

R865. Tax Commission, Auditing.

R865-14W. Mineral Producers' Withholding Tax.

R865-14W-1. Mineral Production Tax Withholding Pursuant to Utah Code Ann. Sections 59-6-101 through 59-6-104.

(1) Definitions.

(a) "Working interest owner" means any person who is the owner of an interest in oil, gas, other hydrocarbon substances, or all other metalliferous and nonmetalliferous minerals who is burdened with a share of the expense of developing and operating the property.

(b) "First purchaser" means the first person to pay for production after it is extracted from deposits in this state.

(c) "Person" means any natural person, company, corporation, association, partnership, joint venture, cooperative, estate, trust, receiver, or any other party or entity that has a working interest, royalty interest, overriding royalty interest, production payment, production payment including in-kind exchanges, or any other ownership interest entitled to production proceeds from deposits in this state.

(d) "Producer" as defined in Section 59-6-101 includes any non-operating working interest owner that makes payments to persons having an interest in minerals produced or extracted from deposits in this state.

(2) Advance mineral production payments that relate to, refer to, or concern production are subject to the mineral production tax withholding requirements.

(3) Each producer who disburses funds that are owed to any person owning a working interest, a royalty interest, overriding royalty interest, production payment or any other interest in minerals produced in this state, is subject to the withholding requirement of Section 59-6-102.

(4) Withholding requirements on further distributions are as follows:

(a) Unless otherwise provided by statute, each producer who disburses funds to any producer, working interest owner or any other interest owner must withhold five percent of the gross payment due if that producer or any other interest owner does not make further distributions. For producers or any other interest owners making further distributions, the procedures outlined in Subsection (4)(b) must be followed.

(b) The working interest owner or producer who makes further distributions must be licensed to withhold on the disbursements and is responsible for remitting the tax withheld each quarter. Upon approval by the ~~[Auditing Division of the Tax Commission]~~commission, a working interest owner or producer who makes further distributions of the mineral production proceeds may furnish an exemption certificate approved by the ~~[Tax Commission]~~commission to the producer or first purchaser.

(c) If an exemption certificate approved by the ~~[Auditing Division of the Tax Commission]~~commission is not received, withholding is required.

38 (5) If a mineral is taken in kind by an interest owner of a mineral production property,
39 the initial withholding responsibility rests with the first purchaser who receives the mineral. A
40 person taking a mineral under an exchange agreement with the interest owner is considered to be
41 the first purchaser and is subject to the requirement of withholding and remitting the tax on any
42 payments made to the interest owner.

43 (6) Claiming credit for the tax withheld shall be accomplished as follows:

44 (a) Credit must be claimed for the tax withheld on a Utah individual income tax return or
45 a Utah corporation franchise tax return.

46 (b) Taxpayers who are shareholders in a corporation taxed under Subchapter S of the
47 Internal Revenue Code and are Utah residents, members of a Utah limited liability company, or
48 members of a partnership doing business in this state may claim credit for the amount shown on
49 the federal schedule K-1 or the Utah schedule K-1 as their percentage share of the tax withheld
50 from Utah mineral production payments by the corporation, limited liability company, or
51 partnership.

52 (c) An estate or trust is entitled to credit for the tax withheld in proportion to its share of
53 federal distributable net income. The remaining credit must be passed through to the
54 beneficiaries in proportion to their respective shares of federal distributable net income of the
55 estate or trust. The beneficiaries may claim credit for the amount shown by the fiduciary on the
56 federal schedule K-1 or the Utah schedule K-1 as their percentage share of the tax withheld from
57 Utah mineral production payments.

58 (d) A corporation or individual taxpayer filing on a fiscal year ending other than
59 December 31, must claim a credit for the withholding tax shown on Form TC-675R on the
60 corporation franchise or individual income tax return required to be filed during the year
61 following the December closing period of the Form TC-675R.

62 (7) The return prescribed by the [~~Tax Commission~~]commission for reporting the
63 information specified in Section 59-6-103 may be obtained from the [~~Tax~~
64 ~~Commission~~]commission.

65 (8) If the producer, operator, or first purchaser fails to withhold the tax required under
66 Section 59-6-102, and thereafter, the income subject to withholding is reported, and the resulting
67 tax is paid by the recipient, any tax required to be withheld shall not be collected from the
68 producer, operator, or first purchaser. However, the producer, operator, or first purchaser shall
69 remain subject to penalties and interest on the total amount of taxes that should have been
70 withheld.