

EXXON COMPANY, U.S.A.

IBLA 88-559

Decided June 14, 1990

Appeal from a decision of the Assistant Director, Minerals Management Service, denying an appeal from the assessment of interest charges for the late payment of royalties. MMS-87-0481-OCS, MMS-87-0482-OCS.

Affirmed.

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

The regulations found at 43 CFR 218.102(a) and 218.150(b) provide exceptions to the assessment of late payment charges when royalty payments are made after the end of the month following the month in which the oil and gas is produced and sold. The exception applies if the payor has filed a timely and sufficient estimated payment for the applicable lease account and each product type in accordance with the instructions in the MMS Oil and Gas Payor Handbook. MMS properly assesses late payment charges when a payor has not submitted an estimated payment for a specific lease or product type, even if the total of the estimated payments attributable to the payor exceeds the total royalties due for production from all of the payor's leases.

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 ADMINISTRATIVE JUDGE MULLEN

Exxon Company, U.S.A. (Exxon), has appealed from an April 28, 1988, decision by the Assistant Director for Program Review, Minerals Management Service (MMS), denying an Exxon appeal of a Royalty Management Program (RMP), MMS, decision assessing \$21,812.51 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.

By Invoice No. 05400190 and cover letter, both dated April 22, 1987, RMP notified Exxon that it owed \$16,643.26 in interest for late payment of royalties. Exxon filed an appeal with the Director, MMS, objecting to \$11,378.82 of the amount assessed (MMS-87-0481-OCS). Again, on May 5, 1987, RMP notified Exxon that it was being assessed late payment charges of \$16,098.31 (Invoice No. 06400217). Exxon appealed, objecting to \$10,433.69 of this second assessment (MMS-87-0482-OCS).

In separate, but substantially similar, statements of reasons (SOR), Exxon stated that most of the late payment charges were assessed because it had not established estimated royalty payments at the lease level for certain sales months. It argued that, because the total of its estimated royalty payments for production was at all times equal to or greater than the actual royalty due for production from all of its leases, including those for which it had failed to pay estimated royalties, there was no basis for assessing late payment charges. Exxon also contended that, for MMS-87-0481-OCS, it was charged \$65.12 in interest for late payment of royalties when there was an estimated royalty payment on file for at least one product code within an Accounting Identification Number (AID) for each specific sales month, and that MMS policy was not to assess late payment charges in such cases.

The Assistant Director, MMS, consolidated the two appeals for review. In his April 28, 1988, decision, he first discussed the Federal policy for assessing late payment charges on debts not paid by the due date, citing MMS' statutory and regulatory authority to assess interest for failure to make timely payments. He indicated that the purpose of these interest charges is to compensate the Government for the replacement costs of funds due but not paid. He further emphasized that the assessment was not a penalty, was the equivalent to the time value of the money, and was intended to mitigate additional expenses associated with the failure to make a timely payment.

The Assistant Director rejected Exxon's argument that no interest should be assessed because the total of Exxon's estimated royalty payments for all leases was never deficient. Referring to the RMP field report prepared for the appeals, he found that the late payment charges were assessed because royalties had been paid after the due dates (*i.e.*, 1 month after the month of production if no estimated royalty had been paid for the lease or product code, or 2 months after the production month when an estimated royalty payment was on file for the lease or product code), rather than because of a deficiency in the total amount of Exxon's estimated royalty payments.

The Assistant Director found that the late payment charges stemmed from Exxon's failure to make estimated payments on several leases for certain sales months and Exxon's failure to tie its estimates to specific product codes on its Form MMS-2014. He explained:

Because Exxon did not have estimated payments on certain leases established on time, it did not have an additional month in which to report and pay actual royalties for those lease accounts or [AID]. As a result, the MMS exception processing

system generated bills for late payment interest for the nonestimated items based on the failure of Exxon to report and pay by the end of the month next following the month of production. Of the interest appealed, \$21,747.39 was on royalties paid late on leases for which an estimate had not been established on the lease.

The RMP in determining that interest was due also applied the policy set forth by the MMS Director on June 19, 1986. That policy is to grant payors/lessees an additional month in which to pay actual royalties if an estimate is on file on at least one gas and/or [oil] product code within an AID for each specific sales month. In those instances where oil and gas products are produced from the same lease (AID), each product type must have an estimate in order to receive a 1-month extension on the royalty payment due date. An estimate for an oil product does not extend the due date for gas products and vice versa.

For the balance of \$65.12, Exxon had estimates for the leases for gas products, but failed to establish estimates for the oil products. Royalties were therefore due for the oil products by the end of the month following the month of production, but Exxon paid the royalties late.

(Decision at 3). The Assistant Director concluded that the RMP's late payment assessments were consistent with MMS policy regarding estimated payments and affirmed the RMP determination. This appeal followed.

In its SOR, Exxon acknowledges that there are no disputed facts in this case. Exxon states that it made estimated royalty payments pursuant to the procedures set forth in the 1986 version of the MMS Oil and Gas Payor Handbook (Payor Handbook), and agrees that a payor who makes estimated payments is allowed an additional month to identify and pay the actual royalty amount. The basis for Exxon's appeal is its contention that it made reporting errors in its monthly production reports but did not submit its royalty payments in an untimely manner. Specifically, Exxon contends that it "made some clerical reporting errors which resulted in there being no entry made at the lease level for the estimated [payments] disbursed to the MMS" (SOR at 3). Admitting the fact that the estimated royalty amount had not been tendered for all of its leases, Exxon contends that, if its total estimated payment is considered, the amount was never deficient. This being the case, it argues that MMS was never short of the total amount which Exxon ultimately owed and was never deprived of the time value of the royalty owed by Exxon. It contends that MMS has "assessed Exxon a very severe interest penalty on royalty money which was actually in the agency's possession." Id. In short, Exxon challenges the MMS policy that estimated payments are to be calculated at the individual AID/lease level instead of at the payor level.

Exxon questions the propriety of MMS imposing severe penalties for what Exxon characterizes as a reporting error (i.e., the failure to report

an estimated payment at the lease level), and argues that there is no statutory or regulatory justification for imposing those penalties. Conceding the incorrect preparation of a part of its estimated payment reports, Exxon asserts that there must be some basis for assessing an appropriate penalty for those reporting errors, and argues that the penalty MMS has imposed bears no reasonable relationship to the resulting harm or to the goals of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. §§ 1701-1757 (1982). Exxon reiterates that MMS was not deprived of any royalty because the total estimated payment tendered by Exxon was not late and was sufficient to cover all the royalties due. Thus, it contends, no justification exists for the interest assessment because MMS did not lose the time value of the money owed, and did not suffer harm because of the reporting error. Exxon further contends that the assessment cannot be justified as a civil penalty. Admitting that a line item assessment for erroneous reporting could be imposed under existing regulations (30 CFR 218.40), Exxon notes that MMS did not cite this provision as authority or calculate the penalty under this section of the regulations and, therefore, that a line item assessment is not the issue in this appeal. Exxon concludes that MMS lacks statutory and regulatory authority to assess late payment charges in this case, and that the decision imposing such charges must be reversed.

In its answer, ^{1/} MMS disagrees with Exxon's position that the sufficiency of Exxon's estimated royalty payment should be determined at the payor level (i.e., if the then current estimated royalty balance attributable to Exxon is sufficient to cover its royalty obligations for a given month, no interest should be assessed, even though Exxon may not have earmarked a portion of that amount as being applicable to a specific lease). MMS argues that the amount of the estimated royalty payments must be determined on a lease-by-lease basis, and not on the payor level.

MMS notes that both 30 CFR 218.102(a) (onshore leases) and 30 CFR 218.150(b) (offshore leases) grant exceptions to late payment charges if an estimated royalty payment account has been established in a timely man-ner and in accordance with MMS instructions. It asserts that the instructions for calculating and submitting estimated royalty payments set out in the Payor Handbook clearly require that estimated payments be calculated and reported for each lease and product type, and that the late payment exception is applicable only when payments are calculated and submitted in accordance with the Payor Handbook. MMS contends that Exxon is not entitled to the exception from late payment charges because it did not submit the estimated payments in accordance with MMS instructions.

MMS supports its argument that the estimated payments are to be submitted at the lease level rather than the payor level by emphasizing that each lease agreement is a contract which binds the lessee to pay royalties, and the royalty provisions may vary from lease to lease. It also asserts that the reference to "oil and gas leases" in section 111(a)

^{1/} MMS attached and incorporated an answer it had filed in IBLA 87-734 as part of its answer in this case.

of FOGRMA, 30 U.S.C. § 1721(a) (1982), demonstrates that late payment charges apply at the lease level. Additionally, MMS argues:

[E]stimates must be established on the lease basis because for onshore leases MMS pays 50 percent of the estimated payment to the state within which the lease is located. See 30 U.S.C. § 191. Also, for offshore leases on the outer continental shelf within three miles of the seaward boundary of a coastal state, the MMS distributes 27 percent of the estimated payment to that coastal state. See 43 U.S.C. § 1337(g). If MMS did not require estimates to be made on a lease basis, MMS could not apportion the estimated payments to the proper state and the states entitled to the money would lose [sic] its time value.

(IBLA 87-734 Answer at 5-6).

MMS states that the Payor Handbook also specifies that the estimated royalty payment for the oil produced from a specific lease should be calculated and submitted separately from the estimated royalty payment for the gas produced from the same lease. Therefore, according to MMS, when Exxon submitted an estimated royalty payment for gas products on certain leases producing both oil and gas, Exxon's estimate did not entitle Exxon to an extra month to pay royalties on the oil production from those leases. Finally, MMS objects to Exxon's characterization of interest assessments as penalties. MMS notes that civil penalties (authorized by section 109 of FOGRMA, 30 U.S.C. § 1719 (1982), and designed to deter violations of applicable statutes, regulations, orders, and lease terms) are not the same as late payment charges (assessed pursuant to section 111(a) of FOGRMA, 30 U.S.C. § 1721(a) (1982)). MMS concludes that Exxon did not timely pay its royalties and, therefore, MMS properly assessed late payment charges.

[1] The language found in standard onshore and offshore Federal oil and gas leases and 30 CFR 218.50(a) establish the deadline for submitting timely royalty payments. These payments are due at the end of the month following the month the oil and gas is produced and sold. Section 111(a) of FOGRMA, 30 U.S.C. § 1721(a) (1982), 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 such late payments or underpayments * * *." The regulation implementing this statutory provision also requires the assessment of interest on late payments and underpayments. 30 CFR 218.54. In addition, 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).

Exxon does not challenge MMS' authority to assess late payment charges in the form of interest. Rather, it asserts that MMS should not have assessed a late payment charge because the total of the estimated royalty payments attributable to Exxon during any specific month was always sufficient to cover the royalties due as a result of production and sale of oil and gas from its various leases, including those it had failed to specifically identify when submitting estimated royalty payments.

The regulations governing both onshore and offshore oil and gas royalty collection (30 CFR 218.102(a) and 30 CFR 218.150(b), respectively) authorize an exception to the late payment charge "when estimated payments on minerals production have already been made timely and otherwise in accordance with instructions provided by MMS to the payor." The Payor Handbook contains the instructions for making estimated payments. See Shell Offshore, Inc., 113 IBLA 226, 230, 97 I.D. 73, 76 (1990).

The applicable provisions of the Payor Handbook state that "[a]n estimated payment must be made against a specified MMS-assigned AID, [2/] product code, and selling arrangement." 2 Payor Handbook § 3.5.1 (1986). 3/ Once an estimated payment is established, the full amount of the payment is carried forward from month to month and is not reduced by the actual royalties paid. Id. The Payor Handbook also explains that the payment of estimated royalties delays the deadline for payment of actual royalties due until the end of the second month following the month the production is sold. Id. See Shell Offshore, Inc., supra at 231, 97 I.D. at 76; Yates Petroleum Corp., supra.

Exxon does not dispute that the Payor Handbook requires that estimated royalty payments be tendered for a specific lease to obtain the 1-month extension of the royalty due date for payment of actual royalties due for production from that lease. 4/ Rather, it challenges the rationale for such a requirement when the total estimated payments at the payor level are sufficient to cover all royalties due. However, as this Board has noted on previous occasions, a payor must carefully comply with MMS procedures for estimated payments in order to avoid assessment of interest for late payment of royalties. Shell Offshore, Inc., supra at 232, 97 I.D. at 77; Yates Petroleum Corp., supra. Exxon failed to establish estimated payments for certain leases and for certain product types and thus it failed to follow the necessary procedures for making estimated royalty payments. Accepting Exxon's argument that its failure to properly identify either the lease or the product was the result of clerical errors, it remains that Exxon did not make the requisite estimated payments for certain of its leases and products. This fact precludes Exxon from enjoying the extension of the deadline. Thus, the late payment charges are applicable for payments not calculated and reported in accordance with MMS instructions.

There is ample basis for MMS' policy that estimated payments are to be determined at the lease level rather than the payor level. Each oil

2/ An AID "is assigned by MMS and consists of a 10-digit lease number followed by a three-digit revenue source code." 2 Payor Handbook § 2.3.3 (1986).

3/ The 1986 version of the Payor Handbook superceded a 1984 version which contained substantially the same provision. See Payor Handbook at 3.070-2 (December 1984).

4/ Exxon's only challenge to the \$65.12 assessment based on its failure to have oil product estimates for leases where gas product estimates existed consists of its unsupported belief that MMS policy does not require separate estimates for different product types. MMS has clearly demonstrated that the Payor Handbook and MMS guidelines mandate that an estimate be established for each product type. Thus, Exxon's argument fails.

and gas lease is a contract which stands by itself, independent of other oil and gas leases that might be held by an individual payor, and royal-ties are based upon the production and sales from or attributable to an individual lease. In turn, the Federal Government disburses the royalties it collects based upon the location and nature of the individual lease. For example, for most onshore leases, MMS pays 50 percent of the royalties it collects to the state in which the lease is located, 30 U.S.C. § 191 (1982), and if the lease is an offshore lease located on the Outer Continental Shelf within 3 miles of the seaward boundary of a coastal state, MMS distributes part of the royalties collected to the coastal state. 43 U.S.C. § 1337(g) (1982). If MMS fails to make a timely distribution of a state's portion of the royalties, interest is paid to the state. 30 U.S.C. § 1721(b) (1982); see also 30 CFR 218.103. When estimated payments have been established, MMS uses those payments for royalty distribution. On the other hand, when an estimated payment has not been made, MMS cannot draw upon funds accruing to other leases in order to make timely payment to the state, and must pay interest to the state when the actual royalty is paid. Logic dictates that estimated royalty payments be calculated, reported, and paid on an individual lease basis.

The importance of accounting for production and sales of oil and gas on an individual lease rather than a payor basis has been recognized by this Board in other contexts. For example, we have upheld the propriety of limiting setoffs of royalty overpayments and underpayments to an individual lease. See, e.g., Sun Exploration & Production Co., 106 IBLA 300, 302-03 (1989) (discussing prudential considerations supporting this conclusion). We have also held that rental payments for oil and gas leases must be identified by specific lease number (see, e.g., Walter T. Clark, Jr., 107 IBLA 257, 259-60 (1989)), and that a net-credit balance reflected in statements covering other lease accounts does not constitute the payment of annual rental for a different lease, absent an express written request that particular funds be applied as such rental. Consolidated Crude Oil Co., 51 IBLA 217, 219 (1980). Thus, we find no fault with MMS' requirement that estimated payments be made for an individual lease.

To the extent not specifically addressed herein, Exxon's arguments have been considered and rejected.

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.

R. W. Mullen
Administrative Judge

I concur:

Charles B. Cates, Director
Ex Officio Member