

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

8 **LONG TITLE**

9 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ exempts a claimant, estate, or trust that files an exemption certificate with the
14 mineral producer and the State Tax Commission from the deduction and
15 withholding requirements of the Mineral Production Tax Withholding chapter;
- 16 ▶ allows a claimant, estate, or trust to file an exemption certificate if the claimant,
17 estate, or trust:
- 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 claimant, estate, or trust from filing an exemption certificate for five
26 taxable years 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 provides an immediate effective date and provides for retrospective operation.

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) (a) Except as provided in Subsection (1)(b), "claimant" means a resident or
46 nonresident person.

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

48 (2) "Estate" means a nonresident estate or a resident estate.

49 (3) "Minerals" means ~~either~~:

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

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

52 (c) a combination of Subsections (3)(a) and (b).

53 (4) "Producer" means ~~any~~ a person ~~who~~ that:

54 (a) produces or extracts minerals from deposits in this state; or ~~who~~

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

56 (5) "Refundable tax credit" or "tax credit" means a tax credit that a claimant, estate, or
57 trust may claim:

58 (a) as provided by statute; and

- 59 (b) regardless of whether the claimant, estate, or trust has a tax liability;
- 60 (i) for a tax ~~[described in Subsection 59-6-102(3)]~~ imposed under:
- 61 (A) Chapter 7, Corporate Franchise and Income Taxes;
- 62 (B) Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay
- 63 Corporate Franchise or Income Tax Act; or
- 64 (C) Chapter 10, Individual Income Tax Act; and
- 65 (ii) for the taxable year for which the claimant, estate, or trust claims the tax credit.
- 66 (6) "Taxable year" means the taxable year of a claimant, estate, or trust under:
- 67 (a) Chapter 7, Corporate Franchise and Income Taxes;
- 68 (b) Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay
- 69 Corporate Franchise or Income Tax Act; or
- 70 (c) Chapter 10, Individual Income Tax Act.
- 71 (7) "Tax return" means a return required by:
- 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.
- 76 ~~[(6)]~~ (8) "Trust" means a nonresident trust or a resident trust.
- 77 (9) "Withholding return" means a return a producer is required to file under this
- 78 chapter.

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

80 **59-6-102. Producer's obligation to deduct and withhold payments -- Amount --**
81 **Exempt payments -- Credit against tax.**

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

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

- 88 (a) the United States, this state, or an agency or political subdivision of the United
- 89 States or this state;

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

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

94 (d) a claimant, estate, or trust that files an exemption certificate in accordance with
95 Section 59-6-102.1.

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

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

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

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

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

104 **59-6-102.1. Exemption certificate -- Penalties.**

105 (1) For a taxable year, a claimant, estate, or trust may file an exemption certificate
106 claiming an exemption from the deduction and withholding requirements of this chapter if:

107 (a) for that taxable year, the claimant, estate, or trust is required to file a tax return with
108 the commission;

109 (b) for that taxable year, the claimant, estate, or trust expects to claim a refund on a tax
110 return of at least 75% of the amount that would otherwise be required to be deducted and
111 withheld under this chapter; and

112 (c) regardless of whether the claimant, estate, or trust sells or otherwise disposes of the
113 claimant's, estate's, or trust's interest in the production of minerals, the claimant, estate, or trust
114 consents to the jurisdiction of the commission to enforce:

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

116 (ii) a penalty imposed under this chapter.

117 (2) A claimant, estate, or trust filing an exemption certificate in accordance with
118 Subsection (1) shall file the exemption certificate:

119 (a) with the:

120 (i) producer; and

121 (ii) commission; and
122 (b) on a form prescribed by the commission.
123 (3) (a) In addition to any other penalty provided by law, a claimant, estate, or trust is
124 subject to the penalty described in Subsection (3)(b) if the claimant, estate, or trust:
125 (i) files an exemption certificate in accordance with this section; and
126 (ii) does not file a tax return with the commission for the taxable year for which the
127 claimant, estate, or trust files the exemption certificate described in Subsection (3)(a)(i).
128 (b) For purposes of Subsection (3)(a), the penalty is 100% of the amount that the
129 producer would have deducted and withheld under this chapter for the taxable year had the
130 claimant, estate, or trust not filed an exemption certificate under this section for that taxable
131 year.
132 (c) The commission shall:
133 (i) collect the penalty described in Subsection (3)(b); or
134 (ii) require the producer to:
135 (A) deduct and withhold the penalty described in Subsection (3)(b); and
136 (B) remit the amount the producer deducts and withholds under Subsection
137 (3)(c)(ii)(A) to the commission.
138 (4) If a claimant, estate, or trust is subject to the penalty described in Subsection (3),
139 the claimant, estate, or trust may not file an exemption certificate under this section for five
140 taxable years beginning with the taxable year that the claimant, estate, or trust is subject to the
141 penalty described in Subsection (3).
142 (5) In addition to any other penalty provided by law, a claimant, estate, or trust is
143 subject to a penalty of 5% of the amount that a producer would otherwise be required to deduct
144 and withhold under this chapter for the taxable year if:
145 (a) the claimant, estate, or trust files an exemption certificate under this section for a
146 taxable year; and
147 (b) had the claimant, estate, or trust not filed the exemption certificate under this
148 section for the taxable year, the claimant, estate, or trust:
149 (i) would have been allowed to claim a refund on a tax return for the taxable year in an
150 amount less than 75% of the amount required to be deducted and withheld under this chapter
151 for the taxable year; or

152 (ii) would not have been allowed to claim a refundable tax credit under Section
153 59-6-102 for the taxable year.

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

155 **59-6-103. Returns and payments required of producers.**

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

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

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

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

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

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

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

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

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

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

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

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

181 ~~[(c)]~~ (iv) the name or description of the property from which the [production was
182 obtained; and] production of minerals occurs that results in a payment subject to deduction and

183 withholding under this chapter; and

184 [(~~+~~) (v) for each person described in Subsection (1)(c)(i), the interest of the person in
185 [this production.] the production of minerals that results in a payment subject to deduction and
186 withholding under this chapter.

187 (2) (a) If a producer receives an exemption certificate filed in accordance with Section
188 59-6-102.1 from a claimant, estate, or trust, the producer shall file a withholding return with
189 the commission:

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

191 (ii) on or before the January 31 following the last day of the taxable year for which the
192 producer receives the exemption certificate from the claimant, estate, or trust.

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

194 (i) the name and address of the claimant, estate, or trust that files the exemption
195 certificate in accordance with Section 59-6-102.1;

196 (ii) the amount of the payment made by the producer to the claimant, estate, or trust
197 that would have been subject to deduction and withholding under this chapter had the claimant,
198 estate, or trust not filed the exemption certificate in accordance with Section 59-6-102.1;

199 (iii) the name or description of the property from which the production of minerals
200 occurs that would have resulted in a payment subject to deduction and withholding under this
201 chapter had the claimant, estate, or trust not filed the exemption certificate in accordance with
202 Section 59-6-102.1; and

203 (iv) the interest of the claimant, estate, or trust in the production of minerals that would
204 have resulted in a payment subject to deduction and withholding under this chapter had the
205 claimant, estate, or trust not filed the exemption certificate in accordance with Section
206 59-6-102.1.

207 **Section 5. Effective date -- Retrospective operation.**

208 (1) Subject to Subsection (2), if approved by two-thirds of all the members elected to
209 each house, this bill takes effect upon approval by the governor, or the day following the
210 constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's
211 signature, or in the case of a veto, the date of veto override.

212 (2) This bill has retrospective operation to January 1, 2008, for a withholding return
213 required to be filed by a producer under Title 59, Chapter 6, Mineral Production Tax

214 Withholding, on or after April 30, 2008.

Legislative Review Note
as of 1-16-08 1:23 PM

Office of Legislative Research and General Counsel