

1                   **MINERAL PRODUCTION TAX WITHHOLDING**

2                                   **AMENDMENTS**

3   2008 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Wayne L. Niederhauser**

6                                   House Sponsor: John Dougall

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8   **LONG TITLE**

9   **General Description:**

10           This bill amends the Mineral Production Tax Withholding Amendments chapter.

11   **Highlighted Provisions:**

12           This bill:

- 13           ▶ defines terms;
- 14           ▶ exempts a business entity that files an exemption certificate with the mineral  
15 producer and the State Tax Commission from the deduction and withholding  
16 requirements of the Mineral Production Tax Withholding chapter;
- 17           ▶ allows a business entity to file an exemption certificate if the business entity:
  - 18           • files certain tax returns;
  - 19           • expects to claim a refund on certain tax returns of at least 75% of the amount  
20 that would otherwise be required to be deducted and withheld; and
  - 21           • consents to the jurisdiction of the State Tax Commission to enforce certain  
22 penalties or amounts required to be deducted and withheld;
- 23           ▶ establishes procedures for filing an exemption certificate;
- 24           ▶ addresses penalties;
- 25           ▶ prohibits a business entity from filing an exemption certificate for five taxable years  
26 under certain circumstances;
- 27           ▶ addresses return filing requirements for a producer; and
- 28           ▶ makes technical changes.

29   **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 This bill takes effect on July 1, 2008.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **59-6-101**, as last amended by Laws of Utah 2006, Chapter 223

36 **59-6-102**, as last amended by Laws of Utah 2006, Chapters 221 and 223

37 **59-6-103**, as last amended by Laws of Utah 1988, Chapter 3

38 ENACTS:

39 **59-6-102.1**, Utah Code Annotated 1953



41 *Be it enacted by the Legislature of the state of Utah:*

42 Section 1. Section **59-6-101** is amended to read:

43 **59-6-101. Definitions.**

44 As used in this chapter:

45 (1) "Business entity" means a claimant that is a:

46 (a) C corporation;

47 (b) S corporation;

48 (c) general partnership;

49 (d) limited liability company;

50 (e) limited liability partnership;

51 (f) limited partnership; or

52 (g) business entity similar to Subsections (1)(c) through (f):

53 (i) with respect to which the business entity's income or losses are divided among and  
54 passed through to taxpayers; and

55 (ii) as defined by the commission by rule made in accordance with Title 63, Chapter  
56 46a, Utah Administrative Rulemaking Act.

57 ~~[(+)]~~ (2) (a) Except as provided in Subsection ~~[(+)]~~ (2)(b), "claimant" means a resident

58 or nonresident person.

59 (b) "Claimant" does not include an estate or trust.

60 ~~[(2)]~~ (3) "Estate" means a nonresident estate or a resident estate.

61 ~~[(3)]~~ (4) "Minerals" means ~~[either]~~:

62 (a) metalliferous minerals as defined in Section 59-2-102~~;~~;

63 (b) nonmetalliferous minerals as defined in Section 59-2-102~~;~~; or ~~[both.]~~

64 (c) a combination of Subsections (4)(a) and (b).

65 ~~[(4)]~~ (5) "Producer" means ~~[any]~~ a person ~~[who]~~ that:

66 (a) produces or extracts minerals from deposits in this state~~;~~ or ~~[who]~~

67 (b) is the first purchaser of minerals produced or extracted from deposits in this state.

68 ~~[(5)]~~ (6) "Refundable tax credit" or "tax credit" means a tax credit that a claimant,  
69 estate, or trust may claim:

70 (a) as provided by statute; and

71 (b) regardless of whether the claimant, estate, or trust has a tax liability~~;~~

72 (i) for a tax ~~[described in Subsection 59-6-102(3)]~~ imposed under:

73 (A) Chapter 7, Corporate Franchise and Income Taxes;

74 (B) Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay  
75 Corporate Franchise or Income Tax Act; or

76 (C) Chapter 10, Individual Income Tax Act; and

77 (ii) for the taxable year for which the claimant, estate, or trust claims the tax credit.

78 (7) "Taxable year" means the taxable year of a claimant, estate, or trust under:

79 (a) Chapter 7, Corporate Franchise and Income Taxes;

80 (b) Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay  
81 Corporate Franchise or Income Tax Act; or

82 (c) Chapter 10, Individual Income Tax Act.

83 (8) "Tax return" means a return required by:

84 (a) Chapter 7, Corporate Franchise and Income Taxes;

85 (b) Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay

86 Corporate Franchise or Income Tax Act; or

87 (c) Chapter 10, Individual Income Tax Act.

88 [~~(6)~~] (9) "Trust" means a nonresident trust or a resident trust.

89 (10) "Withholding return" means a return a producer is required to file under this  
 90 chapter.

91 Section 2. Section **59-6-102** is amended to read:

92 **59-6-102. Producer's obligation to deduct and withhold payments -- Amount --**  
 93 **Exempt payments -- Credit against tax.**

94 (1) Except as provided in Subsection (2), each producer shall deduct and withhold from  
 95 each payment being made to any person in respect to production of minerals in this state, but  
 96 not including that to which the producer is entitled, an amount equal to 5% of the amount which  
 97 would have otherwise been payable to the person entitled to the payment.

98 (2) [~~Notwithstanding Subsection (1), the~~] The obligation to deduct and withhold from  
 99 payments as provided in Subsection (1) does not apply to those payments which are payable to:

100 (a) the United States, this state, or an agency or political subdivision of the United  
 101 States or this state;

102 (b) an organization that is exempt from the taxes imposed by Chapter 7, Corporate  
 103 Franchise and Income Taxes, in accordance with Subsection 59-7-102(1)(a); [~~or~~]

104 (c) an Indian or Indian tribe if the amounts accruing are subject to the supervision of the  
 105 United States or an agency of the United States[~~;~~]; or

106 (d) a business entity that files an exemption certificate in accordance with Section  
 107 59-6-102.1.

108 (3) A claimant, estate, or trust that files a tax return with the [~~state in accordance with~~  
 109 ~~the following is entitled to~~] commission may claim a refundable tax credit against the tax  
 110 reflected on the tax return for the amount withheld by the producer under Subsection (1)[~~;~~].

111 [~~(a) Chapter 7, Corporate Franchise and Income Taxes;~~]

112 [~~(b) Chapter 8, Gross Receipts Tax on Certain Corporations not Required to Pay~~  
 113 ~~Corporate Franchise or Income Tax Act; or~~]

114 [~~(c) Chapter 10, Individual Income Tax Act.~~]

115 Section 3. Section **59-6-102.1** is enacted to read:

116 **59-6-102.1. Exemption certificate -- Penalties -- Limit on filing exemption**

117 **certificate.**

118 (1) For a taxable year, a business entity may file an exemption certificate claiming an  
119 exemption from the deduction and withholding requirements of this chapter if:

120 (a) for that taxable year, the business entity is required to file a tax return with the  
121 commission;

122 (b) for that taxable year, the business entity expects to claim a refund on a tax return of  
123 at least 75% of the amount that would otherwise be required to be deducted and withheld under  
124 this chapter; and

125 (c) regardless of whether the business entity sells or otherwise disposes of the business  
126 entity's interest in the production of minerals, the business entity consents to the jurisdiction of  
127 the commission to enforce:

128 (i) an amount required to be deducted and withheld under this chapter; or

129 (ii) a penalty imposed under this chapter.

130 (2) A business entity filing an exemption certificate in accordance with Subsection (1)  
131 shall file the exemption certificate:

132 (a) with the:

133 (i) producer; and

134 (ii) commission; and

135 (b) on a form prescribed by the commission.

136 (3) (a) In addition to any other penalty provided by law, a business entity is subject to  
137 the penalty described in Subsection (3)(b) if the business entity:

138 (i) files an exemption certificate in accordance with this section; and

139 (ii) does not file a tax return with the commission for the taxable year for which the  
140 business entity files the exemption certificate described in Subsection (3)(a)(i).

141 (b) For purposes of Subsection (3)(a), the penalty is 100% of the amount that the

142 producer would have deducted and withheld under this chapter for the taxable year had the  
143 business entity not filed an exemption certificate under this section for that taxable year.

144 (c) The commission shall collect the penalty described in Subsection (3)(b).

145 (4) If a business entity is subject to the penalty described in Subsection (3), the business  
146 entity may not file an exemption certificate under this section for five taxable years beginning  
147 with the taxable year that the business entity is subject to the penalty described in Subsection  
148 (3).

149 (5) In addition to any other penalty provided by law, a business entity is subject to a  
150 penalty of 5% of the amount that a producer would otherwise be required to deduct and  
151 withhold under this chapter for the taxable year if:

152 (a) the business entity files an exemption certificate under this section for a taxable year;  
153 and

154 (b) had the business entity not filed the exemption certificate under this section for the  
155 taxable year, the business entity:

156 (i) would have been allowed to claim a refund on a tax return for the taxable year in an  
157 amount less than 75% of the amount required to be deducted and withheld under this chapter  
158 for the taxable year; or

159 (ii) would not have been allowed to claim a refundable tax credit under Section  
160 59-6-102 for the taxable year.

161 Section 4. Section **59-6-103** is amended to read:

162 **59-6-103. Returns and payments required of producers.**

163 (1) ~~[Any]~~ (a) Subject to Subsection (1)(b), a producer required to deduct and withhold  
164 ~~[any tax under Section 59-6-102 shall pay to]~~ an amount under this chapter shall file a  
165 withholding return with the commission;

166 (i) for the amounts required to be deducted and withheld [from payments resulting from  
167 the production of minerals which were made] under this chapter during the preceding calendar  
168 quarter[. ~~The withholding amounts are~~]; and

169 (ii) on a form prescribed by the commission.

170 (b) A withholding return described in Subsection (1)(a) is due on or before the last day  
171 of April, July, October, and January.

172 ~~[(2) The producer shall file a return with each payment to the commission. The return,~~  
173 ~~in a form prescribed by the commission, shall show:]~~

174 (c) A withholding return described in Subsection (1)(a) shall contain:

175 ~~[(a)]~~ (i) the name and address of each person receiving a payment subject to the  
176 deduction and withholding requirements [during the quarter involved] of this chapter for the  
177 calendar quarter for which the withholding return is filed;

178 ~~[(b) the amount to which each person was entitled before deduction and withholding~~  
179 ~~and also the amount withheld and deducted;]~~

180 (ii) for each person described in Subsection (1)(c)(i), the amount of payment the person  
181 would have received from the production of minerals:

182 (A) by the producer had the deduction and withholding required by this chapter not  
183 been made; and

184 (B) for the calendar quarter for which the withholding return is filed;

185 (iii) for each person described in Subsection (1)(c)(i), the amount of deduction and  
186 withholding under this chapter for the calendar quarter for which the withholding return is filed;

187 ~~[(c)]~~ (iv) the name or description of the property from which the [production was  
188 obtained; and] production of minerals occurs that results in a payment subject to deduction and  
189 withholding under this chapter; and

190 ~~[(d)]~~ (v) for each person described in Subsection (1)(c)(i), the interest of the person in  
191 [this production:] the production of minerals that results in a payment subject to deduction and  
192 withholding under this chapter.

193 (2) (a) If a producer receives an exemption certificate filed in accordance with Section  
194 59-6-102.1 from a business entity, the producer shall file a withholding return with the  
195 commission:

196 (i) on a form prescribed by the commission; and

197 (ii) on or before the January 31 following the last day of the taxable year for which the

198 producer receives the exemption certificate from the business entity.

199 (b) The withholding return required by Subsection (2)(a) shall contain:

200 (i) the name and address of the business entity that files the exemption certificate in  
201 accordance with Section 59-6-102.1;

202 (ii) the amount of the payment made by the producer to the business entity that would  
203 have been subject to deduction and withholding under this chapter had the business entity not  
204 filed the exemption certificate in accordance with Section 59-6-102.1;

205 (iii) the name or description of the property from which the production of minerals  
206 occurs that would have resulted in a payment subject to deduction and withholding under this  
207 chapter had the business entity not filed the exemption certificate in accordance with Section  
208 59-6-102.1; and

209 (iv) the interest of the business entity in the production of minerals that would have  
210 resulted in a payment subject to deduction and withholding under this chapter had the business  
211 entity not filed the exemption certificate in accordance with Section 59-6-102.1.

212 Section 5. **Effective date.**

213 This bill takes effect on July 1, 2008.