
REQUEST LETTER

04-018

NAME
ADDRESS
PHONE

We hereby request an advisory ruling with regard to the credit for mineral production tax withholding claimed COMPANY on its 2003 Form, TC-65 and on future tax forms to be filed. The important facts related to this request are outlined below.

FACTS

COMPANY owns interests in oil and gas properties in the State of Utah and, therefore, has mineral production tax withholding. COMPANY has eight partners who are individuals, one partner which is an S Corporation and one partner which is a trust. All partners are non-Utah residents and have no other Utah source income.

To ease the administrative burden of filing multiple individual tax returns, the eight individual partners of COMPANY desire to be included in a composite filing by COMPANY to report their respective Utah source income. These partners also desire to claim their combined respective share (or 70.29%) of the Utah mineral production tax withholding on such composite return.

Utah State Auditors NAME and NAME have advised us that the credit for Utah tax withholding on mineral production cannot be claimed on a composite return. Citing Administrative Rule R865-9I-13, Section 3, they have concluded that the credit cannot be claimed by a partnership. They have also stated that, if this were an S corporation, the credit could be claimed. We find this distinction to be inconsistent and inequitable. In addition, to not allow the credit on a composite tax return will result in a duplication of the payment of the tax.

REQUEST FOR RULING

With regard to the foregoing facts and discussion, we respectfully request the following advisory ruling:

1. COMPANY will be allowed to claim the credit for Utah tax withheld on mineral production on its composite tax return, Form TC-65.
2. In the Event that the Commission does not allow the credit for Utah Tax withheld on mineral production, we respectfully request that the production relating to eight individual partners of COMPANY be exempt from the mineral production withholding tax.

Thank you very much for your assistance with this matter. Please contact me if you have any questions regarding this request.

RESPONSE LETTER

July 26, 2005

NAME
ADDRESS

RE: Private Letter Ruling Request –

Dear NAME,

We received your request regarding the credit for mineral production tax withholding claimed by COMPANY on its 2003 Form, TC-65 and on future tax forms to be filed. You represented that COMPANY owns interests in oil and gas properties in the State of Utah and, therefore, has mineral production tax withholding. COMPANY has eight partners who are individuals, one partner which is an S Corporation and one partner which is a trust. All partners are non-Utah residents and have no other Utah source income.

You stated the individual partners of COMPANY desire to be included in a composite filing by COMPANY to report their respective Utah source income. These partners also desire to claim their combined respective share (or 70.29%) of the Utah mineral production tax withholding on such composite return.

You stated your request by proposing two alternatives. You asked the Commission to either allow the Partnership to claim the credit for Utah tax withheld on mineral production on its composite tax return, Form TC-65, or to exempt the production relating to eight individual partners of COMPANY from the mineral production withholding tax.

Administrative Rule R865-9I-13(3) states,

Nonresident partners or nonresident members that are entitled to mineral production tax withholding credits, agricultural off-highway gas tax credits, or other Utah credits, may not be included in a composite filing, but must file form TC-40NR, Nonresident or Part-year Resident Form Individual Income Tax Return.

The form referenced by the rule is no longer used. However, the nonresident partners may file a TC-40 Individual Income Tax form. §59-10-303 deals with a non-resident partner's share of partnership income. Subsection (1) states,

In determining the adjusted gross income of a nonresident partner of any partnership, there shall be included only that part derived from or connected with sources in this state of the partner's distributive share of items of partnership income, gain, loss, and deduction entering into his federal adjusted gross income, as such part is determined under rules prescribed by the commission in accordance with the general rules in Section

59-10-116.

§59-6-102(3)(a) entitles a person filing to take a credit against individual income tax owed for the amount withheld by the producer. Filing a TC-40 will allow the individual partners to claim any credit to which they may be entitled. Accordingly, there will be no duplication in the payment of the tax.

The Commission declines to grant either of your requested alternatives. Instead, the nonresident partners should file a TC-40 and claim a credit for the amount withheld by the producer.

Please contact us if you have any other questions.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/SR
PLR 04-018