



Montana Department of
REVENUE



Mineral Royalty Withholding Tax Guide

New July 2019

Introduction

This guide is for persons responsible for making mineral royalty payments to royalty owners for minerals produced in Montana. It explains the requirements for withholding Montana income tax from Montana mineral royalty payments made to non-resident individuals and non-Montana domiciled business entities. The income tax withholding on mineral royalties is administered in a similar manner as employers' withholding of income tax on wages.

Table of Contents

Definition of Terms in Guide	1
Mineral Royalty Tax Withholding Requirements	1
Accounting Service Provider	1
Amount to Withhold	1
Funds Held in Trust	2
Registration Requirement.....	2
Change in FEIN	2
Closing an Account.....	2
Quarterly Withholding Return and Payment of Withheld Tax	2
Payment Schedule and Due Dates.	2
Payment Options	2
Annual Filing Requirements.....	3
Filing Forms RW-3, 1099-MISC, and 1042-S.	3
Not Required Remitter	3
Filing Options.....	3
Exceptions to the Withholding Requirement.....	4
Voluntary Agreement to Withhold	4
Exception 1: Exception for Certain Royalty Owners	4
Exception 2: Exception for a Small Producing Remitter	4
Measuring the Production Threshold.....	4
Notification of Exempt Status by Publicly Traded Partnership or Tax-Exempt Organization	4
Exception 3: Exception for Payment Amount Below Statutory Threshold	5
Exception 4: Montana Minerals Minimum Amounts of Royalties.....	5
Unclaimed Property	5

Definition of Terms in Guide

Montana Mineral Royalty Payment: A payment to a royalty owner that represents the royalty owner's share of receipts from the sale of Montana minerals extracted from within the boundaries of Montana. The amount that is subject to Montana income tax withholding is the net amount of the Montana mineral royalty reported in Box 2 of the federal Form 1099-MISC or 1042-S.

Montana Source Minerals: Any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium, talc, vermiculite, limestone, or other nonrenewable merchantable product extracted from the surface or subsurface of the state of Montana.

Mineral Royalty Owner: A person entitled to receive periodic mineral royalty payments for a nonworking interest in the production of Montana source minerals, and the person to whom a remitter is required to issue a federal Form 1099-MISC or 1042-S to report the mineral royalty payments.

Remitter: A person that distributes a royalty payment to a royalty owner. A remitter may be the person that produces the Montana source mineral and/or the person that distributes the royalty on behalf of a producer. In all cases, the remitter is the person whose name and Federal Employer Identification Number (FEIN) must be entered on the payer boxes on the federal Form 1099-MISC or 1042-S.

Producer: An entity that produces Montana source minerals.

Person: An individual, estate, trust, partnership, corporation, limited liability company, and any other type of entity recognized under Montana law.

Non-Montana Domicile Business Entity: A business entity with a commercial domicile located outside the state of Montana. Commercial domicile is the place from which the trade business is directed or managed. A business entity includes a partnership, corporation, and any person other than an individual.

RW-3: Montana Annual Mineral Royalty Withholding Tax Reconciliation.

RW-1: Montana Mineral Royalty Withholding Tax Payment Voucher.

Form 1099-MISC or 1042-S: A federal Form 1099-MISC or 1042-S prepared on a pro forma basis for Montana income tax purposes for a mineral royalty owner with Montana mineral royalty payments for whom a federal Form 1099-MISC or 1042-S is not required to be issued for federal income tax purposes. See "Information returns for royalty owners" later in this guide for more information.

Mineral Royalty Tax Withholding Requirements

A remitter is required to:

- Withhold Montana income tax from Montana mineral royalty payments in the amount equal to 6 percent of the net amount payable to the royalty owners.
- Register a Montana Mineral Royalty Withholding account.
- File a quarterly return, Montana Mineral Royalty Withholding Tax Payment Voucher and payment of withheld tax.
- File an annual return, Montana Annual Mineral Royalty Withholding Tax Reconciliation and forms 1099-MISC or 1042-S.

Accounting Service Provider

A remitter may arrange with a third-party accounting service to handle the withholding, reporting, and payment duties on behalf of the remitter. However, the remitter remains responsible for any failure to comply with any of the withholding requirements.

Amount to Withhold

The amount to withhold is determined by multiplying the net amount of the Montana mineral royalty by 6 percent. This withholding tax rate applies to all types of royalty owners, regardless of whether the royalty owner is an individual, estate, trust, partnership, or other type of business entity. The rate is subject to change by the Montana Legislature.

Funds Held in Trust

Montana income tax withheld from royalty payments made to royalty owners is deemed to be held in trust by the remitter for the State of Montana. All amounts withheld must be submitted to the department in the manner set out in this guide, regardless of whether or not the amount was properly withheld.

Registration Requirement

Every remitter must register with the Montana Department of Revenue. Registration can be completed electronically through the [TransAction Portal \(TAP\)](#), **Register for a New Tax Account**, or by completing the [Business Registration](#) form. When the Mineral Royalty Withholding account is opened, it will be on a quarterly withholding schedule. Every remitter is subject to certain reporting requirements regardless whether or not the remitter is required to withhold any tax.

Change in FEIN

If a remitter's FEIN is changed for any reason, or the quarterly or annual return will be filed under a different FEIN, the remitter must complete and file a new [Business Registration](#) form to register the change.

Closing an Account

If a remitter will be permanently ceasing activity as a remitter or will no longer be making Montana mineral royalty payments, it must notify the Department of Revenue. Fax or mail a written request to close your mineral royalty withholding account. Include account ID, FEIN, business name, contact name, phone number, reason for closure and date of the last remittance. See **Questions?** at the end of this guide.

Within 30 days of ceasing to be a remitter or issuing royalty payments, you are required to send:

- payment for the final withholding from last royalty payments
- the RW-3 and 1099-MISC or 1042-S reporting total royalty payments and Montana withholding

Quarterly Withholding Return and Payment of Withheld Tax

Remitters required to withhold Montana income tax must pay the royalty withholding tax amount due on a calendar year quarterly basis. See payment options below.

Payment Schedule and Due Dates

Form RW-1 must be filed on or before the following due dates:

Quarter	Months	Due Date
1st	January, February, March	April 30
2nd	April, May, June	July 31
3rd	July, August, September	October 31
4th	October, November, December	January 31

Payment Options

For your convenience, we have a variety of payment options:

Online	Online	Mail Check
TransAction Portal https://tap.dor.mt.gov	ACH Credit https://mtrevenue.gov	Send RW-1 payment voucher and check as instructed on the form.
Pay with an e-check (free) or with a credit/debit card (small fee). Log in, select the Mineral Royalty Withholding Account link, then select Make a Payment.	Transfer funds from your financial institution to the Department of Revenue. See our website for more information.	To ensure proper credit to your account, you must include the Account ID and payment period on the voucher.

Annual Filing Requirements

On or before January 31 with an automatic extension to February 25 of each year, all remitters must file a Form RW-3, Montana Annual Mineral Royalty Withholding Tax Reconciliation. The annual return is used to report the total Montana mineral royalties paid and the total Montana income tax withheld from the payments during the calendar year.

Filing Forms RW-3, 1099-MISC, and 1042-S

Each remitter must also provide the department with a 1099-MISC and/or 1042-S for each mineral royalty owner as prescribed by the IRS. Whenever Montana mineral royalties are paid, the remitter must prepare a 1099-MISC or 1042-S for each royalty owner regardless of whether any tax was withheld. The form 1099-MISC or 1042-S for each royalty owner must have the correct taxpayer identification number (Social Security Number or FEIN) as reported to the remitter on federal Form W-9, and Montana must be identified as the state in Box 17 of Form 1099-MISC or Box 17c of Form 1042-S.

Important: Do not truncate identification numbers on the 1099-MISC or 1042-S. Provide all the numbers of the ID. Examples: 55-5555555 or 555-55-555; not XX-XXX555 or XXX-XX-555.

Not Required Remitter

A Not Required status will only apply if notified by the Montana Department of Revenue. If a remitter is exempt from the Montana mineral royalty withholding requirement, the remitter must file Form RW-3, 1099-MISC, and/or 1042-S to report the Montana mineral royalties paid to each royalty owner.

Filing Options

Online – Single Entry

1. Log into TAP; select your Mineral Royalty Withholding account.
2. For RW-3s, select the File Return link. Your return will be populated from records the department has on file, including payments. Complete and update other information if needed.
3. For 1099-MISC, select File Single 1099 forms and follow the steps provided on the screen.

Online – File Upload

The TAP File Upload feature can be used with payroll software products approved by the department.

Payroll service providers or third-party preparers can submit files on behalf of clients by following these steps:

1. Register to Upload 1099 or Withholding files in TAP.
2. Log into TAP, select the FLE account and follow the steps provided on the screen.

Mail

Send paper RW-3s, 1099-MISC to:

Montana Department of Revenue
PO Box 5835
Helena, MT 59604-5835

Important: To successfully process the forms, complete SSNs and FEINs are required on each 1099-MISC and all information must be clearly printed.

Exceptions to the Withholding Requirement

This section of the guide explains the exceptions to the withholding requirement. A Not Required status will only apply if notified by the Montana Department of Revenue.

If a remitter is notified of a Not Required status, the remitter is required to file an annual return (form RW-3, and form 1099-MISC or 1042-S) to report the Montana mineral royalties paid to each mineral royalty owner.

Voluntary Agreement to Withhold

If a remitter is exempt from the withholding requirements, the remitter is not prohibited from withholding income tax from the royalty payments made to royalty owners. A remitter and a royalty owner may mutually agree to have Montana income tax withheld on a voluntary basis from the royalty owner's Montana mineral royalty payments. If Montana income tax is voluntarily withheld, the remitter must comply with the registration, reporting, and payment requirements explained in this guide.

Exception 1: Exception for Certain Royalty Owners

A remitter is not required to withhold Montana income tax from Montana mineral royalty payments made to any of the following entities:

- The United States or any of its agencies, or any state and its political subdivisions.
- A federally recognized Indian tribe with respect to on-reservation oil and gas production pursuant to a lease entered under the Mineral Leasing Act of 1938 [25 USC 396a – 396g].
- The United States as trustee for individual Indians.
- A publicly traded partnership, as defined in Internal Revenue Code Section 7704, that is not treated as a corporation.
- An organization that is exempt from taxation under Montana Code Annotated, MCA 15-31-102
- The same person or entity as the remitter.

Exception 2: Exception for a Small Producing Remitter

A remitter that produces less than 100,000 barrels of oil and less than 500 million cubic feet of gas annually will be notified by the department if they are not required to withhold. The department shall determine a remitter's annual production of oil and gas based upon a 3-year rolling average of the remitter's annual production as reported by the remitter to the Montana Board of Oil and Gas Conservation. This exception does not apply if a remitter is not a producer.

If a remitter produces both oil and gas, and only one resource meets the requirements for withholding, the withholding provisions apply to both oil and gas.

Measuring the Production Threshold

The volume of production used to determine whether the threshold is exceeded is the amount reported by a well operator to the Montana Department of Natural Resources & Conservation (DNRC), Board of Oil and Gas Conservation, on Forms 5 and 5B for the preceding calendar years.

Notification of Exempt Status by Publicly Traded Partnership or Tax-Exempt Organization

A royalty owner that is a publicly traded partnership may be exempt from the withholding requirements provided the partnership submits a report to both the remitter and the department. The report, which can be in the form of a letter, must contain the publicly traded partnership's letterhead, state that the partnership is publicly traded and request exemption from 15-30-2536 through 15-30-2547, MCA. The request must be received by the remitter and the department prior to November 1 of the year prior to the calendar year in which the exemption is requested. Upon receipt of the report, a determination will be issued within 30 days.

Exception 3: Exception for Payment Amount Below Statutory Threshold

Upon written request, the department will allow a remitter to forgo withholding Montana income tax from any Montana mineral royalty payment that is less than a statutory threshold amount, as explained below:

- For royalty payments made on a quarterly basis, no withholding is required from a payment that is less than \$166.
- For royalty payments made on an annual basis, no withholding is required from a payment that, when annualized, is less than \$2,000.

Exception 4: Montana Minerals Minimum Amounts of Royalties

Any person or business that extracts minerals other than oil and gas must withhold 6 percent of the net royalty payments of all royalty interest owners. If the entity can provide information that satisfies the department that the net royalty payments are immaterial, they may not be required to withhold.

Unclaimed Property

Royalties are subject to withholding when it is payable. If royalties are not claimed at that time they must be reported as Unclaimed Property following MCA 70-9-801 through 70-9-829.

Questions? Call us at (406) 444-6937, Montana Relay at 711 for hearing impaired, or fax to 406-444-0750.

Email: DORWithholding@mt.gov

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Write: Montana Department of Revenue

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