

EXXON COMPANY, U.S.A.

IBLA 90-29

Decided December 21, 1990

Appeal from a decision of the Assistant Director for Program Review, Minerals Management Service, denying an appeal of the assessment of interest charges for the late payment of royalties. MMS-89-0064-OCS.

Affirmed.

1. Federal Oil and Gas Royalty Management Act of 1982: Royalties--Oil and Gas Leases: Offers to Lease--Oil and Gas Leases: Royalties: Interest--Oil and Gas Leases: Offers to Lease: Royalties: Payments

Pursuant to the lease terms and the applicable regulation, 30 CFR 218.50, royalty payments are required to be made by the last day of the month following production. Late payment charges will be assessed where payments are made after the due date. However, the regulations found at 43 CFR 218.102(a) and 218.150(b) establish exceptions to late payment charges for royalty payments made after the end of the month following the month in which the oil and gas is produced and sold where the payor has filed estimated payments in accordance with the instructions in the MMS Oil and Gas Payor Handbook. Where a payor fails to provide estimated payments at the lease level, and fails to identify estimated payments by specific product codes on the MMS-2014 form, MMS properly assesses late payment charges. This charge is appropriate even though the total amount of all the estimated payments made by the payor for its leases exceeds the total amount of royalties due for all of the payor's leases, including those for which no estimated payment has been established.

APPEARANCES: Charles L. Katz, Esq., Houston, Texas, for Exxon Company, U.S.A.; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., and Howard W. Chalker, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Exxon Company, U.S.A. (Exxon) has appealed from a July 19, 1989, decision of the Assistant Director for Program Review (Assistant Director),

Minerals Management Service (MMS), denying Exxon's appeal of MMS' assessment of \$39,832.43 in interest charges for the late payment of royalties due on oil and/or gas produced from several Federal onshore and offshore oil and gas leases.

The Royalty Management Program and MMS, issued Invoice No. 09400258 on May 17, 1988, assessing Exxon a total of \$63,201.43 in late payment charges, of which Exxon challenged \$39,832.43. The basis for Exxon's appeal is that since Exxon's "total estimated payments on deposit with MMS were timely and sufficient, MMS was not deprived of any royalties, and therefore, no late payment charges should be assessed" (Decision at 2; emphasis in original). In his July 19, 1989, decision, the Assistant Director provided the following explanation of MMS' policy regarding estimated payments for onshore and offshore leases:

It is the policy of MMS to grant payors/lessees an additional month in which to pay actual royalties if an estimated payment has been made at the Accounting Identification Number (AID) level (lease level). In those instances where oil and gas products are produced from the same lease (AID), each product type must have an established payment in order to receive a 1-month extension of the royalty payment due date. An estimated payment for an oil product does not extend the due date for gas products and vice versa.

Once estimated payments are established for a selling arrangement and product code, late payment interest is not assessed in connection with such payments so long as: (1) the amounts of the estimates are equal to or greater than the actual royalty amounts subsequently determined to be due; and (2) the payor pays the actual royalties due within the 2-month cycle.

(Decision at 1-2).

The Assistant Director rejected Exxon's argument that because its total estimated payments on deposit with MMS were timely and sufficient, MMS should not assess late payment charges, reasoning as follows:

It is clear from the record that late payment charges were assessed because the actual royalties were reported and paid after their due dates and not because of an overall insufficiency in Exxon's estimated payments. The lateness was caused by Exxon's failure to identify estimates to specific leases and product codes on Form MMS-2014. [Emphasis in original.]

Id. at 2.

In its statement of reasons (SOR) filed with the Board, Exxon states that it "does not dispute in this appeal that it made reporting errors to

the MMS" (SOR at 2). Exxon admits that it "made some clerical reporting errors which resulted in there being no entry made at the lease level for the estimate disbursed to the MMS." Id. However, according to Exxon, it "was not in any way deficient or late in making its royalty payments to the MMS":

At all times * * * Exxon, as a payor, had sufficient estimated payments for all of its leases on account with the MMS. The MMS was never short the total amount of money which Exxon ultimately owed the MMS when the reporting errors were corrected. Consequently, the MMS was never deprived of the time value of the royalty money to which it was entitled. Nevertheless, the MMS assessed Exxon a very severe interest penalty on royalty money which was actually in the agency's possession.

(SOR at 2).

Exxon challenges the appropriateness of MMS' imposition of this "interest penalty," stating that "[i]n the absence of an intentional violation of a regulation or order, administrative penalties should have a reasonable relationship to the harm or burden which the violation creates," and that "[t]he penalties imposed on Exxon in this case fail both of these tests." Id. at 2-3. Finally, Exxon contends that "[t]he interest penalties at issue * * * bear no reasonable relationship to the goals of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) and the Regulations promulgated by the MMS pursuant to the FOGRMA (30 CFR Parts 210 et al.)." Id. at 3.

Standard onshore and offshore Federal oil and gas leases as well as 30 CFR 218.50(a) establish that royalty payments are due at the end of the month following the month during which the oil and gas is produced and sold. Section 111(a) of FOGRMA, 30 U.S.C. § 1721(a) (1988), specifically provides that "where royalty payments are not received by the Secretary on the date that such payments are due, or are less than the amount due, the Secretary shall charge interest on late payments or underpayments." 30 CFR 218.54. Additionally, the Board has held that the Government has the authority, independent of any specific grant thereof, to make a unilateral determination of interest owed. See Yates Petroleum Corp., 104 IBLA 173, 176 (1988); Peabody Coal Co., 72 IBLA 337, 348 (1983); Atlantic Richfield Co., 21 IBLA 98, 111, 82 I.D. 316, 322 (1975); FMP Operating Co., 111 IBLA 377, 378-80 (1989).

Departmental regulations governing estimated payments for offshore leases are found at 30 CFR 218.150(b) and for onshore leases at 30 CFR 218.102(a). Both regulations provide: "Exceptions to this late payment charge may be granted when estimated payments on minerals production have already been made timely and otherwise in accordance with instructions provided by MMS to the payor."

The instructions provided by MMS for making estimated payments are contained in its Payor Handbook. Qualifier A, page 3.070-2, 12/84, states:

"The estimated payment must be made against a specific AID and MMS assigned product code and selling arrangement number. Estimated payments are only reported once." Qualifier B, page 3.070-2, 12/84, states: "Estimated payments are primarily used for gas product codes. If a payor would like to make an estimated payment for oil product codes, written approval must be granted by the Lessee Contact Branch of the Minerals Management Service (MMS) at the Lakewood Accounting Center."

In Exxon Company, U.S.A., 115 IBLA 81, 85 (1990), the Board observed that "[i]t is clear from the instructions in the Payor Handbook that MMS requires that an estimated royalty payment be made at lease level for both products for the royalty payment due date to be extended 1 month," and that "[t]he Payor Handbook also explains that the establishment of an estimated payment delays the payment of the actual royalties due until the end of the second month following the month the production is sold." See also Shell Offshore, Inc., 113 IBLA 226, 231, 97 I.D. 74, 76 (1990); Yates Petroleum Corp., 104 IBLA 173, 176 (1988).

In Exxon Company, U.S.A., supra at 86, the Board rejected Exxon's argument that MMS is without authority to assess "late payment charges where there are sufficient funds on deposit with MMS to cover royalty due on all leases, including those for which no estimated payments were established," quoting the following analysis from Yates Production Corp., supra at 177:

The principal purpose of allowing an estimated payment is to provide the payor with an additional month within which to make actual royalty payments which will be considered timely. Submission of an estimated payment does not establish credit upon which the payor may draw any time a payment is due. When actual payment is made, the estimated payment rolls forward to satisfy the royalty obligation for the next month.

* * * * *

MMS's estimated payment system is not contrary to the policy expressed in FOGRMA to ensure the prompt and proper collection of royalty. The threat of a late payment charge when royalty is not accurately reported and timely paid is in line with the purposes of the statute. Such a charge should be an incentive to lessees to avoid situations where they owe additional royalties by virtue of retroactive adjustments in past due royalty. To the extent that an estimated payment is found to be under the amount actually determined to be due, as MMS points out, a lessee will be liable for that deficiency, as well as a separate late payment charge. That charge should also be a disincentive to underpay estimated royalties.

We conclude that MMS properly assessed late payment charges in this case, given that Exxon failed to establish any estimated payments and paid its royalties after the end of the month following production.

Accordingly, 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.

Wm. Philip Horton
Chief Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge