

DEPARTMENT OF REVENUE

Taxpayer Service Division – Tax Group

SEVERANCE TAX

1 CCR 201-10

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

Regulation 39-29-101 MATERIALS UPON WHICH SEVERANCE TAX IS LEVIED

Tax is levied on the severance from land in Colorado, regardless of whether or not a profit is derived, on the following materials:

- (1) Metallic Minerals
- (2) Molybdenum
- (3) Oil and Gas
- (4) Coal
- (5) Oil Shale

RULE 39-29-102(3)(A)

- (1) For the purpose of severance tax imposed on oil and gas under article 29 of title 39, C.R.S., “gross income” is calculated by deducting from gross lease revenues any costs borne by the taxpayer for transporting, manufacturing, and processing identifiable, measurable oil or gas. For the purpose of this rule, “identifiable and measurable oil or gas” means oil or gas that has been separated from a bulk production stream and has thereafter been separately measured.
 - (a) In calculating “gross income” for severance tax purposes, no deduction shall be allowed for the cost of transporting, manufacturing, or processing an unseparated bulk production stream in which oil and gas has not yet been separated and measured.
- (2) Except as otherwise required by this rule, costs shall be deductible in a manner consistent with guidelines established by the Property Tax Administrator for the calculation of “net taxable revenues” pursuant to § 39-7-101(1)(d), C.R.S. for property tax purposes.
- (3) For the purposes of this rule and § 39-29-102(3)(a), C.R.S., and in determining whether a sale is an arms-length transaction, the term
 - (a) “Entity” includes, but is not limited to, corporations, limited liability companies, partnerships, estates, and trusts.
 - (b) “Party” includes entities and individuals.
 - (c) “Related Parties” include:

- (i) individuals related to one another as a spouse, parent, child, sibling, grandparent, or grandchild, regardless of whether the relationship is by blood, marriage, adoption, or other means;
- (ii) an Entity who controls, is controlled by, or is under common control with another Party. For the purpose of this rule, ownership, directly or indirectly, of more than 50 percent of the voting securities, or instruments of ownership or other forms of ownership, of another Party constitutes control;
- (iii) in the case of a trust, the trust, its trustee, and its beneficiaries’;
- (iv) in the case of an estate, the estate, its personal representative (or equivalent), its beneficiary/heir, and its executor/administrator.

Regulation 29-102(3)(b). [Repealed eff. 08/30/2014]

Regulation 29-102(4). [Repealed eff. 08/30/2014]

Regulation 29-102(5). [Repealed eff. 08/30/2014]

Regulation 29-102(6). [Repealed eff. 08/30/2014]

Regulation 39-29-103.

- (1) **Tax levied.** In addition to all other taxes, there is levied a tax upon the severance of all metallic minerals from the earth within this state. The tax is levied against every mining operation engaged in severance of metallic minerals. The owners and/or operators of the mining operation so engaged shall be deemed liable for the maintenance of records, filing required forms and payment of the tax.
- (2) **Taxation.**
 - (a) For each taxable year, the tax is imposed at the rate of 2.25% of gross income. Such tax on gross income from the severance of metallic minerals is subject to an exemption of the first \$19,000,000 of gross income, which need not be prorated for a taxable period of less than twelve months. This exemption is allowed for each mining operation, which shall consist of an area of land in which the recoverable metallic mineral reserves can be developed in an efficient, economical, and orderly manner as a unit with due regard to conservation of recoverable metallic mineral reserves and other resources. All lands in a mining operation shall be under the effective control of a single operator/lessee and be able to be developed and operated as a single operation. A single mining operation may include, but is not limited to, surface mining, underground and in situ mining, on-site concentrating, milling, evaporation, and other primary processing and transportation at or near the mine site.
 - (b) Ores severed prior to January 1, 1978 shall not be subject to these provisions. Where ores are processed and abandoned and subsequently reclaimed by an unrelated economic interest they shall be generally considered as waste or residue.
 - (c) The following case is cited to exemplify what is not considered to be waste or residue from previously processed ores:

Taxpayer's predecessor in interest dredge mined property for gold, aggregates were picked up by dredge, washed but not treated chemically or crushed, then dumped back unchanged on same land. Gold was in free state, not actually extracted from aggregates. Aggregates were natural deposits of minerals in place - not dumps or tailings. Commissioner of Internal Revenue v. Claude C. Wood Company, 321 F.2d 207, (9th Cir. 1963).

- (3) **Tax credit.** All ad valorem tax determined on the basis of gross proceeds or net proceeds under Section 39-6-106, C.R.S. 1973, is allowed as a credit against the tax imposed in subsection (1) of this section. The ad valorem tax credit allowed may not exceed fifty percent of the metallic minerals severance tax imposed. The amount of ad valorem tax used to determine the credit shall be the amount assessed in the case of an accrual basis taxpayer during the taxable year or the amount paid by a cash basis taxpayer during a taxable year. In the case of a short period return including the return for the first taxable period the credit will be limited to an amount equal to the ad valorem tax assessed to an accrual basis taxpayer or paid by a cash basis taxpayer during the short period.

Regulation 39-29-104. Molybdenum [Repealed eff. 08/30/2014]

Regulation 29-105(1)(a). [Repealed eff. 08/30/2014]

Regulation 29-105(1)(b). [Repealed eff. 08/30/2014]

Regulation 39-29-105 AD VALOREM TAX CREDIT

- (1) The ad valorem tax credit is apportionable among related parties in proportion to each party's share of gross income. If such credit exceeds the tax on the severance of oil and gas, the excess amount does not create a right to a refund of severance tax or a credit against past or future severance tax liability.
- (a) In the case of a short taxable period, the credit shall apply only if the ad valorem tax is assessed to an accrual basis taxpayer or paid by a cash basis taxpayer during such period. The credit applicable for one period may not be used in another period.
- (2) The ad valorem tax paid on buildings, equipment and facilities shall not be used to compute the ad valorem tax credit.
- (3) The ad valorem credit is allowed only if the well production is subject to severance tax in the year the ad valorem tax is paid or assessed.
- (4) Taxpayers on a cash basis for oil or gas revenue and expense reporting for federal income tax purposes must claim ad valorem credits based on the date ad valorem taxes are paid to the county treasurer.
- (5) Taxpayers on an accrual basis for oil and gas revenue and expense reporting for federal income tax purposes must claim ad valorem credits in the tax year that contains the accrual date for the ad valorem tax in the State of Colorado. The accrual date is the levy date of the ad valorem tax, which is January 1 of the calendar year following the year of production that is reported to the county assessor.

Regulation 29-105(2)(b). [Repealed eff. 08/30/2014]

Regulation 29-105(2)(c). [Repealed eff. 08/30/2014]

Regulation 39-29-106 COAL

- (1) In addition to all other taxes, there is levied a tax upon the severance of coal from the earth within this state. The tax on coal is subject to an exemption of the first 300,000 tons per calendar quarter, which need not be prorated for taxable periods of less than a calendar quarter. This exemption is allowed for each person, which shall be considered to be any combined unitary economic interest consisting of one or more related operations that are supportive of, or dependent upon, each other for the production of coal. Such person shall be liable for the payment of the tax imposed.
- (2) **Exemptions.**
 - (a) There is allowed a credit equal to fifty percent of the severance tax on production of lignitic coal.
 - (b) There is allowed a credit equal to fifty percent of the severance tax on production of underground coal.
- (3) The rate of tax on coal shall be determined as follows:
 - (a) The basic rate shall be 36 cents per ton of coal.
 - (b) The rate shall be adjusted each quarter based upon changes in the Producer's Price Index - All Commodities, (not seasonally adjusted) prepared by the U.S. Department of Labor, Bureau of Labor Statistics. Revisions to the Producer's Price Index shall not result in a further adjustment to the coal tax rate for a given quarter.
 - (c) The adjustment shall be one percent of the basic rate for every full one and one-half percent change in the Producer's Price Index over the base period of January 1978.

Regulation 29-106(5). [Repealed effective 12/30/2007]

Repealed effective 12/30/2007

Regulation 29-107.

- (1) This tax is levied at the rate of four percent, except as provided in subsection
- (2) of this section, on the gross proceeds from each commercial oil shale facility. A commercial oil shale facility shall be considered to be any combined unitary economic interest consisting of one or more related operations which are supportive of, or dependent upon, each other for the production of oil shale or oil from oil shale.

Regulation 29-110(1)(d). [Repealed eff. 08/30/2014]

Regulation 39-29-111 OIL AND GAS SEVERANCE TAX WITHHOLDING

- (1) Every producer or purchaser who disburses funds owed to any person owning a working interest, a royalty interest, a production payment, or any other interest in any oil or gas produced in Colorado shall withhold one percent (1%) of the gross income from such payments; except, no withholding shall be taken from payments for:
 - (a) Interests held by the United States of America;

- (b) Interests held by the State of Colorado or any political subdivisions of the state of Colorado;
 - (c) Interests held by the Southern Ute Indian Tribe or the Mountain Ute Indian Tribe,; or,
 - (d) On or after January 1, 2000, any production exempt from the tax imposed by 39-29-105(1)(a) or (b), C.R.S.
- (2) Producers and purchasers do not have to register wells with production exempt under section 39-29-105(1)(b), C.R.S. where the well API number shows exempt levels of monthly production on the conservation levy records of the Colorado Oil and Gas Conservation Commission.
- (3) **Annual Report.**
 - (a) Every producer or first purchaser who withholds as provided in §39-29-111(1), C.R.S. shall furnish an annual report to the Department on a calendar year basis reflecting:
 - (i) Gross royalty income,
 - (ii) Amount withheld, and
 - (iii) Any ad valorem tax attributable to the particular royalty interest.
- (4) **Returns and Liability.** The tax is imposed on the interest owner who shall file the severance tax return and pay the severance tax. The return shall reflect the amount listed on the DR21W received from the producer or first purchaser; the tax liability shall not be shifted onto another party. For example, a limited partnership, LLC or S Corporation must file at the entity level. Partners, members, or shareholders shall not file a severance tax return to report oil and gas income received by the pass-through entity. The interest owner is the person who receives income from the producer or first purchaser regardless of the person's form of organization, including individual partnerships, LLCs or corporations.
- (5) The amount withheld pursuant to §39-29-111, C.R.S. by the producer or first purchaser may be claimed as a credit by the interest owner of oil and gas or oil shale production when such party files a return as required under §39-29-112, C.R.S.
 - (a) If the credit for the amount withheld exceeds the tax shown on the return, the excess credit shall be refunded to the royalty interest owner.

Cross Reference(s)

- 1. For additional information governing the requirement to file electronically, see Procedure and Administration Special Rule 1, "EFT Payment Due."

Regulation 29-111(2). [Repealed eff. 08/30/2014]

Regulation 39-29-112. Due Date for Filing Severance Tax Returns.

- (1) **Due Date.** When a severance tax filing due date falls on a Saturday, Sunday or a legal holiday, a return will be considered to have been timely filed if it is filed on the next business day.
- (2) **Automatic Extension of Time to File a Severance Tax Return.** All taxpayers will be allowed an automatic six-month extension of time for filing the severance tax return. However, interest on any net tax liability due will be assessed. Penalty may also be due if the taxpayer has not complied with regulation 39-29-115.

- (3) Extension Period. The extension of time to file ends when the return is filed. If the return is not filed within the six-month extension period, the extension period is disregarded and the return is considered delinquent filed.

Regulation 39-29-115. Penalty and Interest.

- (1) Except as specified in paragraph (2) of this regulation, the penalties for failure to file or to pay penalty described in §39-29-115(1), C.R.S. will not be due if a taxpayer files and pays the severance tax return within the extension period.
- (2) Unless specifically waived by the Department for good cause, the failure to file or pay penalty described in §39-29-115(1), C.R.S. will be due if:
- (a) the taxpayer has not paid at least ninety percent of the net tax liability into the Department of Revenue as of the original due date of the return,
 - (b) the taxpayer does not file by the extension due date, or
 - (c) the taxpayer does not pay all of the net tax due with the taxpayer's filed return.
- (3) Interest will be assessed on any unpaid net tax liability, including a return filed under extension, for the period from the original due date until payment is made.
- (4) Net tax liability means the total Colorado severance tax liability for the tax year reduced by all credits other than prepayment credits.
- (5) Prepayment credits are credits for severance tax paid by the taxpayer (severance tax withheld and estimated tax) on or before the original due date of the return.

Editor's Notes

History

Regulations 39-29-104, 39-29-106 eff. 4/30/2007.

Regulation 39-29-106 eff. 12/30/2007; regulation 29-106(5) repealed eff. 12/30/2007.

Regulations 39-29-101, 39-29-105, 39-29-106, 39-29-111 eff. 08/30/2014. Regulations 29-102(3)(b), 29-102(4), 29-102(5), 29-102(6), 39-29-104, 29-105(1)(a), 29-105(1)(b), 29-105(2)(b), 29-105(2)(c), 29-110(1)(d), 29-111(2) repealed eff. 08/30/2014.

Rule 39-29-102(3)(A) emer. rule eff. 01/23/2017.