide in relevant part:

The full adjustment must be made if possible, in the next payment. If it is not possible to complete the adjustment in the next payment, the purchaser shall adjust the underwithholding or overwithholding to the fullest extent possible in each subsequent payment until the adjustment is completed.

BIA's decision held that Marathon was under an obligation to adjust previous overwithholdings in a timely manner pursuant to the above regulation, that Marathon breached its duty to royalty owners in underpaying royalty during the period in issue, and that the delay in the receipt of the full amounts due under the lease could have been avoided if Marathon had made the adjustments prescribed by the regulation in a timely manner.

Marathon's first argument is that MMS' assessment of late payment charges, coming more than 6 years after the "alleged wrongful withholding," is barred by the statute of limitations at 28 U.S.C. § 2415 (1988). Marathon also asserts that MMS' original order of July 24, 1987, is barred by the same statute because it "sought to collect [Windfall Profit Taxes] withheld during 1980, more than 6 years before the MMS Order was issued." MMS counters that the Board is not an appropriate forum for resolution of issues involving the statute of limitations.

[1] As to the application of the statute of limitations to the MMS order of July 24, 1987, that order determined Marathon's liability for payment of royalty. In Forest Oil Corp., 111 IBLA 284, 287 (1989), we found

it inappropriate to apply the statute of limitations to an administrative proceeding involving the adjudication of liability for royalty under the Mineral Leasing Act. As we observed in Footo Mineral Co., 34 IBLA 285, 308, 85 I.D. 171, 183 (1978), rev'd on other grounds, 654 F.2d 81 (Ct. Cl. 1981), where the purpose of a proceeding is only to determine the underlying obligation for royalty, as contrasted with settlement negotiations or actions to collect amounts due, the statute of limitations "raises no issue within the scope of this administrative adjudicative proceeding." Such is the case here.

Similarly, the statute raises no issue in our adjudication of the question of the assessment of late payment charges. Regulations 30 CFR 218.54(a) and 30 CFR 218.50(c) require MMS to assess interest charges for late payment of royalties from the date such royalties were due "until the date on which the payment is received in the appropriate MMS accounting office." 30 CFR 218.501(c). The decision of MMS to assess charges and the decision of BIA to affirm them simply determined Marathon's liability for interest under the regulations. See Forest Oil Corp., *supra*.

Marathon next argues that because the Commissioner of Indian Affairs, in his May 19, 1980, windfall profit tax exemption certificate failed to specifically identify the Indian royalty owners as being exempt from the windfall profit tax, it had no reason to believe that they were exempt and therefore properly withheld the tax. Marathon also refers to December 1982 letters from the IRS to the two lease interest owners for whom it overwithheld. In those letters the IRS advised the interest owners that their production did not qualify as exempt Indian oil. Marathon argues that under such circumstances it should not be held accountable for determining the tax status of interest holders in the lease. Marathon notes further that if these interest holders had filed 1980 tax returns, including IRS Form 6248, they would have received refunds with interest and MMS would have had no reason to seek late payment assessments from Marathon.

These arguments were fully discussed and properly disposed of in the decision appealed from. The May 19, 1980, letter from the Commissioner of Indian Affairs states:

This is to inform you that the royalty portion of production from the Indian oil and gas lease(s) indicated on the enclosure to this certificate is exempt from the tax.

* * * * *

A copy of this certificate with the attached list of leases is being furnished to the regional IRS Service Center where the lands are located.

If you are not the party obligated for the withholding of the tax for any of the listed leases, you are responsible for furnishing this certificate to that person. Should you have

any questions, please direct them to the local Bureau of Indian Affairs Area Office having responsibility over the lands under lease.

This letter constitutes adequate notice to Marathon concerning leases exempt from the tax. Marathon has cited no authority pursuant to which individual royalty owners of a given lease would have to have been specified in the Commissioner's certificate of exemption. In any event, Marathon received certificates of exemption from the two royalty interest owners on August 21, 1980 and January 19, 1981. As the decision states, Marathon failed to make simple adjustments prior to March 31, 1981, the filing date for Form 6248, to reflect these exemption notices. The treasury regulations place the responsibility for taking action to correct errors on the producer, in this case Marathon, and not on the royalty owners. 26 CFR 51.4997-2(c)(5).

Next, Marathon notes that in its October 6, 1987, letter the Dallas Area Compliance Office stated that Marathon's check for \$4,307.80 had been received on August 25, 1987. Marathon asserts that the recalculated payment charges, calculated as accruing through and including June 14, 1989, fail to give Marathon any credit for the period from August 25, 1987 through June 14, 1989, "during which time the original, full amount demanded by the MMS was in the MMS' hands." Marathon claims it is entitled to a reduction in late payment charges for this period. In its answer, MMS argues that if the check had been received, it would have been properly processed by BIA, and asserts that since it was not processed, the legal presumption is that BIA did not receive the check. MMS argues that Marathon has failed to overcome the presumption that BIA would have processed the check if it had been received.

[2] When the presumption of regularity supporting the official acts of public officers in the discharge of their duties conflicts with the presumption that documents properly mailed are duly delivered, the Board has accorded greater weight to the presumption of regularity. Nahama & Weagant Energy Co., 108 IBLA 209, 213-214 (1989). Thus, the Board has held that where an appellant asserts that checks were sent to MMS, and MMS states that it did not receive them, "the burden is on the one asserting that they were delivered to show that they were, in fact, timely received by MMS." Id. at 214.

In the case at hand, appellant has not met its burden of showing that its check was received by BIA on August 25, 1987. The only evidence submitted by appellant is MMS' October 6, 1987, letter stating appellant's check was received on August 25. By letter dated August 7, 1989, MMS advised Marathon that while it had received a copy of the check, it recently found that the check had not been received by BIA. Thus, the October 6 letter was in error on that point. While the error was unfortunate, it is well settled that "[r]eliance upon information or opinion of any [government] officer, agent or employee * * * cannot operate to vest any right not authorized by law." 43 CFR 1810.3(c); See Raymond T. Duncan, 96 IBLA 352, 355 (1987). Moreover, it is not disputed that BIA never processed the check

in question. Applying the presumption of regularity to this case, we must presume, in the absence of convincing evidence to the contrary, that the check was not received. See Bernard S. Storper, 60 IBLA 67 (1981). Appellant has failed to provide such evidence. Accordingly, we conclude that MMS correctly applied the late payment charge through June 14, 1989.

Finally, Marathon has requested an oral argument before the Board pursuant to 43 CFR 4.25. Because we find that such argument would not facilitate the disposition of this appeal, the request is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

John H. Kelly
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge