

Producers and first purchasers who disburse income from oil and gas production in Colorado to any interest owner are “withholding agents” who must comply with several withholding requirements. Withholding agents must register with the Colorado Department of Revenue, withhold severance tax from each interest owner’s gross income, and electronically remit such withholding on a monthly basis. On an annual basis, withholding agents must provide an Oil and Gas Withholding Statement (DR 0021W) to the each interest owner, submit a copy of each DR 0021W to the Department, and file a Colorado Annual Reconciliation of Oil and Gas Severance Withholding (DR 0456) with the Department.

WHO IS REQUIRED TO WITHHOLD?

The oil and gas withholding requirements described in this publication apply to every withholding agent. A withholding agent is any producer or first purchaser that disburses funds from the production of oil and gas in Colorado to interest owners. Withholding agents that are subject to these requirements include every person or business that produces or extracts oil shale or oil and gas deposits in Colorado and every first purchaser of oil shale or oil and gas produced from deposits in Colorado are subject to these requirements, but only if such producer or first purchaser disburse funds to interest owners. These requirements apply regardless of whether the interest owners hold a working interest, a royalty interest, a production payment, or any other type of interest.

Any producer or first purchaser that does not disburse funds to interest owners is not a withholding agent and is not subject to the requirements discussed in this publication.

Production taken in kind

When an interest owner elects to take production in kind, that interest owner is responsible for withholding and remitting severance tax on such production

WHAT OIL AND GAS PRODUCTION IS SUBJECT TO WITHHOLDING?

Unless the oil and gas production or the interest owner is exempt, as described below, the withholding agent must withhold tax from any gross income owed to any interest owner. Interest owners for whom withholding is required include owners of a working interest, royalty interest, production payment, or any other interest. If the withholding agent is also an interest owner, the withholding agent must withhold on its own behalf as well.

In calculating gross income for withholding purposes, no deduction is allowed for any down-hole production or operating costs incurred to extract oil and gas, even if such costs are borne by the interest owner. See the section below entitled *How is the required withholding amount calculated?* for additional information regarding the calculation of gross income and required withholding amounts.

The withholding agent must withhold tax from any gross income owed to any interest owner, regardless of whether the withholding agent actually makes a disbursement to such interest owner. For example, if the non-deductible, down-hole production costs allocated to and borne by an interest owner exceed the interest owner’s gross income, and the withholding agent therefore makes no disbursement, the withholding agent must nonetheless withhold tax from the interest owner’s gross income, calculated as described below.

WHAT OIL AND GAS PRODUCTION IS EXEMPT FROM WITHHOLDING?

Gross income from certain oil and gas production is exempt from withholding requirements, based either on the type of interest owner or the production volume from the well.

Exempt interest owners

No withholding is required for any of the following interest owners:

- The United States of America;
- The State of Colorado;
- Any political subdivision, such as cities and counties, of the State of Colorado;
- The Southern Ute Indian Tribe and Ute Mountain Ute Indian Tribe.

Exempt oil and gas production

An exemption from severance tax and withholding requirements applies to oil and gas produced from wells with average daily production below certain thresholds. The term “stripper well” is commonly used to refer to wells with lower levels of production, often near the end of their economically useful life. No withholding is required for:

- oil produced from any individual well that produces 15 barrels per day or less of oil for the average of all producing days during a taxable year, or
- gas produced from any individual well that produces 90,000 cubic feet or less of gas per day for the average of all producing days during a taxable year.

Withholding agents do not have to register the exempt production from a well with the Department if the records of the Colorado Oil and Gas Conservation Commission show exempt levels of monthly production for the well.

HOW IS THE REQUIRED WITHHOLDING AMOUNT CALCULATED?

The required withholding amount is equal to one percent (1%) of the gross income from oil and gas owed to each interest owner, regardless of whether such income is disbursed to the interest owner.

Gross income

The gross income used to calculate the required withholding amount is the interest owner’s share of gross lease revenues minus any direct costs actually paid or accrued by the interest owner for transportation, manufacturing, or processing of the product, including depreciation. No deduction is allowed for cost of capital or for down-hole production or operating costs incurred to extract oil and gas. See House Bill 21-1312 and 1 CCR 201-10, Rule 39-29-102(3)(A) for additional information about deductible and non-deductible costs, but note that the Department anticipates rulemaking to make amendments to the rule consistent with House Bill 21-1212. The withholding agent must calculate and withhold tax from an interest owner’s gross income even if non-deductible, down-hole production costs allocated to and borne by an interest owner exceed the interest owner’s gross income and, as a result, no disbursement is made.

REGISTERING, REMITTING, AND FILING

Every withholding agent must (1) open an oil and gas severance tax account, (2) withhold and remit tax on a monthly basis, and (3) provide annual statements to both the Department and each interest owner reporting gross income and withholding.

Opening an oil and gas severance tax withholding account

Each withholding agent must complete and submit to the Department of Revenue a Colorado Sales Tax Wage Withholding Account Application (CR 0100AP) to open a severance withholding tax account. The application is a multi-purpose form that can be used to open accounts for other tax types as well. The applicant must check the appropriate box in Section D to apply for an oil and gas severance tax withholding account.

Every withholding agent must also complete and submit to the Department an Electronic Funds Transfer (EFT) Account Setup for Tax Payments (DR 5785). See Colorado Department of Revenue Electronic Funds Transferred (EFT) Program for Tax Payments (DR 5782) for additional information regarding EFT.

Monthly remittance of withholding

The required oil and gas severance tax withholding must be remitted to the Department on a monthly basis by electronic funds transfer (EFT). If there is no taxable production, and therefore no required withholding for the month, the withholding agent must report \$0 withholding through the Department’s EFT system.

Monthly oil and gas severance tax withholding payments are due the first day of the third month following the month the tax was withheld, as illustrated in the table to the right. If the due date for a withholding payment falls on a Saturday, Sunday, or legal holiday, the payment will be due on the next business day.

A withholding agent who makes the required monthly withholding remittance made via EFT is not required to file a separate paper return. A withholding agent should only file Form DR 0461 and remit payment by paper check if they have not yet been approved to remit EFT payments or if they are reporting penalty and interest for the late payment of their monthly withholding.

Withholding Month	Due Date
January	April 1 st
February	May 1 st
March	June 1 st
April	July 1 st
May	August 1 st
June	September 1 st
July	October 1 st
August	November 1 st
September	December 1 st
October	January 1 st
November	February 1 st
December	March 1 st

Failure to file or pay

A withholding agent with an active oil and gas severance tax account must, for each month, remit the required monthly withholding or, if no withholding is due, report that no tax is due using the Department's EFT system. If a withholding agent with an active severance withholding account does not, for any month, either remit payment or report \$0 withholding due, the Department will make an estimate of the withholding payment due and mail notice of such estimated amount due to the withholding agent. The withholding agent must then promptly (1) remit payment of the estimated amount along with any applicable penalties and interest, (2) file a return reporting and remitting the actual withholding amount due, or (3), if applicable, file an Account Change or Business Closure Form (DR 1102) to report the closure of the account prior to the month for which the estimate was made

Annual filing requirements

On an annual basis, every withholding agent must:

- 1) issue an annual Oil and Gas Withholding Statement (DR 0021W) to each interest owner,
- 2) file a Colorado Annual Reconciliation of Oil and Gas Severance Withholding (DR 0456), and
- 3) submit copies of all DR 0021Ws to the Department.

Issuing DR 0021Ws to interest owners

On or before March 1st of each year, every withholding agent must provide each interest owner an Oil and Gas Withholding Statement (DR 0021W). Along with additional information, the Oil and Gas Withholding Statement must report for the entire calendar year:

- 1) the interest owner's gross income determined on both cash and accrual bases;
- 2) the interest owner's share of any ad valorem taxes on oil and gas production, determined on both cash and accrual bases; and
- 3) the severance tax withheld from the interest owner's gross income from oil and gas.

The withholding reported on a DR 0021W can be claimed only by the interest owner named on the DR 0021W. An interest owner who receives a DR 0021W may not further distribute or split the withholding, income, or ad valorem tax amounts reported on the DR 0021W.

Withholding agents are not required to issue DR 0021Ws to an interest owner if all of the interest owner's gross income and ad valorem taxes are from exempt oil and gas production.

Annual reconciliation of oil and gas severance withholding (DR 0456)

Every withholding agent must file DR 0456 with the Department by April 15th of each year reporting amounts withheld and paid for the preceding calendar year. If a withholding agent fails to file DR 0456 by the applicable due date, they will be subject to a penalty of \$1,500 or 15% of the required withholding, whichever is less.

Filing DR 0021Ws with the Department

Withholding agents must file all DR 0021Ws with the Department by April 15th reporting amounts withheld and paid for the preceding calendar year. The DR 0021W can be filed either as attachments to the annual reconciliation (DR 0456) or electronically through Revenue Online. See FYI Withholding 9 for electronic filing instructions. The withholding agent must retain copies of the DR 0021Ws in their records for a period of three years.



ADDITIONAL RESOURCES

- *Colorado statutes and regulations (any legislative history)*
 - § 39-29-111, C.R.S. Withholding of income from oil and gas interest.
 - 1 CCR 201-10, Rule 39-29-111. Oil and gas severance tax withholding.
 - § 39-29-102, C.R.S. Definitions.
 - 1 CCR 201-10, Rule 39-29-102(3)(A). Definition of “gross income” for severance tax on oil and gas.
 - § 39-22-105, C.R.S. Tax on severance of oil and gas.
 - § 24-61-102, C.R.S. Taxation compact between the Southern Ute Indian tribe, La Plata County, and the State of Colorado
 - § 39-29-115, C.R.S. Penalties and interest,
 - § 39-21-113, C.R.S. Reports and returns.
- *Colorado forms, publications, and guidance*
 - Colorado Sales Tax Withholding Account Application (CR 0100AP)
 - Monthly Return of Oil and Gas Tax Withheld (DR 0461)
 - Colorado Annual Reconciliation of Oil and Gas Severance Withholding (DR 0456)
 - Oil and Gas Withholding Statement (DR 0021W)
 - Electronic Funds Transfer (EFT) Account Setup for Tax Payments (DR 5785)
 - Colorado Department of Revenue Electronic Funds Transferred (EFT) Program for Tax Payments (DR 5782)

FYIs represent a good faith effort to provide general information concerning a variety of Colorado tax topics in simple and straightforward language. By their nature, however, FYIs cannot and do not address all taxpayer situations nor do they provide a comprehensive overview of Colorado’s tax laws. For this reason, FYIs are not binding on the Colorado Department of Revenue, nor do they replace, alter, or supersede Colorado law and regulations.

A taxpayer seeking additional guidance regarding the tax consequences of a particular transaction or factual scenario can request a Private Letter Ruling (PLR) or General Information Letter (GIL). Requests for PLRs and GILs must comply with certain requirements, which are currently set forth at 1 Code of Colorado Regulations 201-1, Regulation 24-35-103.5. PLRs are binding upon the Department only with respect to the specific taxpayer that requested the PLR. GILs are for informational purposes only and are not binding on the Department.