

**Illinois Department of Revenue
Regulations**

Title 86 Part 475 Section 130	Withholding of Tax
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TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 475
ILLINOIS HYDRAULIC FRACTURING TAX ACT

Section 475.130 Withholding of Tax

- a) *Any purchaser who makes a monetary payment to a producer for his or her portion of the value of oil and gas from a production unit shall withhold from that payment the amount of tax due from the producer. Any purchaser who pays any tax due from a producer shall be entitled to reimbursement from the producer for the tax so paid and may take credit for that amount from any monetary payment to the producer for the value of the oil and gas. To the extent that a purchaser required to collect the tax imposed by the Tax Act has actually collected that tax, the tax is held in trust for the benefit of the State of Illinois. [35 ILCS 450/2-25]*
- b) **Withholding of Tax by Purchasers**
- 1) *The tax imposed by the Tax Act is upon the producers of the oil or gas in the proportion to their respective beneficial interests at the time of severance. The first purchaser of any oil or gas sold shall collect the amount of the tax due from the producers by deducting and withholding that amount from any payments made by the purchaser to the producers and shall remit the tax imposed by the Tax Act to the Department. [35 ILCS 450/2-30(a)]*
- 2) *The first purchaser is required to withhold and remit the tax imposed by the Tax Act to the Department from the oil and gas purchased from the production unit unless the first purchaser obtains from the operator an exemption certificate signed by the operator stating that the production unit is not subject to the tax imposed by the Tax Act.*
- A) **Wells Drilled Prior to July 1, 2013**
- i) For production units containing wells drilled prior to July 1, 2013 and from which the first purchaser commences purchasing oil or gas on or after January 1, 2019, the exemption certificate must include the following information:
- name and address of the operator;
 - common name of the production unit and the number assigned to the production unit by the prior first purchaser;

- a statement by the operator that he or she will promptly notify the first purchaser in the event that the well becomes subject to the tax imposed by the Tax Act; and
 - a statement by the operator that the production unit is exempt from the tax imposed by the Tax Act.
- ii) The first purchaser shall maintain in its books and records the legal description of each production unit identified in the exemption certificate. The operator may provide, and the first purchaser may accept, one exemption certificate containing the name of the operator, the common names and numbers of all the production units, and the statements required by subsections (b)(2)(A)(i), third and fourth bullets.
- B) For wells drilled on or after January 1, 2019, *the exemption certificate must include the following information:*
- i) *name and address of the operator;*
 - ii) *common name of the well on the permit issued by DNR;*
 - iii) *number assigned to the production unit by the first purchaser, if available;*
 - iv) *legal description of the production unit;*
 - v) *well reference number on the permit issued by DNR;*
 - vi) a statement by the operator that he or she will promptly notify the first purchaser in the event that the well becomes subject to the Tax Act; and
 - vii) *a statement by the operator that the production unit is exempt from the tax imposed by the Tax Act. [35 ILCS 450/2-30(b)]*
- 3) An operator must promptly notify the first purchaser in the event that a well certified as exempt from the tax imposed by the Tax Act becomes subject to tax.
- 4) The purchaser is not required to obtain a new exemption certificate if the operator providing the exemption certificate to the purchaser assigns or transfers operations and management of the well to a new operator.
- 5) *If a first purchaser obtains an exemption certificate that contains the required information and reasonably relies on the exemption certificate and it is subsequently determined by the Department that the production unit is subject to the tax imposed by the Tax Act, the Department will collect any tax that is due from the operator and producers, and the first purchaser is relieved of any liability [35 ILCS 450/2-30(b)]. During any determination by the Department of whether the first purchaser reasonably relied on an exemption certificate, the Department will inquire whether the purchaser had any information or knowledge that would lead a reasonable person to believe the statement provided by the*

operator that the production unit is exempt was false. If the Department provides a purchaser with a lien in the amount of any assessment for underpayment of tax, penalty and interest, the purchaser shall suspend payment of oil or gas proceeds from the well to the producers until such time as the purchaser receives a release of lien. A purchaser shall also honor any levy issued to it to collect amounts withheld pursuant to a lien. The Department retains all other legal remedies to collect the underpayment from the producers.

- 6) *When the title to any oil or gas severed from the earth, soil, or water is in dispute and the purchaser of that oil or gas is withholding payments on account of litigation, or for any other reason, the purchaser is hereby authorized, empowered, and required to deduct from the gross amount thus held the amount of the tax imposed and to make remittance of the tax to the Department as provided in the Tax Act [35 ILCS 450/2-55].*
- 7) If a purchaser purchases oil or gas from an operator or person claiming to be acting as a purchaser for purposes of the Tax Act, or the operator or person requests payment for 100% of the value of the oil or gas without withholding the tax imposed by the Tax Act, the purchaser shall obtain a written withholding certification from the operator or person for each well or production unit from which oil or gas is removed, subject to the tax imposed by the Tax Act.
 - A) The withholding certification shall contain the following information:
 - i) name and address of the operator or person;
 - ii) common name of the well on the permit issued by DNR;
 - iii) number assigned to the production unit by the operator, if available;
 - iv) legal description of the production unit;
 - v) well reference number on the permit issued by DNR;
 - vi) the certificate of registration number obtained by the operator or person from the Department under Section 475.160; and
 - vii) a statement by the operator or person stating that the tax imposed by the Tax Act will be withheld and paid by the operator or person.
 - B) The purchaser shall maintain the certification in its records. The purchaser is prohibited from paying 100% of the value of the oil or gas removed from wells subject to the tax imposed by the Tax Act to any operator or person without withholding the tax imposed by the Tax Act unless the purchaser obtains from the operator or person a certificate of registration number issued by the Department under Section 475.160. A withholding certificate is not required if the oil or gas purchased from the wells or production units by the purchaser is not subject to the tax imposed by the Tax Act.

c) Withholding of Tax by Operators

- 1) *The tax imposed by the Tax Act is upon the producers of the oil or gas in proportion to their respective beneficial interests at the time of severance. Any operator who makes a monetary payment to a producer for his or her portion of the value of products from a production unit shall withhold from that payment the amount of tax due from the producer. Any operator who pays any tax due from a producer shall be entitled to reimbursement from the producer for the tax so paid and may take credit for that amount from any monetary payment to the producer for the value of products. To the extent that an operator required to collect the tax imposed by the Tax Act has actually collected that tax, the tax is held in trust for the benefit of the State of Illinois. [35 ILCS 450/2-50(c)] (See Section 475.135(b).)*

- 2) *When the title to any oil or gas severed from the earth or water is in dispute and the operator of the oil or gas is withholding payments on account of litigation, or for any other reason, the operator is hereby authorized, empowered and required to deduct from the gross amount thus held the amount of the tax imposed and to make remittance of the tax to the Department as provided in this Section [35 ILCS 450/2-50(e)].*