

79-3222a. Mining production payment reports required; withholding of production payments, procedures; penalties. (a) In addition to the reporting requirement prescribed by K.S.A. 79-3222, and amendments thereto, complete reports shall be required to be filed with the director of taxation for all oil, gas or mining production payments paid or payable during any year to any person or entity subject to taxation under the Kansas income tax act. Such reports shall be filed at or before the time the information returns prescribed by K.S.A. 79-3222, and amendments thereto, are required to be filed with the director. The director may require any person or entity making such production payments to report the total production payments made to any person during any calendar year, in addition to any other information necessary to calculate Kansas income tax upon such production payments. The director may require such reports from any person or entity making production payments for any time period prior to the effective date of this act based on payment records that such person or entity is required to maintain by state or federal law. For purposes of this section, the term "production payment" means payments of proceeds generated from mineral interests in this state including, but not limited to, a lease bonus, delay rental, royalty and working interest payment and overriding royalty interest payment.

(b) The director is authorized and empowered to issue orders to withhold all production payments to any person upon a determination that the person has failed to file a state income tax return as required by law reporting production payment income or has failed to pay state income tax. The order to withhold production payments shall be directed to the person or entity making production payments and shall apply to all production payments that the person named within such order is entitled to until the return is filed and the income tax, penalty and interest are paid. Release of the order to withhold shall be mailed by the director to the person or entity withholding production payments upon the filing of the return and payment of the tax, penalty and interest by the person named within such order or upon payment of the tax, penalty and interest by the person or entity withholding the production payment.

(c) Upon receipt of the order of the director to withhold production payments, the person or entity making production payments, within 60 days of receiving such order, shall:

- (1) Withhold payments for all production of the person named within such order until such order is released by the director;
- (2) hold in suspense all production payments subject to such order to withhold; and
- (3) in the case of established delinquent income tax, upon receiving such order from the director of such established delinquency, pay the tax, penalty and interest out of the withheld production payments and receipt such tax payment to the taxpayer in lieu of cash in settlement for such production.

The order to withhold shall apply to production payments in any case where a successor person or entity is required to make production payments and to production payments of subsequent production of minerals in this state. Any person or corporation that withholds production payments or pays same to the director pursuant to such order is hereby relieved of all liability for such acts.

(d) The director shall mail notice to each delinquent taxpayer at the last known address reported by the person or entity making production payments prior to issuance of an order to withhold production payments. The notice shall contain a statement that the taxpayer has failed to file an income tax return as required by law or has failed to pay delinquent income tax. Within 15 days after the mailing of such notice, the taxpayer may request a hearing of the director relating to taxpayer's failure to file an income tax return as required by law or failure to pay delinquent income tax. Based on the evidence presented at such hearing, the director shall make a final determination and shall notify the taxpayer of such decision. An order to withhold production payments may be issued by the director for collection of any delinquent income tax, penalty and interest owed by the taxpayer entitled to production payments.

(e) Any person or entity making production payments who refuses or fails to file the reports required by this section, in the manner and at the time prescribed by the director, shall be subject to a penalty in the amount of \$50 for each such refusal or failure. Any person or entity making production payments who refuses to withhold payments shall be subject to a penalty in the amount of \$100 for each payment made which was ordered to be withheld.

History: L. 1987, ch. 364, § 1; July 1.