

INTERIOR BOARD OF LAND APPEALS

Paul DeCleva, Jr.

141 IBLA 199 (November 12, 1997)

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Appeal from a Decision of the Director, Minerals Management Service, denying the appeal of a Demand for Payment of interest charges for late payment of royalties. MMS-95-0394-O&G.

Affirmed.

1. Mineral Leasing Act: Royalties—Minerals Management Service: Generally—Oil and Gas Leases: Royalties: Interest—Oil and Gas Leases: Royalties: Payments

The applicable regulation, 30 C.F.R. § 218.50(a), provides that royalty payments are due at the end of the month following the month during which the oil or gas is produced and sold. A lessee cannot avoid its responsibility to make timely payment of royalties to the Government because of difficulties in obtaining payments from, or because of disputes with, the purchaser, absent evidence showing that the purchaser was not legally required to make the payment.

2. Mineral Leasing Act: Royalties—Minerals Management Service: Generally—Oil and Gas Leases: Royalties: Interest—Oil and Gas Leases: Royalties: Payments

When the purchaser of oil or gas pays the severance tax or reimburses the lessee or operator for payment of severance taxes, that amount is to be added to the purchase price of the oil or gas in determining the total gross proceeds upon which the royalty is based. This rule applies even though the Federal share of the production is tax-exempt.

APPEARANCES: Paul DeCleva, Jr., pro se.

#### OPINION BY ADMINISTRATIVE JUDGE PRICE

On May 23, 1995, Paul DeCleva, Jr., filed an appeal from a Demand for Payment of two invoices for interest charges for late payment of royalties for oil and gas with the Director, Minerals Management Service (MMS). On

October 10, 1995, MMS sent DeCleva a Draft Decision denying his appeal and providing 21 days for DeCleva to file a response. Receiving none, MMS issued a Decision on February 7, 1996, which also denied his appeal. DeCleva responded by letter dated February 20, 1996, MMS forwarded a copy of the letter to this Board, and we treated it as a Notice of Appeal to which docket number IBLA 96-466 was assigned. On June 14, 1996, MMS filed a "Motion to Dismiss or in the Alternative-Answer." The Motion to Dismiss is based on MMS's view that DeCleva's Notice of Appeal does not suffice as a Statement of Reasons (SOR). We disagree, and accordingly, the Motion is denied and the February 20, 1996, letter is deemed Appellant's SOR.

The February 20 letter states several objections to the late payment charge, asserting in essence that Appellant should not have been required to pay royalty until he received payment from his purchasers. Appellant explains that he did not receive full payment for some months, because the purchasers of production had erroneously paid state tax, which was deducted from the amount due Appellant for distribution. Noting that the State of Texas would not refund to Appellant the taxes thus paid, instead requiring the purchaser to seek the refund, DeCleva argues that "the purchaser's employee handling this [matter] was inexperienced and it was over a year before the underpayments, duplicate payments and overpayments were adjusted to properly collect the tax refunds from the state to the purchaser. The operator had no control in the situation and, yet, was the one penalized!" (SOR at 1.) He further notes that an MMS employee could find no instructions in the MMS Payor Handbook on "exempt tax." *Id.* at 2. Although these objections are sufficient to constitute an SOR, *see J.W. Weaver*, 124 IBLA 29 (1992), they provide no basis for reversing MMS's Decision.

[1] We first observe that this appeal involves only the demand for interest charges on late payments of royalty and not the correctness of the underlying determination that additional royalty was due. Although Appellant complains that an operator should not be required to pay royalty before he has been paid by his purchasers, the applicable regulation, 30 C.F.R. § 218.50(a), makes it clear that the obligation to pay royalty does not vary with the success of a lessee's or operator's collection efforts or cash flow. The regulation thus provides that royalty payments are due at the end of the month following the month during which the oil or gas is produced and sold. We have held that a lessee cannot avoid its responsibility to make timely payment of royalties to the Government because of difficulties in obtaining payments from, or because of disputes with, the purchaser, absent evidence showing that the purchaser was not legally required to make the payment. *Oxy USA, Inc.*, 123 IBLA 383 (1992). Appellant's arguments concerning his lack of awareness of the fact that the Federal share of production is exempt from state severance taxes fail to persuade us that this rule does not apply here. <sup>1/</sup>

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<sup>1/</sup> In any event, it is well known that several states impose taxes upon the severance of minerals but consider the Federal royalty share to be exempt from those taxes. *See CIG Exploration, Inc.*, 113 IBLA 99, 100 (1990); *aff'd*, Civ. No. 91-CV-0096 (D. Wyo., June 19, 1992, final judgment

[2] Further, it has long been the rule that when the purchaser of oil or gas pays the severance tax or reimburses the lessee or operator for payment of severance taxes, that amount is to be added to the purchase price of the oil or gas in determining the total gross proceeds upon which the royalty is based. Enron Oil & Gas Co. v. Lujan, 978 F.2d 212 (5th Cir. 1992), cert. denied, 114 S.Ct. 59 (1993); Hoover & Bracken Energies v. United States Dept of Interior, 723 F.2d 1488 (10th Cir. 1983), cert. denied, 469 U.S. 821 (1984). This rule applies even though the Federal share of the production is tax-exempt. Id. Therefore, Appellant should have been aware that he was required to pay Federal royalty in the amount of 12.5 percent of the amount he received from the purchaser, including the amount earmarked for severance taxes, no later than the deadline established by 30 C.F.R. § 218.30(a).

Despite Appellant's complaint that the operator is being "penalized" for circumstances beyond its control, interest charges are not penalties. The payment of interest merely compensates the lessor for the cost of replacing funds that are due but not timely paid, because the Appellant or his purchasers retain the use of the funds during the period the royalties remain unpaid. See Oryx Energy Co., 137 IBLA 177 (1996). Moreover, MMS is required by statute to charge interest for late payments or underpayments. 30 U.S.C. § 1721(a) (1994).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Motion to Dismiss is denied, and the Decision appealed from is affirmed.

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T. Britt Price  
Administrative Judge

I concur.

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David L. Hughes  
Administrative Judge

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fn. 1 (continued)  
entered Aug. 17, 1992), appeal dismissed, No. 92-8070 (10th Cir. Feb. 1, 1993). The state statutes establishing the tax and the exemption constitute sufficient notice to those who are affected by them, so that Appellant and his purchasers are presumed to have knowledge of such provisions. See generally Texaco, Inc. v. Short, 454 U.S. 516 (1982).