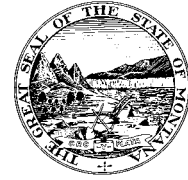




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November 19, 2008

FAQs – Resource Indemnity and Groundwater Assessment Tax Opencut Sand and Gravel Pits

If you have any questions or concerns about the below frequently asked questions, please feel free to contact Lee Willis at (406)444-5877.

1. What is the resource indemnity and groundwater assessment tax?

The resource indemnity and groundwater assessment tax (RIGWAT), also known as the resource indemnity trust tax (RITT), was created to indemnify the citizens of Montana for the loss of long-term value resulting from the depletion of Montana's natural resources, and for environmental damage caused by mineral development. RIGWAT is assessed on the extraction of talc, coal, limestone, industrial garnets, sand, gravel and other nonrenewable minerals.

2. I received a letter from the Department of Revenue stating that I may have a requirement to file a RIGWAT return. Why am I receiving a letter?

The Department of Environmental Quality's Opencut Mining Program was audited by the Legislative Audit Division. The legislative audit and further research done by the Department of Revenue found there were approximately 300 opencut sand and gravel pits, permitted by the Department of Environmental Quality, that have not filed corresponding RIGWAT returns with the Department of Revenue. The Department was unable to determine if the 300 permitted opencut sand and gravel operations were filing or were required to file. The Department determined the most effective method of contacting these operators was with a letter. The letters are an effort to notify the opencut operators that they *may* have an obligation to file and pay the RIGWAT tax.

3. Who is responsible for filing the RIGWAT return?

The extractor, producer or operator of the opencut sand and gravel pit is responsible for filing the RIGWAT return. The land owner where the sand and gravel pit exists is not responsible for filing the RIGWAT return, unless the land owner is also the extractor, operator, or producer.

4. Who is the extractor, producer or operator?

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The extractor, producer or operator is the individual, partnership, firm, association, corporation, or other entity that engages in or carries on the business of mining, extracting, or producing sand and gravel. The terms extractor, producer or operator have the same meaning.

5. How often is the RIGWAT return required to be filed?

RIGWAT is an annual tax due on the 60th day after the end of the calendar year. You may get a blank RIGWAT return from the Department's website. The return can be found at: http://mt.gov/revenue/formsandresources/forms/RIT_1.pdf

The Department hopes to have this return available for electronic filing soon.

6. What is the RIGWAT tax rate for sand and gravel?

The tax rate for RIGWAT for sand and gravel is .5% of the gross value. Please note there is a \$25 minimum tax required if sand and gravel is extracted. For example: If an operator has determined that they have \$15,000 in gross value there RIGWAT tax due is \$75. ($\$15,000 \text{ gross value} \times 0.005 \text{ tax rate} = \75 tax). If the gross value is \$1,000, the RIGWAT tax is \$25, ($\$1,000 * .005 = \5 , thus the \$25 minimum tax).

7. What is the RIGWAT tax based on?

The RIGWAT tax is based on the gross value of the mineral at the time of extraction from either the surface or subsurface of the ground. (ARM 42.32.103)

8. What is meant by the “time of extraction”?

The time of extraction is after loading the raw product and before hauling or transportation occurs. (ARM 42-32-107)

9. What is gross value?

Gross value means the market value of any merchantable mineral extracted or produced during the taxable year. Market value is the value at the time of extraction at which the sand and gravel would change hands between a willing buyer and a willing seller.

10. How do I compute or determine the gross value?

There are several ways to determine the gross value of sand and gravel. The following methods provide a process for the producer to use to determine gross value. The methods must be followed in order. For example, if the producer can use Method 1 to determine gross value, that is the value that should be used and there would be no need to move on to Method 2.

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Method 1:

The producer's actual sales prices for the sand and gravel sold at the time of extraction should be used as the gross value.

For Example: If a producer agrees to pay a land owner \$1.00 per cubic yard of sand and gravel extracted from the land owner's property the gross value would be \$1.00 per cubic yard.

Method 2:

If the producer does not have the sales price information discussed in Method 1, a market survey of other producers' sales of sand and gravel should be done. If this method is used, the producer must obtain market data for three or more other producers. This data must represent the results of competitive transactions in markets with a substantial number of unrelated buyers and sellers. The producer must document that all values used are for sand and gravel of comparable quality sold in quantities approximating the producers' level of production. It may also be necessary to consider the geographic area served by the markets used for comparison. All information obtained by the producer to support this method must be provided to the department on request.

For Example: A producer contacts three sand and gravel operations and obtains sales information that indicates that they are acquiring sand and gravel for \$.80, \$1.50 and \$1.00 per cubic yard. The operator would average the three sales prices to determine the gross value to be reported. In this example, the producer would report a gross value of \$1.10 per cubic yard.

Method 3:

If the information required by Method 1 or Method 2 above is not available, the proportionate profits method may be used to compute a value in the absence of adequate market data. The general formula for this computation is stated below.

$$\text{Taxable value/unit} = \frac{\text{Direct costs through extraction}}{\text{Total direct costs}} \times \text{Sales price/unit}$$

(A) Direct costs through extraction will include overburden removal, drilling, blasting, loading, mine reclamation, royalties and any other direct costs incurred through the loading process.

(B) Total direct costs will include, in addition to those noted above, all direct costs applied to the mineral products up to the point of production of the first marketable product or group of products that have not been manufactured or fabricated. These costs will typically include hauling, sorting, crushing, grinding, drying, smelting, refining, etc. Final reclamation costs related to dismantling facilities may also be included in total direct costs.

(C) The sales price per unit will be the weighted average price of the first marketable product or group of substantially similar products sold in significant quantities by the producer. The first marketable product or group of products will not include

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manufactured products. For example, a cement producer must use the sales price of bulk cement not the price of concrete blocks he may manufacture from the cement.

(D) Only direct costs may be used in computing the cost ratio for the formula. No costs that benefit the operation as a whole or are not directly related to a specific phase of the mining or processing of the mineral product will be included in the ratio.

For Example: Company A extracts 10,000 yards of gravel from its permitted pit in calendar year 2008. Company A does not sale the gravel at the time of extraction. Company A ultimately sales the product at its retail store after incurring many costs getting the product prepared to be sold. The price at the retail store is \$12.50 per yard.

Company A has incurred \$1,000 in extraction costs and has incurred \$25,000 in total direct costs.

Based upon the above formula the taxable unit value would be \$.50.

$$\frac{\$1,000 \text{ direct costs through extraction}}{\$25,000 \text{ total direct costs}} = .04 * 12.50 = \$.50$$

11. We have not extracted any sand and gravel or had an open pit mine in operation for many years?

Please send the Department a letter stating that the permitted mine is not in operation and you are not actively in the business of extracting sand and gravel.

12. I extract sand and gravel on state or federal lands do I still have to file RIGWAT returns?

Yes, you have to file RIGWAT if you extract on state or federal lands.

13. How will penalties and interest on past due taxes be handled?

If a RIGWAT return is required to be filed and tax is due and the return is received by the Department by December 31, 2008, the Department will waive all penalties. Interest will not be waived.

14. If I have 5 permitted sand and gravel pits and I haven't extracted any sand and gravel in one of my 5 permitted pits in the calendar year, am I required to file and pay the RIGWAT for that pit?

You are required to file a zero return, a RIGWAT return filed with zero production, for all non-producing permitted pits until the pit(s) becomes inactive and will not have any further extraction. A zero return is required so the Department is aware that there was no production and we won't send you a non-filer letter.

In regards to tax payment, since you have not extracted any material from the pit during the calendar year you are not required to pay RIGWAT for that pit.

15. Do operators, who operate multiple permitted sand and gravel pits, file separate returns for each permitted sand and gravel pit or can the producer/operator combine all of the pits on to one RIGWAT return?

A producer who operates more than one sand and gravel pit may combine all of the production from the multiple sand and gravel pits onto one RIGWAT return, however each sand and gravel pit where extraction occurred during the calendar year must at least pay the RIGWAT minimum tax for each pit of \$25.

16. If a company is executing a public works contract is the material removed subject to the tax?

Yes. The law does not allow for a RIGWAT exemption for public works contracts.

17. If I don't agree with the Department's determination that I am required to file and pay the RIGWAT, what are my appeal rights?

If you disagree with this assessment, you must file a written objection within 30 days of the date of this assessment. Objections may be submitted to the attention of the undersigned either electronically to soaobjections@mt.gov or by mail to:

Montana Department of Revenue
Business Tax and Valuation Bureau
Natural Resource Tax
P.O. Box 5805
Helena, Montana 59604-5805

Failure to file a written objection, within 30 days of the date of this letter, shall be deemed an admission that you agree that the debt stated in this letter is due and owing

If you do object, §15-1-211, MCA, allows you to provide the reasons for your objections, in writing, by telephone, or if requested, at an informal conference. An informal conference is not subject to the Montana Administrative Procedure Act.

You have the right to appeal a final decision of the Department. These rights are also found in §15-1-211, MCA. In addition, your rights under the Taxpayer Bill of Rights can be located in §15-1-222, MCA.

18. If I overpaid my RIGWAT tax what can I do?

If an operator believes that they have overpaid their RIGWAT in the past 5 years, they may file an amended RIGWAT return. To file an amended RIGWAT return use the current return that is provided on the Department website, populate it with the correct information, write amended on the top of the return, and mail it to the appropriate address. Once the Department has received and processed the return the appropriate amount of refund will be calculated and sent to you.