

Senator Wayne L. Niederhauser proposes the following substitute bill:

MINERAL PRODUCTION TAX WITHHOLDING

AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: John Dougall

LONG TITLE

General Description:

This bill amends the Mineral Production Tax Withholding Amendments chapter.

Highlighted Provisions:

This bill:

- ▶ exempts a business entity that files an exemption certificate with the mineral producer and the State Tax Commission from the deduction and withholding requirements of the Mineral Production Tax Withholding chapter;
- ▶ allows a business entity to file an exemption certificate if the business entity:
 - files certain tax returns;
 - expects to claim a refund on certain tax returns of at least 75% of the amount that would otherwise be required to be deducted and withheld; and
 - consents to the jurisdiction of the State Tax Commission to enforce certain penalties or amounts required to be deducted and withheld;
- ▶ establishes procedures for filing an exemption certificate;
- ▶ addresses penalties;
- ▶ prohibits a business entity from filing an exemption certificate for five taxable years under certain circumstances;



- 26 ▶ addresses return filing requirements for a producer; and
- 27 ▶ makes technical changes.

28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill takes effect on July 1, 2008.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **59-6-101**, as last amended by Laws of Utah 2006, Chapter 223

35 **59-6-102**, as last amended by Laws of Utah 2006, Chapters 221 and 223

36 **59-6-103**, as last amended by Laws of Utah 1988, Chapter 3

37 ENACTS:

38 **59-6-102.1**, Utah Code Annotated 1953



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

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

42 **59-6-101. Definitions.**

43 As used in this chapter:

44 (1) "Business entity" means a claimant that is a

45 (a) C corporation;

46 (b) S corporation;

47 (c) general partnership;

48 (d) limited liability company;

49 (e) limited liability partnership;

50 (f) limited partnership; or

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

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

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

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

57 or nonresident person.

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

59 ~~[(2)]~~ (3) "Estate" means a nonresident estate or a resident estate.

60 ~~[(3)]~~ (4) "Minerals" means ~~[either]~~:

61 (a) metalliferous minerals as defined in Section 59-2-102[;];

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

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

64 ~~[(4)]~~ (5) "Producer" means ~~[any]~~ a person ~~[who]~~ that:

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

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

67 ~~[(5)]~~ (6) "Refundable tax credit" or "tax credit" means a tax credit that a claimant,
68 estate, or trust may claim:

69 (a) as provided by statute; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

87 ~~[(6)]~~ (9) "Trust" means a nonresident trust or a resident trust.

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

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

91 **59-6-102. Producer's obligation to deduct and withhold payments -- Amount --**
92 **Exempt payments -- Credit against tax.**

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

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

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

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

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

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

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

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

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

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

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

115 **59-6-102.1. Exemption certificate -- Penalties.**

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

118 (a) for that taxable year, the business entity is required to file a tax return with the

119 commission;

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

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

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

127 (ii) a penalty imposed under this chapter.

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

130 (a) with the:

131 (i) producer; and

132 (ii) commission; and

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

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

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

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

139 (b) For purposes of Subsection (3)(a), the penalty is 100% of the amount that the
140 producer would have deducted and withheld under this chapter for the taxable year had the
141 business entity not filed an exemption certificate under this section for that taxable year.

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

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

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

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

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

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

157 (ii) would not have been allowed to claim a refundable tax credit under Section
158 59-6-102 for the taxable year.

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

160 **59-6-103. Returns and payments required of producers.**

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

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

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

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

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

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

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

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

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

180 (A) by the producer had the deduction and withholding required by this chapter not

181 been made; and

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

183 (iii) for each person described in Subsection (1)(c)(i), the amount of deduction and

184 withholding under this chapter for the calendar quarter for which the withholding return is

185 filed;

186 ~~[(e)]~~ (iv) the name or description of the property from which the [production was

187 ~~obtained; and] production of minerals occurs that results in a payment subject to deduction and~~

188 withholding under this chapter; and

189 ~~[(d)]~~ (v) for each person described in Subsection (1)(c)(i), the interest of the person in

190 ~~[this production.]~~ the production of minerals that results in a payment subject to deduction and

191 withholding under this chapter.

192 (2) (a) If a producer receives an exemption certificate filed in accordance with Section

193 59-6-102.1 from a business entity, the producer shall file a withholding return with the

194 commission:

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

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

197 producer receives the exemption certificate from the business entity.

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

199 (i) the name and address of the business entity that files the exemption certificate in

200 accordance with Section 59-6-102.1;

201 (ii) the amount of the payment made by the producer to the business entity that would

202 have been subject to deduction and withholding under this chapter had the business entity not

203 filed the exemption certificate in accordance with Section 59-6-102.1;

204 (iii) the name or description of the property from which the production of minerals

205 occurs that would have resulted in a payment subject to deduction and withholding under this

206 chapter had the business entity not filed the exemption certificate in accordance with Section

207 59-6-102.1; and

208 (iv) the interest of the business entity in the production of minerals that would have

209 resulted in a payment subject to deduction and withholding under this chapter had the business

210 entity not filed the exemption certificate in accordance with Section 59-6-102.1.

211 **Section 5. Effective date.**

212

This bill takes effect on July 1, 2008.

Fiscal Note**S.B. 137 1st Sub. (Green) - Mineral Production Tax Withholding
Amendments**

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Businesses entities that expect at least a 75% refund will benefit given that an exemption certificate is filed with the Tax Commission and the producer. Individuals and localities are likely unaffected.
