

## **Opinion No. 88-31**

May 3, 1988

**OPINION OF:** HAL STRATTON, Attorney General

**BY:** Lyn Hebert, Assistant Attorney General

**TO:** Mr. Will Waggoner, New Mexico Legislative Council, 334 State Capitol, Santa Fe, New Mexico 87503

### **QUESTIONS**

May a governmental unit raise an individual's or a group of individuals' property tax over five percent under the current yield control provision of the New Mexico Property Tax Code, Subsection 7-37-7.1(A) NMSA 1978?

### **CONCLUSIONS**

Yes.

### **ANALYSIS**

Section 7-37-7 NMSA 1978 establishes the maximum tax rates that the department of finance and administration may set for the use of the various governmental units. These rates apply to all property of a similar kind within the governmental unit's taxing jurisdiction. Section 7-37-2 NMSA 1978 states: "A tax is imposed upon all property subject to valuation for property taxation purposes under Article 36 of Chapter 7 NMSA 1978. The tax shall be imposed at the rates authorized and in the manner and for the purposes specified in this article."

Subsection 7-37-7.1(A) NMSA 1978 provides, in part:

[I]n setting the general property tax rates for residential and non-residential property, ...neither the department of finance and administration nor any other entity authorized to set or impose a rate or assessment shall set a rate or impose a tax or assessment that will produce revenue from residential and non-residential property in a particular governmental unit in excess of a dollar amount derived by multiplying the growth control factor by the revenue due from the imposition on residential and nonresidential property for the prior property tax year in the governmental unit of the rate, imposition or assessment for the specified purpose. The calculation described in this subsection shall be separately applied to residential and nonresidential property. Except as provided in Subsections D and E of this section, no tax rate or benefit assessment that will produce revenue from either class of property in a particular governmental unit in excess of the dollar amount allowed by the calculation shall be set or imposed. The rates imposed pursuant to Sections 7-32-4 and 7-34-4 NMSA 1978 shall be those which would have

been imposed but for the limitations in this section. As used in this section, "growth control factor" is a percentage represented by "G" in the following formula:

$$G = (\text{base year value} + \text{net new value})$$

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base year value

expressed as a percentage, but if the percentage is less than one hundred percent, then one hundred percent shall be used, plus percent change I.

(Emphasis added.) Paragraph 7-37-7.1 (A)(3) defines "percent change I" as a percent not in excess of five percent that is derived from changes in the annual general business indicator index for state and local government purchases of goods and services, as published by the United States Department of Commerce.

Subsection 7-37-7.1(A) prohibits the department of finance and administration from setting a tax rate that would permit a governmental unit to receive property tax revenue in an amount that exceeds a calculated percentage, not to exceed 105% of the previous year's tax receipts. Subsection 7-37-7.1(A) limits neither the yield from an individual's or a group of individuals' property tax, nor any increases in the valuation of property for property tax purposes. Rather, it sets a cap on the total property tax collections for any governmental unit.

When the legislature enacted Section 7-37-7.1 in 1979, it also repealed a statute that limited property tax valuations to no more than 110% of the valuation in the previous tax year. In *Hansman v. Bernalillo County Assessor*, 95 N.M. 697, 625 P.2d 1214 (Ct. App. 1980), taxpayers alleged that the property tax valuation assessments against their properties in 1979 exceeded 110% of the previous year's valuations. See 1979 N.M. Laws, ch. 268, sec. 3. Section 7-37-7.1 contains no similar limit on property tax valuation increases. The court concluded that Section 7-37-7.1 applied to the 1979 taxes, and that it did not prohibit the county from valuing or assessing property in excess of 110% of the previous year's valuation or assessment. *Id.* at 700, 625 P.2d at 1217.

Based on the foregoing analysis, it is our opinion that Subsection 7-37-7.1(A) does not prohibit a governmental unit from raising an individual's or a group of individuals' property tax over five percent from the prior year's property tax.

## **ATTORNEY GENERAL**

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