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MEMORANDUM¹

TO: Statutory Revision Committee

FROM: Ed DeCecco, Office of Legislative Legal Services

DATE: February 19, 2021

SUBJECT: Correcting section 39-29-111, C.R.S.

Summary

Section 39-29-111, C.R.S., relates to the withholding requirements that apply to disbursements to oil and gas interest owners. The section has several minor defects and an anachronism:

- A definition that is too narrow and redundant;
- Extraneous references to "oil shale";
- A cross-reference to a repealed subsection; and
- An obsolete reporting requirement.

The Department of Revenue and the Office of Legislative Legal Services identified the defects and anachronism.

Analysis

Section 39-29-111 (1)(a), C.R.S., requires a producer or purchaser who disburses money to an oil and gas interest owner to withhold a portion of those funds and pay

¹ This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

the withheld amount to the Department of Revenue. There are several problems with this section.

1. The definition "producer" is inconsistent with the statute and has extraneous references to "oil shale".

Under section 39-29-111 (1)(a), C.R.S., "[e]very producer or purchaser who disburses funds that are 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 from the amount owed to such person an amount equal to one percent of the gross income from such interest...." For purposes of this provision, "producer" is defined in section 39-29-111 (3), C.R.S., as "every person producing or extracting oil shale or oil and gas deposits located within this state or the first purchaser of oil shale or oil and gas produced from deposits located within this state." There are two problems with this definition.

First, the term "producer" includes a "first purchaser", but subsection (1)(a) already separately applies to a "purchaser." As such, applying the definition to subsection (1)(a), it redundantly requires a person producing or extracting, *a first purchaser*, and a *purchaser* to withhold amounts. Moreover, the definition narrows the statutory provision to apply to just "first purchasers," which is how the department has interpreted it, and not all purchasers. These defects can be remedied by expanding the defined term from "producer" to "producer or purchaser" so that the definition is in harmony with the subsection to which it applies.

Second, the definition includes extraneous references to "oil shale." As originally enacted in 1977,² section 39-29-111, C.R.S., required withholding related to oil shale. But that was removed from subsection (1) of the section in 1985.³ The requirement only applies to those persons having an interest in "any oil or gas produced in Colorado." Moreover, the amount withheld is based on "gross income as defined in section 39-29-102 (3)(a)," which only applies to oil and gas, and not oil shale. This defect can be remedied by twice striking " oil shale or" from the definition.

² H.B. 77-1076.

³ H.B. 85-1126.

2. There is a cross-reference to a repealed provision.

Section 39-29-111 (1)(a), C.R.S., requires producers and purchasers to pay the withheld amounts "to the department in the manner set forth in paragraph (b) of this subsection (1)." Subsection (1)(b) of the section, however, was repealed in House Bill 19-1256.⁴ Prior to its repeal, subsection (1)(b) gave the Department of Revenue the authority to require electronic payments. The General Assembly repealed this provision in House Bill 19-1256 and replaced it with section 39-21-119.5, C.R.S., which mandated electronic filing for a number of taxes, including these withholding payments. This defect can be remedied by substituting a reference to the electronic filing provision in section 39-21-119.5 (4)(b), C.R.S.

3. There is an obsolete reporting requirement that applied prior to 2007.

Section 39-29-111 (1)(a), C.R.S., established payment and filing requirements for producers and purchasers that applied prior to July 1, 2007. This provision is now obsolete, and can be repealed.

Statutory Charge⁵

The proposed bill fits within the charge of the Statutory Revision Committee because it will modify or eliminate antiquated, redundant, and contradictory provisions of law.

Proposed Bill

The attached bill corrects the defects in section 39-29-111, C.R.S.

⁴ See http://leg.colorado.gov/sites/default/files/documents/2019A/bills/sl/2019a_sl_395.pdf

⁵ The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the SRC "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

ADDENDUM A

39-29-111. Withholding of income from oil and gas interest.

(1) (a) Every producer or purchaser who disburses funds that are 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, unless such production is exempt under section 39-29-105 (1) and the producer or purchaser has registered such exempt production with the department of revenue in accordance with rules promulgated by the department, withhold from the amount owed to such person an amount equal to one percent of the gross income from such interest, except for income accruing to the United States or the state of Colorado or to any political subdivision of the state of Colorado. The amount withheld shall be based on gross income as defined in section 39-29-102 (3)(a). On or before each March 1, June 1, September 1, and December 1 prior to July 1, 2007, the aggregate of all such amounts withheld during the prior calendar quarter shall be paid to the department; and, no later than such dates, a report covering the withholding of such amounts shall be filed with the department upon forms prescribed by the executive director. On the first day of each month beginning with July 1, 2007, the aggregate of all such amounts withheld during the calendar month that was three months prior thereto shall be paid to the department in the manner set forth in paragraph (b) of this subsection (1). Nothing in this section shall be so construed as to reduce the tax imposed by this article.

(b) Repealed.

(2) Every person making a return as required by section 39-29-112 may take credit for the amount withheld by the producer or the first purchaser against the tax shown to be due upon such return, and any overpayment shown on such return shall be refunded to the taxpayer.

(3) For the purposes of subsection (1) of this section, "producer" means every person producing or extracting oil shale or oil and gas deposits located within this state or the first purchaser of oil shale or oil and gas produced from deposits located within this state.

(4) On or before March 1 of each year, every producer or purchaser shall provide each person holding any interest pursuant to subsection (1) of this section with a statement of the amounts deducted and withheld pursuant to this section from disbursements made to such person during the preceding calendar year. Such statements shall be retained in the records of every producer or purchaser for a period of three years and shall be made available to the department of revenue upon the written request of the department.

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

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2.5.21

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LLS NO. 21-0722.01 Ed DeCecco x4216

COMMITTEE BILL

Statutory Revision Committee

BILL TOPIC: "Fix Defects Related To Severance Withholdings"

A BILL FOR AN ACT

101 CONCERNING THE CORRECTION OF DEFECTS RELATED TO SEVERANCE
102 TAX WITHHOLDINGS FROM A DISBURSEMENT TO AN OIL AND GAS
103 INTEREST OWNER.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Under current law, a producer or purchaser is required to withhold an amount from each disbursement made to an interest owner in any oil and gas produced in the state and pay this amount to the department of revenue. The bill fixes defects related to this law by:

- For purposes of electronic payments, replacing a

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

cross-reference to a repealed subsection with a reference to the current statutory requirement;

- Expanding the defined term "producer" to be "producer or purchaser" to eliminate a redundancy in the law; and
- Repealing extraneous references to "oil shale" from the definition.

The bill also repeals obsolete filing requirements that applied prior to July 1, 2007.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 39-29-111, **amend**
3 (1)(a) and (3) as follows:

4 **39-29-111. Withholding of income from oil and gas interest.**

5 (1) (a) Every producer or purchaser who disburses funds that are owed
6 to any person owning a working interest, a royalty interest, a production
7 payment, or any other interest in any oil or gas produced in Colorado
8 shall, unless such production is exempt under section 39-29-105 (1) and
9 the producer or purchaser has registered such exempt production with the
10 department of revenue in accordance with rules promulgated by the
11 department, withhold from the amount owed to such person an amount
12 equal to one percent of the gross income from such interest, except for
13 income accruing to the United States or the state of Colorado or to any
14 political subdivision of the state of Colorado. The amount withheld shall
15 be based on gross income as defined in section 39-29-102 (3)(a). ~~On or~~
16 ~~before each March 1, June 1, September 1, and December 1 prior to July~~
17 ~~1, 2007, the aggregate of all such amounts withheld during the prior~~
18 ~~calendar quarter shall be paid to the department; and, no later than such~~
19 ~~dates, a report covering the withholding of such amounts shall be filed~~
20 ~~with the department upon forms prescribed by the executive director. On~~
21 the first day of each month beginning with July 1, 2007, the aggregate of

1 all such amounts withheld during the calendar month that was three
2 months prior thereto shall be paid to the department in the manner set
3 forth in ~~paragraph (b) of this subsection (1)~~ SECTION 39-21-119.5 (4)(b).
4 Nothing in this section shall be so construed as to reduce the tax imposed
5 by this ~~article~~ ARTICLE 29.

6 (3) For the purposes of subsection (1) of this section, "producer
7 OR PURCHASER" means every person producing or extracting ~~oil shale or~~
8 oil and gas deposits located within this state or the first purchaser of ~~oil~~
9 ~~shale or~~ oil and gas produced from deposits located within this state.

10 **SECTION 2. Act subject to petition - effective date.** This act
11 takes effect at 12:01 a.m. on the day following the expiration of the
12 ninety-day period after final adjournment of the general assembly; except
13 that, if a referendum petition is filed pursuant to section 1 (3) of article V
14 of the state constitution against this act or an item, section, or part of this
15 act within such period, then the act, item, section, or part will not take
16 effect unless approved by the people at the general election to be held in
17 November 2022 and, in such case, will take effect on the date of the
18 official declaration of the vote thereon by the governor.