



Montana Mineral Royalty Withholding Tax Guide

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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. The income tax withholding on mineral royalties paid to royalty owners is administered in a similar manner as employers' withholding of income tax on wages paid to employees. The withholding may be used as a credit against the income taxes owed by a taxpayer.

What's New

The 2023 Montana Legislature passed Senate Bill 303, which increased the penalty for failing to file a required royalty and tax statement (Form 1099-MISC or Form 1042-S), from \$50 per form to \$150 per form. The minimum penalty was left unchanged at \$1,000.

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 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 either 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 Domiciled 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.

Form RW-3. Montana Annual Mineral Royalty Withholding Tax Reconciliation form.

Form 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.

Mineral Royalty Tax Withholding Requirements

Every remitter is subject to certain reporting requirements regardless of whether the remitter is required to withhold any tax. 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. Some exceptions are described later.
- Register a Montana Mineral Royalty Withholding account.

- **File a quarterly Form RW-1, Montana Mineral Royalty Withholding Tax Payment Voucher along with payment of the withheld tax.**
- File an annual Form RW-3, Montana Annual Mineral Royalty Withholding Tax Reconciliation, accompanied by all Forms 1099-MISC or 1042-S issued to royalty owners.

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 payments 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, corporation, 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 the amount was properly withheld.

Registration Requirement

Every remitter must register a business account electronically through TransAction Portal (TAP). In TAP, you can file returns electronically as well as manage tax account details. Register by visiting <https://tap.dor.mt.gov>. Under Businesses, click Register for a New Tax Account to start the registration process.

The following information is required to register for a Mineral Royalty Withholding account on TAP:

- **Federal Employer Identification Number** as used to report to the Internal Revenue Service.
- **Date** the remitter began operating in Montana.
- **Legal business name** as associated with the identification number and as reported to the Internal Revenue Service.
- **Assumed business name, trade name, or DBA.** This is the name used before the public.
- **Legal business address.** This must be the physical street address of the legal business headquarters.
- **Current mailing address.** This may be a post office box or other address. This is the address where the department will send all correspondence.
- **Contact name and phone number.** This is the individual that will act as the entity's representative.

Accessing and Managing Your Account Details

Once your registration has been approved, you will receive an Account ID. Include this ID on all correspondence, payments, and returns sent to the department. This Account ID is used to sign up for a TAP login. In TAP, you can view and print returns, make and view payments, view balances, view letters, manage login access, and add or edit name and address information.

Change in Federal Employer Identification Number

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 register a new account.

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. You may send a secure message through your TAP account to close your account.

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

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

Quarterly Withholding Return and Payment of Withheld Tax

All Mineral Royalty Withholding accounts are on a quarterly withholding schedule, meaning that they must remit quarterly mineral royalty withholding payments on a calendar year quarterly basis.

Payment Schedule and Due Dates

Payments must be made 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 offer a variety of payment options:

Online. Pay online through our TransAction Portal (TAP) at <https://tap.dor.mt.gov> to pay by e-check (free) or with a credit or debit card (will include additional transaction fees).

Pay by telephone. Call us at (406) 444-6900 to pay by e-check (free) or credit or debit card (will include additional transaction fees). You will need your Montana Account ID and bank or credit card information when you call.

Mail a check. To pay by check, mail RW-1 payment voucher and your check as instructed on the form. 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 the last business day of February of each year--all remitters must file a [Form RW-3](#), Montana Annual Mineral Royalty Withholding Tax Reconciliation. This 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 Form 1099-MISC and/or Form 1042-S for each mineral royalty owner as prescribed by the IRS. Whenever Montana mineral royalties are paid, the remitter must prepare a Form 1099-MISC or Form 1042-S for each royalty owner regardless of whether any tax was withheld. The Form 1099-MISC or Form 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 either Form 1099-MISC or 1042-S. Provide all the numbers of the ID.

Examples: 55-5555555 or 555-55-5555; not XX-XXX5555 or XXX-XX-5555.

Filing Options

The most accurate and efficient way to file Forms RW-3 is electronically. The current options for electronic filing are TAP Single Entry or TAP File Upload.

TAP Single Entry

TAP Single Entry may be used by remitters that have an active TAP login with the authority to file returns.

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

TAP 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 Form 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 Forms RW-3, 1099-MISC, and 1042-S to:

Montana Department of Revenue
P.O. Box 5835
Helena, MT 59604-5835

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

Late Filing Penalties

Failing to file any required Form 1099-MISC or Form 1042-S timely will result in the department assessing a penalty. The penalty is \$150 per form with a minimum penalty of \$1,000. Failure to timely file a Form RW-3 will result in the department assessing a \$50 penalty.

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 still 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, 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. 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. This exception does not apply if a remitter is not a producer.

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 determination is made on September 1 of each year, culminating with the department issuing a new remittance schedule for the subsequent tax year. For example, on September 1, 2023, the department averaged a remitter's oil and gas production from 2020, 2021, and 2022, to determine the 2024 remittance schedule.

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 be written on the publicly traded partnership's letterhead and state that the partnership is publicly traded and that it requests 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, the department will issue a determination 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 Title 70 Chapter 9 Part 8](#).

Questions? Call us at (406) 444-6937, or Montana Relay at 711 for hearing impaired. Email questions to MTDORWithholding@mt.gov.