# CHAPTER 7
# Taxation

# ARTICLE 1
# Administration

## 7-1-1. Short title.

Chapter 7, Article 1 NMSA 1978 may be cited as the "Tax Administration Act".

**History:** 1953 Comp., § 72-13-13, enacted by Laws 1965, ch. 248, § 1; 1979, ch. 144, § 1.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity of statutory classifications based on population - tax statutes, 98 A.L.R.3d 1083.

## 7-1-2. Applicability.

The Tax Administration Act applies to and governs:

A. the administration and enforcement of the following taxes or tax acts as they now exist or may hereafter be amended:

(1) Income Tax Act [Chapter 7, Article 2 NMSA 1978];

(2) Withholding Tax Act [Chapter 7, Article 3 NMSA 1978];

(3) Venture Capital Investment Act [Chapter 7, Article 2D NMSA 1978];

(4) Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] and any state gross receipts tax;

(5) Liquor Excise Tax Act [Chapter 7, Article 17 NMSA 1978];

(6) Local Liquor Excise Tax Act [7-24-8 through 7-24-16 NMSA 1978];

(7) any municipal local option gross receipts tax;

(8) any county local option gross receipts tax;

(9) Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978];

(10) Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978];

(11) petroleum products loading fee, which fee shall be considered a tax for the purpose of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978];

(12) Alternative Fuel Tax Act [Chapter 7, Article 16B NMSA 1978];

(13) Cigarette Tax Act [Chapter 7, Article 12 NMSA 1978];

(14) Estate Tax Act [7-7-1 through 7-7-12 NMSA 1978];

(15) Railroad Car Company Tax Act [Chapter 7, Article 11 NMSA 1978];

(16) Investment Credit Act [Chapter 7, Article 9A NMSA 1978], rural job tax credit, Laboratory Partnership with Small Business Tax Credit Act [Chapter 7, Article 9E NMSA 1978 ], Technology Jobs and Research and Development Tax Credit Act [Chapter 7, Article 9F NMSA 1978], Film Production Tax Credit Act [Chapter 7, Article 2F NMSA 1978], Affordable Housing Tax Credit Act [Chapter 7, Article 9I NMSA 1978] and high-wage jobs tax credit;

(17) Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978];

(18) Uniform Division of Income for Tax Purposes Act [Chapter 7, Article 4 NMSA 1978];

(19) Multistate Tax Compact [7-5-1 NMSA 1978];

(20) Tobacco Products Tax Act [Chapter 7, Article 12A NMSA 1978]; and

(21) the telecommunications relay service surcharge imposed by Section 63-9F-11 NMSA 1978, which surcharge shall be considered a tax for the purposes of the Tax Administration Act;

B. the administration and enforcement of the following taxes, surtaxes, advanced payments or tax acts as they now exist or may hereafter be amended:

(1) Resources Excise Tax Act [Chapter 7, Article 25 NMSA 1978];

(2) Severance Tax Act [7-26-1 through 7-26-8 NMSA 1978];

(3) any severance surtax;

(4) Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978];

(5) Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978];

(6) Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978];

(7) Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978];

(8) Natural Gas Processors Tax Act [Chapter 7, Article 33 NMSA 1978];

(9) Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978];

(10) Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978];

(11) any advance payment required to be made by any act specified in this subsection, which advance payment shall be considered a tax for the purposes of the Tax Administration Act;

(12) Enhanced Oil Recovery Act [Chapter 7, Article 29A NMSA 1978];

(13) Natural Gas and Crude Oil Production Incentive Act [7-29B-1 through 7-29B-6 NMSA 1978]; and

(14) intergovernmental production tax credit and intergovernmental production equipment tax credit;

C. the administration and enforcement of the following taxes, surcharges, fees or acts as they now exist or may hereafter be amended:

(1) Weight Distance Tax Act [Chapter 7, Article 15A NMSA 1978];

(2) the workers' compensation fee authorized by Section 52-5-19 NMSA 1978, which fee shall be considered a tax for purposes of the Tax Administration Act;

(3) Uniform Unclaimed Property Act (1995) [Chapter 7, Article 8A NMSA 1978];

(4) 911 emergency surcharge and the network and database surcharge, which surcharges shall be considered taxes for purposes of the Tax Administration Act;

(5) the solid waste assessment fee authorized by the Solid Waste Act [74-9-1 NMSA 1978 et seq.], which fee shall be considered a tax for purposes of the Tax Administration Act;

(6) the water conservation fee imposed by Section 74-1-13 NMSA 1978, which fee shall be considered a tax for the purposes of the Tax Administration Act; and

(7) the gaming tax imposed pursuant to the Gaming Control Act [Chapter 60, Article 2E NMSA 1978]; and

D. the administration and enforcement of all other laws, with respect to which the department is charged with responsibilities pursuant to the Tax Administration Act, but only to the extent that the other laws do not conflict with the Tax Administration Act.

History: 1953 Comp., § 72-13-14, enacted by Laws 1965, ch. 248, § 2; 1966, ch. 54, § 1; 1969, ch. 156, § 1; 1971, ch. 276, § 3; 1973, ch. 346, § 1; 1974, ch. 13, § 1; 1975, ch. 301, § 1; 1978, ch. 182, § 22; 1979, ch. 144, § 2; 1982, ch. 18, § 1; 1983, ch. 211, § 3; 1985, ch. 65, § 1; 1986, ch. 20, § 2; 1987, ch. 45, § 20; 1987, ch. 268, § 1; 1988, ch. 71, § 1; 1988, ch. 73, § 1; 1989, ch. 263, § 1; 1989, ch. 325, § 1; 1989, ch. 326, § 10; 1989, ch. 327, § 1; 1990, ch. 86, § 1; 1990, ch. 88, § 1; 1990, ch. 99, § 45; 1990, ch. 124, § 12; 1990, ch. 125, § 1; 1992, ch. 55, § 1; 1993, ch. 5, § 1; 1994, ch. 51, § 1; 1996, ch. 15, § 1; 1997, ch. 190, § 64; 2000, ch. 28, § 1; 2001, ch. 56, § 1; 2004, ch. 4, § 3; 2006, ch. 25, § 1; 2007, ch. 164, § 1; 2016, ch. 77, § 1.

## ANNOTATIONS

**Cross references.** — For administration of Income Tax Act, *see* 7-2-22 NMSA 1978.

For rural job tax credit, *see* 7-2E-1 NMSA 1978.

For administration and enforcement of Estate Tax Act, *see* 7-7-10 NMSA 1978.

**Compiler's notes.** — Laws 2010 (2nd S.S.), ch. 2, § 1, effective March 19, 2010, provided for a tax amnesty program for a period of no more than one hundred eighty days (180) occurring within fiscal years 2010 and 2011, and that the terms of the program conform with the provisions of Section 7-1-11.1 NMSA 1978. Laws 2010 (2nd S.S.), ch. 2, § 2 appropriated five hundred thousand dollars ($500,000) from the general fund to the taxation and revenue department for expenditure in fiscal years 2010 through 2012 for the program. Laws 2010 (2nd S.S.), ch. 2, § 3 repealed the program effective July 1, 2012.

**The 2016 amendment,** effective May 18, 2016, made non-substantive amendments to conform references in the law; in Subsection A, in Paragraph (16), after "Technology Jobs", added "and Research and Development", after "Tax Credit Act,", deleted "film production tax credit, New Mexico filmmaker tax credit" and added "Film Production Tax Credit Act", after "Affordable Housing Tax Credit Act", added "and", and after "high-wage jobs tax credit", deleted "and Research and Development Small Business Tax Credit Act".

**The 2007 amendment,** effective June 15, 2007, applied the Tax Administration Act to the film tax credit, New Mexico filmmaker tax credit, Affordable Housing Tax Credit Act, high-wage jobs tax credit and Research and Development Small Business Tax Credit Act.

**The 2006 amendment,** effective March 2, 2006, deleted Paragraph (22) of Subsection A, which provided for a daily bed charge.

**The 2004 amendments,** effective May 19, 2004, added a new Paragraph (22) to Subsection A of this section.

**The 2001 amendment,** effective July 1, 2001, in Subsection A, inserted the provisions contained in former Paragraphs (16) and (17) as well as "Laboratory Partnership with Small Business Tax Credit Act and Technology Jobs Tax Credit Act" in present Paragraph (16), and renumbered the remaining paragraphs accordingly.

**The 2000 amendment,** effective July 1, 2000, in Subsection A, inserted Paragraphs (3), (17), and (18), deleted Paragraph (20), which read "Filmmaker's Credit Act," and redesignated the remaining paragraphs accordingly; added Subsections B(12) through (14); in Subsection C, deleted Paragraph (2) concerning the Special Fuels Tax Act, and redesignated the remaining paragraphs accordingly.

**The 1997 amendment,** effective June 20, 1997, in Subsection A, deleted Paragraph (6) referring to the Banking and Financial Corporations Tax Act, and redesignated former Paragraphs (7) to (22) as Paragraphs (6) to (21); in Subsection C, deleted "and" at the end of Paragraph (6) and added Paragraph (8).

**The 1996 amendment,** effective July 1, 1996, added Paragraph A(12), redesignated former Paragraphs A(12) to A(15) as Paragraphs A(13) to A(16), deleted former Paragraph A(16) which read "Corporate Income Tax Act;", deleted former Paragraph C(4) which read "Controlled Substance Tax Act;", redesignated Paragraphs C(5) to C(8) as Paragraphs C(4) to C(7), and made a stylistic change in Subsection D.

**The 1994 amendment,** effective July 1, 1994, in Subsection A, deleted "and" at the end of Paragraph (20), added "and" at the end of Paragraph (21) and added Paragraph (22); and, in Subsection C, rewrote Paragraph (6), which read: "911 emergency surcharge, which surcharge shall be considered a tax for purposes of the Tax Administration Act; and", and added Paragraph (8).

**The 1993 amendment,** effective July 1, 1993, in Subsection A, substituted "local option" for "sales or" in Paragraph (7), rewrote Paragraph (8) which read "County Fire Protection Excise Tax Act", rewrote Paragraph (9) which read "any county local option gross receipts", and added paragraph (21); in Subsection B, inserted "surtaxes, advanced payments" in the introductory paragraph and added Paragraph (11); in Subsection C, substituted "surcharges, fees or acts" for "or tax acts" in the introductory paragraph, substituted "fee" for "assessment" in two places in Paragraph (3), and added the language beginning "which surcharge shall" at the end of Paragraph (6); and made minor stylistic changes.

**The 1992 amendment,** effective July 1, 1992, added "and any state gross receipts tax" at the end of Subsection A(3); added present Subsection A(11); redesignated former

Subsections A(11) to A(13) as present Subsections A(12) to A(14); deleted former Subsection A(14), which read: "County and Municipal Gasoline Tax Act"; added "Uniform" at the beginning of Subsection C(5); and added Subsection C(7).

**1990 amendments.** — Laws 1990, ch. 86, § 1, effective July 1, 1990, and Laws 1990, ch. 124, § 12, effective March 7, 1990, in Subsection A, adding present Paragraph (5), redesignating former Paragraphs (5) to (8) as present Paragraphs (6) to (9), deleting former Paragraph (9) which read "Uniform Disposition of Unclaimed Property Act;", and making a minor stylistic change; and, in Subsection C, adding Paragraphs (5) to (7) and making related stylistic changes, were approved on March 2, 1990 and on March 7, 1990, respectively. Laws 1990, ch. 88, § 1, identical to the above-described two amendments, but also deleting former Paragraph (14) which read "County and Municipal Gasoline Tax Act" and redesignating former Paragraphs (15) to (20) as present Paragraphs (14) to (19), was approved March 2, 1990. Laws 1990, ch. 99, § 45, effective March 5, 1990, in Subsection A, deleting former Paragraph (9) which read "Uniform Disposition of Unclaimed Property Act" and redesignating former Paragraph (21) as present Paragraph (9); and in Subsection C, by adding Paragraphs (5) to (7) and making minor stylistic changes, was approved March 2, 1990. However, Laws 1990, ch. 125, § 1, effective March 7, 1990, in Subsection A, adding Paragraph (5), redesignating former Paragraphs (5) to (8) as present Paragraphs (6) to (9), and deleting former Paragraph (9) which read "Uniform Disposition of Unclaimed Property Act"; in Subsection D, adding Paragraph (10) and making related stylistic changes; and, in Subsection C, adding Paragraphs (5) and (6) and making related stylistic changes, was approved March 7, 1990. The section is set out as amended by Laws 1990, ch. 125, § 1. *See* 12-1-8 NMSA 1978.

**1989 amendments.** — Laws 1989, ch. 263, § 1, effective June 16, 1989, adding a Subsection A(21), which read "the workers' compensation assessment authorized by Section 52-5-19 NMSA 1978" was approved April 5, 1989. Laws 1989, ch. 325, § 1, effective June 16, 1989, adding a Subsection C(3) relating to the workers' compensation assessment authorized by 52-5-19 NMSA 1978, was approved April 7, 1989. Laws 1989, ch. 326, § 10, effective June 16, 1989, adding a Subsection A(21), which read "Local Liquor Excise Tax Act" and a Subsection C(3) relating to the workers' compensation assessment authorized by 52-5-19 NMSA 1978, was also approved on April 7, 1989. However, Laws 1989, ch. 327, § 1, effective July 1, 1989, adding Subsections C(3) and C(4), was approved later on April 7, 1989. The section is set out as amended by Laws 1989, ch. 327, § 1. *See* 12-1-8 NMSA 1978.

**Doctrine of vicarious or virtual exhaustion of remedies does not apply.** — The Tax Administration Act provides the exclusive remedies for tax refunds and requires taxpayers to individually seek a refund. Each member of the class of taxpayers challenging the constitutionality of a tax must individually exhaust their administrative remedies and only after individual exhaustion by each class member can the district court have jurisdiction over the class. The doctrine of vicarious or virtual exhaustion of remedies that allows a class action for tax refunds to proceed when only a few members of the proposed class have exhausted their administrative remedies does not

apply to proceedings under the Tax Administration Act. U.S. Xpress. Inc. v. N.M. Taxation & Revenue Dep't, 2006-NMSC-017, 139 N.M. 589, 136 P.3d 999, *rev'g* 2005-NMCA-091, 138 N.M. 55, 116 P.3d 846..

**Refund procedures of 7-1-26 NMSA 1978 are not applicable** to real property taxes. Lovelace Ctr. for Health Sciences v. Beach, 1980-NMCA-004, 93 N.M. 793, 606 P.2d 203.

**This article governs priorities between assignee for creditors and state.** — In disposing of priorities between the assignee for the benefit of creditors and the State of New Mexico, a court is governed by the Tax Administration Act. Regents of N.M. College of Agric. & Mechanic Arts v. Academy of Aviation, Inc., 1971-NMSC-087, 83 N.M. 86, 488 P.2d 343.

**Law reviews.** — For comment, "Ad Valorem Taxes - Omitted Property and Improvements - Assessments," see 6 Nat. Resources J. 105 (1966).

## 7-1-2.1, 7-1-2.2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1986, ch. 20, § 136A and Laws 1987, ch. 169, § 7 repealed 7-1-2.1 and 7-1-2.2 NMSA 1978, as enacted by Laws 1985, ch. 65, §§ 2 and 53, relating to applicability of the Tax Administration Act and legislative intent, effective July 1, 1986 and July 1, 1987, respectively. For present comparable provisions relating to applicability, *see* 7-1-2 NMSA 1978.

## 7-1-3. Definitions.

Unless the context clearly indicates a different meaning, the definitions of words and phrases as they are stated in this section are to be used, and whenever in the Tax Administration Act these words and phrases appear, the singular includes the plural and the plural includes the singular:

A. "automated clearinghouse transaction" means an electronic credit or debit transmitted through an automated clearinghouse payable to the state treasurer and deposited with the fiscal agent of New Mexico;

B. "department" means the taxation and revenue department, the secretary or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "electronic payment" means a payment made by automated clearinghouse deposit, any funds wire transfer system or a credit card, debit card or electronic cash transaction through the internet;

D. "employee of the department" means any employee of the department, including the secretary, or any person acting as agent or authorized to represent or perform services for the department in any capacity with respect to any law made subject to administration and enforcement under the provisions of the Tax Administration Act;

E. "financial institution" means any state or federally chartered, federally insured depository institution;

F. "hearing officer" means a person who has been designated by the chief hearing officer to serve as a hearing officer and who is:

(1) the chief hearing officer;

(2) an employee of the administrative hearings office; or

(3) a contractor of the administrative hearings office;

G. "Internal Revenue Code" means the Internal Revenue Code of 1986, as that code may be amended or its sections renumbered;

H. "levy" means the lawful power, hereby invested in the secretary, to take into possession or to require the present or future surrender to the secretary or the secretary's delegate of any property or rights to property belonging to a delinquent taxpayer;

I. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon the taxpayer's gross receipts, as that term is defined in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978], and required to be collected by the department at the same time and in the same manner as the gross receipts tax; "local option gross receipts tax" includes the taxes imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act [Chapter 7, Article 19D NMSA 1978], Supplemental Municipal Gross Receipts Tax Act [Sections 7-19-10 through 7-19-18 NMSA 1978], County Local Option Gross Receipts Taxes Act [Chapter 7, Article 20E NMSA 1978], Local Hospital Gross Receipts Tax Act [7-20C-1 through 7-20C-17 NMSA 1978] and County Correctional Facility Gross Receipts Tax Act [7-20F-3 through 7-20F-12 NMSA 1978] and such other acts as may be enacted authorizing counties or municipalities to impose taxes on gross receipts, which taxes are to be collected by the department in the same time and in the same manner as it collects the gross receipts tax;

J. "managed audit" means a review and analysis conducted by a taxpayer under an agreement with the department to determine the taxpayer's compliance with a tax administered pursuant to the Tax Administration Act and the presentation of the results to the department for assessment of tax found to be due;

K. "net receipts" means the total amount of money paid by taxpayers to the department in a month pursuant to a tax or tax act less any refunds disbursed in that month with respect to that tax or tax act;

L. "overpayment" means an amount paid, pursuant to any law subject to administration and enforcement under the provisions of the Tax Administration Act, by a person to the department or withheld from the person in excess of tax due from the person to the state at the time of the payment or at the time the amount withheld is credited against tax due;

M. "paid" includes the term "paid over";

N. "pay" includes the term "pay over";

O. "payment" includes the term "payment over";

P. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate, other association or gas, water or electric utility owned or operated by a county or municipality; "person" also means, to the extent permitted by law, a federal, state or other governmental unit or subdivision, or an agency, department or instrumentality thereof; and "person", as used in Sections 7-1-72 through 7-1-74 NMSA 1978, also includes an officer or employee of a corporation, a member or employee of a partnership or any individual who, as such, is under a duty to perform any act in respect of which a violation occurs;

Q. "property" means property or rights to property;

R. "property or rights to property" means any tangible property, real or personal, or any intangible property of a taxpayer;

S. "return" means any tax or information return, application or form, declaration of estimated tax or claim for refund, including any amendments or supplements to the return, required or permitted pursuant to a law subject to administration and enforcement pursuant to the Tax Administration Act and filed with the secretary or the secretary's delegate by or on behalf of any person;

T. "return information" means a taxpayer's name, address, government-issued identification number and other identifying information; any information contained in or derived from a taxpayer's return; any information with respect to any actual or possible administrative or legal action by an employee of the department concerning a taxpayer's return, such as audits, managed audits, denial of credits or refunds, assessments of tax, penalty or interest, protests of assessments or denial of refunds or credits, levies or liens; or any other information with respect to a taxpayer's return or tax liability that was not obtained from public sources or that was created by an employee of the department;

but "return information" does not include statistical data or other information that cannot be associated with or directly or indirectly identify a particular taxpayer;

U. "secretary" means the secretary of taxation and revenue and, except for purposes of Subsection B of Section 7-1-4 NMSA 1978, also includes the deputy secretary or a division director or deputy division director delegated by the secretary;

V. "secretary or the secretary's delegate" means the secretary or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

W. "security" means money, property or rights to property or a surety bond;

X. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico and any territory or possession of the United States;

Y. "tax" means the total amount of each tax imposed and required to be paid, withheld and paid or collected and paid under provision of any law made subject to administration and enforcement according to the provisions of the Tax Administration Act, including the amount of any interest or civil penalty relating thereto; "tax" also means any amount of any abatement of tax made or any credit, rebate or refund paid or credited by the department under any law subject to administration and enforcement under the provisions of the Tax Administration Act to any person contrary to law, including the amount of any interest or civil penalty relating thereto;

Z. "tax return preparer" means a person who prepares for others for compensation or who employs one or more persons to prepare for others for compensation any return of income tax, a substantial portion of any return of income tax, any claim for refund with respect to income tax or a substantial portion of any claim for refund with respect to income tax; provided that a person shall not be a "tax return preparer" merely because such person:

(1) furnishes typing, reproducing or other mechanical assistance;

(2) is an employee who prepares an income tax return or claim for refund with respect to an income tax return of the employer, or of an officer or employee of the employer, by whom the person is regularly and continuously employed; or

(3) prepares as a trustee or other fiduciary an income tax return or claim for refund with respect to income tax for any person; and

AA. "taxpayer" means a person liable for payment of any tax; a person responsible for withholding and payment or for collection and payment of any tax; a person to whom an assessment has been made, if the assessment remains unabated or the amount thereof has not been paid; or a person who entered into a special agreement pursuant to Section 7-1-21.1 NMSA 1978 to assume the liability of gross

receipts tax or governmental gross receipts tax of another person and the special agreement was approved by the secretary pursuant to the Tax Administration Act.

**History:** 1953 Comp., § 72-13-15, enacted by Laws 1965, ch. 248, § 3; 1977, ch. 249, § 41; 1979, ch. 144, § 3; 1982, ch. 18, § 2; 1985, ch. 65, § 3; 1986, ch. 20, § 3; 1987, ch. 169, § 1; 1992, ch. 55, § 2; 1993, ch. 5, § 2; 1994, ch. 51, § 2; 1997, ch. 67, § 1; 2000, ch. 28, § 2; 2001, ch. 16, § 2; 2001, ch. 56, § 2; 2003, ch. 398, § 4; 2009, ch. 243, § 1; 2013, ch. 87, § 2; 2015, ch. 73, § 10; 2017, ch. 63, § 4.

## ANNOTATIONS

**Cross references.** — For the federal Internal Revenue Code, *see* 26 U.S.C. § 1 et seq.

**The 2017 amendment,** effective June 16, 2017, clarified certain definitions of terms used in the Tax Administration Act; in Subsection I, after "Local Hospital Gross Receipts Tax Act", added "and"; in Subsection S, after "information return", added "application or form"; in Subsection Y, after the first occurrence of "Tax Administration Act", deleted "and, unless the context otherwise requires, includes" and added "including", and after "any person contrary to law", deleted "and includes, unless the context requires otherwise" and added "including"; and in Subsection AA, after "special agreement", added "pursuant to Section 7-1-21.1 NMSA 1978".

**The 2015 amendment,** effective July 1, 2015, amended the definitions of the Tax Administration Act to include "hearing officer"; added Subsection F and redesignated the succeeding subsections, through Subsection X, accordingly; in Subsection U, after "NMSA 1978", deleted "and Subsection E of Section 7-1-24 NMSA 1978"; deleted former Subsection Y; and added Subsection AA.

**The 2013 amendment,** effective April 1, 2013, broadened the definition of "taxpayer" to include persons who assume the gross receipts tax liability of another person; and in Subsection Y, after "the amount thereof has not been paid", added the remainder of the sentence.

**Applicability.** — Laws 2013, ch. 87, § 3 provided that the provisions of Laws 2013, ch. 87, §§ 1 and 2 apply to gross receipts or governmental gross receipts received in tax periods beginning on or after May 1, 2013.

**The 2009 amendment,** effective July 1, 2009, added Subsections R and S.

**The 2003 amendment,** effective July 1, 2003, substituted "a tax administered pursuant to the Tax Administration Act" for "the Gross Receipts and Compensating Tax Act and local option gross receipts taxes" near the middle of Subsection I.

**The 2001 amendment,** effective July 1, 2001, deleted former Subsections C, D and E, which contained the definitions of "division", "director" and "director or his delegate" respectively; added Subsection I, and renumbered the remaining subsections

accordingly. Laws 2001, ch. 16, § 2, effective July 1, 2001, also amended this section. The section was set out as amended by Laws 2001, ch. 56, § 2. *See* 12-1-8 NMSA 1978.

**The 2000 amendment,** effective July 1, 2000, added Subsections A, F, and H and redesignated the remaining subsections accordingly and deleted "Special Municipal Gross Receipts Tax Act" following "Supplemental Municipal Gross Receipts Tax Act" in present Subsection K.

**The 1997 amendment,** effective July 1, 1997, made minor stylistic changes to Subsection A and Subsection R, deleted "Paragraphs (1) and (2) of Subsection B of Section 7-1-5" preceding "and Subsection E" in Subsection Q, and inserted "abatement of tax made or any" preceding "credit, rebate or refund" in Subsection U.

**The 1994 amendment,** effective July 1, 1994, inserted Subsection F, redesignated former Subsections F to V as Subsections G to W and substituted the present list of tax acts in Subsection H for the former list.

**The 1993 amendment,** effective July 1, 1993, inserted "limited liability partnership" and "limited liability company" near the beginning of Subsection M.

**The 1992 amendment,** effective July 1, 1992, added Subsection G and redesignated former Subsections G through U as Subsections H through V.

**United States as "taxpayer".** — Since the contracts require the United States to pay all costs under the contracts including taxes, this is sufficient to recognize the United States as a "taxpayer" under this section and allow it to be a party in tax disputes with the department. United States v. New Mexico, 455 F. Supp. 993 (D.N.M. 1978), *rev'd in part on other grounds*, 624 F.2d 111 (10th Cir. 1980), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Right of United States to participate as party in certain cases.** — In cases involving a challenge to state taxes as violating the federal government's sovereign and constitutional rights, the United States must be permitted to participate as a party. United States v. New Mexico, 455 F. Supp. 993 (D.N.M. 1978), *rev'd in part on other grounds*, 624 F.2d 111 (10th Cir. 1980), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

## 7-1-4. Investigative authority and powers.

A. For the purpose of establishing or determining the extent of the liability of any person for any tax, for the purpose of collecting any tax, for the purpose of enforcing any statute administered under the provisions of the Tax Administration Act or for the purpose of investigating possible criminal violations of the revenue laws of this state, including fraud or other crimes that may affect the taxes due to the state, the secretary or the secretary's delegate is authorized to examine equipment and to examine and

require the production of any pertinent records, books, information or evidence, to require the presence of any person and to require that person to testify under oath concerning the subject matter of the inquiry and to make a permanent record of the proceedings.

B. As a means for accomplishing the matters referred to in Subsection A of this section, the secretary is hereby invested with the power to issue subpoenas and summonses. In no case shall a subpoena or summons be made returnable less than ten days from the date of service.

C. Any subpoena or summons issued by the secretary shall state with reasonable certainty the nature of the evidence required to be produced, the time and place of the hearing, the nature of the inquiry or investigation and the consequences of failure to obey the subpoena or summons; shall bear the seal of the department; and shall be attested by the secretary.

D. After service of a subpoena or summons upon the person, if any person neglects or refuses to appear in response to the summons or neglects or refuses to produce records or other evidence or to allow the inspection of equipment in response to the subpoena or neglects or refuses to give testimony as required, the department may invoke the aid of the court in the enforcement of the subpoena or summons. In appropriate cases, the court shall issue its order requiring the person to appear and testify or produce books or records and may, upon failure of the person to comply with the order, punish the person for contempt.

E. If a person, the extent of whose tax liability is being established, or that person's agent, nominee or other person acting under the direction or control of that person, files an action with the court to quash a subpoena or summons issued by that court pursuant to this section, the running of the period of limitations pursuant to Sections 7-1-18 and 7-1-19 NMSA 1978 or Section 30-1-8 NMSA 1978 with respect to the tax liability under investigation shall be suspended for the period during which a proceeding and related appeals regarding the enforcement of the subpoena or summons is pending.

History: 1953 Comp., § 72-13-22, enacted by Laws 1965, ch. 248, § 10; 1971, ch. 276, § 4; 1979, ch. 144, § 4; 1986, ch. 20, § 4. 2005, ch. 108, § 1.

## ANNOTATIONS

**The 2005 amendment,** effective June 17, 2005, in Subsection A, added the authority to investigate possible criminal violation of state revenue laws, including fraud and other crimes that may affect the taxes due the state; and added Subsection E to provide that if a person, whose tax liability has been determined, files an action to quash a subpoena or summons, the statute of limitations is tolled during the time the action or any appeal is pending.

**Secretary's authority to examine and reconstruct records.** — This section not only gives the commissioner (now secretary) authority to examine pertinent books and records for the purpose of verification but also authority to reconstruct records when they are destroyed. Torridge Corp. v. Comm'r of Revenue, 1972-NMCA-171, 84 N.M. 610, 506 P.2d 354, cert. denied, 84 N.M. 592, 506 P.2d 336 (1973).

**Scope of examination.** — The New Mexico taxation and revenue department has the authority to examine records, including looking beyond what was simply reported on the taxpayers federal tax forms, in order to determine the extent of taxpayer's liability to pay state income tax. Holt v. N.M. Dep't of Taxation & Revenue, 2002-NMSC-034, 133 N.M. 11, 59 P.3d 491.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 109, 110, 601.

Constitutionality of statutory provisions for examination of records, books or documents for taxation purposes, 103 A.L.R. 522.

## 7-1-4.1. New Mexico taxpayer bill of rights created; purpose.

The "New Mexico Taxpayer Bill of Rights" is created. It is the purpose of the New Mexico Taxpayer Bill of Rights to:

A. ensure that the rights of New Mexico taxpayers are adequately safeguarded and protected during the assessment, collection and enforcement of any tax administered by the department pursuant to the Tax Administration Act;

B. ensure that the taxpayer is treated with dignity and respect; and

C. provide brief but comprehensive statements that explain in simple, nontechnical terms the rights of taxpayers as set forth in Section 7-1-4.2 NMSA 1978.

**History:** Laws 2003, ch. 398, § 1; 2017, ch. 63, § 5.

**ANNOTATIONS**

**The 2017 amendment,** effective June 16, 2017, in Subsection C, after "Section", deleted "2 of this 2003 act", added "7-1-4.2 NMSA 1978".

## 7-1-4.2. New Mexico taxpayer bill of rights.

The rights afforded New Mexico taxpayers during the assessment, collection and enforcement of any tax administered by the department as set forth in the Tax Administration Act include:

A. the right to available public information and prompt and courteous tax assistance;

B. the right to be represented or advised by counsel or other qualified representatives at any time in administrative interactions with the department in accordance with the provisions of Section 7-1-24 NMSA 1978 or the administrative hearings office in accordance with the provisions of the Administrative Hearings Office Act [7-1B-1 through 7-1B-9 NMSA 1978];

C. the right to have audits, inspections of records and meetings conducted at a reasonable time and place in accordance with the provisions of Section 7-1-11 NMSA 1978;

D. the right to have the department conduct its audits in a timely and expeditious manner and be entitled to the tolling of interest as provided in the Tax Administration Act;

E. the right to obtain nontechnical information that explains the procedures, remedies and rights available during audit, protest, appeals and collection proceedings pursuant to the Tax Administration Act;

F. the right to be provided with an explanation of the results of and the basis for audits, assessments or denials of refunds that identify any amount of tax, interest or penalty due;

G. the right to seek review, through formal or informal proceedings, of any findings or adverse decisions relating to determinations during audit or protest procedures in accordance with the provisions of Section 7-1-24 NMSA 1978 and the Administrative Hearings Office Act;

H. the right to have the taxpayer's tax information kept confidential unless otherwise specified by law, in accordance with Sections 7-1-8 through 7-1-8.11 NMSA 1978;

I. the right to abatement of an assessment of taxes determined to have been incorrectly, erroneously or illegally made, as provided in Section 7-1-28 NMSA 1978 and the right to seek a compromise of an asserted tax liability by obtaining a written determination of liability or nonliability when the secretary in good faith is in doubt of the liability as provided in Section 7-1-20 NMSA 1978;

J. upon receipt of a tax assessment, the right to be informed clearly that if the assessment is not paid, secured, protested or otherwise provided for in accordance with the provisions of Section 7-1-16 NMSA 1978, the taxpayer will be a delinquent taxpayer and, upon notice of delinquency, the right to timely notice of any collection actions that will require sale or seizure of the taxpayer's property in accordance with the provisions of the Tax Administration Act; and

K. the right to procedures for payment of tax obligations by installment payment agreements, in accordance with Section 7-1-21 NMSA 1978.

**History:** Laws 2003, ch. 398, § 2; 2015, ch. 73, § 11; 2017, ch. 63, § 6.

## ANNOTATIONS

**The 2017 amendment,** effective June 16, 2017, in Subsection H, after "in accordance with", changed "Section" to "Sections", and after "7-1-8", added "through 7-1-8.11".

**The 2015 amendment,** effective July 1, 2015, amended the Tax Administration Act to provide for hearings pursuant to the Administrative Hearings Office Act; in Subsection B, after "NMSA 1978", added "or the administrative hearings office in accordance with the provisions of the Administrative Hearings Office Act"; and in Subsection G, after "in accordance with", added "the provisions of", and after "NMSA 1978", added "and the Administrative Hearings Office Act".

**Temporary provisions.** — Laws 2015, ch. 73, § 36 provided:

A. On July 1, 2015, all personnel, functions, appropriations, money, records, furniture, equipment and other property of, or attributable to, the hearings bureau of the office of the secretary of taxation and revenue shall be transferred to the administrative hearings office.

B. On July 1, 2015, all contractual obligations of the hearings bureau of the office of the secretary of taxation and revenue shall be binding on the administrative hearings office.

C. On July 1, 2015, all references in statute to the hearings bureau of the office of the secretary of taxation and revenue or hearing officers of the taxation and revenue department in Chapters 7 and 66 NMSA 1978 shall be deemed to be references to the administrative hearings office or a hearing officer of the office.

D. Rules of the taxation and revenue department pertaining to hearing officers and the conduct of hearings pursuant to actions related to Chapter 7 or 66 NMSA 1978 shall be deemed to be the rules of the administrative hearings office until amended or repealed by the office.

**Gross receipts tax returns are privileged.** — Where plaintiff sued defendants for employment discrimination; plaintiff's spouse, who was not a party to the action, maintained a private law practice; plaintiff alleged that upon filing the complaint, defendants retaliated against plaintiff by asserting irregularities with regard to the gross receipts tax records and returns of the spouse's private law practice; defendants asked the district court to issue subpoenas duces tecum to the spouse and to defendant taxation and revenue department for the spouse's gross receipts tax records and returns; and plaintiff's marital relationship to the spouse did not make plaintiff liable for payment of the gross receipts tax of the spouse's private law practice; the gross receipts tax records and returns sought by the subpoenas issued to the spouse and to defendant taxation and revenue department were confidential under Sections 7-1-4.2

and 7-1-8 NMSA 1978 and privileged under Rule 11-502 NMRA. Breen v. N.M. Taxation & Revenue Dep't, 2012-NMCA-101, 287 P.3d 379.

## 7-1-4.3. New Mexico taxpayer bill of rights; notice to the public.

The department shall develop a publication that states the rights of taxpayers in simple, nontechnical terms and shall disseminate the publication to taxpayers, at a minimum, with the annual income and semiannual combined reporting system tax forms.

**History:** Laws 2003, ch. 398, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 398, § 16 made the act effective on July 1, 2003.

## 7-1-4.4. Notice of potential eligibility required.

The department shall include a notice with an income tax refund or other notice sent to a taxpayer whose income is within one hundred thirty percent of federal poverty guidelines as defined by the United States census bureau that the taxpayer may be eligible for food stamps. Included in the notice shall be general information about food stamps, such as where to apply for food stamps, based on information received by the department from the human services department by January 30 of each calendar year.

History: Laws 2005, ch. 138, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 138 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

**Cross references.** — For notice by mail pursuant to taxpayers, *see* 7-1-9 NMSA 1978.

## 7-1-5. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 31, § 7 repealed 7-1-5 NMSA 1978, as amended by Laws 1986, ch. 20, § 5, relating to administrative regulations, rulings, instructions and orders issued by the secretary, effective July 1, 1995. For provisions of the former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 9-11-6.2 NMSA 1978.

## 7-1-6. Receipts; disbursements; funds created.

A. All money received by the department with respect to laws administered pursuant to the provisions of the Tax Administration Act shall be deposited with the state treasurer before the close of the next succeeding business day after receipt of the money, except that for 1989 and every subsequent year, money received with respect to the Income Tax Act during the period starting with the fifth day prior to the due date for payment of income tax for the year and ending on the tenth day following that due date shall be deposited before the close of the tenth business day after receipt of the money.

B. Money received or disbursed by the department shall be accounted for by the department as required by law or regulation of the secretary of finance and administration.

C. Disbursements for tax credits, tax rebates, refunds, the payment of interest, the payment of fees charged by attorneys or collection agencies for collection of accounts as agent for the department, attorney fees and costs awarded by a court or hearing officer, as the result of oil and gas litigation, the payment of credit card service charges on payments of taxes by use of credit cards, distributions and transfers shall be made by the department of finance and administration upon request and certification of their appropriateness by the secretary or the secretary's delegate.

D. There are hereby created in the state treasury the "tax administration suspense fund", the "extraction taxes suspense fund" and the "workers' compensation collections suspense fund" for the purpose of making the disbursements authorized by the Tax Administration Act.

E. All revenues collected or received by the department pursuant to the provisions of the taxes and tax acts set forth in Subsection A of Section 7-1-2 NMSA 1978 and, through June 30, 2009, federal funds from the temporary assistance for needy families program pursuant to an agreement that the department and the human services department may enter into for the payment of tax refunds, tax rebates and tax credits to low-income families with dependent children otherwise authorized by state and federal law shall be credited to the tax administration suspense fund and are appropriated for the purpose of making the disbursements authorized in this section or otherwise authorized or required by law to be made from the tax administration suspense fund.

F. All revenues collected or received by the department pursuant to the taxes or tax acts set forth in Subsection B of Section 7-1-2 NMSA 1978 shall be credited to the extraction taxes suspense fund and are appropriated for the purpose of making the disbursements authorized in this section or otherwise authorized or required by law to be made from the extraction taxes suspense fund.

G. All revenues collected or received by the department pursuant to the taxes or tax acts set forth in Subsection C of Section 7-1-2 NMSA 1978 may be credited to the tax

administration suspense fund, unless otherwise directed by law to be credited to another fund or agency, and are appropriated for the purpose of making disbursements authorized in this section or otherwise authorized or required by law.

H. All revenues collected or received by the department pursuant to the provisions of Section 52-5-19 NMSA 1978 shall be credited to the workers' compensation collections suspense fund and are appropriated for the purpose of making the disbursements authorized in this section or otherwise authorized or required by law to be made from the workers' compensation collections suspense fund.

I. Disbursements to cover expenditures of the department shall be made only upon approval of the secretary or the secretary's delegate.

J. Miscellaneous receipts from charges made by the department to defray expenses pursuant to the provisions of Section 9-11-6.1 NMSA 1978 and similar charges are appropriated to the department for its use.

K. From the tax administration suspense fund, there may be disbursed each month amounts approved by the secretary or the secretary's delegate necessary to maintain a fund hereby created and to be known as the "income tax suspense fund". The income tax suspense fund shall be used for the payment of income tax refunds.

**History:** Laws 1965, ch. 248, § 12; 1953 Comp., § 72-13-24; Laws 1966, ch. 53, § 1; 1969, ch. 147, § 1; 1970, ch. 57, § 1; 1975, ch. 263, § 8; 1977, ch. 247, § 182; 1977, ch. 315, § 2; reenacted by Laws 1978, ch. 55, § 1; 1979, ch. 144, § 6; 1979, ch. 284, § 4; 1981, ch. 37, § 7; 1981, ch. 215, § 3; 1982, ch. 18, § 4; 1983, ch. 211, § 5; 1985, ch. 65, § 5; 1986, ch. 20, § 6; 1988, ch. 72, § 1; 1989, ch. 325, § 2; 1990, ch. 86, § 2; 1992, ch. 55, § 3; 2001, ch. 230, § 1; 2009, ch. 242, § 1; 2017, ch. 63, § 7.

## ANNOTATIONS

**The 2017 amendment,** effective June 16, 2017, in Subsection J, after "Section", changed "9-11-6.2" to "9-11-6.1".

**The 2009 amendment,** effective April 7, 2009, in Subsection A, after "laws administered", deleted "under" and added "pursuant to"; in Subsection E, after "tax acts", deleted "administered under" and added "set forth in", after "NMSA 1978", added "and, through June 30, 2009, federal funds from the temporary assistance for needy families program pursuant to an agreement that the department and the human services department may enter into for the payment of tax refunds, tax rebates and tax credits to low-income families with dependent children otherwise authorized by state and federal law", and after "disbursements authorized", deleted "under" and added "in"; in Subsections F and G, after "tax acts", deleted "administered under" and added "set forth in", and after "disbursements authorized", deleted "under" and added "in"; and in Subsection H, after "disbursements authorized", deleted "under" and added "in".

**The 2001 amendment,** effective June 15, 2001, inserted "attorney fees and costs awarded by a court or hearing officer, as the result of oil and gas litigation" in Subsection C; deleted "other than amounts required to be credited to the oil and gas protested payments suspense fund" following "NMSA 1978" in Subsection E; and updated the internal reference in Subsection I.

**The 1992 amendment,** effective July 1, 1992, inserted "the payment of fees charged by attorneys or collection agencies for collection of accounts as agent for the department, the payment of credit card service charges on payments of taxes by use of credit cards" in the first sentence of Subsection C.

**The 1990 amendment,** effective July 1, 1990, deleted "other than the Uniform Disposition of Unclaimed Property Act" following "Section 7-1-2 NMSA 1978", added Subsection F, redesignated former Subsections F to I as Subsections G to J and, in Subsection I, substituted "Section 7-1-5 NMSA 1978" for "Sections 7-1-5 and 7-1-25 NMSA 1978".

**The 1989 amendment,** effective June 16, 1989, in Subsection A, added all of the language beginning "except that,"; in Subsection C, inserted "and the 'workers' compensation collections suspense fund'"; in Subsections D and E, deleted "of the Tax Administration Act" following "Section 7-1-2 NMSA 1978"; added Subsection F; and redesignated former Subsections F through H as Subsections G through I.

**Law reviews.** — For article, "Taxation of Electricity Generation: The Economic Efficiency and Equity Bases for Regionalism Within the Federal System," see 20 Nat. Resources J. 877 (1980).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 85 C.J.S. Taxation §§ 1654 to 1664.

## 7-1-6.1. Identification of money in tax administration suspense fund; distribution.

After the necessary disbursements have been made from the tax administration suspense fund, the money remaining, except for remittances received within the previous sixty days that are unidentified as to source or disposition, in the suspense fund as of the last day of the month shall be identified by tax source and distributed or transferred in accordance with the applicable provisions of the Tax Administration Act. After the necessary distributions and transfers, any balance shall be distributed to the general fund.

History: 1978 Comp., § 7-1-6.1, enacted by Laws 1983, ch. 211, § 6; 1985, ch. 154, § 1; 1986, ch. 20, § 7; 1990, ch. 6, § 19; 1990, ch. 86, § 3; 2007 (1st S.S.), ch. 2, § 9.

**ANNOTATIONS**

**Cross references.** — For the tax administration suspense fund, *see* 7-1-6 NMSA 1978.

For the general fund, *see* 6-4-2 NMSA 1978.

**The 2007 amendment,** effective June 28, 2007, eliminated the list of sections of the Tax Administration Act that govern distributions.

**Repeals.** — Laws 2007 (1st S.S.), ch. 2, § 11 repealed Laws 1990, ch. 6, § 19, effective June 28, 2007.

**The 1990 amendment,** effective July 1, 1990, substituted "Sections 7-1-6.2 through 7-1-6.19, 7-1-6.24 through 7-1-6.26 and 7-1-6.28 through 7-1-6.40 NMSA 1978" for "Sections 7-1-6.2 through 7-1-6.18 NMSA 1978" at the end of the first sentence. Laws 1990, ch. 6, § 19, effective February 13, 1990, also amended this section. The section was set out as amended by Laws 1990, ch. 86, § 3. *See* 12-1-8 NMSA 1978.

## 7-1-6.2. Distribution; small cities assistance fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the small cities assistance fund in an amount equal to fifteen percent of the net receipts attributable to the compensating tax.

History: 1978 Comp., § 7-1-6.2, enacted by Laws 1983, ch. 211, § 7; 1984, ch. 25, § 2; 1988, ch. 129, § 2; 2012, ch. 5, § 3.

### ANNOTATIONS

**Cross references.** — For distributions from small cities assistance fund, *see* 3-37A-3 NMSA 1978.

**The 2012 amendment,** effective January 1, 2013, increased the percentage of net receipts attributable to the compensating tax and after "in an amount equal to", deleted "ten" and added "fifteen".

**Applicability.** — Laws 2012, ch. 5, § 7 provided that the distribution pursuant to Laws 2012, ch. 5, § 3 applies to receipts from compensating taxes that are attributable to sales on or after January 1, 2013.

## 7-1-6.3. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1993, ch. 65, § 23, repealed 7-1-6.3 NMSA 1978, as enacted by Laws 1983, ch. 214, § 5, relating to distributions to the community alcoholism treatment and detoxification fund, effective July 1, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 7-1-6.4. Distribution; municipality from gross receipts tax.

A. Except as provided in Subsection B of this section, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the product of the quotient of one and two hundred twenty-five thousandths percent divided by the tax rate imposed by Section 7-9-4 NMSA 1978 multiplied by the net receipts for the month attributable to the gross receipts tax from business locations:

(1) within that municipality;

(2) on land owned by the state, commonly known as the "state fairgrounds", within the exterior boundaries of that municipality;

(3) outside the boundaries of any municipality on land owned by that municipality; and

(4) on an Indian reservation or pueblo grant in an area that is contiguous to that municipality and in which the municipality performs services pursuant to a contract between the municipality and the Indian tribe or Indian pueblo if:

(a) the contract describes an area in which the municipality is required to perform services and requires the municipality to perform services that are substantially the same as the services the municipality performs for itself; and

(b) the governing body of the municipality has submitted a copy of the contract to the secretary.

B. If the reduction made by Laws 1991, Chapter 9, Section 9 to the distribution under this section impairs the ability of a municipality to meet its principal or interest payment obligations for revenue bonds outstanding prior to July 1, 1991 that are secured by the pledge of all or part of the municipality's revenue from the distribution made under this section, then the amount distributed pursuant to this section to that municipality shall be increased by an amount sufficient to meet any required payment, provided that the distribution amount does not exceed the amount that would have been due that municipality under this section as it was in effect on June 30, 1992.

C. A distribution pursuant to this section may be adjusted for a distribution made to a tax increment development district with respect to a portion of a gross receipts tax increment dedicated by a municipality pursuant to the Tax Increment for Development Act [Chapter 5, Article 15 NMSA 1978].

**History:** 1978 Comp., § 7-1-6.4, enacted by Laws 1983, ch. 211, § 9; 1991, ch. 9, § 9; 1992, ch. 42, § 1; 2006, ch. 75, § 30.

## ANNOTATIONS

**Compiler's note.** — Laws 1991, ch. 9, § 9 referred to in Subsection B is compiled as 7-1-6.4 NMSA 1978.

**The 2006 amendment,** effective March 6, 2006, added Subsection C to provide an adjustment for a distribution to a tax increment development district.

**The 1992 amendment,** effective August 1, 1992, added the Subsection A designation at the beginning of the formerly undesignated introductory paragraph and added "Except as provided in Subsection B of this section" at the beginning of the paragraph, redesignated former Subsections A to D as Paragraphs (1) to (4) of Subsection A, revised the subparagraph designations in Subsection A(4), and added Subsection B.

**The 1991 amendment,** effective August 1, 1992, substituted "one and two-hundred-twenty-five-thousandths" for "one and thirty-five hundredths" in the first paragraph; substituted "secretary" for "director" at the end of Paragraph (2) of Subsection D; and made a minor stylistic change in Subsection D.

## 7-1-6.5. Distribution; small counties assistance fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the small counties assistance fund in an amount equal to ten percent of the net receipts attributable to the compensating tax.

**History:** 1978 Comp., § 7-1-6.5, enacted by Laws 1983, ch. 211, § 10; 1983, ch. 214, § 6; 1984, ch. 24, § 2.

**ANNOTATIONS**

**Cross references.** — For distributions from small counties assistance fund, *see* 4-61-3 NMSA 1978.

**Compiler's notes.** — Laws 1983, ch. 211, § 10, and Laws 1983, ch. 214, § 6, both enacted the above section. However, Laws 1983, ch. 211, § 10, provided for a distribution in an amount equal to two percent of the net receipts. Both acts were approved on April 6, 1983. The section is set out as enacted by Laws 1983, ch. 214, § 6. *See* 12-1-8 NMSA 1978.

## 7-1-6.6. Distribution; game protection fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the game protection fund of all amounts designated as contributions to that fund under the provisions of Section 7-2-24 NMSA 1978.

**History:** 1978 Comp., § 7-1-6.6, enacted by Laws 1983, ch. 211, § 11.

## 7-1-6.7. Distributions; state aviation fund.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state aviation fund in an amount equal to four and seventy-nine hundredths percent of the taxable gross receipts attributable to the sale of fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state aviation fund in an amount equal to twenty-six hundredths percent of gasoline taxes, exclusive of penalties and interest, collected pursuant to the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978].

C. From July 1, 2013 through June 30, 2021, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state aviation fund in an amount equal to forty-six thousandths percent of the net receipts attributable to the gross receipts tax distributable to the general fund.

D. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state aviation fund from the net receipts attributable to the gross receipts tax distributable to the general fund in an amount equal to:

(1) eighty thousand dollars ($80,000) monthly from July 1, 2007 through June 30, 2008;

(2) one hundred sixty-seven thousand dollars ($167,000) monthly from July 1, 2008 through June 30, 2009; and

(3) two hundred fifty thousand dollars ($250,000) monthly after July 1, 2009.

History: 1978 Comp., § 7-1-6.7, enacted by Laws 1994, ch. 5, § 2; 1995, ch. 6, § 1; 1995, ch. 36, § 1; 2001, ch. 198, § 1; 2003, ch. 214, § 1; 2004, ch. 58, § 1; 2007, ch. 297, § 1; 2007, ch. 298, § 1; 2013, ch. 19, § 1; 2016, ch. 87, § 1.

## ANNOTATIONS

**Cross references.** — For the general fund, *see* 6-4-2 NMSA 1978.

For state aviation fund, *see* 64-1-15 NMSA 1978.

**Repeals and reenactments.** — Laws 1994, ch. 5, § 2 repealed former 7-1-6.7 NMSA 1978, as amended by Laws 1994, ch. 5, § 1, and enacted a new section, effective August 1, 1995.

**Compiler's notes.** — Laws 1995, ch. 36, § 2, effective June 16, 1995, repealed Laws 1993, ch. 364, § 4, which had repealed former 7-1-6.7 NMSA 1978, as amended by Laws 1993, ch. 364, § 3, effective July 1, 1995.

Subsection A of Laws 1995, ch. 6, § 20 repealed 7-1-6.7 NMSA 1978, as enacted by Laws 1994, ch. 5, § 3, which was to become effective August 1, 1997, effective June 16, 1995.

**The 2016 amendment,** effective July 1, 2016, extended to the year 2021 the distribution of the general fund gross receipts tax to the state aviation fund; and in Subsection C, changed "June 30, 2018" to "June 30, 2021".

**The 2013 amendment,** effective July 1, 2013, continued the distribution of forty-six thousandths percent of the gross receipts tax distributable to the general fund during the period from July 1, 2013 through June 30, 2018; and in Subsection C, at the beginning of the sentence, deleted "From July 1, 2002 through June 30, 2012" and added "From July 1, 2013 through June 30, 2018, a".

**The 2007 amendment,** effective July 1, 2007, in Subsection C, changed the ending date of the period in which distributions are made to the state aviation fund to June 30, 2012 and added Subsection D.

**The 2004 amendments,** effective March 4, 2004, amended Subsection A to change "four and thirty-one hundredths" to "four and seventy-nine hundredths" percent.

**The 2003 amendment,** effective August 1, 2003 substituted "four and thirty-one hundredths percent of the taxable" for "three and fifty-nine hundredths percent of the" near the middle of Subsection A.

**The 2001 amendment,** effective April 3, 2001, added Subsection C.

**The 1995 amendment,** effective August 1, 1995, substituted "three and fifty nine hundredths percent" for "two and fifteen hundredths percent" in Subsection A.

## 7-1-6.8. Distribution; motorboat fuel tax fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the motorboat fuel tax fund in an amount equal to thirteen hundredths of one percent of the net receipts attributable to the gasoline tax.

**History:** 1978 Comp., § 7-1-6.8, enacted by Laws 1983, ch. 211, § 13; 1987, ch. 347, § 7; 1988, ch. 72, § 3; 1988, ch. 73, § 3; 1989, ch. 356, § 3; 1993, ch. 357, § 2; 1994, ch. 5, § 4; 1995, ch. 6, § 2.

**ANNOTATIONS**

**Cross references.** — For Gasoline Tax Act, *see* 7-13-1 NMSA 1978 et seq.

For motor boat fuel fund, *see* 16-2-19.1 NMSA 1978.

**Compiler's notes.** — Subsection A of Laws 1995, ch. 6, § 20 repealed 7-1-6.8 NMSA 1978 as enacted by Laws 1994, ch. 5, § 5, relating to distributions to the motorboat fuel tax fund and which was to become effective August 1, 1997, effective June 16, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

**The 1995 amendment,** effective August 1, 1995, substituted "thirteen hundredth" for "eleven hundredths".

**The 1994 amendment,** effective August 1, 1994, substituted "eleven hundredths" for "one tenth".

**The 1993 amendment,** effective August 1, 1993, substituted "one-tenth of one percent" for "fourteen one-hundredths of one percent".

**The 1989 amendment,** effective August 1, 1989, substituted "equal to fourteen one hundredths" for "equal to sixteen one hundredths".

## 7-1-6.9. Distribution of gasoline taxes to municipalities and counties.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made in an amount equal to ten and thirty-eight hundredths percent of the net receipts attributable to the taxes, exclusive of penalties and interest, imposed by the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978].

B. The amount determined in Subsection A of this section shall be distributed as follows:

(1) ninety percent of the amount shall be paid to the treasurers of municipalities and H class counties in the proportion that the taxable motor fuel sales in each of the municipalities and H class counties bears to the aggregate taxable motor fuel sales in all of these municipalities and H class counties; and

(2) ten percent of the amount shall be paid to the treasurers of the counties, including H class counties, in the proportion that the taxable motor fuel sales outside of incorporated municipalities in each of the counties bears to the aggregate taxable motor fuel sales outside of incorporated municipalities in all of the counties.

C. Except as provided in Subsection D of this section, this distribution shall be paid into a separate road fund in the municipal treasury or county road fund for expenditure only for construction, reconstruction, resurfacing or other improvement or maintenance of public roads, streets, alleys or bridges, including right-of-way and materials acquisition. Money distributed pursuant to this section may be used by a municipality or county to provide matching funds for projects subject to cooperative agreements entered into with the department of transportation pursuant to Section 67-3-28 NMSA 1978. Any municipality or H class county that has created or that creates a "street

improvement fund" to which gasoline tax revenues or distributions are irrevocably pledged under Sections 3-34-1 through 3-34-4 NMSA 1978 or that has pledged all or a portion of gasoline tax revenues or distributions to the payment of bonds shall receive its proportion of the distribution of revenues under this section impressed with and subject to these pledges.

D. This distribution may be paid into a separate road fund or the general fund of the municipality or county if the municipality has a population less than three thousand or the county has a population less than four thousand.

**History:** 1978 Comp., § 7-1-6.9, enacted by Laws 1991, ch. 9, § 11; 1993, ch. 357, § 3; 1994, ch. 5, § 6; 1995, ch. 6, § 3; 1999, ch. 212, § 1; 2001, ch. 171, § 1; 2017, ch. 63, § 8.

## ANNOTATIONS

**Cross references.** — For the general fund, *see* 6-4-2 NMSA 1978.

**Repeals and reenactments.** — Laws 1991, ch. 9, § 11 repealed former 7-1-6.9 NMSA 1978, as amended by Laws 1991, ch. 9, § 10 and enacted a new section, effective July 1, 1992.

**Compiler's notes.** — Laws 1995, ch. 6, § 20 repealed 7-1-6.9 NMSA 1978, as enacted by Laws 1994, ch. 5, § 7, relating to distribution of gasoline taxes to municipalities and counties and which was to become effective August 1, 1997, effective June 16, 1995.

**The 2017 amendment,** effective June 16, 2017, made technical changes; in Subsection B, deleted "Except as provided in Subsection D of this section"; and in Subsection C, added "Except as provided in Subsection D of this section", after "agreements entered into with the", deleted "state highway and" and added "department of", and after "transportation", deleted "department".

**The 2001 amendment,** effective June 15, 2001, inserted "Except as provided in Subsection D of this section" at the beginning of Subsection B; and added Subsection D.

**The 1999 amendment,** effective August 1, 1999, in Subsection C inserted "a separate road fund in", substituted "road fund" for "general fund", substituted the language beginning "expenditure only" to the end of the first sentence for "general purposes or for any special purposes designated by the governing body of the municipality or county", and added the second sentence.

**The 1995 amendment,** effective August 1, 1995, substituted "ten and thirty-eight hundredth" for "eight and eighty-two hundredth" in Subsection A.

**The 1994 amendment,** effective August 1, 1994, substituted "eight and eighty-two hundredths" for "eight and two-hundredths" in Subsection A.

**The 1993 amendment,** effective August 1, 1993, substituted "eight and two-hundredths percent" for "eleven and three-hundredths percent" in Subsection A.

## 7-1-6.10. Distributions; state road fund.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state road fund in an amount equal to the net receipts attributable to the taxes, surcharges, penalties and interest imposed pursuant to the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978] and to the taxes, surtaxes, fees, penalties and interest imposed pursuant to the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978] and the Alternative Fuel Tax Act [7-16B-1 through 7-16B-10 NMSA 1978] less:

(1) the amount distributed to the state aviation fund pursuant to Subsection B of Section 7-1-6.7 NMSA 1978;

(2) the amount distributed to the motorboat fuel tax fund pursuant to Section 7-1-6.8 NMSA 1978;

(3) the amount distributed to municipalities and counties pursuant to Subsection A of Section 7-1-6.9 NMSA 1978;

(4) the amount distributed to the county government road fund pursuant to Section 7-1-6.19 NMSA 1978;

(5) the amount distributed to the local governments road fund pursuant to Section 7-1-6.39 NMSA 1978;

(6) the amount distributed to the municipalities pursuant to Section 7-1-6.27 NMSA 1978;

(7) the amount distributed to the municipal arterial program of the local governments road fund pursuant to Section 7-1-6.28 NMSA 1978;

(8) the amount distributed to a qualified tribe pursuant to a gasoline tax sharing agreement entered into between the secretary of transportation and the qualified tribe pursuant to the provisions of Section 67-3-8.1 NMSA 1978; and

(9) the amount distributed to the general fund pursuant to Section 7-1-6.44 NMSA 1978.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state road fund in an amount equal to the net receipts attributable to the taxes, interest and penalties from the Weight Distance Tax Act [Chapter 7, Article 15A NMSA 1978].

History: 1978 Comp., § 7-1-6.10, enacted by Laws 1983, ch. 211, § 15; 1987, ch. 347, § 9; 1988, ch. 70, § 8; 1988, ch. 73, § 5; 1989, ch. 356, § 5; 1990, ch. 86, § 4; 1992, ch. 55, § 4; 1993, ch. 272, § 1; 1993, ch. 357, § 4; 1994, ch. 5, § 8; 1995, ch. 6, § 4; 1995, ch. 16, § 11; 1996, ch. 15, § 2; 2003, ch. 150, § 1; 2003 (1st S.S.), ch. 3, § 1; 2004, ch. 109, § 1.

**ANNOTATIONS**

**The 2004 amendment,** effective July 1, 2004, added Paragraph (9) of Subsection A.

**The 2003 (1st S.S.) amendment,** effective July 1, 2004, deleted "highway and" following "secretary of" in Paragraph (8) of Subsection A, and "fees," preceding "interest and penalties" in Subsection B.

**The 2003 amendment,** effective July 1, 2003, deleted "Special Fuels Tax Act" in from the first paragraph in Subsection A, and added Paragraph (A)(8).

## 7-1-6.11. Distributions of cigarette taxes.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the comprehensive cancer center at the university of New Mexico health sciences center in an amount equal to eighty-three hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to eight and eighty-nine hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax, shall be made, on behalf of and for the benefit of the university of New Mexico health sciences center, to the New Mexico finance authority.

C. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to three and seventy-four hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax shall be made to the New Mexico finance authority for land acquisition and the planning, designing, construction and equipping of department of health facilities or improvements to such facilities.

D. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to nine and seventy-seven hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax shall be made to the New Mexico finance authority for deposit in the credit enhancement account created in the authority.

E. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to sixty-two hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax shall be made, on behalf of and for the benefit of the rural county cancer treatment fund, to the New Mexico finance authority.

**History**: 1978 Comp., § 7-1-6.11, enacted by Laws 1983, ch. 211, § 16; 1985, ch. 25, § 3; 1986, ch. 13, § 1; 1993, ch. 358, § 1; 2003, ch. 341, § 1; 2005, ch. 320, § 6; 2006, ch. 89, § 2; 2010 (2nd S.S.), ch. 5, § 1; 2017, ch. 34, § 2; 2017, ch. 63, § 9.

## ANNOTATIONS

**Cross references.** — For the county and municipality recreation fund, *see* 7-12-15 NMSA 1978.

For the county and municipal cigarette tax fund, *see* 7-12-16 NMSA 1978.

For medical trust fund for cancer and other research, *see* 24-20-1 NMSA 1978.

**2017 Multiple Amendments.** — Laws 2017, ch. 34, § 2, with contingent effective date, and Laws 2017, ch. 63, § 9, effective June 16, 2017, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2017, ch. 63, § 9, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2017, ch. 34, § 2 and Laws 2017, ch. 63, § 9 are described below. To view the session laws in their entirety, *see* the 2017 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2017, ch. 34, § 2 eliminated a distribution of the cigarette tax to the New Mexico finance authority and made technical changes to the section, and Laws 2017, ch. 63, § 9 amended a provision that designated funds from the cigarette tax to reflect the comprehensive designation and new name of the cancer center at the university of New Mexico health sciences center, and made technical changes.

**Laws 2017, ch. 63, § 9,** effective June 16, 2017, amended a provision that designated funds from the cigarette tax to reflect the comprehensive designation and new name of the cancer center at the university of New Mexico health sciences center, and made technical changes; redesignated former Subsections C through H as Subsections A through F, respectively; and in Subsection A, after "shall be made to the", added "comprehensive", and after "cancer", deleted "research and treatment".

**Laws 2017, ch. 34, § 2,** eliminated a distribution of the cigarette tax to the New Mexico finance authority; designated former Subsection C as Subsection A; deleted former Subsection D, which directed that a 1.25 percent distribution from cigarette tax revenues be made to the New Mexico finance authority; and redesignated former Subsections E through H as Subsections B through E, respectively.

**Contingent effective date.** — Laws 2017, ch. 34, § 3 provided that the provisions of this act is the later of:

A. November 1, 2017; or

B. the first day of the month following the day the chief executive officer of the New Mexico finance authority certifies to the secretary of taxation and revenue, the secretary of finance and administration, the legislative council service and the New Mexico compilation commission that the bonds issued pursuant to Section 6-21-6.10 NMSA 1978 have been discharged in full and the distribution pursuant to Subsection D of Section 7-1-6.11 NMSA 1978 is no longer needed to pay debt service, as that subsection was in effect prior to the effective date of this act.

**The 2010 (2nd S. S.) amendment,** effective July 1, 2010, in Subsection C, changed the amount of the distribution of net receipts from one and thirty-five hundredths percent to eighty-three hundredths percent; in Subsection D, changed the amount of the distribution of net receipts from two and two hundredths percent to one and twenty-five hundredths percent; in Subsection E, changed the amount of the distribution of net receipts from fourteen and thirty-seven hundredths percent to eight and eighty-nine hundredths percent; in Subsection F, changed the amount of the distribution of net receipts from six and five hundredths percent to three and seventy-four hundredths percent; in Subsection G, changed the amount of the distribution of net receipts from fifteen and seventy-nine hundredths percent to nine and seventy-seven hundredths percent; and in Subsection H, changed the amount of the distribution of net receipts from one percent to sixty-two hundredths percent.

**Applicability.** — Laws 2010 (2nd S.S.), ch. 5, § 27 provided that the distributions pursuant to the provisions of Laws 2010 (2nd S.S.), ch. 5, § 1 apply to receipts from the cigarette tax that are attributable to sales that occur on or after July 1, 2010.

**The 2006 amendment,** effective May 17, 2006, reduced the cigarette tax distribution in Subsections A through G; and added Subsection H to provide for a one percent distribution, for the benefit of the rural county cancer treatment fund, to the New Mexico finance authority.

**The 2005 amendment,** effective June 17, 2005, provided in Subsection F that the distribution shall be made to land acquisition and the planning, designing, construction and equipping and making improvements to department of health facilities.

**The 2003 amendment,** effective August 1, 2003, in Subsection A and C, substituted "one and thirty-six hundredths" for "four and three-quarters"; in Subsection B, substituted "two and seventy-two hundredths" for "nine and one-half"; in Subsection C, inserted "research and treatment" and substituted "health sciences center" for "school of medicine"; in Subsection D, substituted "two and four-hundredths" for "seven and one-eighth"; and added Subsections E, F, and G.

**The 1993 amendment,** effective August 1, 1993, deleted "to municipalities, counties and dedicated health research fund" from the end of the catchline; substituted "four and three-quarters percent" for "one-fifteenth" in Subsection A; substituted "nine and one-half percent" for "two-fifteenths" in Subsection B; and substituted "the cancer center at

the university of New Mexico school of medicine" for "dedicated health research fund" and "four and three-quarters percent" for "three-fifteenths" in Subsection C.

## 7-1-6.12. Transfer; revenues from municipal local option gross receipts taxes.

A. A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality for which the department is collecting a local option gross receipts tax imposed by that municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net receipts attributable to the local option gross receipts tax imposed by that municipality, less any deduction for administrative cost determined and made by the department pursuant to the provisions of the act authorizing imposition by that municipality of the local option gross receipts tax and any additional administrative fee withheld pursuant to Subsection C of Section 7-1-6.41 NMSA 1978.

B. A transfer pursuant to this section may be adjusted for a distribution made to a tax increment development district with respect to a portion of a gross receipts tax increment dedicated by a municipality pursuant to the Tax Increment for Development Act [Chapter 5, Article 15 NMSA 1978].

**History:** 1978 Comp., § 7-1-6.12, enacted by Laws 1983, ch. 211, § 17; 1986, ch. 20, § 8; 1990, ch. 99, § 46; 1991, ch. 9, § 12; 1993, ch. 30, § 1; 1997, ch. 125, § 2; 2006, ch. 75, § 31.

**ANNOTATIONS**

**Cross references.** — For the solid waste facility grant fund, *see* 74-9-41 NMSA 1978.

**The 2006 amendment,** effective March 6, 2006, added Subsection B to provide an adjustment for a distribution to a tax increment development district.

**The 1997 amendment,** effective July 1, 1997, added the language beginning "and any additional administrative".

**The 1993 amendment,** effective June 18, 1993, inserted "local option" in the catchline and rewrote this section to the extent that a detailed comparison is impracticable.

## 7-1-6.13. Transfer; revenues from county local option gross receipts taxes.

A. Except as provided in Subsection B of this section, a transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each county for which the department is collecting a local option gross receipts tax imposed by that county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net

receipts attributable to the local option gross receipts tax imposed by that county, less any deduction for administrative cost determined and made by the department pursuant to the provisions of the act authorizing imposition by that county of the local option gross receipts tax and any additional administrative fee withheld pursuant to Subsection C of Section 7-1-6.41 NMSA 1978.

B. A transfer pursuant to this section may be adjusted for a distribution made to a tax increment development district with respect to a portion of a gross receipts tax increment dedicated by a county pursuant to the Tax Increment for Development Act [Chapter 5, Article 15, NMSA 1978].

History: 1978 Comp., § 7-1-6.13, enacted by Laws 1983, ch. 211, § 18; 1986, ch. 20, § 9; 1987, ch. 45, § 9; 1989, ch. 326, § 11; 1990, ch. 99, § 47; 1991, ch. 176, § 16; 1993, ch. 30, § 2; 1997, ch. 125, § 3; 2003, ch. 205, § 1; 2005, ch. 338, § 1; 2006, ch. 75, § 32; 2008, ch. 51, § 1; 2014, ch. 79, § 1.

**ANNOTATIONS**

**The 2014 amendment,** effective March 12, 2014, eliminated the distribution to the sole community provider fund; in Subsection A, after "Except as provided in", deleted "Subsections" and added "Subsection", and after "Subsection B", deleted "and C"; and deleted former Subsection C, which provided for a distribution to the sole community provider fund from the county gross receipts tax through June 30, 2009.

**The 2008 amendment,** effective February 28, 2008, added Subsection C.

**The 2006 amendment,** effective March 6, 2006, added Subsection B to provide an adjustment for a distribution to a tax increment development district.

**The 2005 amendment,** effective July 1, 2005, deleted former Subsection B which provided for a distribution of local option gross receipts tax and special county hospital gross receipts tax to the largest municipality in certain class B counties for hospital purposes.

**The 2003 amendment,** effective July 1, 2003, in Subsection A, inserted "Except as provided in Subsection B of this section" at the beginning, substituted "7-1-6.41 NMSA 1978" for "1 of this 1997 act" at the end; and added Subsection B.

**The 1997 amendment,** effective July 1, 1997, added the language beginning "and any additional administrative".

**The 1993 amendment,** effective June 18, 1993, inserted "local option" in the section heading and rewrote this section to the extent that a detailed comparison is impracticable.

## 7-1-6.14. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 88, § 21 repealed 7-1-6.14 NMSA 1978, as enacted by Laws 1983, ch. 211, § 19, relating to transfers to counties or municipalities of amounts of net receipts attributable to county or municipal gasoline tax, effective May 16, 1990. For provisions of former section, *see* the 1989 NMSA on *NMOneSource.com.*

## 7-1-6.15. Adjustments of distributions or transfers to municipalities or counties.

A. The provisions of this section apply to:

(1) any distribution to a municipality pursuant to Section 7-1-6.4, 7-1-6.36 or 7-1-6.46 NMSA 1978;

(2) any transfer to a municipality with respect to any local option gross receipts tax imposed by that municipality;

(3) any transfer to a county with respect to any local option gross receipts tax imposed by that county;

(4) any distribution to a county pursuant to Section 7-1-6.16 or 7-1-6.47 NMSA 1978;

(5) any distribution to a municipality or a county of gasoline taxes pursuant to Section 7-1-6.9 NMSA 1978;

(6) any transfer to a county with respect to any tax imposed in accordance with the Local Liquor Excise Tax Act [7-24-8 through 7-24-16 NMSA 1978];

(7) any distribution to a county from the county government road fund pursuant to Section 7-1-6.26 NMSA 1978;

(8) any distribution to a municipality of gasoline taxes pursuant to Section 7-1-6.27 NMSA 1978; and

(9) any distribution to a municipality of compensating taxes pursuant to Section 7-1-6.55 NMSA 1978.

B. Before making a distribution or transfer specified in Subsection A of this section to a municipality or county for the month, amounts comprising the net receipts shall be segregated into two mutually exclusive categories. One category shall be for amounts relating to the current month, and the other category shall be for amounts relating to prior periods. The total of each category for a municipality or county shall be reported each month to that municipality or county. If the total of the amounts relating to prior periods is less than zero and its absolute value exceeds the greater of one hundred

dollars ($100) or an amount equal to twenty percent of the average distribution or transfer amount for that municipality or county, then the following procedures shall be carried out:

(1) all negative amounts relating to any period prior to the three calendar years preceding the year of the current month, net of any positive amounts in that same time period for the same taxpayers to which the negative amounts pertain, shall be excluded from the total relating to prior periods. Except as provided in Paragraph (2) of this subsection, the net receipts to be distributed or transferred to the municipality or county shall be adjusted to equal the amount for the current month plus the revised total for prior periods; and

(2) if the revised total for prior periods determined pursuant to Paragraph (1) of this subsection is negative and its absolute value exceeds the greater of one hundred dollars ($100) or an amount equal to twenty percent of the average distribution or transfer amount for that municipality or county, the revised total for prior periods shall be excluded from the distribution or transfers and the net receipts to be distributed or transferred to the municipality or county shall be equal to the amount for the current month.

C. The department shall recover from a municipality or county the amount excluded by Paragraph (2) of Subsection B of this section. This amount may be referred to as the "recoverable amount".

D. Prior to or concurrently with the distribution or transfer to the municipality or county of the adjusted net receipts, the department shall notify the municipality or county whose distribution or transfer has been adjusted pursuant to Paragraph (2) of Subsection B of this section:

(1) that the department has made such an adjustment, that the department has determined that a specified amount is recoverable from the municipality or county and that the department intends to recover that amount from future distributions or transfers to the municipality or county;

(2) that the municipality or county has ninety days from the date notice is made to enter into a mutually agreeable repayment agreement with the department;

(3) that if the municipality or county takes no action within the ninety-day period, the department will recover the amount from the next six distributions or transfers following the expiration of the ninety days; and

(4) that the municipality or county may inspect, pursuant to Section 7-1-8.9 NMSA 1978, an application for a claim for refund that gave rise to the recoverable amount, exclusive of any amended returns that may be attached to the application.

E. No earlier than ninety days from the date notice pursuant to Subsection D of this section is given, the department shall begin recovering the recoverable amount from a municipality or county as follows:

(1) the department may collect the recoverable amount by:

(a) decreasing distributions or transfers to the municipality or county in accordance with a repayment agreement entered into with the municipality or county; or

(b) except as provided in Paragraphs (2) and (3) of this subsection, if the municipality or county fails to act within the ninety days, decreasing the amount of the next six distributions or transfers to the municipality or county following expiration of the ninety-day period in increments as nearly equal as practicable and sufficient to recover the amount;

(2) if, pursuant to Subsection B of this section, the secretary determines that the recoverable amount is more than fifty percent of the average distribution or transfer of net receipts for that municipality or county, the secretary:

(a) shall recover only up to fifty percent of the average distribution or transfer of net receipts for that municipality or county; and

(b) may, in the secretary's discretion, waive recovery of any portion of the recoverable amount, subject to approval by the state board of finance; and

(3) if, after application of a refund claim, audit adjustment, correction of a mistake by the department or other adjustment of a prior period, but prior to any recovery of the department pursuant to this section, the total net receipts of a municipality or county for the twelve-month period beginning with the current month are reduced or are projected to be reduced to less than fifty percent of the average distribution or transfer of net receipts, the secretary may waive recovery of any portion of the recoverable amount, subject to approval by the state board of finance.

F. No later than ninety days from the date notice pursuant to Subsection D of this section is given, the department shall provide the municipality or county adequate opportunity to review an application for a claim for refund that gave rise to the recoverable amount, exclusive of any amended returns that may be attached to the application, pursuant to Section 7-1-8.9 NMSA 1978.

G. On or before September 1 of each year beginning in 2016, the secretary shall report to the state board of finance and the legislative finance committee the total recoverable amount waived pursuant to Subparagraph (b) of Paragraph (2) and Paragraph (3) of Subsection E of this section for each municipality and county in the prior fiscal year.

H. The secretary is authorized to decrease a distribution or transfer to a municipality or county upon being directed to do so by the secretary of finance and administration pursuant to the State Aid Intercept Act [6-22-1 through 6-22-3 NMSA 1978] or to redirect a distribution or transfer to the New Mexico finance authority pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement of the municipality or county and the New Mexico finance authority. Upon direction to decrease a distribution or transfer or notice to redirect a distribution or transfer to a municipality or county, the secretary shall decrease or redirect the next designated distribution or transfer, and succeeding distributions or transfers as necessary, by the amount of the state distributions intercept authorized by the secretary of finance and administration pursuant to the State Aid Intercept Act or by the amount of the state distribution intercept authorized pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement with the New Mexico finance authority. The secretary shall transfer the state distributions intercept amount to the municipal or county treasurer or other person designated by the secretary of finance and administration or to the New Mexico finance authority pursuant to written agreement to pay the debt service to avoid default on qualified local revenue bonds or meet other local revenue bond, loan or other debt obligations of the municipality or county to the New Mexico finance authority. A decrease to or redirection of a distribution or transfer pursuant to this subsection that arose:

(1) prior to an adjustment of a distribution or transfer of net receipts creating a recoverable amount owed to the department takes precedence over any collection of any recoverable amount pursuant to Paragraph (2) of Subsection B of this section, which may be made only from the net amount of the distribution or transfer remaining after application of the decrease or redirection pursuant to this subsection; and

(2) after an adjustment of a distribution or transfer of net receipts creating a recoverable amount owed to the department shall be subordinate to any collection of any recoverable amount pursuant to Paragraph (2) of Subsection B of this section.

I. Upon the direction of the secretary of finance and administration pursuant to Section 9-6-5.2 NMSA 1978, the secretary shall temporarily withhold the balance of a distribution to a municipality or county, net of any decrease or redirected amount pursuant to Subsection H of this section and any recoverable amount pursuant to Paragraph (2) of Subsection B of this section, that has failed to submit an audit report required by the Audit Act [12-6-1 through 12-6-14 NMSA 1978] or a financial report required by Subsection F of Section 6-6-2 NMSA 1978. The amount to be withheld, the source of the withheld distribution and the number of months that the distribution is to be withheld shall be as directed by the secretary of finance and administration. A distribution withheld pursuant to this subsection shall remain in the tax administration suspense fund until distributed to the municipality or county and shall not be distributed to the general fund. An amount withheld pursuant to this subsection shall be distributed to the municipality or county upon direction of the secretary of finance and administration.

J. As used in this section:

(1) "amounts relating to the current month" means any amounts included in the net receipts of the current month that represent payment of tax due for the current month, correction of amounts processed in the current month that relate to the current month or that otherwise relate to obligations due for the current month;

(2) "amounts relating to prior periods" means any amounts processed during the current month that adjust amounts processed in a period or periods prior to the current month regardless of whether the adjustment is a correction of a department error or due to the filing of amended returns, payment of department-issued assessments, filing or approval of claims for refund, audit adjustments or other cause;

(3) "average distribution or transfer amount" means the following amounts; provided that a distribution or transfer that is negative shall not be used in calculating the amounts:

(a) the annual average of the total amount distributed or transferred to a municipality or county in each of the three twelve-month periods preceding the current month;

(b) if a distribution or transfer to a municipality or county has been made for less than three years, the total amount distributed or transferred in the year preceding the current month; or

(c) if a municipality or county has not received distributions or transfers of net receipts for twelve or more months, the monthly average of net receipts distributed or transferred to the municipality or county preceding the current month multiplied by twelve;

(4) "current month" means the month for which the distribution or transfer is being prepared; and

(5) "repayment agreement" means an agreement between the department and a municipality or county under which the municipality or county agrees to allow the department to recover an amount determined pursuant to Paragraph (2) of Subsection B of this section by decreasing distributions or transfers to the municipality or county for one or more months beginning with the distribution or transfer to be made with respect to a designated month. No interest shall be charged.

History: 1978 Comp., § 7-1-6.15, enacted by Laws 1983, ch. 211, § 20; 1986, ch. 20, § 10; 1987, ch. 169, § 2; 1988, ch. 72, § 5; 1989, ch. 326, § 12; 1990, ch. 99, § 48; 1991, ch. 9, § 13; 1991, ch. 176, § 17; 1992, ch. 105, § 4; 1993, ch. 30, § 3; 1994, ch. 54, § 1; 1996, ch. 28, § 3; 1999, ch. 189, § 1; 2007, ch. 331, § 1; 2011, ch. 106, § 3; 2015, ch. 89, § 1; 2015, ch. 100, § 1.

## ANNOTATIONS

**The 2015 amendment,** effective July 1, 2015, changed the procedures for adjusting certain distributions and transfers to municipalities and counties; in Paragraph (1) of Subsection A, after "municipality", deleted "of gross receipts taxes", after "7-1-6.4", deleted "NMSA 1978 or of interstate telecommunications gross receipts tax pursuant to Section", and after "7-1-6.36", added "or 7-1-6.46"; in Paragraph (4) of Subsection A, after "7-1-6.16", added "or 7-1-6.47"; deleted Paragraph (7) of Subsection A and redesignated the succeeding paragraphs accordingly; deleted former Subsections B through E; added new Subsections B through G; redesignated former Subsections F and G as Subsections H and I, respectively; in Subsection H, after "decrease a distribution", added "or transfer", after "to redirect a distribution", added "or transfer", after "decrease a distribution", added "or transfer", after "notice to redirect a distribution", added "or transfer", after "designated distribution", added "or transfer", after "succeeding distributions", added "or transfers", and added the last sentence of the introductory paragraph of Subsection H; added Paragraphs (1) and (2) of Subsection H; in Subsection I, after "temporarily withhold", added "the balance of", after "municipality or county,", added "net of any decrease or redirected amount pursuant to Subsection H of this section and any recoverable amount pursuant to Paragraph (2) of Subsection B of this section", and added the last sentence of Subsection I; and added Subsection J.

**Duplicate laws.** — Laws 2015, ch. 89, § 1 and Laws 2015, ch. 100, § 1, both effective July 1, 2015, enacted identical amendments to this section. The section was set out as amended by Laws 2015, ch. 100, § 1. *See* 12-1-8 NMSA 1978.

**The 2011 amendment,** effective July 1, 2012, authorized the secretary of finance and administration to order the secretary of taxation and revenue to temporarily withhold distributions to municipalities and counties that have failed to submit audit reports required by the Audit Act or financial reports required by Section 6-6-2 NMSA 1978.

**The 2007 amendment,** effective July 1, 2007, amended Paragraph 10 of Subsection A to replace distributions to counties, school districts or special districts and distributions of oil and gas ad valorem production taxes with a distribution to municipalities pursuant to 7-1-6.55 NMSA 1978.

**The 1999 amendment,** effective June 18, 1999, added Subsection A(10) and substituted "political subdivision" for "municipality or county" throughout Subsections B to D.

**The 1996 amendment,** effective March 4, 1996, inserted "or a resolution" in the first and second sentences of Subsection F.

**The 1994 amendment,** effective May 18, 1994, in Subsection A, deleted "and" at the end of Paragraph (6), and added Paragraphs (8) and (9); and, in Subsection F, added all of the language at the end of the first sentence beginning with "or to redirect", all of the language at the end of the second sentence beginning with "or by the amount" and

all the language at the end of the last sentence beginning with "or meet other", and inserted "or notice to redirect a distribution" and "or redirect" in the second sentence, and "or to the New Mexico finance authority pursuant to written agreement" in the last sentence.

**The 1993 amendment,** effective June 18, 1993, in Subsection A, added the language beginning "or of interstate" at the end of Paragraph (1), rewrote Paragraphs (2) and (3), deleted former Paragraphs (6) and (7) relating to transfers to municipalities or counties with respect to a tax on gasoline, added Paragraph (6) and redesignated former Paragraph (8) as Paragraph (7).

**The 1992 amendment,** effective May 20, 1992, inserted "Municipal Infrastructure Gross Receipts Tax Act" in Subsection A(2); substituted "Subject to the provisions of" for "Unless provided by" in the second sentence of Subsection B; inserted "pursuant to Subsection B of this section" in Subsection E; and added Subsection F.

**The 1991 amendment,** effective April 4, 1991, in Paragraph (3) of Subsection A, added "or Local Hospital Gross Receipts Tax Act" and made a related stylistic change. The section was also amended by Laws 1991, ch. 9, § 13, effective July 1, 1991. The section wasa set out as amended by Laws 1991, ch. 176, § 17. *See* 12-1-8 NMSA 1978.

**The 1990 amendment,** effective March 5, 1990, in Subsection A, added "Municipal Environmental Services Gross Receipts Tax Act" at the end of Paragraph (2), deleted "County Sales Tax Act" following "in accordance with the" and added "County Environmental Services Gross Receipts Tax Act" at the end of Paragraph (3), and made minor stylistic changes.

**The 1989 amendment,** effective June 16, 1989, in Subsection A(3), inserted "Local Liquor Excise Tax Act".

**Meaning of the term "erroneous".** — The term "erroneous" in 7-1-6.15(B) NMSA 1978 refers to distributions or transfers of gross receipts tax revenue that were in error due to a taxpayer filing or reporting error by a taxpayer as well as an error made by the department. City of Eunice v. N.M. Taxation & Revenue Dep't, 2014-NMCA-085, cert. granted, 2014-NMCERT-008.

**Time limitation to recover over-payment of gross receipts taxes to a municipality.** — Where the taxpayer, who paid gross receipts taxes imposed by the state, county and municipality, determined that it had mistakenly paid taxes to the municipality because its place of business was actually in the unincorporated part of the county and not within the municipal boundaries; the taxpayer filed amended returns changing the reporting location from the municipality to the county; in January 2013, the department granted the taxpayer a refund of taxes going back to January 2009; and the department claimed that the municipality had to refund taxes distributed to the municipality based on the taxpayer's original returns from January 2009 in excess of $2.3 million, 7-1-6.15(C)

NMSA 1978 barred the department from recovering any excess state and municipal taxes revenues distributed to the municipality prior to January 1, 2012 and had statutory authority to recover only $120,552 from the municipality for erroneous distributions of taxes made in 2012. City of Eunice v. N.M. Taxation & Revenue Dep't, 2014-NMCA-085, cert. granted, 2014-NMCERT-008.

## 7-1-6.16. County equalization distribution.

A. Beginning on September 15, 1989 and on September 15 of each year thereafter, the department shall distribute to any county that has imposed or continued in effect during the state's preceding fiscal year a county gross receipts tax pursuant to Section 7-20E-9 NMSA 1978 an amount equal to:

(1) the product of a fraction, the numerator of which is the county's population and the denominator of which is the state's population, multiplied by the annual sum for the county; less

(2) the net receipts received by the department during the report year, including any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, attributable to the county gross receipts tax at a rate of one-eighth percent; provided that for any month in the report year, if no county gross receipts tax was in effect in the county in the previous month, the net receipts, for the purposes of this section, for that county for that month shall be zero.

B. If the amount determined by the calculation in Subsection A of this section is zero or a negative number for a county, no distribution shall be made to that county.

C. As used in this section:

(1) "annual sum" means for each county the sum of the monthly amounts for those months in the report year that follow a month in which the county had in effect a county gross receipts tax;

(2) "monthly amount" means an amount equal to the product of:

(a) the net receipts received by the department in the month attributable to the state gross receipts tax plus five percent of the total amount of deductions claimed pursuant to Section 7-9-92 NMSA 1978 for the month plus five percent of the total amount of deductions claimed pursuant to Section 7-9-93 NMSA 1978 for the month; and

(b) a fraction, the numerator of which is one-eighth percent and the denominator of which is the tax rate imposed by Section 7-9-4 NMSA 1978 in effect on the last day of the previous month;

(3) "population" means the most recent official census or estimate determined by the United States census bureau for the unit or, if neither is available, the most current estimated population for the unit provided in writing by the bureau of business and economic research at the university of New Mexico; and

(4) "report year" means the twelve-month period ending on the July 31 immediately preceding the date upon which a distribution pursuant to this section is required to be made.

History: 1978 Comp., § 7-1-6.16, enacted by Laws 1983, ch. 213, § 27; 1986, ch. 20, § 11; 1989, ch. 216, § 1; 2004, ch. 116, § 4.

**ANNOTATIONS**

**The 2004 amendment,** effective January 1, 2005, amended Subsection C to divide Paragraph (2) into Subparagraphs (a) and (b), to delete from Subparagraph (a), "multiplied by" and to insert in its place: "plus five percent of the total amount of deductions claimed pursuant to Section 7-9-92 NMSA 1978 for the month plus five percent of the total amount of deductions claimed pursuant to Section 7-9-93 NMSA 1978 for the month; and".

**The 1989 amendment,** effective June 16, 1989, in the introductory paragraph of Subsection A substituted "1989" for "1986", inserted "during the state's preceding fiscal year", and deleted "for general purposes" following "tax"; rewrote Paragraph A(1); in Paragraph A(2) rewrote the first sentence and added the second sentence; added Paragraphs C(1) and C(2); redesignated former Subsection C as Paragraph C(3) while deleting therein "for the purposes of this section" following "means"; and added Paragraph C(4).

## 7-1-6.17. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 264, § 25A repealed 7-1-6.17 NMSA 1978, as enacted by Laws 1986, ch. 112, § 1, relating to distribution of tobacco products tax, effective July 1, 1987.

## 7-1-6.18. Distribution; veterans' state cemetery fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the veterans' state cemetery fund of the amounts designated pursuant to Section 7-2-28 NMSA 1978 as contributions to that fund after the city of Santa Fe has received the balance of tax refund contributions in the amount of one million seventy thousand dollars ($1,070,000).

History: 1978 Comp., § 7-1-6.18, enacted by Laws 1987, ch. 257, § 1; 2011, ch. 42, § 2; 2016, ch. 7, § 1.

**ANNOTATIONS**

**The 2016 amendment,** effective May 18, 2016, changed the name of the veterans' national cemetery fund to the veterans' state cemetery fund, removed a contingency on a distribution to the veterans' state cemetery fund that already occurred, and removed a requirement that certain excess amounts in the veterans' state cemetery fund be distributed to the substance abuse education fund; in the catchline, after "veterans'", deleted "national" and added "state"; deleted "Upon a certification by the state board of finance that the city of Santa Fe grants and conveys additional acreage for the Santa Fe national cemetery", after "veterans'", deleted "national" and added "state", after "contributions to that fund", deleted "provided that when the sum of contributions received on or after January 1, 1988 equals one million seventy thousand dollars ($1,070,000), any contributions received in excess of that amount shall be distributed to the substance abuse education fund" and added "after the city of Santa Fe has received the balance of tax refund contributions in the amount of one million seventy thousand dollars ($1,070,000)".

**The 2011 amendment,** effective June 17, 2011, eliminated the provision that permitted distributions to the substance abuse education fund if House Bill 103 of the first session of the thirty-eighth legislature became law.

## 7-1-6.19. Distribution; county government road fund created.

A. There is created in the state treasury the "county government road fund".

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county government road fund in an amount equal to five and seventy-six hundredths percent of the net receipts attributable to the gasoline tax.

**History:** 1978 Comp., § 7-1-6.19, enacted by Laws 1991, ch. 9, § 15; 1993, ch. 357, § 5; 1994, ch. 5, § 9; 1995, ch. 6, § 5.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1991, ch. 9, § 15 repealed former 7-1-6.19 NMSA 1978, as enacted by Laws 1987, ch. 347, § 10, and enacted a new section, effective July 1, 1992.

**Compiler's notes.** — Subsection A of Laws 1995, ch. 6, § 20 repealed 7-1-6.19 NMSA 1978, as enacted by Laws 1994, ch. 5, § 10, relating to the creation of and distributions to county government road fund and which was to become effective August 1, 1997, effective June 16, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

**The 1995 amendment,** effective August 1, 1995, substituted "five and seventy-six hundredths percent" for "four and nine tenth percent" in Subsection B.

**The 1994 amendment,** effective August 1, 1994, substituted "four and nine-tenths" for "four and forty-six hundredths" in Subsection B.

**The 1993 amendment,** effective August 1, 1993, substituted "four and forty-six hundredths percent" for "six and thirteen-hundredths percent" in Subsection B.

## 7-1-6.20. Identification of money in extraction taxes suspense fund; distribution.

A. Except as provided in Subsection B of this section, after the necessary disbursements have been made from the extraction taxes suspense fund, the money remaining in the suspense fund as of the last day of the month shall be identified by tax source and distributed or transferred in accordance with the provisions of Sections 7-1-6.21 through 7-1-6.23 NMSA 1978. After the necessary distributions and transfers, any balance, except for remittances unidentified as to source or disposition, shall be transferred to the general fund.

B. Payments on assessments issued by the department pursuant to the Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978], the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978], the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978] and the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978] shall be held in the extraction taxes suspense fund until the secretary determines that there is no substantial risk of protest or other litigation, whereupon after the necessary disbursements have been made from the extraction taxes suspense fund, the money remaining in the suspense fund as of the last day of the month attributed to these payments shall be identified by tax source and distributed or transferred in accordance with the provisions of Sections 7-1-6.21 through 7-1-6.23 NMSA 1978. After the necessary distributions and transfers, any balance, except for remittance unidentified as to source or disposition, shall be transferred to the general fund.

**History:** 1978 Comp., § 7-1-6.20, enacted by Laws 1985, ch. 65, § 6; 2001, ch. 230, § 2.

**ANNOTATIONS**

**Cross references.** — For the extraction taxes suspense fund, *see* 7-1-6 NMSA 1978.

For the general fund, *see* 6-4-2 NMSA 1978.

**The 2001 amendment,** effective June 15, 2001, inserted "Except as provided in Subsection B of this section" in Subsection A, and added Subsection B.

## 7-1-6.20. Identification of money in extraction taxes suspense fund; distribution. (Effective July 1, 2018.)

*A. Except as provided in Subsection B of this section, after the necessary disbursements have been made from the extraction taxes suspense fund, the money remaining in the suspense fund as of the last day of the month shall be identified by tax source and distributed or transferred in accordance with the provisions of Sections 7-1-6.21 through 7-1-6.23 NMSA 1978 and Section 3 of this 2017 act [7-1-6.61 NMSA 1978]. After the necessary distributions and transfers, any balance, except for remittances unidentified as to source or disposition, shall be transferred to the general fund.*

*B. Payments on assessments issued by the department pursuant to the Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978], the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978], the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978] and the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978] shall be held in the extraction taxes suspense fund until the secretary determines that there is no substantial risk of protest or other litigation, whereupon after the necessary disbursements have been made from the extraction taxes suspense fund, the money remaining in the suspense fund as of the last day of the month attributed to these payments shall be identified by tax source and distributed or transferred in accordance with the provisions of Sections 7-1-6.21 through 7-1-6.23 NMSA 1978 and Section 3 of this 2017 act [7-1-6.61 NMSA 1978]. After the necessary distributions and transfers, any balance, except for remittance unidentified as to source or disposition, shall be transferred to the general fund.*

***History:*** *1978 Comp., § 7-1-6.20, enacted by Laws 1985, ch. 65, § 6; 2001, ch. 230, § 2; 2017 (1st S.S.), ch. 3, § 2.*

***ANNOTATIONS***

***The 2017 (1st S.S.) amendment,*** *effective July 1, 2018, provided that excess funds in the extraction taxes suspense fund be distributed or transferred in accordance with the provisions of Section 7-1-6.61 NMSA 1978; and in Subsections A and B, after "7-1-6.23 NMSA 1978", added "and Section 3 of this 2017 act".*

## 7-1-6.21. Distribution to oil and gas reclamation fund.

A. With respect to any period for which the rate of the tax imposed by Section 7-30-4 NMSA 1978 is nineteen-hundredths percent, a distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the oil and gas reclamation fund in an amount equal to two-nineteenths of the net receipts attributable to the tax imposed under the Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978].

B. With respect to any period for which the total rate of the tax imposed on oil by Section 7-30-4 NMSA 1978 is twenty-four hundredths percent, a distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the oil and gas reclamation fund in an amount equal to nineteen and seven-tenths percent of the net receipts attributable to the tax imposed under the Oil and Gas Conservation Tax Act.

History: 1978 Comp., § 7-1-6.21, enacted by Laws 1985, ch. 65, § 7; 1989, ch. 130, § 1; 1991, ch. 9, § 16; 2003, ch. 433, § 1; 2010, ch. 98, § 1.

**ANNOTATIONS**

**The 2010 amendment,** effective May 19, 2010, in Subsection A, after "reclamation fund in", deleted "the" and added "an"; in Subsection B, after "for which the", added "total"; after "tax imposed", added "on oil"; after "Section 7-30-4 NMSA 1978 is", deleted "eighteen hundredths" and added "twenty-four hundredths"; after "reclamation fund in", deleted "the" and added "an"; and after "amount equal to", deleted "one-eighteenth" and added "nineteen and seven-tenths percent".

**The 2003 amendment,** effective July 1, 2003, inserted the Subsection A designation; substituted "two-nineteenths" for "one-nineteenth" in the second percentage of Subsection A; and added Subsection B.

**The 1991 amendment,** effective July 1, 1991, substituted "and Gas Reclamation" for "Conservation" in the catchline; deleted former Subsection A, relating to a distribution pursuant to 7-1-6.20 NMSA 1978 to the oil conservation fund; and deleted the subsection designation "B".

**The 1989 amendment,** effective June 16, 1989, designated the formerly undesignated provisions as Subsection A, while inserting therein "the difference between" and adding all of the language following "Act", and added Subsection B.

## 7-1-6.22. Distributions to oil and gas production tax fund, oil and gas equipment tax fund and copper production tax fund; creation of funds.

A. A distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the "oil and gas production tax fund", hereby created in the state treasury, of the net receipts including advance payments, attributable to the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978].

B. A distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the "oil and gas equipment tax fund", hereby created in the state treasury, of the net receipts attributable to the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978].

C. A distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the "copper production tax fund", hereby created in the state treasury, of the net receipts attributable to the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978].

**History:** 1978 Comp., § 7-1-6.22, enacted by Laws 1985, ch. 65, § 8; 1990, ch. 125, § 2; 1991, ch. 9, § 17.

**ANNOTATIONS**

**The 1991 amendment,** effective July 1, 1991, inserted "including advance payments" in Subsection A.

**The 1990 amendment,** effective March 7, 1990, inserted "and copper production tax fund" in the section heading, made a related stylistic change, and added Subsection C.

## 7-1-6.23. Distribution to severance tax bonding fund.

A distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the severance tax bonding fund of the net receipts attributable to the taxes and advance payment imposed pursuant to the Severance Tax Act [7-26-1 through 7-26-8 NMSA 1978] and the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978].

**History:** 1978 Comp., § 7-1-6.23, enacted by Laws 1985, ch. 65, § 9; 1991, ch. 9, § 18.

**ANNOTATIONS**

**Cross references.** — For the severance tax bonding fund, *see* 7-27-2 NMSA 1978.

**The 1991 amendment,** effective July 1, 1991, inserted "and advance payment".

## 7-1-6.24. Distribution; substance abuse education fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the substance abuse education fund of the amounts designated pursuant to Section 7-2-30 NMSA 1978 as contributions to that fund.

**History:** 1978 Comp., § 7-1-6.18, enacted by Laws 1987, ch. 265, § 3; 2017, ch. 63, § 10.

**ANNOTATIONS**

**Compiler's notes.** — Laws 1987, ch. 257, § 1 and ch. 265, § 3 both enacted 7-1-6.18 NMSA 1978, thereby necessitating the renumbering of this section as 7-1-6.24 NMSA 1978.

**Cross references.** — For substance abuse education fund, *see* 9-7-17 NMSA 1978.

**The 2017 amendment,** effective June 16, 2017, after the second occurrence of "Section", changed "7-2-28" to "7-2-30".

## 7-1-6.25. Distribution of petroleum products loading fee; corrective action fund; local governments road fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 of the net receipts attributable to the petroleum products loading fee shall be made to each of the following funds in the following amounts:

A. to the local governments road fund an amount equal to the net receipts attributable to a fee of forty dollars ($40.00) per load; and

B. to the corrective action fund the balance, if any, of the net receipts.

**History:** 1978 Comp., § 7-1-6.25, enacted by Laws 1988, ch. 70, § 9; 1990, ch. 124, § 13; 1993, ch. 298, § 1; 1995, ch. 6, § 6; 1996, ch. 82, § 1.

**ANNOTATIONS**

**Cross references.** — For imposition of petroleum products loading fee, *see* 7-13A-3 NMSA 1978.

For local governments road fund, *see* 67-3-28.2 NMSA 1978.

For ground water protection corrective action fund, *see* 74-6B-7 NMSA 1978.

**The 1996 amendment,** effective July 1, 1996, deleted former Subsection B relating to ceasing imposition of the petroleum products loading fee when the corrective action fund is certified to equal or exceed $50,000,000, and rewrote the remaining provisions.

**The 1995 amendment,** effective August 1, 1995, inserted "of petroleum products loading fee" and "local governments road fund" in the section heading; designated the former first and second sentences as Subsections A and B; deleted "shall be made to the corrective action fund" preceding "of the net receipts" and added the language beginning "shall be made" at the end of the introductory paragraph of Subsection A; and added Paragraphs A(1) and A(2).

**The 1993 amendment,** effective April 7, 1993, substituted "fifty million dollars ($50,000,000)" for "twenty-five million dollars ($25,000,000)" and "secretary of environment" for "director of the environmental improvement division of the health and environment department" near the middle of the second sentence.

**The 1990 amendment,** effective July 1, 1990, rewrote the section to the extent that a detailed comparison would be impracticable.

## 7-1-6.26. County government road fund; distribution.

A. For the purposes of this section, "distributable amount" means the amount in the county government road fund as of the last day of any month for which a distribution is required to be made pursuant to this section in excess of the balance in that fund as of

the last day of the preceding month after reduction for any required distributions for the preceding month.

B. The secretary of transportation shall determine and certify on or before July 1 of each year the total miles of public roads maintained by each county pursuant to Section 66-6-23 NMSA 1978. For the purposes of this subsection, if the certified mileage of public roads maintained by a county is less than four hundred miles, the state treasurer shall increase the number of miles of public roads maintained by that county by fifty percent and revise the total miles of public roads maintained by all counties accordingly. Except as provided otherwise in Subsection D of this section, each county shall receive an amount equal to its proportionate share of miles of public roads maintained, as the number of miles for the county may have been revised pursuant to this subsection, to the total miles of public roads maintained by all counties, as that total may have been revised pursuant to this subsection, times fifty percent of the distributable amount in the county government road fund.

C. Except as provided otherwise in Subsection D of this section, each county shall receive a share of fifty percent of the distributable amount in the county government road fund as determined in this subsection. The amount for each county shall be the greater of:

(1) twenty-one cents ($.21) multiplied by the county's population as shown by the most recent federal decennial census; or

(2) the proportionate share that the taxable gallons of gasoline reported for that county for the preceding fiscal year bear to the total taxable gallons of gasoline for all counties in the preceding fiscal year, as determined by the department, multiplied by fifty percent of the distributable amount in the county government road fund.

If the sum of the amounts to be distributed pursuant to Paragraphs (1) and (2) of this subsection exceeds fifty percent of the distributable amount in the county government road fund, the excess shall be eliminated by multiplying the amount determined in Paragraphs (1) and (2) of this subsection for each county by a fraction, the numerator of which is fifty percent of the distributable amount in the county government road fund, and the denominator of which is the sum of amounts determined for all counties in Paragraphs (1) and (2) of this subsection.

D. If the distribution for a class A county or for an H class county determined pursuant to Subsections B and C of this section exceeds an amount equal to one-twelfth of the product of the total taxable gallons of gasoline reported for the county for the preceding fiscal year times one cent ($.01), the distribution for that county shall be reduced to an amount equal to one-twelfth of the product of the total taxable gallons of gasoline reported for the county for the preceding fiscal year times one cent ($.01). Any amount of the reduction shall be shared among the counties whose distribution has not been reduced pursuant to this subsection in the ratio of the amounts computed in Subsections B and C of this section.

E. If a county has not made the required mileage certification pursuant to Section 67-3-28.3 NMSA 1978 by April 1 of every year of the year for which distribution is being made, the secretary of transportation shall estimate the mileage maintained by those counties for the purpose of making distribution to all counties, and the amount calculated to be distributed each month to those counties not certifying mileage shall be reduced by one-third each month for that fiscal year and that amount not distributed to those counties shall be distributed equally to all counties that have certified mileages.

F. Distributions made to counties pursuant to this section shall be deposited in the county road fund to be used for the construction, reconstruction, resurfacing or other improvement or maintenance of the public roads and bridges in the county, including right-of-way and materials acquisition. Money distributed pursuant to this section may be used by the county to provide matching funds for projects subject to cooperative agreements entered into with the department of transportation pursuant to Section 67-3-28 NMSA 1978.

**History:** Laws 1987, ch. 347, § 11; 1988, ch. 106, § 1; 1989, ch. 352, § 2; 1990, ch. 85, § 3; 1992, ch. 55, § 5; 1999, ch. 212, § 2; 2017, ch. 63, § 11.

## ANNOTATIONS

**The 2017 amendment,** effective June 16, 2017, made technical corrections; in Subsection B, after "The secretary of", deleted "highway and", after "certify on or before", deleted "July 1, 1987 and on or before", and after "July 1 of each", deleted "subsequent"; in Subsection E, after "NMSA 1978", deleted "by May 1, 1998, and", after "of every year", deleted "thereafter", and after "the secretary of", deleted "highway and"; and in Subsection F, after "entered into with the", deleted "state highway and" and added "department of", and after "transportation", deleted "department".

**The 1999 amendment,** effective August 1, 1999, added Subsection F.

**The 1992 amendment,** effective July 1, 1992, substituted "Subsections B and C" for "Subsections A and B" near the beginning of the first sentence of Subsection D and "that" for "which" near the end of Subsection E.

**The 1990 amendment,** effective July 1, 1990, deleted former Subsection A which read "The state treasurer shall distribute the distributable amount for August, 1987 and each subsequent month to the respective county road funds in accordance with the provisions of this section"; redesignated former Subsections B to F as Subsections A to E; deleted "less the distributable amount to the county government training program, pursuant to Section 7-1-6.19 NMSA 1978, which is equal to five-tenths of one percent of the amount in the county government road fund" at the end of Subsection A; in Subsection C, substituted "Subsection D" for "Subsection E" in the first sentence and rewrote the second paragraph of Paragraph (2); and, in Subsection D, substituted "Subsections A and B" for "Subsections B and C" in the first sentence and added the second sentence.

**The 1989 amendment,** effective June 16, 1989, in Subsection B, inserted the language at the end beginning "less the distributable amount".

## 7-1-6.27. Distribution; municipal roads.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to municipalities for the purposes and amounts specified in this section in an aggregate amount equal to five and seventy-six hundredths percent of the net receipts attributable to the gasoline tax.

B. The distribution authorized in this section shall be used for the following purposes:

(1) reconstructing, resurfacing, maintaining, repairing or otherwise improving existing alleys, streets, roads or bridges, or any combination of the foregoing; or laying off, opening, constructing or otherwise acquiring new alleys, streets, roads or bridges, or any combination of the foregoing; provided that any of the foregoing improvements may include, but are not limited to, the acquisition of rights of way;

(2) to provide matching funds for projects subject to cooperative agreements with the state highway and transportation department pursuant to Section 67-3-28 NMSA 1978; and

(3) for expenses of purchasing, maintaining and operating transit operations and facilities, for the operation of a transit authority established by the municipal transit law and for the operation of a vehicle emission inspection program. A municipality may engage in the business of the transportation of passengers and property within the political subdivision by whatever means the municipality may decide and may acquire cars, trucks, motor buses and other equipment necessary for operating the business. A municipality may acquire land, erect buildings and equip the buildings with all the necessary machinery and facilities for the operation, maintenance, modification, repair and storage of the cars, trucks, motor buses and other equipment needed. A municipality may do all things necessary for the acquisition and the conduct of the business of public transportation.

C. For the purposes of this section:

(1) "computed distribution amount" means the distribution amount calculated for a municipality for a month pursuant to Paragraph (2) of Subsection D of this section prior to any adjustments to the amount due to the provisions of Subsections E and F of this section;

(2) "floor amount" means four hundred seventeen dollars ($417);

(3) "floor municipality" means a municipality whose computed distribution amount is less than the floor amount; and

(4) "full distribution municipality" means a municipality whose population at the last federal decennial census was at least two hundred thousand.

D. Subject to the provisions of Subsections E and F of this section, each municipality shall be distributed a portion of the aggregate amount distributable under this section in an amount equal to the greater of:

(1) the floor amount; or

(2) eighty-five percent of the aggregate amount distributable under this section times a fraction, the numerator of which is the municipality's reported taxable gallons of gasoline for the immediately preceding state fiscal year and the denominator of which is the reported total taxable gallons for all municipalities for the same period.

E. Fifteen percent of the aggregate amount distributable under this section shall be referred to as the "redistribution amount". Beginning in August 1990, and each month thereafter, from the redistribution amount there shall be taken an amount sufficient to increase the computed distribution amount of every floor municipality to the floor amount. In the event that the redistribution amount is insufficient for this purpose, the computed distribution amount for each floor municipality shall be increased by an amount equal to the redistribution amount times a fraction, the numerator of which is the difference between the floor amount and the municipality's computed distribution amount and the denominator of which is the difference between the product of the floor amount multiplied by the number of floor municipalities and the total of the computed distribution amounts for all floor municipalities.

F. If a balance remains after the redistribution amount has been reduced pursuant to Subsection E of this section, there shall be added to the computed distribution amount of each municipality that is neither a full distribution municipality nor a floor municipality an amount that equals the balance of the redistribution amount times a fraction, the numerator of which is the computed distribution amount of the municipality and the denominator of which is the sum of the computed distribution amounts of all municipalities that are neither full distribution municipalities nor floor municipalities.

**History:** 1978 Comp., § 7-1-6.27, enacted by Laws 1991, ch. 9, § 20; 1992, ch. 55, § 6; 1993, ch. 357, § 6; 1994, ch. 5, § 11; 1995, ch. 6, § 7; 1999, ch. 212, § 3.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1991, ch. 9, § 20 repealed former 7-1-6.27 NMSA 1978, as amended by Laws 1991, ch. 9, § 19 and enacted a new section, effective July 1, 1992.

**Compiler's notes.** — Subsection A of Laws 1995, ch. 6, § 20 repealed 7-1-6.27 NMSA 1978, as enacted by Laws 1994, ch. 5, § 12, relating to distributions to municipalities for municipal roads and which was to become effective August 1, 1997, effective June 16,

1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

**The 1999 amendment,** effective August 1, 1999, in Subsection B added Paragraph (2), made a related stylistic change, and redesignated former Paragraph (2) as Paragraph (3).

**The 1995 amendment,** effective August 1, 1995, substituted "five and seventy-six hundredths percent" for "four and nine tenth percents" in Subsection A.

**The 1994 amendment,** effective August 1, 1994, substituted "four and nine-tenths" for "four and forty-six hundredths" in Subsection A and "amount distributable under this section" for "six and thirteen-hundredths percent of the net receipts attributable to the gasoline tax" in the introductory language of Subsection D, and deleted the former second sentence in Subsection E, relating to the 1989-1990 period.

**The 1993 amendment,** effective August 1, 1993, substituted "four and forty-six hundredths percent" for "six and thirteen hundredths percent" in Subsection A.

**The 1992 amendment,** effective July 1, 1992, substituted "thirteen-hundredths percent" for "twenty-five one hundredths percent" in the introductory paragraph of Subsection D and made minor stylistic changes in Subsection F.

## 7-1-6.28. Distribution; municipal arterial program of local governments road fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the municipal arterial program of the local governments road fund created in Section 67-3-28.2 NMSA 1978 in an amount equal to one and forty-four hundredths percent of the net receipts attributable to the gasoline tax.

**History:** 1978 Comp., § 7-1-6.28, enacted by Laws 1991, ch. 9, § 22; 1993, ch. 357, § 7; 1994, ch. 5, § 13; 1995, ch. 6, § 8.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1991, ch. 9, § 22 repealed former 7-1-6.28 NMSA 1978, as enacted by Laws 1989, ch. 356, § 8, and enacted a new section, effective July 1, 1992.

**Compiler's notes.** — Subsection A of Laws 1995, ch. 6, § 20 repeals 7-1-6.28 NMSA 1978 as enacted by Laws 1994, ch. 5, § 14, relating to distributions to the local governments road fund and which was to become effective August 1, 1997, effective June 16, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

**The 1995 amendment,** effective August 1, 1995, substituted "Distribution" for "Distributions" and inserted "municipal arterial program of" in the section heading; deleted the Subsection A designation; substituted "one and forty-four hundredths" for "one and twenty-two hundredths"; and deleted former Subsection B relating to distributions pursuant to 7-1-6.1 NMSA 1978 to the local governments road fund.

**The 1994 amendment,** effective August 1, 1994, rewrote the section heading, which read: "Distribution; municipal arterial program"; designated the previously undesignated language as Subsection A, and substituted "one and twenty-two hundredths" for "one and eleven-hundredths" therein; and added Subsection B.

**The 1993 amendment,** effective August 1, 1993, substituted "one and eleven hundredths" for "one and fifty-three hundredths".

## 7-1-6.29. Money in workers' compensation collections suspense fund; distribution.

A. After the necessary disbursements from the workers' compensation collections suspense fund have been made, money remaining in the suspense fund as of the last day of the month, less any deduction for administrative costs determined and made by the department pursuant to Section 52-5-19 NMSA 1978, less any distribution made pursuant to Subsection B of this section and less any amount determined by the department to be retained in the suspense fund for the purpose of making refunds, shall be distributed to the workers' compensation administration fund.

B. Upon certification by the New Mexico finance authority that a project is sufficiently developed to warrant the issuance of bonds by the authority, the department shall distribute the first forty cents ($.40) of each workers' compensation assessment imposed pursuant to Section 52-5-19 NMSA 1978 to the New Mexico finance authority. Upon certification by the authority, the department shall cease distribution to the authority.

**History:** 1978 Comp., § 7-1-6.27, enacted by Laws 1989, ch. 325, § 3; 1993, ch. 367, § 74.

**ANNOTATIONS**

**Compiler's notes.** — As enacted by Laws 1989, ch. 325, § 3, this section was designated 7-1-6.27 NMSA 1978. However, due to the enactment of an identically designated section by Laws 1989, ch. 356, § 7, this section was redesignated.

**The 1993 amendment,** effective April 8, 1993, redesignated the existing language as Subsection A and inserted "less any distribution made pursuant to Subsection B of this section" in that subsection, and added Subsection B.

## 7-1-6.30. Distribution; retiree health care fund.

A. Beginning January 1, 2017 and prior to July 1, 2019, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the retiree health care fund in an amount equal to one-twelfth of the total amount distributed to the retiree health care fund beginning July 1, 2015 and prior to July 1, 2016.

B. Beginning July 1, 2019, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the retiree health care fund in an amount equal to one-twelfth of one hundred twelve percent of the total amount distributed to the retiree health care fund in the previous fiscal year.

History: 1978 Comp., § 7-1-6.30, enacted by Laws 1990, ch. 6, § 20; 1992, ch. 55, § 7; 2001, ch. 335, § 1; 2016 (2nd S.S.), ch. 1, § 1.

**ANNOTATIONS**

**Cross references.** — For retiree health care fund, *see* 10-7C-8 NMSA 1978.

**The 2016 (2nd S.S.) amendment,** effective October 7, 2016, temporarily suspended the growth of certain distributions to the retiree health care fund; after the catchline, deleted "For the period ending June 30, 2002, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the retiree health care fund in an amount equal to one-twelfth of one hundred six percent of the total amount distributed to the retiree health care fund in the previous fiscal year. For the fiscal year beginning July 1, 2002 and subsequent fiscal years" and added new Subsection A; added the new subsection designation "B" and in Subsection B, after the subsection designation, added "Beginning July 1, 2019".

**The 2001 amendment,** effective June 15, 2001, substituted "period ending June 30, 2002" for "eighty-first and subsequent fiscal years"; and added the last sentence.

**The 1992 amendment,** effective July 1, 1992, rewrote this section to the extent that a detailed comparison would be impracticable.

## 7-1-6.31. Distributions; enhanced 911 fund; network and database surcharge fund.

A. Pursuant to Section 7-1-6.1 NMSA 1978, a distribution shall be made to the enhanced 911 fund in an amount equal to the net receipts attributable to the 911 emergency surcharge.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the network and database surcharge fund of the net receipts attributable to the network and database surcharge imposed pursuant to the Enhanced 911 Act [63-9D-1 through 63-9D-11.1 NMSA 1978].

**History:** 1978 Comp., § 7-1-6.30, enacted by Laws 1990, ch. 86, § 5; 1993, ch. 48, § 1.

**ANNOTATIONS**

**Compiler's notes.** — Laws 1990, ch 86, § 5 enacted this section as 7-1-6.30 NMSA 1978, but since Laws 1990, ch. 6, § 20 had already enacted a section designated 7-1-6.30 NMSA 1978, this section has been compiled as 7-1-6.31 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, rewrote the catchline which read "Distribution - Enhanced 911 Fund"; redesignated the former provision as Subsection A; and added Subsection B.

## 7-1-6.32. Distribution; solid waste assessment fee.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the solid waste facility grant fund of the net receipts attributable to the solid waste assessment fee authorized under the Solid Waste Act [74-9-1 NMSA 1978] less any administrative fee withheld pursuant to Section 7-1-6.41 NMSA 1978.

**History:** Laws 1990, ch. 99, § 44; 1997, ch. 125, § 4; 2017, ch. 63, § 12.

**ANNOTATIONS**

**Cross references.** — For solid waste facility grant fund, *see* 74-9-41 NMSA 1978.

**The 2017 amendment,** effective June 16, 2017, after the second occurrence of "Section", deleted "1 of this 1997 act" and added "7-1-6.41 NMSA 1978".

**The 1997 amendment,** effective July 1, 1997, added the language beginning "less any administrative".

## 7-1-6.33. Distribution to county-supported medicaid fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county-supported medicaid fund of the net receipts attributable to the taxes imposed pursuant to Section 7-20E-18 NMSA 1978.

**History:** Laws 1991, ch. 212, § 15; 2017, ch. 63, § 13.

**ANNOTATIONS**

**The 2017 amendment,** effective June 16, 2017, after "imposed pursuant to", deleted "the County Health Care Gross Receipts Tax Act" and added "Section 7-20E-18 NMSA 1978".

## 7-1-6.34. Distribution; conservation planting revolving fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the conservation planting revolving fund of all amounts designated as contributions to that fund under the provisions of Section 7-2-24.1 NMSA 1978.

**History:** 1978 Comp., § 7-1-6.34, enacted by Laws 1992, ch. 108, § 3.

**ANNOTATIONS**

**Cross references.** — For contributions to proper state political party, *see* 7-1-6.35 NMSA 1978.

For optional designation of tax refund, *see* 7-2-31 NMSA 1978.

## 7-1-6.35. Distribution; contributions to state political party.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state treasurer in an amount equal to the money designated pursuant to Section 7-2-31 NMSA 1978 as contributions to a state political party, as that term is defined in Section 7-2-31 NMSA 1978. The state treasurer within ten days of receipt of the money from the department shall remit the amount designated for each state political party to that party.

**History:** Laws 1992, ch. 108, § 2; 1993, ch. 30, § 4.

**ANNOTATIONS**

**Cross references.** — For contributions to conservation planting revolving fund, *see* 7-1-6.34 NMSA 1978.

For optional designation of tax refund, *see* 7-2-31 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, rewrote the catchline which read "Contributions credited to proper state political party" and rewrote this section to the extent that a detailed comparison is impracticable.

## 7-1-6.36. Distribution; interstate telecommunications gross receipts tax.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the product of the quotient of one and thirty-five hundredths percent divided by the tax rate imposed by the Interstate Telecommunications Gross Receipts Tax Act [Chapter 7, Article 9C NMSA 1978] times the net receipts for the month attributable to the interstate telecommunications gross receipts tax from business locations:

A. within that municipality;

B. on land owned by the state, commonly known as the "state fairgrounds", within the exterior boundaries of that municipality;

C. outside the boundaries of any municipality on land owned by that municipality; and

D. on an Indian reservation or pueblo grant in an area that is contiguous to that municipality and in which the municipality performs services pursuant to a contract between the municipality and the Indian tribe or Indian pueblo if:

(1) the contract describes an area in which the municipality is required to perform services and requires the municipality to perform services that are substantially the same as the services the municipality performs for itself; and

(2) the governing body of the municipality has submitted a copy of the contract to the secretary.

**History:** Laws 1992, ch. 50, § 13 and Laws 1992, ch. 67, § 13.

**ANNOTATIONS**

**Compiler's notes.** — Identical versions of this section were enacted by Laws 1992, ch. 50, § 13 and Laws 1992, ch. 67, § 13, both effective July 1, 1992. The section was set out as enacted by Laws 1992, ch. 67, § 13. *See* 12-1-8 NMSA 1978.

## 7-1-6.37. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 6, § 21 repealed 7-1-6.37 NMSA 1978, as enacted by Laws 1993, ch. 357, § 8, relating to distribution of gasoline and special fuel excise taxes to the general fund, effective August 1, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

Subsection A of Laws 1995, ch. 6, § 20 repealed 7-1-6.37 NMSA 1978, as enacted by Laws 1994, ch. 5, § 16, relating to distribution of gasoline and special fuel excise taxes to the general fund and which was to become effective August 1, 1997, effective June 16, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

## 7-1-6.38. Distribution; governmental gross receipts tax.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the public project revolving fund administered by the New Mexico finance authority in an amount equal to seventy-five percent of the net receipts attributable to the governmental gross receipts tax.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the energy, minerals and natural resources department in an amount equal to twenty-four percent of the net receipts attributable to the governmental gross receipts tax. Forty-one and two-thirds percent of the distribution is appropriated to the energy, minerals and natural resources department to implement the provisions of the New Mexico Youth Conservation Corps Act [9-5B-1 through 9-5B-11 NMSA 1978] and fifty-eight and one-third percent of the distribution is appropriated to the energy, minerals and natural resources department for state park and recreation area capital improvements, including the costs of planning, engineering, design, construction, renovation, repair, equipment and furnishings.

C. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the office of cultural affairs in an amount equal to one percent of the net receipts attributable to the governmental gross receipts tax for capital improvements at state museums and monuments administered by the office of cultural affairs.

D. The state pledges to and agrees with the holders of any bonds or notes issued by the New Mexico finance authority or by the energy, minerals and natural resources department and payable from the net receipts attributable to the governmental gross receipts tax distributed to the New Mexico finance authority or the energy, minerals and natural resources department pursuant to this section that the state will not limit, reduce or alter the distribution of the net receipts attributable to the governmental gross receipts tax to the New Mexico finance authority or the energy, minerals and natural resources department or limit, reduce or alter the rate of imposition of the governmental gross receipts tax until the bonds or notes together with the interest thereon are fully met and discharged. The New Mexico finance authority and the energy, minerals and natural resources department are authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds or notes.

**History:** Laws 1994, ch. 145, § 1; 1995, ch. 141, § 21; 2003, ch. 430, § 1.

## ANNOTATIONS

**Cross references.** — For public project revolving fund, *see* 6-21-6 NMSA 1978.

For appropriations to other funds from the public project revolving fund, *see* 6-21-6.1 NMSA 1978.

For New Mexico Youth Conservation Corps Act, *see* 9-5B-1 NMSA 1978 et seq.

For acquisition of lands for park and recreational purposes, *see* 16-2-11 NMSA 1978.

**The 2003 amendment,** effective June 20, 2003, in Subsection B, substituted "twenty-four percent" for "twenty-five percent" in the first percentage, "forty-one and two-thirds" for "forty" in the second, and "fifty-eight and one-third" for "sixty" in the third; inserted present Subsection C and redesignated the remaining subsection accordingly.

**The 1995 amendment,** effective April 5, 1995, inserted "energy, minerals and natural resources" in two places in the second sentence in Subsection B and added Subsection C.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Constitutionality, construction, and application of state and local public-utility-gross-receipts-tax statutes - modern cases, 58 A.L.R.5th 187.

## 7-1-6.39. Distribution of special fuel excise tax to local governments road fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the local governments road fund in an amount equal to nine and fifty-two hundredths percent of the net receipts attributable to the taxes, exclusive of penalties and interest, from the special fuel excise tax imposed by the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978].

History: 1978 Comp., § 7-1-6.39, enacted by Laws 1995, ch. 6, § 9; 2003 (1st S.S.), ch. 3, § 2.

**ANNOTATIONS**

**Cross references.** — For the local governments road fund, *see* 67-3-28.2 NMSA 1978.

**The 2003 (1st S.S.) amendment,** effective July 1, 2004, substituted "nine and fifty-two" for "eleven and eleven" following "amount equal to" near the middle of the section.

## 7-1-6.40. Distribution of liquor excise tax; local DWI grant fund; certain municipalities; lottery tuition fund.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the local DWI grant fund in an amount equal to the following percentages of the net receipts attributable to the liquor excise tax:

(1) prior to July 1, 2015, forty-one and one-half percent;

(2) from July 1, 2015 through June 30, 2018, forty-six percent; and

(3) on and after July 1, 2018, forty-one and one-half percent.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 of twenty thousand seven hundred fifty dollars ($20,750) monthly from the net receipts attributable to the liquor excise tax shall be made to a municipality that is located in a class A county and that has a population according to the most recent federal decennial census of more than thirty thousand but less than sixty thousand. The distribution pursuant to this subsection

shall be used by the municipality only for the provision of alcohol treatment and rehabilitation services for street inebriates.

C. From July 1, 2015 through June 30, 2017, a distribution pursuant to Section 7-1-6.1 NMSA 1978 of thirty-nine percent of the net receipts attributable to the liquor excise tax shall be made to the lottery tuition fund.

History: Laws 1997, ch. 182, § 1; 2000, ch. 83, § 1; 2001, ch. 112, § 1; 2007, ch. 138, § 1; 2008, ch. 93, § 1; 2014, ch. 54, § 1; 2014, ch. 80, § 7; 2015, ch. 8, § 1.

## ANNOTATIONS

**Repeals.** — Laws 2015, ch. 8, § 2 repealed Laws 2014, ch. 54, § 1 effective July 1, 2015.

**Cross references.** — For local DWI grant fund, *see* 11-6A-3 NMSA 1978.

For imposition and rate of liquor excise tax, *see* 7-17-5 NMSA 1978.

**The 2015 amendment,** effective July 1, 2015, increased, for the period July 1, 2015 through June 30, 2018, the percentage of the liquor excise tax distributed to the local DWI grant fund from forty-one and one-half percent to forty-six percent, after which the percentage reverts to its current amount of forty-one and one-half percent and also changed the ending date of the distribution to the lottery tuition fund from July 1, 2017 to read "through June 30"; in the catchline, added "of liquor excise tax", and after "grant fund", added "certain"; in Subsection A, after "amount equal to", deleted "forty-one and fifty hundredths percent" and added "the following percentages", and added new Paragraphs (1), (2) and (3); in Subsection C, after "From July 1, 2015", deleted "July 1" and added "through June 30".

**The 2014 amendment,** effective March 12, 2014, distributed money in the liquor excise tax to the lottery tuition fund; in the catchline, after "municipalities", added "lottery tuition fund"; and added Subsection C.

**The 2008 amendment,** effective July 1, 2009, added Subsection B.

**Applicability.** — Laws 2008, ch. 93, § 2 provided that the distribution pursuant to Laws 2008, ch. 93, § 1 applies to revenue earned on a modified accrual basis after June 30, 2009.

**The 2007 amendment,** effective July 1, 2007, increases the percentage from thirty-four and fifty-seven hundredths to forty-one and fifty hundredths.

**The 2001 amendment,** effective July 1, 2001, changed the percentage of the net receipts attributable to the liquor excise tax to thirty-four and fifty-seven hundredths

percent and deleted Subsections A and B, which contained the percentages of the net receipts to be used in certain time periods.

**The 2000 amendment,** effective July 1, 2001, changed the distribution percentage of the net receipts attributable to the liquor excise tax from twenty-seven and two-tenths to the percentages stipulated in Subsections A and B.

## 7-1-6.41. Administrative fee imposed; appropriation.

A. The taxation and revenue department is directed to withhold an administrative fee of three percent of the net amount to be distributed under the provisions of:

(1) Section 7-1-6.32 NMSA 1978;

(2) Section 66-12-20 NMSA 1978; and

(3) Section 74-1-13 NMSA 1978.

B. The administrative fee to be withheld pursuant to Subsection A of this section shall be withheld on distributions made on or after July 1, 1997 and shall continue until the earlier of December 31, 2006 or the date on which the New Mexico finance authority certifies to the taxation and revenue department that all obligations for bonds issued pursuant to Section 12 of this 1997 act have been fully discharged and directs the department to cease distributing money to the authority pursuant to this section.

C. The taxation and revenue department is directed to withhold an additional administrative fee at the following percentage of the net amount to be distributed pursuant to the following provisions of law:

(1) two percent of the net amount to be distributed pursuant to Section 7-1-6.12 NMSA 1978; and

(2) six-tenths of one percent of the net amount to be distributed pursuant to Section 7-1-6.13 NMSA 1978.

D. The administrative fee to be withheld under Subsection C of this section shall be withheld on distributions made on or after July 1, 1997 and shall continue until the earlier of July 1, 2000 or the date on which the New Mexico finance authority certifies to the taxation and revenue department that all obligations for bonds issued pursuant to Section 12 of this 1997 act have been fully discharged and directs the department to cease distributing money to the authority pursuant to this section.

E. The administrative fee to be withheld by the taxation and revenue department under Section 7-1-6.12 and 7-1-6.13 NMSA 1978 shall be set at three percent of the net amount to be distributed pursuant to the provisions of those sections.

F. The administrative fee to be withheld under Subsection E of this section shall be withheld on distributions made on or after July 1, 2000 and shall continue until the earlier of December 31, 2006 or the date on which the New Mexico finance authority certifies to the taxation and revenue department that all obligations for bonds issued pursuant to Section 12 of this 1997 act have been fully discharged and directs the department to cease distributing money to the authority pursuant to this section. After the department has been directed by the authority to cease distributing money to the authority pursuant to this section, the administrative fee shall be remitted to the state treasurer for deposit in the state general fund each month.

G. The administrative fee shall be distributed monthly to the New Mexico finance authority to be pledged irrevocably for the payment of principal, interest and any expenses or obligations related to the bonds issued by the authority to finance the taxation and revenue information management systems project.

**History:** Laws 1997, ch. 125, § 1.

**ANNOTATIONS**

**Compiler's notes.** — The phrase "Section 12 of this 1997 act" in Subsection B refers to Section 12 of Laws 1997, ch. 125, which is an uncompiled provision authorizing the issuance of revenue bonds. For details of that provision, *see* the Revenue Bonds table following Chapter 6, Article 12 NMSA 1978.

## 7-1-6.42. Distribution; state building bonding fund; gross receipts tax.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state building bonding fund in the amount of five hundred thirty thousand dollars ($530,000) from the net receipts attributable to the gross receipts tax imposed by the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978]. The distribution shall be made:

A. after the required distribution pursuant to Section 7-1-6.4 NMSA 1978;

B. contemporaneously with other distributions of net receipts attributable to the gross receipts tax for payment of debt service on outstanding bonds or to a fund dedicated for that purpose; and

C. prior to any other distribution of net receipts attributable to the gross receipts tax.

History: Laws 2001, ch. 199, § 12; 2003, ch. 371, § 11; 2007, ch. 64, § 2.

**ANNOTATIONS**

**Cross references.** — For gross receipts tax, *see* 7-9-4 NMSA 1978.

**The 2007 amendment,** effective March 29, 2007, increased the distribution from $500,000 to $530,000.

**The 2003 amendment,** effective June 20, 2003, substituted "state building bonding fund" for "state office building bonding fund" in the section heading and at the beginning of the introductory text of the section.

## 7-1-6.42. Distribution; state building bonding fund; gross receipts tax. (Contingent effective date. See note below.)

*A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state building bonding fund in the amount of six hundred eighty thousand dollars ($680,000) from the net receipts attributable to the gross receipts tax imposed by the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978]. The distribution shall be made:*

*A. after the required distribution pursuant to Section 7-1-6.4 NMSA 1978;*

*B. contemporaneously with other distributions of net receipts attributable to the gross receipts tax for payment of debt service on outstanding bonds or to a fund dedicated for that purpose; and*

*C. prior to any other distribution of net receipts attributable to the gross receipts tax.*

*History: Laws 2001, ch. 199, § 12; 2003, ch. 371, § 11; 2007, ch. 64, § 2; 2009, ch. 114, § 3.*

***ANNOTATIONS***

***The 2009 amendment** changed the amount from $530,000 to $680,000.*

***Contingent effective dates.** — The effective date of the provisions of Laws 2009, ch. 114, § 3 is the later of:*

*A. July 1, 2011; or*

*B. the first day of the month following the day that the chief executive officer of the New Mexico finance authority certifies to the secretary of taxation and revenue, the secretary of finance and administration, the legislative council service and the New Mexico compilation commission that the distribution is needed to make debt service payments on the bonds issued pursuant to Laws 2009, ch. 114, § 5 of this act.*

## 7-1-6.43. Distribution to legislative retirement fund.

A. Beginning on July 1, 2019, a distribution pursuant to Section 7-1-6.1 NMSA 1978 from the net receipts attributable to the amount of tax deducted pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act [Chapter 7, Article 3A NMSA 1978] shall be made to the legislative retirement fund in the amount of seventy-five thousand dollars ($75,000) or, if larger, in an amount equal to one-twelfth of the amount necessary to pay out the retirement benefits due under state legislator member coverage plan 2 and Paragraph (2) of Subsection C of Section 10-11-41 NMSA 1978 for the succeeding calendar year.

B. In regard to the distribution to the legislative retirement fund, in December 2003 and in each December thereafter, except in 2017, the public employees retirement association, with the assistance of the legislative council service, shall determine the amount of retirement benefits for the succeeding calendar year. If the monthly average exceeds seventy-five thousand dollars ($75,000), the association shall immediately notify the department of the average amount.

**History:** Laws 2003, ch. 86, § 1; 2016 (2nd S.S.), ch. 3, § 1; 2017 (1st S.S.), ch. 3, § 6.

**ANNOTATIONS**

**The 2017 (1st S.S.) amendment,** effective July 1, 2017, suspended certain distributions to the legislative retirement fund; in the catchline, after "Distribution", deleted "to"; in Subsection A, added "Beginning on July 1, 2019", and added "from the net receipts attributable to the amount of tax deducted pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act", after "legislative retirement fund in", deleted "an" and added "the", after "amount", deleted "equal to" and added "of", after "if larger", added "in an amount equal to", and after "NMSA 1978 for the", added "succeeding"; and in Subsection B, after "In", added "regard to the distribution to the legislative retirement fund, in", after "thereafter", added "except in 2017", after "determine the amount of", deleted "those", after "association shall", deleted "notify", after "immediately", added "notify", and deleted the last sentence, which related to the timing of certain distributions to the legislative retirement fund.

**The 2016 (2nd S.S.) amendment,** effective October 19, 2016, reduced a distribution to the legislative retirement fund; in Subsection A, after "in an amount equal to", deleted "two hundred thousand dollars ($200,000)" and added "seventy-five thousand dollars ($75,000)", and after "Subsection C of Section", deleted "10-11-42" and added "10-11-41"; in Subsection B, after "the monthly average exceeds", deleted "two hundred thousand dollars ($200,000)" and added "seventy-five thousand dollars ($75,000)".

## 7-1-6.44. Distribution; gasoline tax sharing agreement.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made by the department to each qualified tribe in an amount equal to forty percent of the net receipts attributable to the gasoline tax paid to the department on two million five hundred thousand gallons of gasoline each month. The distribution to each qualified tribe shall

be made pursuant to a gasoline tax sharing agreement entered into by the department of transportation and the qualified tribe according to the provisions of Section 67-3-8.1 NMSA 1978.

B. From the balance remaining each month from the gasoline tax revenue on two million five hundred thousand gallons of gasoline per qualified tribe after distributions made pursuant to Subsection A of this section, a distribution of thirty-three thousand three hundred thirty-three dollars ($33,333) shall be made to the general fund.

C. The balance remaining after the distributions from gasoline tax revenue from two million five hundred thousand gallons of gasoline per qualified tribe pursuant to Subsections A and B of this section shall be distributed pursuant to Section 7-1-6.10 NMSA 1978.

D. As used in this section, "qualified tribe" means the Pueblo of Nambe or the Pueblo of Santo Domingo, as long as it owns one hundred percent of a registered Indian tribal distributor pursuant to the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978], that qualifies for a deduction pursuant to Subsection F of Section 7-13-4 NMSA 1978 and has entered into a gasoline tax sharing agreement pursuant to Section 67-3-8.1 NMSA 1978.

History: Laws 2003, ch. 150, § 2; 2004, ch. 109, § 2.

**ANNOTATIONS**

**The 2004 amendments,** effective July 1, 2004, amended Subsection A to change "a qualified tribe" to "each qualified tribe", added after "distribution" "to each qualified tribe", added Subsections B and C, redesignated Subsection B as Subsection D and added at the end of Subsection D "and has entered into a gasoline tax sharing agreement pursuant to Section 67-3-8.1 NMSA 1978".

## 7-1-6.45. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2006, ch. 25, § 2 repealed 7-1-6.45 NMSA 1978, as enacted by Laws 2004, ch. 4, § 2, relating to distributions to the medicaid program, effective March 2, 2006. For provisions of former section, *see* the 2005 NMSA 1978 on *NMOneSource.com.*

## 7-1-6.46. Distribution to municipalities; offset for food deduction and health care practitioner services deduction.

A. For a municipality that has not elected to impose a municipal hold harmless gross receipts tax through an ordinance and that has a population of less than ten thousand according to the most recent federal decennial census, a distribution pursuant

to Section 7-1-6.1 NMSA 1978 shall be made to a municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the sum of:

(1) the total deductions claimed pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers from business locations attributable to the municipality multiplied by the sum of the combined rate of all municipal local option gross receipts taxes in effect in the municipality for the month plus one and two hundred twenty-five thousandths percent; and

(2) the total deductions claimed pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers from business locations attributable to the municipality multiplied by the sum of the combined rate of all municipal local option gross receipts taxes in effect in the municipality for the month plus one and two hundred twenty-five thousandths percent.

B. For a municipality not described in Subsection A of this section, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the sum of:

(1) the total deductions claimed pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers from business locations attributable to the municipality multiplied by the sum of the combined rate of all municipal local option gross receipts taxes in effect in the municipality on January 1, 2007 plus one and two hundred twenty-five thousandths percent in the following percentages:

(a) prior to July 1, 2015, one hundred percent;

(b) on or after July 1, 2015 and prior to July 1, 2016, ninety-four percent;

(c) on or after July 1, 2016 and prior to July 1, 2017, eighty-eight percent;

(d) on or after July 1, 2017 and prior to July 1, 2018, eighty-two percent;

(e) on or after July 1, 2018 and prior to July 1, 2019, seventy-six percent;

(f) on or after July 1, 2019 and prior to July 1, 2020, seventy percent;

(g) on or after July 1, 2020 and prior to July 1, 2021, sixty-three percent;

(h) on or after July 1, 2021 and prior to July 1, 2022, fifty-six percent;

(i) on or after July 1, 2022 and prior to July 1, 2023, forty-nine percent;

(j) on or after July 1, 2023 and prior to July 1, 2024, forty-two percent;

(k) on or after July 1, 2024 and prior to July 1, 2025, thirty-five percent;

(l) on or after July 1, 2025 and prior to July 1, 2026, twenty-eight percent;

(m) on or after July 1, 2026 and prior to July 1, 2027, twenty-one percent;

(n) on or after July 1, 2027 and prior to July 1, 2028, fourteen percent; and

(o) on or after July 1, 2028 and prior to July 1, 2029, seven percent; and

(2) the total deductions claimed pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers from business locations attributable to the municipality multiplied by the sum of the combined rate of all municipal local option gross receipts taxes in effect in the municipality on January 1, 2007 plus one and two hundred twenty-five thousandths percent in the following percentages:

(a) prior to July 1, 2015, one hundred percent;

(b) on or after July 1, 2015 and prior to July 1, 2016, ninety-four percent;

(c) on or after July 1, 2016 and prior to July 1, 2017, eighty-eight percent;

(d) on or after July 1, 2017 and prior to July 1, 2018, eighty-two percent;

(e) on or after July 1, 2018 and prior to July 1, 2019, seventy-six percent;

(f) on or after July 1, 2019 and prior to July 1, 2020, seventy percent;

(g) on or after July 1, 2020 and prior to July 1, 2021, sixty-three percent;

(h) on or after July 1, 2021 and prior to July 1, 2022, fifty-six percent;

(i) on or after July 1, 2022 and prior to July 1, 2023, forty-nine percent;

(j) on or after July 1, 2023 and prior to July 1, 2024, forty-two percent;

(k) on or after July 1, 2024 and prior to July 1, 2025, thirty-five percent;

(l) on or after July 1, 2025 and prior to July 1, 2026, twenty-eight percent;

(m) on or after July 1, 2026 and prior to July 1, 2027, twenty-one percent;

(n) on or after July 1, 2027 and prior to July 1, 2028, fourteen percent; and

(o) on or after July 1, 2028 and prior to July 1, 2029, seven percent.

C. The distribution pursuant to Subsections A and B of this section is in lieu of revenue that would have been received by the municipality but for the deductions provided by Sections 7-9-92 and 7-9-93 NMSA 1978. The distribution shall be considered gross receipts tax revenue and shall be used by the municipality in the same manner as gross receipts tax revenue, including payment of gross receipts tax revenue bonds. A distribution pursuant to this section to a municipality not described in Subsection A of this section or to a municipality that has imposed a gross receipts tax through an ordinance that does not provide a deduction contained in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] shall not be made on or after July 1, 2029.

D. If the reductions made by this 2013 act to the distributions made pursuant to Subsections A and B of this section impair the ability of a municipality to meet its principal or interest payment obligations for revenue bonds that are outstanding prior to July 1, 2013 and that are secured by the pledge of all or part of the municipality's revenue from the distribution made pursuant to this section, then the amount distributed pursuant to this section to that municipality shall be increased by an amount sufficient to meet the required payment; provided that the total amount distributed to that municipality pursuant to this section does not exceed the amount that would have been due that municipality pursuant to this section as it was in effect on June 30, 2013.

E. For the purposes of this section, "business locations attributable to the municipality" means business locations:

(1) within the municipality;

(2) on land owned by the state, commonly known as the "state fairgrounds", within the exterior boundaries of the municipality;

(3) outside the boundaries of the municipality on land owned by the municipality; and

(4) on an Indian reservation or pueblo grant in an area that is contiguous to the municipality and in which the municipality performs services pursuant to a contract between the municipality and the Indian tribe or Indian pueblo if:

(a) the contract describes an area in which the municipality is required to perform services and requires the municipality to perform services that are substantially the same as the services the municipality performs for itself; and

(b) the governing body of the municipality has submitted a copy of the contract to the secretary.

F. A distribution pursuant to this section may be adjusted for a distribution made to a tax increment development district with respect to a portion of a gross receipts tax

increment dedicated by a municipality pursuant to the Tax Increment for Development Act [Chapter 5, Article 15 NMSA 1978].

History: Laws 2004, ch. 116, § 1; 2006, ch. 75, § 33; 2007, ch. 331, § 2; 2013, ch. 160, § 1.

**ANNOTATIONS**

**The 2013 amendment,** effective July 1, 2013, offset the effects of revenue reductions from decreasing the corporate income tax rate and the use of a single sales factor by phasing out certain local government hold harmless provisions over a fifteen-year period; in Subsection A, at the beginning of the sentence, added the language up to "a distribution pursuant to Section 7-1-6.1 NMSA 1978"; deleted former Paragraph (1) of Subsection A, which provided a distribution for municipalities having a population of less than ten thousand and a per capita taxable gross receipts less than the average for all municipalities; in Subsection B, after "described in", deleted "Paragraph (1) of this" and after "Section", added the remainder of the sentence; in Paragraph (1) of Subsection B, in the introductory sentence, added "in the following percentages" and added Subparagraphs (a) through (o); in Paragraph (2) of Subsection B, after "percent", added "in the following percentages" and added Subparagraphs (a) through (o); in Subsection C, in the first sentence, after "pursuant to", changed "Subsection A" to "Subsections A and B", and added the third sentence; and added Subsection D.

**The 2007 amendment,** effective July 1, 2007, added Paragraph (1) of Subsection A and Subparagraphs (a) and (b) of Paragraph (2) of Subsection A.

**The 2006 amendment,** effective March 6, 2006, added Subsection D to provide an adjustment for a distribution to a tax increment development district.

## 7-1-6.47. Distribution to counties; offset for food deduction and health care practitioner services deduction.

A. For a county that has not elected to impose a county hold harmless gross receipts tax through an ordinance and that has a population of less than forty-eight thousand according to the most recent federal decennial census, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to a county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the sum of:

(1) the total deductions claimed pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers from business locations within a municipality in the county multiplied by the combined rate of all county local option gross receipts taxes in effect for the month that are imposed throughout the county;

(2) the total deductions claimed pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers from business locations in the county but not within a

municipality multiplied by the combined rate of all county local option gross receipts taxes in effect for the month that are imposed in the county area not within a municipality;

(3) the total deductions claimed pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers from business locations within a municipality in the county multiplied by the combined rate of all county local option gross receipts taxes in effect for the month that are imposed throughout the county; and

(4) the total deductions claimed pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers from business locations in the county but not within a municipality multiplied by the combined rate of all county local option gross receipts taxes in effect for the month that are imposed in the county area not within a municipality.

B. For a county not described in Subsection A of this section, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the sum of:

(1) the total deductions claimed pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers from business locations within a municipality in the county multiplied by the combined rate of all county local option gross receipts taxes in effect on January 1, 2007 that are imposed throughout the county in the following percentages:

(a) prior to July 1, 2015, one hundred percent;

(b) on or after July 1, 2015 and prior to July 1, 2016, ninety-four percent;

(c) on or after July 1, 2016 and prior to July 1, 2017, eighty-eight percent;

(d) on or after July 1, 2017 and prior to July 1, 2018, eighty-two percent;

(e) on or after July 1, 2018 and prior to July 1, 2019, seventy-six percent;

(f) on or after July 1, 2019 and prior to July 1, 2020, seventy percent;

(g) on or after July 1, 2020 and prior to July 1, 2021, sixty-three percent;

(h) on or after July 1, 2021 and prior to July 1, 2022, fifty-six percent;

(i) on or after July 1, 2022 and prior to July 1, 2023, forty-nine percent;

(j) on or after July 1, 2023 and prior to July 1, 2024, forty-two percent;

(k) on or after July 1, 2024 and prior to July 1, 2025, thirty-five percent;

(l) on or after July 1, 2025 and prior to July 1, 2026, twenty-eight percent;

(m) on or after July 1, 2026 and prior to July 1, 2027, twenty-one percent;

(n) on or after July 1, 2027 and prior to July 1, 2028, fourteen percent; and

(o) on or after July 1, 2028 and prior to July 1, 2029, seven percent;

(2) the total deductions claimed pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers from business locations in the county but not within a municipality multiplied by the combined rate of all county local option gross receipts taxes in effect on January 1, 2007 that are imposed in the county area not within a municipality in the following percentages:

(a) prior to July 1, 2015, one hundred percent;

(b) on or after July 1, 2015 and prior to July 1, 2016, ninety-four percent;

(c) on or after July 1, 2016 and prior to July 1, 2017, eighty-eight percent;

(d) on or after July 1, 2017 and prior to July 1, 2018, eighty-two percent;

(e) on or after July 1, 2018 and prior to July 1, 2019, seventy-six percent;

(f) on or after July 1, 2019 and prior to July 1, 2020, seventy percent;

(g) on or after July 1, 2020 and prior to July 1, 2021, sixty-three percent;

(h) on or after July 1, 2021 and prior to July 1, 2022, fifty-six percent;

(i) on or after July 1, 2022 and prior to July 1, 2023, forty-nine percent;

(j) on or after July 1, 2023 and prior to July 1, 2024, forty-two percent;

(k) on or after July 1, 2024 and prior to July 1, 2025, thirty-five percent;

(l) on or after July 1, 2025 and prior to July 1, 2026, twenty-eight percent;

(m) on or after July 1, 2026 and prior to July 1, 2027, twenty-one percent;

(n) on or after July 1, 2027 and prior to July 1, 2028, fourteen percent; and

(o) on or after July 1, 2028 and prior to July 1, 2029, seven percent;

(3) the total deductions claimed pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers from business locations within a municipality in the county multiplied by the combined rate of all county local option gross receipts taxes in effect on January 1, 2007 that are imposed throughout the county in the following percentages:

(a) prior to July 1, 2015, one hundred percent;

(b) on or after July 1, 2015 and prior to July 1, 2016, ninety-four percent;

(c) on or after July 1, 2016 and prior to July 1, 2017, eighty-eight percent;

(d) on or after July 1, 2017 and prior to July 1, 2018, eighty-two percent;

(e) on or after July 1, 2018 and prior to July 1, 2019, seventy-six percent;

(f) on or after July 1, 2019 and prior to July 1, 2020, seventy percent;

(g) on or after July 1, 2020 and prior to July 1, 2021, sixty-three percent;

(h) on or after July 1, 2021 and prior to July 1, 2022, fifty-six percent;

(i) on or after July 1, 2022 and prior to July 1, 2023, forty-nine percent;

(j) on or after July 1, 2023 and prior to July 1, 2024, forty-two percent;

(k) on or after July 1, 2024 and prior to July 1, 2025, thirty-five percent;

(l) on or after July 1, 2025 and prior to July 1, 2026, twenty-eight percent;

(m) on or after July 1, 2026 and prior to July 1, 2027, twenty-one percent;

(n) on or after July 1, 2027 and prior to July 1, 2028, fourteen percent; and

(o) on or after July 1, 2028 and prior to July 1, 2029, seven percent; and

(4) the total deductions claimed pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers from business locations in the county but not within a municipality multiplied by the combined rate of all county local option gross receipts taxes in effect on January 1, 2007 that are imposed in the county area not within a municipality in the following percentages:

(a) prior to July 1, 2015, one hundred percent;

(b) on or after July 1, 2015 and prior to July 1, 2016, ninety-four percent;

(c) on or after July 1, 2016 and prior to July 1, 2017, eighty-eight percent;

(d) on or after July 1, 2017 and prior to July 1, 2018, eighty-two percent;

(e) on or after July 1, 2018 and prior to July 1, 2019, seventy-six percent;

(f) on or after July 1, 2019 and prior to July 1, 2020, seventy percent;

(g) on or after July 1, 2020 and prior to July 1, 2021, sixty-three percent;

(h) on or after July 1, 2021 and prior to July 1, 2022, fifty-six percent;

(i) on or after July 1, 2022 and prior to July 1, 2023, forty-nine percent;

(j) on or after July 1, 2023 and prior to July 1, 2024, forty-two percent;

(k) on or after July 1, 2024 and prior to July 1, 2025, thirty-five percent;

(l) on or after July 1, 2025 and prior to July 1, 2026, twenty-eight percent;

(m) on or after July 1, 2026 and prior to July 1, 2027, twenty-one percent;

(n) on or after July 1, 2027 and prior to July 1, 2028, fourteen percent; and

(o) on or after July 1, 2028 and prior to July 1, 2029, seven percent.

C. The distribution pursuant to Subsections A and B of this section is in lieu of revenue that would have been received by the county but for the deductions provided by Sections 7-9-92 and 7-9-93 NMSA 1978. The distribution shall be considered gross receipts tax revenue and shall be used by the county in the same manner as gross receipts tax revenue, including payment of gross receipts tax revenue bonds. A distribution pursuant to this section to a county not described in Subsection A of this section or to a county that has imposed a gross receipts tax through an ordinance that does not provide a deduction contained in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] shall not be made on or after July 1, 2029.

D. If the reductions made by this 2013 act to the distributions made pursuant to Subsections A and B of this section impair the ability of a county to meet its principal or interest payment obligations for revenue bonds that are outstanding prior to July 1, 2013 and that are secured by the pledge of all or part of the county's revenue from the distribution made pursuant to this section, then the amount distributed pursuant to this section to that county shall be increased by an amount sufficient to meet the required payment; provided that the total amount distributed to that county pursuant to this section does not exceed the amount that would have been due that county pursuant to this section as it was in effect on June 30, 2013.

E. A distribution pursuant to this section may be adjusted for a distribution made to a tax increment development district with respect to a portion of a gross receipts tax increment dedicated by a county pursuant to the Tax Increment for Development Act [Chapter 5, Article 15 NMSA 1978].

History: Laws 2004, ch. 116, § 2; 2006, ch. 75, § 34; 2007, ch. 331, § 3; 2013, ch. 160, § 2.

**ANNOTATIONS**

**The 2013 amendment,** effective July 1, 2013, offset the effects of revenue reductions from decreasing the corporate income tax rate and the use of a single sales factor by phasing out certain local government hold harmless provisions over a fifteen-year period; in Subsection A, at the beginning of the sentence, added the language up to "a distribution pursuant to Section 7-1-6.1 NMSA 1978"; deleted former Paragraph (1) of Subsection A, which provided a distribution for counties having a population of less than forty eight thousand; in Subsection B, after "described in", deleted "Paragraph (1) of this" and after "Section", added the remainder of the sentence; in Paragraph (1) of Subsection B, in the introductory sentence, after "imposed throughout the county", added "in the following percentages" and added Subparagraphs (a) through (o); in Paragraph (2) of Subsection B, in the introductory sentence, after "county area not within a municipality", added "in the following percentages" and added Subparagraphs (a) through (o); in Paragraph (3) of Subsection B, in the introductory sentence, after "imposed throughout the county", added "in the following percentages" and added Subparagraphs (a) through (o); in Paragraph (4) of Subsection B, in the introductory sentence, after "county area not within a municipality", added "in the following percentages" and added Subparagraphs (a) through (o); in Subsection C, in the first sentence, after "pursuant to", changed "Subsection A" to "Subsections A and B", and added the third sentence; and added Subsection D.

**The 2007 amendment,** effective July 1, 2007, amended Subsection A to provide separate distributions to offset for food deductions and health care practitioner services deductions for counties having a population of less than 48,000 in Paragraph (1) and all other counties as provided in new Paragraph (2).

**The 2006 amendment,** effective March 6, 2006, added Subsection C to provide an adjustment for a distribution to a tax increment development district.

## 7-1-6.48. Distribution; contributions to department of health; amyotrophic lateral sclerosis research.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the amyotrophic lateral sclerosis research fund in an amount equal to the money designated pursuant to Section 7-2-30.1 NMSA 1978 as contributions to the amyotrophic lateral sclerosis research fund.

**History:** Laws 2005, ch. 56, § 1; 2017, ch. 63, § 14.

**ANNOTATIONS**

**Cross reference.** — For the amyotrophic lateral sclerosis research fund, *see* 24-20-4 NMSA 1978.

**The 2017 amendment,** effective June 16, 2017, after "pursuant to", deleted "the Income Tax Act" and added "Section 7-2-30.1 NMSA 1978".

## 7-1-6.49. Distribution; contributions to the state parks division.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the energy, minerals and natural resources department in an amount equal to the money designated pursuant to Section 7-2-30.2 NMSA 1978 as contributions to the state parks division of the energy, minerals and natural resources department for the kids in parks education program. The energy, minerals and natural resources department shall remit the amount designated for the state parks division to the state parks division for expenditure for the kids in parks education program.

**History:** Laws 2005, ch. 87, § 1; 2017, ch. 63, § 15.

**ANNOTATIONS**

**The 2017 amendment,** effective June 16, 2017, after "pursuant to", deleted "the Income Tax Act" and added "Section 7-2-30.2 NMSA 1978".

**ANNOTATIONS**

## 7-1-6.50. Distribution; contributions for national guard member and family assistance.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the department of military affairs in an amount equal to the money designated pursuant to Section 7-2-30.3 NMSA 1978 as contributions for assistance to members of the New Mexico national guard deployed overseas for a period of thirty or more consecutive days and to their families. The department of military affairs shall deposit the money in a temporary suspense account for distribution to members of the New Mexico national guard and to their families.

**History:** Laws 2005, ch. 220, § 1; 2008, ch. 13, § 1; 2015, ch. 150, § 1; 2017, ch. 63, § 16.

**ANNOTATIONS**

**The 2017 amendment,** effective June 16, 2017, after "pursuant to", deleted "the Income Tax Act" and added "Section 7-2-30.3 NMSA 1978".

**The 2015 amendment,** effective April 10, 2015, authorized a distribution from the tax administration suspense fund to be made to the department of military affairs for assistance to members of the New Mexico national guard who have been deployed overseas for a period of thirty or more consecutive days; after the first occurrence of "New Mexico national guard", deleted "activated for service in the global war on terrorism" and added "deployed overseas for a period of thirty or more consecutive days", and after the second occurrence of "New Mexico national guard", deleted "activated for service in the global war on terrorism".

**The 2008 amendment,** effective February 22, 2008, changed the distribution from the secretary of veterans' services to the department of military affairs.

## 7-1-6.51. Distribution; municipal event center surcharge.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the public project revolving fund administered by the New Mexico finance authority in an amount equal to seventy-five percent of the amount of event center surcharge proceeds transferred to the tax administration suspense fund pursuant to the Municipal Event Center Funding Act [3-66-1 through 3-66-11 NMSA 1978].

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the energy, minerals and natural resources department in an amount equal to twenty-four percent of the amount of event center surcharge proceeds transferred to the tax administration suspense fund pursuant to the Municipal Event Center Funding Act.

C. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the cultural affairs department in an amount equal to one percent of the amount of event center surcharge proceeds transferred to the tax administration suspense fund pursuant to the Municipal Event Center Funding Act.

History: Laws 2005, ch. 351, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 351, § 14 made the act effective April 8, 2005.

**Compiler's notes.** — Laws 2005, ch. 351 was not enacted as part of the Municipal Code, but is included in that code as a convenience to the user.

## 7-1-6.52. Distribution adjustment; tax administration suspense fund; credit for certain sales of services for resale.

Distributions from the tax administration suspense fund to the general fund of revenue attributable to the gross receipts tax or to the governmental gross receipts tax shall be adjusted for credits issued pursuant to the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] for receipts from the sale of services for resale.

History: Laws 2005, ch. 104, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 104, § 29 made the act effective July 1, 2005.

## 7-1-6.53. Distribution; energy efficiency and renewable energy bonding fund; gross receipts tax.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the energy efficiency and renewable energy bonding fund from the net receipts attributable to the gross receipts tax imposed by the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] in an amount necessary to make the required bond debt service payments pursuant to the Energy Efficiency and Renewable Energy Bonding Act [Chapter 6, Article 21D NMSA 1978] as determined by the New Mexico finance authority. The distribution shall be made:

A. after the required distribution pursuant to Section 7-1-6.4 NMSA 1978;

B. contemporaneously with other distributions of net receipts attributable to the gross receipts tax for payment of debt service on outstanding bonds or to a fund dedicated for that purpose; and

C. prior to any other distribution of net receipts attributable to the gross receipts tax.

History: Laws 2005, ch. 176, § 11.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 176, § 13 made the act effective July 1, 2005.

## 7-1-6.54. Distributions; tax increment development districts.

A distribution to a tax increment development district shall be made by the department, in accordance with a notice that is filed pursuant to the Tax Increment for Development Act [Chapter 5, Article 15 NMSA 1978] with respect to a taxing entity's dedication of a portion of a gross receipts tax increment to the tax increment development district.

**History:** Laws 2006, ch. 75, § 29.

**ANNOTATIONS**

**Emergency clause.** — Laws 2006, ch. 75, § 36 contained an emergency clause and was approved March 6, 2006.

## 7-1-6.55. Distribution to municipality equivalent to a portion of compensating tax.

A A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality in an amount calculated pursuant to Subsection B of this section, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978; provided that the distribution shall be phased in according to the following schedule:

(1) from July 1, 2008 until June 30, 2009, the distribution shall be equal to ten percent of the amount calculated according to Subsection B of this section; and

(2) on or after July 1, 2009, the distribution shall be equal to thirty percent of the amount calculated according to Subsection B of this section.

B. The amount of the distribution provided for in this section shall be calculated for each month in the six-month period beginning on each July 1 and January 1 and shall be equal to the reported taxable gross receipts for all business locations in the municipality for the month multiplied by:

(1) the ratio of net compensating tax receipts for the entire six-month period beginning the previous November 1 or May 1, respectively, to the reported taxable gross receipts for all business locations for the entire six-month period beginning the previous November 1 or May 1, respectively; and further multiplied by:

(2) the ratio of one and two hundred twenty-five thousandths percent to the average tax rate imposed by Section 7-9-7 NMSA 1978 in effect for the six-month period beginning on January 1 or July 1, respectively.

History: Laws 2007, ch. 331, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 331, § 6 made this section effective July 1, 2007.

## 7-1-6.56. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2016 (2nd S.S.), ch. 1, § 3 repealed 7-1-6.56 NMSA 1978, as enacted by Laws 2007, ch. 168, § 1, relating to retiree health care fund distribution,

effective January 1, 2017. For provisions of former section, *see* the 2016 NMSA 1978 on *NMOneSource.com*.

## 7-1-6.57. Distribution adjustment; tax administration suspense fund; credit for receipts of hospitals.

Distributions from the tax administration suspense fund to the general fund of net receipts attributable to the gross receipts tax shall be adjusted for the full cost of credits issued pursuant to the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] for receipts of hospitals licensed by the department of health.

History: Laws 2007, ch. 361, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 361 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 7-1-6.58. Distribution; public election fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the public election fund from the amount deposited pursuant to the provisions of Section 7-8A-13 NMSA 1978 in the amount of one hundred thousand dollars ($100,000) per month during fiscal year 2008 and subsequent fiscal years.

History: Laws 2007 (1st S.S.), ch. 2, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2007 (1st S.S.), ch. 2 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 28, 2007, 90 days after the adjournment of the legislature.

## 7-1-6.59. Distribution; Vietnam veterans memorial operation, maintenance and improvement.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the veterans' services department in an amount equal to the money designated pursuant to Section 7-2-30.4 NMSA 1978 as contributions to the veterans' services department for the operation, maintenance and improvement of the Vietnam veterans memorial near Angel Fire, New Mexico.

**History:** Laws 2009, ch. 175, § 1; 2017, ch. 63, § 17; 2017, ch. 115, § 1.

## ANNOTATIONS

**2017 Multiple Amendments.** — Laws 2017, ch. 63, § 17 and Laws 2017, ch. 115, § 1, both effective June 16, 2017, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2017, ch. 115, § 1, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2017, ch. 63, § 17 and Laws 2017, ch. 115, § 1 are described below. To view the session laws in their entirety, *see* the 2017 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2017, ch. 63, § 17, provided the citation to the Vietnam veterans memorial state park tax contribution statute, and Laws 2017, ch. 115, § 1, redesignated tax contributions from the state parks division of the energy, minerals and natural resources department to the veterans' services department for the operation, maintenance and improvement of the Vietnam veterans memorial near Angel Fire, New Mexico.

**Laws 2017, ch. 115, § 1,** effective June 16, 2017, redesignated tax contributions from the state parks division of the energy, minerals and natural resources department to the veterans' services department for the operation, maintenance and improvement of the Vietnam veterans memorial near Angel Fire, New Mexico; in the catchline added "Vietnam"; after "shall be made to the", deleted "state parks division of the energy, mineral and natural resources" and added "veterans' services", after "contributions to the", deleted "state parks division of the energy, minerals and natural resources" and added "veterans' services", and after "Vietnam veterans memorial", deleted "state park".

**Laws 2017, ch. 63, § 17,** effective June 16, 2017, provided the citation to the Vietnam veterans memorial state park tax contribution statute; after "pursuant to", deleted "the Income Tax Act" and added "Section 7-2-30.4 NMSA 1978".

**Temporary provisions.** — Laws 2017, ch. 90, § 1, effective June 16, 2017, provided:

A. Upon ratification of the transfer of the real property of Vietnam Veterans Memorial state park in Colfax county from the energy, minerals and natural resources department to the general services department, all programs, functions, personnel, appropriations, money, records, furniture, equipment, supplies and other property belonging to the energy, minerals and natural resources department pertaining to Vietnam Veterans Memorial state park in Colfax county shall be transferred to the veterans' services department.

B. Upon ratification of the transfer of the real property of Vietnam Veterans Memorial state park in Colfax county from the energy, minerals and natural resources department to the general services department, all contractual obligations of the energy, minerals and natural resources department pertaining to any of the function delineated in Subsection A of this section shall be transferred to the veterans' services department.

C. Upon ratification of the transfer of the real property of Vietnam Veterans Memorial state park in Colfax county from the energy, minerals and natural resources department to the general services department, all references in law to the energy, minerals and natural resources department pertaining to any of the functions delineated in Subsection A of this section shall be transferred to the veterans' services department.

## 7-1-6.60. Distribution; county business retention gross receipts tax.

Beginning September 1, 2011, an annual distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to a county that has imposed and the electors have approved a county business retention gross receipts tax. The distribution shall be in an amount equal to the balance of the net receipts attributable to that tax collected in the prior fiscal year, exclusive of penalties and interest, after the state has deducted an amount for deposit to the general fund equal to the reduction in gaming tax revenue from the gaming operator licensees that are racetracks located in that county resulting from county gaming tax credits allowed in the immediately prior fiscal year for gaming operator licensees located in that county. The total receipts from any county transferred to the general fund in any fiscal year shall not exceed seven hundred fifty thousand dollars ($750,000) or the total amount of the decrease in gaming tax revenue calculated for the county pursuant to this section, whichever is less.

History: Laws 2010, ch. 31, § 2.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2010, ch. 31, § 4 contained an emergency clause and was approved March 3, 2010.

## 7-1-6.61. Distribution; tax stabilization reserve from the oil and gas emergency school tax. (Effective July 1, 2018.)

*A. A distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the tax stabilization reserve in an amount as calculated pursuant to Subsection B of this section.*

*B. If the year-to-date amount plus the current net receipts exceeds the annual average amount, the excess shall be distributed to the tax stabilization reserve. If there is not an excess amount, no distribution shall be made to the tax stabilization reserve. Each month the department shall make the calculation to determine if an excess amount should be distributed.*

*C. As used in this section:*

*(1) "annual average amount" means the total net receipts attributable to the tax imposed pursuant to Section 7-31-4 NMSA 1978 and distributed pursuant to Section 7-1-6.20 NMSA 1978 in the immediately preceding five fiscal years, divided by five; and*

*(2) "year-to-date amount" means the cumulative year-to-date net receipts attributable to the tax imposed pursuant to Section 7-31-4 NMSA 1978 and distributed to the general fund in the prior months of the current fiscal year.*

***History:*** *Laws 2017 (1st S.S.), ch. 3, § 3.*

***ANNOTATIONS***

***Effective dates.*** *— Laws 2017 (1st S.S.), ch. 3, § 25 made Laws 2017 (1st S.S.), ch. 3, § 3 effective July 1, 2018.*

## 7-1-7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1992, ch. 55, § 18 repealed 7-1-7 NMSA 1978, as enacted by Laws 1969, ch. 147, § 2, relating to distribution in lieu of municipal sales tax and pledges of municipal sales tax, effective July 1, 1992. For provisions of former section, *see* the 1991 NMSA 1978 on *NMOneSource.com.*

## 7-1-8. Confidentiality of returns and other information.

A. It is unlawful for any person other than the taxpayer to reveal to any other person the taxpayer's return or return information, except as provided in Sections 7-1-8.1 through 7-1-8.11 NMSA 1978.

B. A return or return information revealed under Sections 7-1-8.1 through 7-1-8.11 NMSA 1978:

(1) may only be revealed to a person specifically authorized to receive the return or return information and the employees, directors, officers and agents of such person whose official duties or duties in the course of their employment require the return or return information and to an employee of the department;

(2) may only be revealed for the authorized purpose and only to the extent necessary to perform that authorized purpose;

(3) shall at all times be protected from being revealed to an unauthorized person by physical, electronic or any other safeguards specified by directive by the secretary; and

(4) shall be returned to the secretary or the secretary's delegate or destroyed as soon as it is no longer required for the authorized purpose.

C. If any provision of Sections 7-1-8.1 through 7-1-8.11 NMSA 1978 requires that a return or return information will only be revealed pursuant to a written agreement between a person and the department, the written agreement shall:

(1) list the name and position of any official or employee of the person to whom a return or return information is authorized to be revealed under the provision;

(2) describe the specific purpose for which the return or return information is to be used;

(3) describe the procedures and safeguards the person has in place to ensure that the requirements of Subsection B of this section are met; and

(4) provide for reimbursement to the department for all costs incurred by the department in supplying the returns or return information to, and administering the agreement with, the person.

D. A return or return information that is lawfully made public by an employee of the department or any other person, or that is made public by the taxpayer, is not subject to the provisions of this section once it is made public.

**History:** 1953 Comp., § 72-13-25, enacted by Laws 1965, ch. 248, § 13; 1969, ch. 8, § 1; 1970, ch. 16, § 1; 1971, ch. 276, § 5; 1975, ch. 136, § 1; 1977, ch. 249, § 42; 1979, ch. 144, § 7; 1981, ch. 37, § 8; 1982, ch. 18, § 8; 1983, ch. 211, § 21; 1985, ch. 65, § 10; 1986, ch. 20, § 12; 1987, ch. 169, § 3; 1988, ch. 73, § 6; 1991, ch. 19, § 1; 1993, ch. 5, § 3; 1993, ch. 261, § 1; 1996, ch. 15, § 3; 2000, ch. 28, § 3; 2001, ch. 56, § 3; 2003, ch. 398, § 5; 2003, ch. 439, § 1; 2005, ch. 107, § 1; 2005, ch. 108, § 2; 2005, ch. 109, § 2; 2007, ch. 164, § 2; 2009, ch. 241, § 1; 2009, ch. 242, § 2; 2009, ch. 243, § 2; 2017, ch. 63, § 18.

## ANNOTATIONS

**Cross references.** — For the Internal Revenue Code referred to in Subsection NN, *see* Title 26 of the United States Code.

**Repeals.** — Laws 2017, ch. 63, § 31 repealed Laws 2009, ch. 241, § 1 and Laws 2009, ch. 242, § 2, effective June 16, 2017.

**The 2017 amendment,** effective June 16, 2017, included the statutory reference for a new section of the Tax Administration Act, and changed "through 7-1-8.10" to "through 7-1-8.11" throughout the section.

**2009 Multiple Amendments. — Laws 2009, ch. 243, § 2,** effective July 1, 2009, deleted the former introductory paragraph; deleted former Subsections A through NN; and added new Subsections A through D.

**Laws 2009, ch. 242, § 2,** effective April 7, 2009, in Subsection I, changed the statutory reference to "The Cigarette Tax Act"; in Subsection O, changed "information systems division" to "department of information technology"; in Subsection LL, changed "labor" to "workforce solutions"; added Subsection OO, which allowed the following information to be given to the secretary of human services or the secretary's delegate provided that whomever receives the confidential information shall be subject to the penalties of Section 7-1-76 NMSA 1978 for failure to maintain the required confidentiality: (1) information that is needed for reports required to be made to the federal government concerning the use of federal funds for low-income working families and (2) the names and addresses of low-income taxpayers for the limited purpose of outreach to taxpayers with dependent children; provided that the human services department pay the expenses incurred by the taxation and revenue department to derive the information requested by the human services department if the information requested is not readily available in reports for which the taxation and revenue department's information systems are programmed.

**Laws 2009, ch. 241, § 1,** effective June 19, 2009, in Subsection I, changed the statutory reference to "The Cigarette Tax Act"; in Subsection O, changed "information systems division" to the "department of information technology"; in Subsection LL, changed "labor" to "workforce solutions"; added Subsection OO, which allowed the following information to be given to a water and sanitation district that has in effect a water and sanitation gross receipts tax imposed by the district upon its request for a period specified by the district within the twelve months preceding the request for information: (1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts for the district and (2) information indicating whether the persons shown on a list of businesses within the district have reported gross receipts to the taxation and revenue department but have not reported gross receipts for the district; and added a paragraph which provided that officers and employees of a water and sanitation district receiving information provided in this subsection shall be subject to the penalty in Section 7-1-76 NMSA 1978 if the information is revealed to persons other than officers or employees of the district or the department.

**The 2007 amendment,** effective June 15, 2007, permits disclosure of information to the federation of tax administrators and adds Subsection NN.

**The 2005 amendment,** effective January 1, 2006, provided in Subsection D that the taxation and revenue department may disclose information to another jurisdiction pursuant to an international fuel tax agreement for tax purposes only; provided in Subsection R that the department may answer inquires concerning whether a person is a registered taxpayer for tax programs that require registration, but whether a person has filed a tax return; and provided in Subsection II that the department may disclose written rulings on questions of evidence and procedure made by a hearing officer, but not the name and identification of the taxpayer requesting the ruling.

**The 2003 amendment,** effective July 1, 2003, in Subsection N, substituted "number of gallons" for "amount and gallonage" and "received and deducted, and the amount of tax paid by each person required to file a gasoline tax return or pay gasoline tax" for "imported, exported, sold and used, including tax-exempt sales to the federal government reported or upon which the gasoline tax was paid and covering taxes received from each distributor"; in Subsection O, substituted "a rack operator, importer, blender, supplier or distributor and the number of gallons" for "distributors and gallonage" and inserted "a rack operator, importor, blender" following "Alternative Fuel Tax Act" and added Subsection GG.

**The 2001 amendment,** effective July 1, 2001, inserted "and not available from public sources" at the end of the preliminary language of the section and added Subsections EE and FF.

**The 2000 amendment,** effective July 1, 2000, in Subsection H, inserted "7-12-13 and Sections 7-12-15 and" and "or to the attorney general for purposes of Section 6-4-13 NMSA 1978 and the master settlement agreement defined in Section 6-4-12 NMSA 1978"; substituted "7-1-63" for "7-1-64" in Subsection J; and substituted "public regulation" for "state corporation" in Subsection W.

**Gross receipts tax returns are privileged.** — Where plaintiff sued defendants for employment discrimination; plaintiff's spouse, who was not a party to the action, maintained a private law practice; plaintiff alleged that upon filing the complaint, defendants retaliated against plaintiff by asserting irregularities with regard to the gross receipts tax records and returns of the spouse's private law practice; defendants asked the district court to issue subpoenas duces tecum to the spouse and to defendant taxation and revenue department for the spouse's gross receipts tax records and returns; and plaintiff's marital relationship to the spouse did not make plaintiff liable for payment of the gross receipts tax of the spouse's private law practice; the gross receipts tax records and returns sought by the subpoenas issued to the spouse and to defendant taxation and revenue department were confidential under Sections 7-1-4.2 and 7-1-8 NMSA 1978 and privileged under Rule 11-502 NMRA. Breen v. N.M. Taxation & Revenue Dep't, 2012-NMCA-101, 287 P.3d 379.

**Release of audit to non-affiliated property owner not permitted.** — Subsection U does not permit the release of an audit report on oil and gas operations by the taxation and revenue department to a non-affiliated owner of working interests in properties operated by the audited company. Meridian Oil, Inc. v. N.M. Taxation & Revenue, 1996-NMCA-079, 122 N.M. 131, 921 P.2d 327 (decided under prior law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 590, 591.

Validity, construction, and effect of state laws requiring public officials to protect confidentiality of income tax returns or information, 1 A.L.R.4th 959.

What constitutes privileged communications with preparer of federal tax returns so as to render communication inadmissible in federal tax prosecution, 36 A.L.R. Fed. 686.

84 C.J.S. Taxation § 481.

## 7-1-8.1. Information that may be revealed to an employee of the department, a taxpayer or the taxpayer's representative.

An employee of the department may reveal a return or return information:

A. to another employee of the department whose official duties require the return or return information; and

B. to the taxpayer or to the taxpayer's authorized representative; provided, however, that nothing in this section shall be construed to require an employee to testify in a judicial proceeding except as provided in Subsection A of Section 7-1-8.4 NMSA 1978.

History: 1978 Comp., § 7-1-8.1, as enacted by Laws 2009, ch. 243, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 243, § 14 made this section effective July 1, 2009.

## 7-1-8.2. Information required to be revealed.

A. The department shall:

(1) furnish returns and return information required by a provision of the Tax Administration Act to be made available to the public by the department;

(2) answer all inquiries concerning whether a person is or is not a registered taxpayer for tax programs that require registration, but nothing in this subsection shall be construed to allow the department to answer inquiries concerning whether a person has filed a tax return;

(3) furnish, upon request for inspection by a member of the public pursuant to:

(a) Section 7-1-28 or Section 7-1-29 NMSA 1978, the taxpayer name, abatement, refund or credit amount, tax program or business tax credit and the date the abatement, refund or credit was issued; and

(b) Section 7-1-21 NMSA 1978, the installment agreement; and

(4) with respect to the tax on gasoline imposed by the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978], make available for public inspection at monthly intervals a report covering the number of gallons of gasoline and ethanol blended fuels

received and deducted and the amount of tax paid by each person required to file a gasoline tax return or pay gasoline tax in the state of New Mexico.

B. Nothing in this section shall be construed to require the release of information that would violate an agreement between the state and the federal internal revenue service for sharing of information or any provision or rule of the federal Internal Revenue Code to which a state is subject.

History: 1978 Comp., § 7-1-8.2, as enacted by Laws 2009, ch. 243, § 4.

**ANNOTATIONS**

**Cross references.** — For the federal Internal Revenue Code, *see* 26 U.S.C.S. § 1 et seq.

**Effective dates.** — Laws 2009, ch. 243, § 14 made this section effective July 1, 2009.

## 7-1-8.3. Information that may be revealed to public.

An employee of the department may reveal:

A. information obtained through the administration of a law not subject to administration and enforcement under the provisions of the Tax Administration Act to the extent that revealing that information is not otherwise prohibited by law;

B. return information with respect to the taxes or tax acts administered pursuant to Subsection B of Section 7-1-2 NMSA 1978, except that:

(1) return information for or relating to a period prior to July 1, 1985 with respect to the Resources Excise Tax Act [Chapter 7, Article 25 NMSA 1978] and the Severance Tax Act [7-26-1 through 7-26-8 NMSA 1978] may be revealed only to a committee of the legislature for a valid legislative purpose;

(2) except as provided in Paragraph (3) of this subsection, contracts and other agreements between the taxpayer and other parties and the proprietary information contained in those contracts and agreements shall not be revealed without the consent of all parties to the contract or agreement; and

(3) audit workpapers and the proprietary information contained in the workpapers shall not be revealed except to:

(a) the bureau of safety and environmental enforcement of the United States department of the interior, if production occurred on federal land;

(b) a person having a legal interest in the property that is subject to the audit;

(c) a purchaser of products severed from a property subject to the audit; or

(d) the authorized representative of any of the persons in Subparagraphs (a) through (c) of this paragraph. This paragraph does not prohibit the revelation of proprietary information contained in the workpapers that is also available from returns or from other sources not subject to the provisions of Section 7-1-8 NMSA 1978;

C. return information with respect to the taxes, surtaxes, advance payments or tax acts administered pursuant to Subsection C of Section 7-1-2 NMSA 1978;

D. a decision and order made by a hearing officer pursuant to the provisions of the Administrative Hearings Office Act [Chapter 7, Article 1B NMSA 1978] with respect to a protest filed with the secretary on or after July 1, 1993;

E. any written ruling on questions of evidence or procedure made by a hearing officer pursuant to the provisions of the Administrative Hearings Office Act; provided that the name and identification number of the taxpayer requesting the ruling shall not be revealed; and

F. return information included in a notice of lien or release or extinguishment of lien.

History: 1978 Comp., § 7-1-8.3, as enacted by Laws 2009, ch. 243, § 5; 2015, ch. 73, § 12.

## ANNOTATIONS

**The 2015 amendment,** effective July 1, 2015, authorized certain tax information resulting from administrative hearings to be revealed to the public; in Subsection B, Paragraph (1), after "respect to", deleted "Sections 7-25-1 through 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978" and added "the Resources Excise Tax Act and the Severance Tax Act"; in Subsection B, Paragraph (3)(a), after "the", deleted "minerals management service" and added "bureau of safety and environment enforcement"; in Subsection D, after "pursuant to", deleted "Section 7-1-24 NMSA 1978" and added "the provisions of the Administrative Hearings Office Act"; and in Subsection E, after "pursuant to", deleted "Section 7-1-24 NMSA 1978" and added "the provisions of the Administrative Hearings Office Act".

**Temporary provisions.** — Laws 2015, ch. 73, § 36 provided:

A. On July 1, 2015, all personnel, functions, appropriations, money, records, furniture, equipment and other property of, or attributable to, the hearings bureau of the office of the secretary of taxation and revenue shall be transferred to the administrative hearings office.

B. On July 1, 2015, all contractual obligations of the hearings bureau of the office of the secretary of taxation and revenue shall be binding on the administrative hearings office.

C. On July 1, 2015, all references in statute to the hearings bureau of the office of the secretary of taxation and revenue or hearing officers of the taxation and revenue department in Chapters 7 and 66 NMSA 1978 shall be deemed to be references to the administrative hearings office or a hearing officer of the office.

D. Rules of the taxation and revenue department pertaining to hearing officers and the conduct of hearings pursuant to actions related to Chapter 7 or 66 NMSA 1978 shall be deemed to be the rules of the administrative hearings office until amended or repealed by the office.

## 7-1-8.4. Information that may be revealed to judicial bodies or with respect to judicial proceedings or investigations and to administrative hearings office.

An employee of the department may reveal to:

A. a district court, an appellate court or a federal court, a return or return information:

(1) in response to an order thereof in an action relating to taxes or an action for tax fraud or any other crime that may involve taxes due to the state and in which the information sought is about a taxpayer that is party to the action and is material to the inquiry, in which case only that information may be required to be produced in court and admitted in evidence subject to court order protecting the confidentiality of the information and no more;

(2) in an action in which the department is attempting to enforce an act with which the department is charged or to collect a tax; or

(3) in any matter in which the department is a party and the taxpayer has put the taxpayer's own liability for taxes at issue, in which case only that information regarding the taxpayer that is party to the action may be produced, but this shall not prevent revelation of department policy or interpretation of law arising from circumstances of a taxpayer that is not a party;

B. the Bernalillo county metropolitan court, upon that court's request, the last known address and the date of that address for every person the court certifies to the department as a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

C. a magistrate court, upon the magistrate court's request, the last known address and the date of that address for every person the court certifies to the department as a

person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

D. a district attorney, a state district court grand jury or federal grand jury, information for an investigation of or proceeding related to an alleged criminal violation of the tax laws;

E. a third party subject to a subpoena or levy issued pursuant to the provisions of the Tax Administration Act, the identity of the taxpayer involved, the taxes or tax acts involved and the nature of the proceeding; and

F. the administrative hearings office, information in relation to a protest or other hearing, in which case only that information regarding the taxpayer that is a party to the action may be produced, but this shall not prevent revelation of department policy or interpretation of law arising from circumstances of a taxpayer that is not a party. The office shall maintain confidentiality regarding taxpayer information as required by the provisions of Section 7-1-8 NMSA 1978.

History: 1978 Comp., § 7-1-8.4, as enacted by Laws 2009, ch. 243, § 6; 2015, ch. 73, § 13.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, authorized certain information from administrative hearings to be revealed to judicial bodies or with respect to judicial proceedings or investigations; in the catchline, after "investigations", added "and to administrative hearings office"; in Subsection A, Paragraph (1), after "taxpayer", deleted "who" and added "that"; in Subsection A, Paragraph (3), after the second and third occurrence of "taxpayer", deleted "who" and added "that"; in Subsection D, after "tax laws;", deleted "and"; in Subsection E, after the semicolon, added "and"; and added Subsection F.

## 7-1-8.5. Information that may be revealed to national governments or their agencies.

An employee of the department may reveal return information to:

A. a representative of the secretary of the treasury or the secretary's delegate pursuant to the terms of a reciprocal agreement entered into with the federal government for exchange of the information; and

B. the national tax administration agencies of Mexico and Canada; provided the agency receiving the information has entered into a written agreement with the department to use the information for tax purposes only and is subject to a confidentiality statute and penalty similar to Sections 7-1-8 and 7-1-76 NMSA 1978.

History: 1978 Comp., § 7-1-8.5, as enacted by Laws 2009, ch. 243, § 7.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 243, § 14 made this section effective July 1, 2009.

## 7-1-8.6. Information that may be revealed to certain tribal governments.

An employee of the department may reveal return information to authorized representatives of an Indian nation, tribe or pueblo, the territory of which is located wholly or partially within New Mexico, pursuant to the terms of a written reciprocal agreement entered into by the department with the Indian nation, tribe or pueblo for the exchange of that information for tax purposes only; provided that the Indian nation, tribe or pueblo has enacted a confidentiality statute and penalty similar to Sections 7-1-8 and 7-1-76 NMSA 1978.

History: 1978 Comp., § 7-1-8.6, as enacted by Laws 2009, ch. 243, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 243, § 14 made this section effective July 1, 2009.

## 7-1-8.7. Information that may be revealed to other states or multistate administrative bodies.

An employee of the department may reveal return information to:

A. an authorized representative of another state or an authorized representative of a local government of another state who is charged under the laws of that state with the responsibility for administration of that state's tax laws; provided that the receiving state or local government has entered into a written agreement with the department to use the return information for tax purposes only and that the receiving state has enacted a confidentiality statute and penalty similar to Sections 7-1-8 and 7-1-76 NMSA 1978 to which the representative is subject;

B. the multistate tax commission, the federation of tax administrators or their authorized representatives; provided that the return information is used for tax purposes only and is revealed by the multistate tax commission or the federation of tax administrators only to states that have met the requirements of Subsection A of this section; and

C. another jurisdiction pursuant to an international fuel tax agreement; provided that the return information is used for tax purposes only.

History: 1978 Comp., § 7-1-8.7, as enacted by Laws 2009, ch. 243, § 9; 2015 (1st S.S.), ch. 2, § 1.

**ANNOTATIONS**

**The 2015 (1st S.S.) amendment,** effective September 6, 2015, authorized employees of the New Mexico taxation and revenue department to reveal tax return information to authorized representatives of local governments of another state who are charged with administering that state's tax laws; and in Subsection A, after "another state", added "or an authorized representative of a local government of another state who is charged under the laws of that state with the responsibility for administration of that state's tax laws", and after "receiving state", added "or local government".

## 7-1-8.8. Information that may be revealed to other state agencies.

An employee of the department may reveal to:

A. a committee of the legislature for a valid legislative purpose, return information concerning any tax or fee imposed pursuant to the Cigarette Tax Act [Chapter 7, Article 12 NMSA 1978];

B. the attorney general, return information acquired pursuant to the Cigarette Tax Act for purposes of Section 6-4-13 NMSA 1978 and the master settlement agreement defined in Section 6-4-12 NMSA 1978;

C. the commissioner of public lands, return information for use in auditing that pertains to rentals, royalties, fees and other payments due the state under land sale, land lease or other land use contracts;

D. the secretary of human services or the secretary's delegate under a written agreement with the department, the last known address with date of all names certified to the department as being absent parents of children receiving public financial assistance, but only for the purpose of enforcing the support liability of the absent parents by the child support enforcement division or any successor organizational unit;

E. the department of information technology, by electronic media, a database updated quarterly that contains the names, addresses, county of address and taxpayer identification numbers of New Mexico personal income tax filers, but only for the purpose of producing the random jury list for the selection of petit or grand jurors for the state courts pursuant to Section 38-5-3 NMSA 1978;

F. the state courts, the random jury lists produced by the department of information technology under Subsection E of this section;

G. the director of the New Mexico department of agriculture or the director's authorized representative, upon request of the director or representative, the names and addresses of all gasoline or special fuel distributors, wholesalers and retailers;

H. the public regulation commission, return information with respect to the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] required to enable the commission to carry out its duties;

I. the state racing commission, return information with respect to the state, municipal and county gross receipts taxes paid by racetracks;

J. the gaming control board, tax returns of license applicants and their affiliates as provided in Subsection E of Section 60-2E-14 NMSA 1978;

K. the director of the workers' compensation administration or to the director's representatives authorized for this purpose, return information to facilitate the identification of taxpayers that are delinquent or noncompliant in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA 1978;

L. the secretary of workforce solutions or the secretary's delegate, return information for use in enforcement of unemployment insurance collections pursuant to the terms of a written reciprocal agreement entered into by the department with the secretary of workforce solutions for exchange of information;

M. the New Mexico finance authority, information with respect to the amount of municipal and county gross receipts taxes collected by municipalities and counties pursuant to any local option municipal or county gross receipts taxes imposed, and information with respect to the amount of governmental gross receipts taxes paid by every agency, institution, instrumentality or political subdivision of the state pursuant to Section 7-9-4.3 NMSA 1978; and

N. the secretary of human services or the secretary's delegate; provided that a person who receives the confidential return information on behalf of the human services department shall not reveal the information and shall be subject to the penalties in Section 7-1-76 NMSA 1978 if the person fails to maintain the confidentiality required:

(1) that return information needed for reports required to be made to the federal government concerning the use of federal funds for low-income working families; and

(2) the names and addresses of low-income taxpayers for the limited purpose of outreach to those taxpayers; provided that the human services department shall pay the department for expenses incurred by the department to derive the information requested by the human services department if the information requested is not readily available in reports for which the department's information systems are programmed.

**History:** 1978 Comp., § 7-1-8.8, as enacted by Laws 2009, ch. 243, § 10; 2015, ch. 30, § 1; 2017, ch. 63, § 19.

**ANNOTATIONS**

**The 2017 amendment,** effective June 16, 2017, authorized the taxation and revenue department to reveal certain tax information to the secretary of human services or the secretary's delegate for limited purposes; and added Subsection N.

**The 2015 amendment,** effective July 1, 2015, authorized employees of the taxation and revenue department to provide certain tax-related information to the New Mexico finance authority; and added Subsection M.

## 7-1-8.9. Information that may be revealed to local governments and their agencies.

A. An employee of the department may reveal to:

(1) the officials or employees of a municipality of this state authorized in a written request by the municipality for a period specified in the request within the twelve months preceding the request; provided that the municipality receiving the information has entered into a written agreement with the department that the information shall be used for tax purposes only and specifying that the municipality is subject to the confidentiality provisions of Section 7-1-8 NMSA 1978 and the penalty provisions of Section 7-1-76 NMSA 1978:

(a) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts for that municipality under the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] or a local option gross receipts tax imposed by that municipality. The department may also reveal the information described in this subparagraph quarterly or upon such other periodic basis as the secretary and the municipality may agree in writing;

(b) a range of taxable gross receipts of registered gross receipts paid by taxpayers from business locations attributable to that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality; provided that authorization from the federal internal revenue service to reveal such information has been received. The department may also reveal the information described in this subparagraph quarterly or upon such other periodic basis as the secretary and the municipality may agree in writing; and

(c) information indicating whether persons shown on a list of businesses located within that municipality furnished by the municipality have reported gross receipts to the department but have not reported gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality;

(2) the officials or employees of a county of this state authorized in a written request by the county for a period specified in the request within the twelve months preceding the request; provided that the county receiving the information has entered into a written agreement with the department that the information shall be used for tax purposes only and specifying that the county is subject to the confidentiality provisions of Section 7-1-8 NMSA 1978 and the penalty provisions of Section 7-1-76 NMSA 1978:

(a) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts either for that county in the case of a local option gross receipts tax imposed on a countywide basis or only for the areas of that county outside of any incorporated municipalities within that county in the case of a county local option gross receipts tax imposed only in areas of the county outside of any incorporated municipalities. The department may also reveal the information described in this subparagraph quarterly or upon such other periodic basis as the secretary and the county may agree in writing;

(b) a range of taxable gross receipts of registered gross receipts paid by taxpayers from business locations attributable either to that county in the case of a local option gross receipts tax imposed on a countywide basis or only to the areas of that county outside of any incorporated municipalities within that county in the case of a county local option gross receipts tax imposed only in areas of the county outside of any incorporated municipalities; provided that authorization from the federal internal revenue service to reveal such information has been received. The department may also reveal the information described in this subparagraph quarterly or upon such other periodic basis as the secretary and the county may agree in writing;

(c) in the case of a local option gross receipts tax imposed by a county on a countywide basis, information indicating whether persons shown on a list of businesses located within the county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that county on a countywide basis; and

(d) in the case of a local option gross receipts tax imposed by a county only on persons engaging in business in that area of the county outside of incorporated municipalities, information indicating whether persons on a list of businesses located in that county outside of the incorporated municipalities but within that county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county outside of the incorporated municipalities within that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by the county only on persons engaging in business in that county outside of the incorporated municipalities; and

(3) officials or employees of a municipality or county of this state, authorized in a written request of the municipality or county, for purposes of inspection, the records of the department pertaining to an increase or decrease to a distribution or transfer

made pursuant to Section 7-1-6.15 NMSA 1978 for the purpose of reviewing the basis for the increase or decrease; provided that the municipality or county receiving the information has entered into a written agreement with the department that the information shall be used for tax purposes only and specifying that the municipality or county is subject to the confidentiality provisions of Section 7-1-8 NMSA 1978 and the penalty provisions of Section 7-1-76 NMSA 1978. The authorized officials or employees may only reveal the information provided in this paragraph to another authorized official or employee, to an employee of the department, or a district court, an appellate court or a federal court in a proceeding relating to a disputed distribution and in which both the state and the municipality or county are parties.

B. The department may require that a municipal or county official or employee satisfactorily complete appropriate training on protecting confidential information prior to receiving the information pursuant to Subsection A of this section.

History: 1978 Comp., § 7-1-8.9, as enacted by Laws 2009, ch. 243, § 11; 2015, ch. 89, § 2; 2015, ch. 100, § 2.

## ANNOTATIONS

**The 2015 amendment,** effective July 1, 2015, allowed the taxation and revenue department to reveal to local governments certain gross receipts tax information attributable to those local governments; designated the previously undesignated introductory sentence as Subsection A; redesignated former Subsection A as Paragraph (1) of Subsection A; in Paragraph (1) of Subsection A, after "preceding the request;", added the remainder of the paragraph; redesignated former Paragraph (1) of Subsection A as Subparagraph A(1)(a); in Subparagraph A(1)(a), after "described in this", deleted "paragraph" and added subparagraph", and after "may agree", added "in writing"; added Subparagraph A(1)(b); redesignated former Paragraph (2) of Subsection A as Subparagraph A(1)(c); redesignated former Subsection B as Paragraph (2) of Subsection A; in Paragraph (2) of Subsection A, after "preceding the request", added the remainder of the paragraph; redesignated former Paragraph (1) of Subsection B as Subparagraph A(2)(a); in Subparagraph A(2)(a), after "described in this", deleted paragraph and added "subparagraph", and after "may agree", added "in writing"; added Subparagraph A(2)(b); redesignated former Paragraphs (2) and (3) of Subsection B as Subparagraphs A(2)(c) and A(2)(d), respectively; redesignated former Subsection C as Paragraph (3) of Subsection A; in Paragraph (3) of Subsection A, after "increase or decrease", added "provided that the municipality or county receiving the information has entered into a written agreement with the department that the information shall be used for tax purposes only and specifying that the municipality or county is subject to the confidentiality provisions of Section 7-1-8 NMSA 1978 and the penalty provisions of Section 7-1-76 NMSA 1978", and after "provided in this", deleted "subsection" and added "paragraph"; and added Subsection B.

**Duplicate laws.** — Laws 2015, ch. 89, § 2 and Laws 2015, ch. 100, § 2, both effective July 1, 2015, enacted identical amendments to this section. The section was set out as amended by Laws 2015, ch. 100, § 2. *See* 12-1-8 NMSA 1978.

## 7-1-8.10. Information that may be revealed to private persons other than the taxpayer.

An employee of the department may reveal to:

A. a transferee, assignee, buyer or lessor of a liquor license, the amount and basis of an unpaid assessment of tax for which the transferor, assignor, seller or lessee is liable;

B. a purchaser of a business as provided in Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis of an unpaid assessment of tax for which the purchaser's seller is liable;

C. a rack operator, importer, blender, distributor or supplier, the identity of a rack operator, importer, blender, supplier or distributor and the number of gallons reported on returns required under the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978], Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978] or Alternative Fuel Tax Act [Chapter 7, Article 16B NMSA 1978], but only when it is necessary to enable the department to carry out its duties under the Gasoline Tax Act, the Special Fuels Supplier Tax Act or the Alternative Fuel Tax Act; and

D. a corporation authorized to be formed under the Educational Assistance Act [Chapter 21, Article 21A NMSA 1978], upon its written request, the last known address and the date of that address of every person certified to the department as an absent obligor of an educational debt due and owed to the corporation or that the corporation has lawfully contracted to collect; this information may only be used by the corporation and its officers and employees to enforce the educational debt obligation of the absent obligors.

History: 1978 Comp., § 7-1-8.10, as enacted by Laws 2009, ch. 243, § 12.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 243, § 14 made this section effective July 1, 2009.

## 7-1-8.11. Information that may be revealed to a water and sanitation district.

A. An employee of the department may reveal to the officials and employees of a water and sanitation district of this state that has in effect a water and sanitation gross receipts tax imposed by the water and sanitation district upon its request for a period

specified by that water and sanitation district within the twelve months preceding the request for the information by those officials and employees:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts for that water and sanitation district; the department may also release the information described in this paragraph quarterly or upon any other periodic basis to which the secretary and the district agree; and

(2) information indicating whether the persons shown on a list of businesses within the water and sanitation district have reported gross receipts to the department but have not reported gross receipts for that water and sanitation district.

B. The officials and employees of water and sanitation districts receiving information as provided in this section shall be subject to the confidentiality provisions of Section 7-1-8 NMSA 1978 and the penalty provisions of Section 7-1-76 NMSA 1978.

**History:** 1978 Comp., § 7-1-8.11, enacted by Laws 2017, ch. 63, § 20.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 63 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

## 7-1-9. Address of notices and payments; timely mailing constitutes timely filing or making.

A. Any notice required or authorized by the Tax Administration Act to be given by mail is effective if mailed or served by the secretary or the secretary's delegate to the taxpayer or person at the last address shown on his registration certificate or other record of the department. Any notice, return, application or payment required or authorized to be delivered to the secretary or the department by mail shall be addressed to the secretary of taxation and revenue, taxation and revenue department, Santa Fe, New Mexico or in any other manner which the secretary by regulation or instruction may direct.

B. Except as provided otherwise in Section 7-1-13.1 NMSA 1978, all notices, returns, applications or payments authorized or required to be made or given by mail are timely if mailed on or before the date on which they are required. The secretary by regulation may provide that delivery to a private delivery or courier service on or before the date on which mailing is required constitutes timely mailing and may specify standards under which the service's time stamps or other indication of date of delivery to the service are adequate to determine actual time of delivery to the service.

**History:** 1953 Comp., § 72-13-26, enacted by Laws 1965, ch. 248, § 14; 1979, ch. 144, § 8; 1985, ch. 65, § 11; 1986, ch. 20, § 13; 1988, ch. 99, § 1; 1997, ch. 67, § 2.

**ANNOTATIONS**

**The 1997 amendment,** effective July 1, 1997, added the second sentence to Subsection B.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Penalty for nonpayment of taxes where due as affected by lack of notice to taxpayer, 102 A.L.R. 405.

Sufficiency of compliance with statute providing for service by mail of notice in tax procedure, 155 A.L.R. 1279.

Time of mailing or time of receipt as determinative of liability for penalty or additional amount for failure to pay tax on license fee within prescribed time, 158 A.L.R. 370.

## 7-1-10. Records required by statute; taxpayer records; accounting methods; reporting methods; information returns.

A. Every person required by the provisions of any statute administered by the department to keep records and documents and every taxpayer shall maintain books of account or other records in a manner that will permit the accurate computation of state taxes or provide information required by the statute under which the person is required to keep records.

B. Methods of accounting shall be consistent for the same business. A taxpayer engaged in more than one business may use a different method of accounting for each business.

C. Prior to changing the method of accounting in keeping books and records for tax purposes, a taxpayer shall first secure the consent of the secretary or the secretary's delegate. If consent is not secured, the department upon audit may require the taxpayer to compute the amount of tax due on the basis of the accounting method earlier used.

D. Prior to changing the method of reporting taxes, other than for changes required by law, a taxpayer shall first secure the consent of the secretary or the secretary's delegate. Consent shall be granted or withheld pursuant to the provisions of Section 7-4-19 NMSA 1978. If consent is not secured, the secretary or the secretary's delegate upon audit may require the taxpayer to compute the amount of tax due on the basis of the reporting method earlier used.

E. Upon the written application of a taxpayer and at the sole discretion of the secretary or the secretary's delegate, the secretary or the secretary's delegate may enter into an agreement with a taxpayer allowing the taxpayer to report values, gross receipts, deductions or the value of property on an estimated basis for gross receipts and compensating tax, oil and gas severance tax, oil and gas conservation tax, oil and gas emergency school tax and oil and gas ad valorem production tax purposes for a limited period of time not to exceed four years. As used in this section, "estimated basis"

means a methodology that is reasonably expected to approximate the tax that will be due over the period of the agreement using summary rather than detail data or alternate valuation applications or methods, provided that:

(1) nothing in this section shall be construed to require the secretary or the secretary's delegate to enter into such an agreement; and

(2) the agreement must:

(a) specify the receipts, deductions or values to be reported on an estimated basis and the methodology to be followed by the taxpayer in making the estimates;

(b) state the term of the agreement and the procedures for terminating the agreement prior to its expiration;

(c) be signed by the taxpayer or the taxpayer's representative and the secretary or the secretary's delegate; and

(d) contain a declaration by the taxpayer or the taxpayer's representative that all statements of fact made by the taxpayer or the taxpayer's representative in the taxpayer's application and the agreement are true and correct as to every material matter.

F. The secretary may, by regulation, require any person doing business in the state to submit to the department information reports that are considered reasonable and necessary for the administration of any provision of law to which the Tax Administration Act applies.

History: 1953 Comp., § 72-13-27, enacted by Laws 1965, ch. 248, § 15; 1971, ch. 276, § 6; 1979, ch. 144, § 9; 1982, ch. 18, § 9; 1983, ch. 211, § 22; 1993, ch. 30, § 5; 2001, ch. 16, § 3; 2007, ch. 275, § 1.

## ANNOTATIONS

**Cross references.** — For inspection of books of taxpayers, *see* 7-1-11 NMSA 1978.

**The 2007 amendment,** effective July 1, 2007, amends Subsection E to permit oil and gas severance tax, oil and gas conservation tax, oil and gas emergency school tax and oil and gas ad valorem production tax to be reported on an estimated basis.

**The 2001 amendment,** effective July 1, 2001, added present Subsection E and renumbered the remaining subsection accordingly.

**The 1993 amendment,** effective June 18, 1993, substituted "department" for "division" in Subsections A and E; substituted "secretary or the secretary's delegate" for "director or his delegate" in Subsection C and in two places in Subsection D; substituted

"department" for "director or his delegate" in the second sentence of Subsection C; substituted "secretary" for "director" in Subsection E; and made minor stylistic changes.

**Adequacy of taxpayer's books and records is question of fact** and the fact that taxpayer, in the hearing before the commissioner (now secretary), introduced evidence that his books and records were adequate did not require a ruling, as a matter of law, that they were adequate. Waldroop v. O'Cheskey, 1973-NMCA-146, 85 N.M. 736, 516 P.2d 1119.

**Director's (now secretary's) decision conclusive if more than one inference possible.** — If more than one inference can reasonably be drawn from the evidence, then the determination made by the commissioner (now secretary) that the books and records were inadequate is conclusive. Waldroop v. O'Cheskey, 1973-NMCA-146, 85 N.M. 736, 516 P.2d 1119.

**Taxpayer has duty to provide director (now secretary) with books and records** upon which to establish a standard for taxation as provided by law. If he fails to do so, he cannot complain of the best methods used by the commissioner (now secretary). Archuleta v. O'Cheskey, 1972-NMCA-165, 84 N.M. 428, 504 P.2d 638.

## 7-1-11. Inspection of books of taxpayers; credentials.

A. To determine the correct amount of tax due, the department shall cause the records and books of account of taxpayers to be inspected or audited at such times as the department deems necessary for the effective execution of the department's responsibilities.

B. Auditors and other officials of the department designated by the secretary are authorized to request and require the production for examination of the records and books of account of a taxpayer. Auditors and officials of the department designated by the secretary shall be furnished with credentials identifying them as such, which they shall display to any taxpayer whose books are sought to be examined.

C. Taxpayers shall upon request make their records and books of account available for inspection at reasonable hours to the secretary or the secretary's delegate who presents proper identification to the taxpayer.

D. If the taxpayer's records and books of account do not exist or are insufficient to determine the taxpayer's tax liability, if any, the department may use any reasonable method of estimating the tax liability, including but not limited to using information about similar persons, businesses or industries to estimate the taxpayer's liability.

E. The secretary or the secretary's delegate shall develop and maintain written audit policies and procedures for all audit programs in which the department routinely conducts field audits of taxpayers, including policies and procedures concerning audit notification, scheduling, records that may be examined, analysis that may be done,

sampling procedures, gathering information or evidence from third parties, policies concerning the rights of taxpayers under audit and related matters. Department audit policies and procedures shall be made available to a person who requests them, at a reasonable charge to defray the cost of preparing and distributing those policies and procedures.

F. Nothing in this section shall be construed to require the department to provide the following:

(1) information that is confidential pursuant to Section 7-1-8 NMSA 1978; or

(2) methods, techniques and analysis used to select taxpayers for audit, including the use of:

(a) data analytics;

(b) data mining;

(c) a scoring model;

(d) internal controls; and

(e) metadata used to detect fraud and noncompliance.

G. For purposes of this section:

(1) "data analytics" means the science of examining data with the purpose of drawing conclusions about the information;

(2) "data mining" means the process of analyzing data from different perspectives and summarizing it into useful information by collecting data into data sets for the purpose of discovering patterns;

(3) "scoring model" means a predictive model that can predict the chance of occurring of a fact and its occurrence;

(4) "methods, techniques and methodology" means a systematic way to accomplish a tactic, qualitative or quantitative component of research and the use of a specific method;

(5) "internal controls" means a process of assuring achievement of an organization's objectives in operational effectiveness and efficiency, reliable financial reporting and compliance with laws, regulations and policies; and

(6) "metadata" means data that provides information about other data.

**History:** 1953 Comp., § 72-13-28, enacted by Laws 1965, ch. 248, § 16; 1979, ch. 144, § 10; 1993, ch. 30, § 6; 2001, ch. 16, § 4; 2001, ch. 56, § 4; 2007, ch. 262, § 1; 2017, ch. 63, § 21.

**ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 262, § 5 repealed Laws 2001, ch. 16, § 4, effective July 1, 2007.

**Cross references.** — For accounting methods and reporting methods of taxpayers, *see* 7-1-10 NMSA 1978.

For managed audits, *see* 7-1-11.1 NMSA 1978.

**The 2017 amendment,** effective June 16, 2017, set forth additional audit information that is confidential, and provided definitions for terms used in the section; in Subsection A, added "To determine the correct amount of tax due"; designated the last sentence of Subsection E as new Subsection F; in Subsection F, after "require the department to provide", deleted "information that is confidential pursuant to Section 7-1-8 NMSA 1978, nor shall the department be required to provide information concerning how taxpayers are selected for audit" and added "the following:", and added Paragraphs F(1) and F(2); and added Subsection G.

**The 2007 amendment,** effective July 1, 2007, required auditors to present proper identification to taxpayers.

**The 2001 amendment,** effective July 1, 2001, added Subsections D and E.

Laws 2001, ch. 16, § 4, effective July 1, 2001, also amended 7-1-11 NMSA 1978. The section is set out as amended by Laws 2001, ch. 56, § 4. *See* 12-1-8 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, substituted "department" for "director or his delegate" in Subsection A and for "division" in two places in Subsection B; substituted "secretary" for "director" in two places in Subsection B and "secretary or the secretary's delegate" for "director or his delegate" in Subsection C; and made related stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 110, 136, 603; 72 Am. Jur. 2d State and Local Taxation § 729.

Constitutionality of statutory provision for examination of records, books or documents for taxation purposes, 103 A.L.R. 522.

## 7-1-11.1. Managed audits.

A. A managed audit may be limited in scope to certain periods, activities, lines of business, geographic areas or transactions, including tax on:

(1) the receipts from certain sales;

(2) the value of certain assets;

(3) the value of certain expense items or services used; and

(4) any other category specified in an agreement authorized by this section.

B. Upon the application of the taxpayer, the secretary or the secretary's delegate may enter into a written agreement with a taxpayer for a managed audit. To be effective the written agreement must:

(1) be signed by the taxpayer or the taxpayer's authorized representative and by the secretary or the secretary's delegate;

(2) contain a declaration by the taxpayer or the taxpayer's authorized representative that all statements of fact made by the taxpayer or the taxpayer's representative in the taxpayer's application and the agreement are true and correct as to every material matter;

(3) specify the reporting period or periods, the type of receipts or transactions and tax to be audited, the procedures to be followed in performing the managed audit, the records to be used, the date of commencement of the audit for purposes of Section 7-9-43 NMSA 1978 and the date for the taxpayer's presentation of the results of the managed audit to the department; and

(4) include a waiver by the taxpayer of the limitations on assessments for the reporting period or periods to be audited.

C. The agreement for a managed audit may be modified in writing, provided that the modification meets the requirements of Subsection B of this section.

D. In determining whether to enter into an agreement for a managed audit the secretary or the secretary's delegate may consider, in addition to other relevant factors:

(1) the taxpayer's history of tax compliance;

(2) the amount of time and resources the taxpayer has available to dedicate to the audit;

(3) the extent and availability of the taxpayer's records; and

(4) the taxpayer's ability to pay any expected liability.

E. The decision whether to enter into an agreement for a managed audit rests solely with the secretary or the secretary's delegate.

F. The results of the managed audit shall be presented to the department by the taxpayer on or before any date set for presentation of the results in the managed audit agreement. The department shall assess the tax liability found to be due as the result of a managed audit performed in accordance with a managed audit agreement. The department may review records, documents, schedules or other information to determine if the managed audit substantially conforms to the managed audit agreement.

**History:** Laws 2001, ch. 16, § 1; 2003, ch. 398, § 6.

**ANNOTATIONS**

**Cross references.** — For definition of local option gross receipts tax, *see* 7-1-3 NMSA 1978.

For gross receipts tax, *see* 7-9-4 NMSA 1978.

For compensating tax, *see* 7-9-7 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, deleted "gross receipts tax, local option gross receipts taxes or compensating tax due from" following "limited in scope to" near the beginning of Subsection A.

## 7-1-11.2. Required audit notices.

A. Except as provided in Subsection G of this section, prior to or coincident with requesting records and books of account from a taxpayer pursuant to Section 7-1-11 NMSA 1978, as part of an office or field audit, the department shall provide the taxpayer with written dated notice of the commencement of an audit. The notice shall, at a minimum, state the tax programs and reporting periods to be covered and the date on which the audit is commenced.

B. To any taxpayer to whom the department is required to provide a written notice of the commencement of an audit, the department shall also provide a written notice of the outstanding records or books of account that have been requested but not received. If the taxpayer has provided all records and books of account requested, the notice shall so state. The notice of outstanding records or books of account shall be given no sooner than sixty days, unless the taxpayer provides a written request for early completion of the audit, and no later than one hundred eighty days after the date of the commencement of the audit. The notice of outstanding records or books of account shall be dated and shall provide reasonable descriptions of any records or books of account needed or the information expected to be contained in them and shall give the taxpayer ninety days to comply with Section 7-1-11 NMSA 1978. The notice shall state that if the taxpayer does not properly comply within ninety days of the date of the notice,

the department will proceed to issue any assessment of tax due on the basis of information available.

C. A taxpayer may request additional time to comply with the notice of outstanding records and books of account. Such request shall be in writing and shall state the amount of time needed.

D. If the department does not issue an assessment within one hundred eighty days after giving a notice of outstanding records or books of account or within ninety days after the expiration of the additional time requested by the taxpayer to comply, if such request was granted, interest shall be computed in accordance with Paragraph (6) of Subsection A of Section 7-1-67 NMSA 1978.

E. Any taxpayer who was not provided a proper notice of outstanding records or books of account is entitled to computation of interest in accordance with Paragraph (7) of Subsection A of Section 7-1-67 NMSA 1978.

F. Nothing in this section shall prevent the department from requesting from the taxpayer a waiver of the statute of limitations for assessment of tax owed. Nothing in this section shall prevent the department from issuing an assessment of tax owed on the basis of the information available.

G. This section does not apply to investigations of fraud.

History: 1978 Comp., § 7-1-11.2, enacted by Laws 2003, ch. 398, § 7; 2007, ch. 262, § 2.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, provided an exception to the sixty-day notice of outstanding records if the taxpayer has requested early completion of the audit.

## 7-1-12. Identification of taxpayers.

A. The secretary by regulation shall establish a system for the registration and identification of taxpayers and shall require taxpayers to comply therewith.

B. The registration system shall be devised so as to facilitate the exchange of information with other states and the United States and to aid in statistical computations.

C. The secretary by regulation also shall provide for a system for the registration and identification of purchasers or lessees who, by reason of their status or the nature of their use of property or service purchased or leased, are ordinarily entitled to make

nontaxable purchases or leases of some kinds of property or service and may require such purchasers or lessees to comply therewith.

D. Any document, issued by the department under authority of this section, which is required to be posted on the business premises of the taxpayer shall contain a brief reference to the requirements of Section 7-1-61 NMSA 1978.

**History:** 1953 Comp., § 72-13-29, enacted by Laws 1965, ch. 248, § 17; 1966, ch. 52, § 1; 1979, ch. 144, § 11; 2000, ch. 28, § 4.

**ANNOTATIONS**

**The 2000 amendment,** effective July 1, 2000, substituted "secretary" for "director" in Subsections A and C and substituted "department" for "director" in Subsection D.

**Possession of taxpayer identification number. —** The mere possession of a New Mexico registration number by a foreign taxpayer does not mean that the taxpayer is registered with New Mexico for gross receipts tax purposes; the possession of a New Mexico taxpayer identification number did not mean that the taxpayer acknowledged that a nexus existed with respect to its activities in New Mexico for gross receipts tax purposes. Siemens Energy & Automation, Inc. v. N.M. Taxation & Revenue Dep't, 1994-NMCA-173, 119 N.M. 316, 889 P.2d 1238.

## 7-1-12.1. Department to designate production unit; index; identification by number or symbol.

A. The department shall have the power to designate the property that shall constitute a production unit; provided, a production unit shall be a unit of property from which products of common ownership are severed.

B. The department shall compile and keep current an index of all production units by description sufficient to properly identify such production units.

C. The department shall assign to each production unit a number or symbol, and the number or symbol shall serve as a means of identification for the purpose of reporting, tax payment and tax collection of the taxes administered by the department.

**History:** 1978 Comp., § 7-1-12.1, enacted by Laws 1985, ch. 65, § 12; 1993, ch. 30, § 7.

**ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, substituted "Department" for "Oil and gas accounting division" in the section heading and throughout this section; substituted "department" for "division" in Subsection C; and made a minor stylistic change.

## 7-1-12.2. Notice of identification number assigned; operator may request identification number.

The department shall inform each operator of a production unit as to the identification number or symbol assigned to such production unit. Such number or symbol may be changed or revised and information regarding such change or revision shall likewise be given the operator. In the creation of a new production unit or in the event of a change of ownership or revision in a production unit, the operator may request the department to assign a new identification number or symbol, and the department shall notify the operator of the identification number or symbol to be used.

**History:** 1978 Comp., § 7-1-12.2, enacted by Laws 1985, ch. 65, § 13; 1993, ch. 30, § 8; 2017, ch. 63, § 22.

**ANNOTATIONS**

**The 2017 amendment,** effective June 16, 2017, removed the requirement that notice of identification numbers must be made by mail; after the first occurrence of "production unit", deleted "by mail", and after the second occurrence of "operator", deleted "by mail".

**The 1993 amendment,** effective June 18, 1993, substituted "department" for "oil and gas accounting division" in the first sentence and for "division" in two places in the final sentence.

## 7-1-13. Taxpayer returns; payment of taxes; extension of time.

A. Taxpayers are liable for tax at the time of and after the transaction or incident giving rise to tax until payment is made. Taxes are due on and after the date on which their payment is required until payment is made.

B. Every taxpayer shall, on or before the date on which payment of any tax is due, complete and file a tax return in a form prescribed and according to the regulations issued by the secretary. Except as provided in Section 7-1-13.1 NMSA 1978 or by regulation, ruling, order or instruction of the secretary, the payment of any tax or the filing of any return may be accomplished by mail. When the filing of a tax return or payment of a tax is accomplished by mail, the date of the postmark shall be considered the date of submission of the return or payment.

C. If any adjustment is made in the basis for computation of any federal tax as a result of an audit by the internal revenue service or the filing of an amended federal return changing a prior election or making any other change for which federal approval is required by the Internal Revenue Code, the taxpayer affected shall, within one hundred eighty days of final determination of the adjustment, file an amended return with the department. Payment of any additional tax due shall accompany the return.

D. Payment of the total amount of all taxes that are due from the taxpayer shall precede or accompany the return. Delivery to the department of a check that is not paid upon presentment does not constitute payment.

E. The secretary or the secretary's delegate may, for good cause, extend in favor of a taxpayer or a class of taxpayers, for no more than a total of twelve months, the date on which payment of any tax is required or on which any return required by provision of the Tax Administration Act shall be filed, but no extension shall prevent the accrual of interest as otherwise provided by law. When an extension of time for income tax has been granted a taxpayer under the Internal Revenue Code, the extension shall serve to extend the time for filing New Mexico income tax provided that a copy of the approved federal extension of time is attached to the taxpayer's New Mexico income tax return. The secretary by regulation may also provide for the automatic extension for no more than six months of the date upon which payment of any New Mexico income tax or the filing of any New Mexico income tax return is required. If the secretary or the secretary's delegate believes it necessary to ensure the collection of the tax, the secretary or the secretary's delegate may require, as a condition of granting any extension, that the taxpayer furnish security in accordance with the provisions of Section 7-1-54 NMSA 1978.

F. As used in this section, "final determination" means:

(1) the taxpayer has:

(a) made payment on any additional income tax liability resulting from the federal audit; and

(b) not filed a petition for redetermination or claim for refund for the portions of the audit on which payment was made;

(2) the taxpayer has received a refund from the United States department of the treasury resulting from the federal audit;

(3) the taxpayer has signed federal form 870 or other internal revenue service form consenting to the deficiency or accepting any overassessment;

(4) the taxpayer's time period for filing a federal petition for redetermination to the United States tax court has expired;

(5) the taxpayer enters into a closing agreement with the internal revenue service as provided in Section 7121 of the Internal Revenue Code; or

(6) a decision from the United States tax court, United States district court, United States court of appeals, United States court of claims or United States supreme court becomes final.

History: 1953 Comp., § 72-13-30, enacted by Laws 1965, ch. 248, § 18; 1971, ch. 276, § 7; 1978, ch. 90, § 1; 1979, ch. 144, § 12; 1983, ch. 211, § 23; 1988, ch. 99, § 2; 1989, ch. 325, § 4; 1993, ch. 5, § 4; 1994, ch. 51, § 3; 2007, ch. 127, § 1; 2013, ch. 27, § 1.

## ANNOTATIONS

**Cross references.** — For the Internal Revenue Code, *see* 26 U.S.C. § 1 et seq.

**The 2013 amendment,** effective July 1, 2013, extended the deadline for filing an amended return after the final determination of an adjustment in the computation of a federal tax; in Subsection C, after "the taxpayer affected shall, within", deleted "ninety days of the internal revenue service audit adjustment or payment of the federal refund" and added "one hundred eighty days of final determination of the adjustment"; and added Subsection F.

**The 2007 amendment,** effective July 1, 2007, provided that if a tax return or payment is mailed, the date of the postmark is the date of submission of the return or payment and increases the period of an automatic extension authorized by the secretary to not more than six months.

**The 1994 amendment,** effective July 1, 1994, substituted "ninety" for "thirty" in the first sentence in Subsection C.

**The 1993 amendment,** effective July 1, 1993, rewrote the first sentence of Subsection C which read "If any adjustment is made in the basis for computation of any federal tax, the taxpayer affected shall, within thirty days, file an amended return with the department" and made a minor stylistic change in Subsection D.

**The 1989 amendment,** effective June 16, 1989, made a minor stylistic change in Subsection A and, in Subsection E, substituted "shall be filed" for "must be filed" and, at the end of the second sentence, inserted the language beginning "except that".

**State returns used for audit although federal taxes filed on different basis.** — Since the taxpayer filed consolidated federal income tax returns for a three-year period, but, for the same period, elected to file its state income tax returns as a separate corporate entity, excluding its subsidiaries, and since it was not obligated to file its state returns on the same basis as its federal return, the revenue department was not required to audit and assess the taxpayer's income taxes on the basis of consolidated income reported by the taxpayer in its federal returns rather than on the basis of its state returns which it had filed. Getty Oil Co. v. Taxation & Revenue Dep't, 1979-NMCA-131, 93 N.M. 589, 603 P.2d 328.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 834, 835, 842.

What amounts to reasonable cause for failure to file, or delay in filing, tax return, 3 A.L.R.2d 617.

85 C.J.S. Taxation §§ 1579 et seq.

## 7-1-13.1. Method of payment of certain taxes due.

A. Payment of the taxes, including any applicable penalties and interest, described in Paragraph (1), (2), (3) or (4) of this subsection shall be made on or before the date due in accordance with Subsection B of this section if the taxpayer's average tax payment for the group of taxes during the preceding calendar year equaled or exceeded twenty-five thousand dollars ($25,000):

(1) Group 1: all taxes due under the Withholding Tax Act [Chapter 7, Article 3 NMSA 1978], the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978], local option gross receipts tax acts, the Interstate Telecommunications Gross Receipts Tax Act [Chapter 7, Article 9C NMSA 1978] and the Leased Vehicle Gross Receipts Tax Act [Chapter 7, Article 14A NMSA 1978];

(2) Group 2: all taxes due under the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978], the Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978], the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978] and the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978];

(3) Group 3: the tax due under the Natural Gas Processors Tax Act [Chapter 7, Article 33 NMSA 1978]; or

(4) Group 4: all taxes and fees due under the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978], the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978] and the Petroleum Products Loading Fee Act [Chapter 7, Article 13A NMSA 1978].

For taxpayers who have more than one identification number issued by the department, the average tax payment shall be computed by combining the amounts paid under the several identification numbers.

B. Taxpayers who are required to make payment in accordance with the provisions of this section shall make payment by one or more of the following means on or before the due date so that funds are immediately available to the state on or before the due date:

(1) electronic payment; provided that a result of the payment is that funds are immediately available to the state of New Mexico on or before the due date;

(2) currency of the United States;

(3) check drawn on and payable at any New Mexico financial institution provided that the check is received by the department at the place and time required by the department at least one banking day prior to the due date; or

(4) check drawn on and payable at any domestic non-New Mexico financial institution provided that the check is received by the department at the time and place required by the department at least two banking days prior to the due date.

C. If the taxes required to be paid under this section are not paid in accordance with Subsection B of this section, the payment is not timely and is subject to the provisions of Sections 7-1-67 and 7-1-69 NMSA 1978.

D. For the purposes of this section, "average tax payment" means the total amount of taxes paid with respect to a group of taxes listed under Subsection A of this section during a calendar year divided by the number of months in that calendar year containing a due date on which the taxpayer was required to pay one or more taxes in the group.

History: 1978 Comp., § 7-1-13.1, enacted by Laws 1988, ch. 99, § 3; 1989, ch. 76, § 1; 1990, ch. 86, § 6; 1992, ch. 55, § 8; 1993, ch. 5, § 5; 2000, ch. 28, § 5; 2005, ch. 109, § 3.

## ANNOTATIONS

**The 2005 amendment,** effective January 1, 2006, adds taxes and fees due under the Gasoline Tax Act, the Special Fuels Supplier Tax Act and the Petroleum Products Loading Fee Act as a new group of taxes in Subsection A(4).

**The 2000 amendment,** effective July 1, 2000, deleted former Subsections B(1) and B(2), concerning automated clearinghouse transactions and transfer of funds through wire transfer systems respectively; added present Subsection B(1) and redesignated the remaining paragraphs in Subsection B accordingly; deleted the last two sentences of Subsection C, concerning automated clearinghouse transactions and the use of checks for the payment of taxes; and deleted former Subsections D(1) and D(3), which defined "automated clearinghouse transaction" and "financial institution" respectively.

**The 1993 amendment,** effective July 1, 1993, in Subsection A, substituted "the group of taxes" for "those taxes" in the first paragraph, inserted "Group 1", "Group 2", and "Group 3" at the beginning of Paragraphs (1), (2), and (3), substituted the language beginning "local option" for "and any other act authorizing a municipal or county tax to be collected at the same time or in the same manner as the gross receipts tax" at the end of Paragraph (1); in Subsection C, deleted "an offsetting debit to" following "When", inserted "is reversed" and substituted "automated clearinghouse transaction" for "debit" in the second sentence and inserted "reversal or" in the final sentence; in Subsection D, added current Paragraph (2) and redesignated former Paragraph (2) as (3); and made minor stylistic changes.

**The 1992 amendment,** effective July 1, 1992, rewrote Subsection B; substituted "transaction" for "deposit" in the second sentence of Subsection C; and, in Subsection D(1), substituted "transaction" for "deposit", inserted "or debit", and deleted "deposit" preceding "payable".

**The 1990 amendment,** effective July 1, 1990, in Subsection A, rewrote the introductory clause which read "Payment of the following taxes, including any applicable penalties and interests described in this subsection, shall be made on or before the date due in accordance with Subsection B of this section"; deleted "if the sum of these taxes equals or exceeds twenty-five thousand dollars ($25,000)" at the end of Paragraphs (1) and (2); deleted "if the tax equals or exceeds twenty-five thousand dollars ($25,000)" at the end of Paragraph (3); deleted former Paragraph (4) which read "the taxes described in Paragraph (1), (2), or (3) of this subsection if the taxpayer's average tax payment for those taxes during the preceding calendar year equaled or exceeded twenty-five thousand dollars ($25,000)"; added the final paragraph and made a stylistic change; and, in Subsection B, substituted "shall make payment" for "must make payment" in the introductory clause.

**The 1989 amendment,** effective May 1, 1989, rewrote the introductory paragraph of Subsection A; added present Subsection B; redesignated former Subsection B as present Subsection C, substituting therein all of the language of the first sentence preceding "the payment" for "If the taxes required to be paid by automated clearing-house deposit under this section are not paid by automated clearing-house deposit on or before the date due" and adding the second sentence; deleted former Subsection C, which read: "Any tax, including any applicable penalty and interest, may be paid by check drawn on the main office of the state fiscal agent"; and in Subsection D substituted the colon and Paragraph (1) designation for a comma, inserted "deposit" preceding "payable" in Paragraph (1), deleted "which must be initiated by the taxpayer or the taxpayer's agent one banking day prior to the due date" at the end of Paragraph (1), and added Paragraph (2).

## 7-1-13.2. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1989, ch. 319, § 15 repealed 7-1-13.2 NMSA 1978, as enacted by Laws 1988, ch. 73, § 55, relating to bond required of certain persons, effective July 1, 1989.

## 7-1-13.3. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1999, ch. 176, § 2 repealed 7-1-13.3 NMSA 1978, as enacted by Laws 1992, ch. 55, § 9, authorizing the department to accept payment of taxes by credit card, effective June 18, 1999. For provisions of former section, *see* the 1998 NMSA

1978 on *NMOneSource.com.* For present comparable provisions, *see* 6-1-14 NMSA 1978.

## 7-1-13.4. Electronic payments; reversals.

A. The department is authorized to accept payment by automated clearinghouse transaction, federal reserve system wire transfer and such other means of electronic payment as the department, with the concurrence of the state board of finance, may choose.

B. With respect to automated clearinghouse transactions, federal reserve system wire transfers and electronic payments by means the department has chosen, neither the department nor the fiscal agent of New Mexico shall refuse to accept the funds or to reverse the transaction when funds have been received by the fiscal agent designating the department as the payee together with sufficient information to identify the name of the taxpayer. The department or the fiscal agent of New Mexico may refuse to accept such a payment or to cause the reversal of the transaction only when the transaction is not successful in making the funds to be transferred available or in identifying the taxpayer. The department and the fiscal agent of New Mexico may refuse to accept electronic payments tendered by means other than automated clearinghouse deposit, federal reserve system wire transfer or those other means the department has chosen.

C. When an electronic payment transaction is reversed through the taxpayer's action or a check is dishonored by the taxpayer's financial institution, neither the department nor the fiscal agent of New Mexico is obligated to resubmit the transaction or check for payment. If the reversal or dishonoring causes the final payment of taxes to be not timely, then the provisions of Sections 7-1-67 and 7-1-69 NMSA 1978 apply.

**History:** 1978 Comp., § 7-1-13.4, enacted by Laws 2000, ch. 28, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2000, ch. 28, § 6 made the act effective July 1, 2000.

## 7-1-14. Secretary may determine where certain gross receipts are to be reported; place of business for construction projects and certain real property sales.

A. By regulation, the secretary may require any person maintaining one or more places of business to report the person's taxable gross receipts and deductions for each municipality or county or area within an Indian reservation or pueblo grant in which the person maintains a place of business.

B. For persons engaged in the construction business, the place where the construction project is performed is a "place of business", and all receipts from that project are to be reported from that place of business.

C. The secretary may, by regulation, also require any person maintaining a business outside the boundaries of a municipality on land owned by that municipality to report the person's taxable gross receipts for that municipality.

D. For a person engaged in the business of selling real estate, the location of the real property sold is the "place of business", and all receipts from that sale are to be reported from that place of business.

**History:** 1953 Comp., § 72-13-30.1, enacted by Laws 1969, ch. 145, § 1; 1970, ch. 57, § 2; 1977, ch. 315, § 3; 1979, ch. 144, § 13; 1983, ch. 211, § 24; 1992, ch. 55, § 10; 1995, ch. 100, § 1.

**ANNOTATIONS**

**The 1995 amendment,** effective July 1, 1995, rewrote the section heading which read "Secretary may require gross receipts to be reported according to municipality, Indian reservation, pueblo grant or if on municipally owned land"; designated the former first, second and third sentences as Subsections A through C; and added Subsection D.

**The 1992 amendment,** effective July 1, 1992, substituted "Secretary" for "Director" in the section heading and throughout the section, substituted "one or more places" for "more than one place" and deleted "covered by a contract of the type described in Section 7-1-6.4 NMSA 1978" following "pueblo grant" in the first sentence, added "all of the present language of the second sentence" following "place of business", and made minor stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation § 727.

85 C.J.S. Taxation §§ 1701 et seq.

## 7-1-15. Secretary may set tax reporting and payment intervals.

The secretary may, pursuant to regulation, allow taxpayers with an anticipated tax liability of less than two hundred dollars ($200) a month to report and pay taxes at intervals which the secretary may specify. However, unless specifically permitted by law, an interval shall not exceed six months. The secretary may also allow direct marketers who have entered into an agreement with the department to collect and remit compensating tax to report and pay on a quarterly or semi-annual basis.

**History:** 1953 Comp., § 72-13-30.1, enacted by Laws 1969, ch. 31, § 1; 1979, ch. 144, § 14; 1983, ch. 211, § 25; 1988, ch. 73, § 7; 1991, ch. 138, § 1; 1998, ch. 105, § 2.

**ANNOTATIONS**

**The 1998 amendment,** effective May 20, 1998, added the last sentence.

**The 1991 amendment,** effective July 1, 1991, substituted "two hundred dollars ($200)" for "one hundred dollars ($100)".

## 7-1-15.1. Secretary may permit or require rounding.

By regulation or instruction, the secretary may permit or require rounding to the nearest whole dollar of tax due provided that, for any tax or tax act the revenues from which are required by the provisions of the Tax Administration Act to be distributed or transferred partly to local governments and partly to state funds, the gain or loss due to rounding shall be attributed to the state funds.

**History:** 1978 Comp., § 7-1-15.1, enacted by Laws 1987, ch. 169, § 4.

## 7-1-15.2. Agreements; collection of compensating tax.

The department may enter into agreements with direct marketers for purposes of enforcing collection of the compensating tax.

**History:** Laws 1998, ch. 105, § 1.

**ANNOTATIONS**

**Cross references.** — For compensating tax, *see* 7-9-1 NMSA 1978 et seq.

## 7-1-16. Delinquent taxpayer.

A. Except as provided in Subsection D of this section, any taxpayer to whom taxes have been assessed as provided in Section 7-1-17 NMSA 1978 or upon whom demand for payment has been made as provided in Section 7-1-63 NMSA 1978 who does not within ninety days after the date of assessment or demand for payment make payment, protest the assessment or demand for payment as provided by Section 7-1-24 NMSA 1978 or furnish security for payment as provided by Section 7-1-54 NMSA 1978 becomes a delinquent taxpayer and remains such until:

(1) payment of the total amount of all such taxes is made;

(2) security is furnished for payment; or

(3) no part of the assessment remains unabated.

B. Any taxpayer who fails to provide security as required by Subsection D of Section 7-1-54 NMSA 1978 shall be deemed to be a delinquent taxpayer.

C. If a taxpayer files a protest as provided in Section 7-1-24 NMSA 1978, the taxpayer nevertheless becomes a delinquent taxpayer upon failure of the taxpayer to appear, in person or by authorized representative, at the hearing set or upon failure to perfect an appeal from any decision or part thereof adverse to the taxpayer to the next higher appellate level, as provided in that section, unless the taxpayer makes payment of the total amount of all taxes assessed and remaining unabated or furnishes security for payment.

D. A taxpayer does not become a delinquent taxpayer if the taxpayer has been issued an assessment as a result of a managed audit but is still within the allowed time period to pay the tax due as specified in Paragraph (4) of Subsection A of Section 7-1-67 NMSA 1978.

History: 1953 Comp., § 72-13-31, enacted by Laws 1965, ch. 248, § 19; 1979, ch. 144, § 15; 1985, ch. 65, § 14; 1989, ch. 325, § 5; 1993, ch. 5, § 6; 1999, ch. 84, § 1; 2007, ch. 262, § 3; 2013, ch. 27, § 2.

**ANNOTATIONS**

**The 2013 amendment,** effective July 1, 2013, extended the deadline for protesting an assessment or demand for payment; in Subsection A, in the first sentence, after "who does not within", deleted "thirty" and added "ninety"; deleted former Paragraph (2) of Subsection A, which provided for a retroactive extension of time to file a protest; and deleted Paragraph (1) of Subsection D, which provided that a taxpayer did not become delinquent if the taxpayer filed for an extension of time to file a protest.

**The 2007 amendment,** effective July 1, 2007, rewrote Subsection D.

**The 1999 amendment,** effective July 1, 1999, in Subsection A, added "Except as provided in Subsection D of this section" at the beginning of the introductory language and inserted "the assessment is not abated and" in Paragraph (2); and added Subsection D.

**The 1993 amendment,** effective July 1, 1993, in Subsection A, inserted the paragraph designations, added Paragraph (2), and made minor stylistic changes.

**The 1989 amendment,** effective June 16, 1989, in Subsection C, substituted "taxpayer files a protest" for "taxpayer does make application for hearing" and made minor stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 782 to 787, 835, 842, 843.

85 C.J.S. Taxation §§ 1096 to 1098, 1108 et seq.

## 7-1-17. Assessment of tax; presumption of correctness.

A. If the secretary or the secretary's delegate determines that a taxpayer is liable for taxes in excess of twenty-five dollars ($25.00) that are due and that have not been previously assessed to the taxpayer, the secretary or the secretary's delegate shall promptly assess the amount thereof to the taxpayer.

B. Assessments of tax are effective:

(1) when a return of a taxpayer is received by the department showing a liability for taxes;

(2) when a document denominated "notice of assessment of taxes", issued in the name of the secretary, is mailed or delivered in person to the taxpayer against whom the liability for tax is asserted, stating the nature and amount of the taxes assertedly owed by the taxpayer to the state, demanding of the taxpayer the immediate payment of the taxes and briefly informing the taxpayer of the remedies available to the taxpayer; or

(3) when an effective jeopardy assessment is made as provided in the Tax Administration Act.

C. Any assessment of taxes or demand for payment made by the department is presumed to be correct.

D. When taxes have been assessed to any taxpayer and remain unpaid, the secretary or the secretary's delegate may demand payment at any time except as provided otherwise by Section 7-1-19 NMSA 1978.

History: 1953 Comp., § 72-13-32, enacted by Laws 1965, ch. 248, § 20; 1969, ch. 32, § 1; 1979, ch. 144, § 16; 1992, ch. 55, § 11; 2007, ch. 45, § 1.

## ANNOTATIONS

**The 2007 amendment,** effective January 1, 2008, in Subsection A, changed the minimum amount from $10.00 to $25.00.

**The 1992 amendment,** effective July 1, 1992, substituted "secretary" for "director" and "department" for "division" several times throughout the section, added "except as provided otherwise by Section 7-1-19 NMSA 1978" at the end of Subsection D, and made minor stylistic changes throughout the section.

**Assessment of taxes effective** when effective jeopardy assessment is made as provided in the Tax Administration Act. Regents of N.M. Coll. of Agric. & Mechanic Arts v. Academy of Aviation, Inc., 1971-NMSC-087, 83 N.M. 86, 488 P.2d 343.

**Assessment upheld when statutes followed and no dispute of factual correctness.** — Since the record showed the statutory provisions were followed and

taxpayer presented no evidence tending to dispute the factual correctness of the assessments, assessment will be upheld. McConnell v. State ex rel. Bureau of Revenue, 1971-NMCA-181, 83 N.M. 386, 492 P.2d 1003.

**Presumption of correctness applies when assessment delivered.** — Once the notice of assessment of taxes is delivered to the taxpayer, the statutory presumption, of the correctness of the assessment, applies, and absent a showing of incorrectness by taxpayers, the audit and notice of assessment of taxes must stand. Torridge Corp. v. Commissioner of Revenue, 1972-NMCA-171, 84 N.M. 610, 506 P.2d 354, cert. denied, 84 N.M. 592, 506 P.2d 336 (1973).

**Exemption strictly construed in favor of taxing authority.** — There is a presumption that an assessment of gross receipts taxes is correct, and in order for the taxpayer to be successful, he must clearly overcome this presumption. Moreover, where an exemption is claimed, the exemption is strictly construed in favor of the taxing authority. Stohr v. N.M. Bureau of Revenue, 1976-NMCA-118, 90 N.M. 43, 559 P.2d 420, cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977).

**Presumption applicable to penalty statute.** — Presumption of correctness of this section also applies to penalty section (7-1-69 NMSA 1978). Tiffany Constr. Co. v. Bureau of Revenue, 1976-NMCA-127, 90 N.M. 16, 558 P.2d 1155, cert. denied, 90 N.M. 255, 561 P.2d 1348 (1977).

**Burden on protesting taxpayers to overcome presumption.** — The burden is on taxpayers protesting assessment to overcome presumption that the bureau's (now department's) assessment is correct. Archuleta v. O'Cheskey, 1972-NMCA-165, 84 N.M. 428, 504 P.2d 638; Tipperary Corp. v. N.M. Bureau of Revenue, 1979-NMCA-031, 93 N.M. 22, 595 P.2d 1212, cert. denied, 92 N.M. 675, 593 P.2d 1078; Anaconda Co. v. Prop. Tax Dep't, 1979-NMCA-158, 94 N.M. 202, 608 P.2d 514, cert. denied, 94 N.M. 628, 614 P.2d 545 (1980); Hawthorne v. Director of Revenue Div. Taxation & Revenue Dep't, 1980-NMCA-071, 94 N.M. 480, 612 P.2d 710, Carlsberg Mgmt. Co. v. State Taxation & Revenue Dep't, 1993-NMCA-121, 116 N.M. 247, 861 P.2d 288; MPC Ltd. v. N.M. Taxation & Revenue Dep't, 2003-NMCA-021, 133 N.M. 217, 62 P.3d 308.

**Presumption overcome when not supported by substantial evidence.** — The assessment is presumed to be correct; the taxpayer may overcome the presumption of correctness of the assessment by presenting evidence and showing that the decision of the bureau (now department) is not supported by substantial evidence. Floyd & Berry Davis Co. v. Bureau of Revenue, 1975-NMCA-143, 88 N.M. 576, 544 P.2d 291.

**Protesting taxpayer must dispute factual correctness to overcome presumption.** — Since any assessment of taxes is presumed to be correct, the duty rested on the taxpayer to present evidence tending to dispute the factual correctness of the assessments and to overcome this presumption. Champion Int'l Corp. v. Bureau of Revenue, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 548 P.2d 70.

**Presumption may be overcome by disputing factual correctness.** — The presumption of Subsection C need be overcome only by a taxpayer's disputing the factual correctness of an assessment. When the taxpayer challenged the interpretation of a county ordinance in its submitted memorandum of positions, the burden was properly shifted by the memorandum to the bureau (now department) to at least acknowledge the existence of the ordinance. Co-Con, Inc. v. Bureau of Revenue, 1974-NMCA-134, 87 N.M. 118, 529 P.2d 1239, cert. denied, 87 N.M. 111, 529 P.2d 1232.

**Necessity of presenting evidence to rebut the presumption of correctness.** — When the corporation contracted with an out-of-state buyer for the corporation to destroy munitions, it was entitled to the gross receipts deduction, and the hearing officer could not properly determine that use or delivery took place within the state without some affirmative evidence in the record to support that conclusion. TPL, Inc. v. N.M. Taxation & Revenue Dep't, 2003-NMSC-007, 133 N.M. 447, 64 P.3d 474.

**No basis for overturning decision where taxpayer unprepared.** — Since the record showed that hearing officer carefully advised taxpayer as to the statutory procedures and his rights in connection with hearing and it also showed the taxpayer did not come prepared for the hearing, taxpayer's claims that bureau (now department) should have given him opportunity to present his evidence at a later time and, although it was his burden to proceed, that he was denied the right to cross-examine a witness who was never called were based on taxpayer's lack of preparation and do not provide a basis for overturning the commissioner's (now secretary's) decision. McConnell v. State ex rel. Bureau of Revenue, 1971-NMCA-181, 83 N.M. 386, 492 P.2d 1003.

**Presumption not overcome by contradictory evidence.** — Evidence that the construction contract between the taxpayer, a contracting business and a corporation created a ceiling price was not compelling in view of the contradictory evidence as to the actual cost of the construction, and the presumption of correctness of the assessment of gross receipts tax was not overcome. Floyd & Berry Davis Co. v. Bureau of Revenue, 1975-NMCA-143, 88 N.M. 576, 544 P.2d 291.

**Presumption not overcome since acceptable audit method used.** — Since the "test months" method was used for audit of taxpayers whose records were destroyed by fire in order to determine gross receipts subject to tax, and since there was evidence that the "test months" method was acceptable practice, the presumption of correctness of the assessments was not overcome. Torridge Corp. v. Comm'r of Revenue, 1972-NMCA-171, 84 N.M. 610, 506 P.2d 354, cert. denied, 84 N.M. 592, 506 P.2d 336 (1973).

**Evidence of entitlement to a manufacturing deduction.** — A biotechnology company whose expertise was in the diagnosis of genetic disorders that could be detected through the appearance of chromosomes, and who produced tangible objects that were provided to its customers, such as a written report of its experts' diagnosis and a laminated karyotype, which consisted of photographs of chromosomes that were numbered and pasted onto a piece of laminated cardboard, did not establish its

entitlement to a manufacturing deduction, since the company could not identify any out-of-state purchases that would be subject to the compensating tax of products incorporated into its reports or laminated karyotypes. The department, whose assessment is assumed correct, had identified as subject to the compensating tax such items as microscopes, sinks, and furniture, which undoubtedly were not incorporated into the documents or laminated karyotypes. Vivigen, Inc. v. Minzner, 1994-NMCA-027, 117 N.M. 224, 870 P.2d 1382.

**Presumption overcome when no basis for assessments existed.** — Since the undisputed evidence of no audit for a two-year period of no test for gross receipts for those years and of different under-reporting percentages for the audited period established an absence of any basis for the assessments for that period, such showing overcame the presumption that the assessments were correct. Torridge Corp. v. Commissioner of Revenue, 1972-NMCA-171, 84 N.M. 610, 506 P.2d 354, cert. denied, 84 N.M. 592, 506 P.2d 336 (1973).

**Standard of review on appeal.** — Department's gross receipts tax assessment can only be reversed by the court of appeals if arbitrary, capricious, or there is an abuse of discretion, such that the assessment's not supported by substantial evidence or it is otherwise not in accordance with law. ITT Educ. Serv. v. Taxation & Revenue Dep't, 1998-NMCA-078, 125 N.M. 244, 959 P.2d 969.

**Standard of review on appeal.** — Any assessment of taxes by the taxation and revenue department is presumed to be correct and in protesting the assessment of taxes the taxpayer has the burden of proving the deductions were proper. In reviewing, courts will reverse the department's decision only if it is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, or not supported by substantial evidence. Arco Materials, Inc. v. State Taxation & Revenue Dep't, 1994-NMCA-062, 118 N.M. 12, 878 P.2d 330, *rev'd on other grounds sub nom.* Blaze Constr. Co. v. Taxation & Revenue Dep't, 1994-NMSC-110, 118 N.M. 647, 884 P.2d 803, cert. denied, 514 U.S. 1016, 115 S. Ct. 1359, 131 L. Ed. 2d 216 (1995).

**Presumption overcome by showing that division (now department) failed to follow statutory provisions.** — An assessment made by the bureau (now department) is presumptively correct. This presumption may be overcome by showing that the bureau (now department) failed to follow the statutory provisions contained in the Tax Administration Act. Regents of N.M. Coll. of Agric. & Mechanic Arts v. Academy of Aviation, Inc., 1971-NMSC-087, 83 N.M. 86, 488 P.2d 343.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 596 to 602; 72 Am. Jur. 2d State and Local Taxation §§ 704 to 738.

Who may complain of underassessment or nonassessment of property for taxation, 5 A.L.R.2d 576, 9 A.L.R.4th 428.

Judicial notice as to assessed valuations, 42 A.L.R.3d 1439.

Separate assessment and taxation of air rights, 56 A.L.R.3d 1300.

84 C.J.S. Taxation §§ 423 to 454, 478 to 531.

## 7-1-17.1. Tax liability; spouse or former spouse.

A. If the secretary determines that, taking into account all the facts and circumstances, it is inequitable to hold the spouse or former spouse of a taxpayer liable for payment of all or part of any unpaid tax, assessment or other deficiency for a tax administered under the Tax Administration Act, the secretary may decline to bring an action or proceeding to collect such taxes against the spouse or former spouse of the taxpayer.

B. Nothing in Subsection A of this section shall be construed to authorize the abatement of taxes or enforcement of any provisions of the Tax Administration Act against the taxpayer.

C. The secretary shall adopt and promulgate regulations as necessary for making the determinations pursuant to this section.

**History:** Laws 2003, ch. 398, § 15.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 398, § 16 made the act effective July 1, 2003.

## 7-1-18. Limitation on assessment by department.

A. Except as otherwise provided in this section, no assessment of tax may be made by the department after three years from the end of the calendar year in which payment of the tax was due, and no proceeding in court for the collection of such tax without the prior assessment thereof shall be begun after the expiration of such period.

B. In case of a false or fraudulent return made by a taxpayer with intent to evade tax, the amount thereof may be assessed at any time within ten years from the end of the calendar year in which the tax was due, and no proceeding in court for the collection of such tax without the prior assessment thereof shall be begun after the expiration of such period.

C. In case of the failure by a taxpayer to complete and file any required return, the tax relating to the period for which the return was required may be assessed at any time within seven years from the end of the calendar year in which the tax was due, and no proceeding in court for the collection of such tax without the prior assessment thereof shall be begun after the expiration of such period.

D. If a taxpayer in a return understates by more than twenty-five percent the amount of liability for any tax for the period to which the return relates, appropriate assessments may be made by the department at any time within six years from the end of the calendar year in which payment of the tax was due.

E. If any adjustment in the basis for computation of any federal tax is made as a result of an audit by the internal revenue service or the filing of an amended federal return changing a prior election or making any other change for which federal approval is required by the Internal Revenue Code that results in liability for any tax, the amount thereof may be assessed at any time, but not after three years from the end of the calendar year in which filing of an amended return is required by Subsection C of Section 7-1-13 NMSA 1978.

F. If the taxpayer has signed a waiver of the limitations on assessment imposed by this section, an assessment of tax may be made or a proceeding in court begun without regard to the time at which payment of the tax was due.

**History:** 1953 Comp., § 72-13-33, enacted by Laws 1965, ch. 248, § 21; 1970, ch. 18, § 1; 1979, ch. 144, § 17; 1983, ch. 211, § 26; 1993, ch. 5, § 7; 1994, ch. 51, § 4; 2013, ch. 27, § 3.

## ANNOTATIONS

**The 2013 amendment,** effective July 1, 2013, permitted an assessment if an Internal Revenue Service audit or change in a return that required Internal Revenue Service approval results in tax liability; in Subsection E, added the language between "computation of any federal tax is made" and "that results in liability for any tax".

**The 1994 amendment,** effective July 1, 1994, substituted the language at the end of Subsection E, beginning with "three years", for "one year after the date of the receipt of the amended return or not after the end of the period limited by Subsection A of this section, whichever is later".

**The 1993 amendment,** effective July 1, 1993, substituted "department" for "director" in the catchline and in Subsection D and for "director or his delegate" in Subsection A, and made a minor stylistic change in Subsection E.

**Extension of limitations period.** — The taxation and revenue department is required to extend the general three-year limitation on assessments to six years when making an assessment if a taxpayer underreported taxes in excess of 25 percent, and the principles of estoppel do not affect the department's application of the longer period. Taxation & Revenue Dep't v. Bien Mur Indian Mkt. Ctr., Inc., 1989-NMSC-015, 108 N.M. 228, 770 P.2d 873.

**Assessment of severance taxes was not barred.** — Where taxpayer was party to a settlement agreement that was approved by a federal district court in a class action

involving the underpayment of royalties on the production of carbon dioxide gas; the settlement agreement constituted an order that increased the value of the carbon dioxide gas previously reported by taxpayer and constituted a taxable event under Section 7-29-4.3 NMSA 1978; taxpayer did not prepare or file any tax returns that reported any of the settlement proceeds paid by taxpayer to royalty interest owners as additional amounts subject to severance tax liability; the settlement agreement was approved in 1998; and a severance tax assessment was issued in 2004, the assessment was not barred by the statute of limitations. Hess Corp. v. N.M. Taxation & Revenue Dep't, 2011-NMCA-043, 149 N.M. 527, 252 P.3d 751 cert. denied, 2011-NMCERT-003, 150 N.M. 619, 264 P.3d 520.

**Proof of effective date of notice of assessment.** — The department failed to make out a prima facie case of entitlement to summary judgment on the issue of the backward reach of an assessment where, on the basis of an erroneous assumption that the date of the written notice of assessment was immaterial because the taxpayer was under an independent duty of self-assessment, it did not offer any evidence establishing the effective date of the notice of assessment. Sonic Indus., Inc. v. State, 2000-NMCA-087, 129 N.M. 657, 11 P.3d 1219, *rev'd on other grounds*, 2006-NMSC-038, 140 N.M. 212, 141 P.3d 1266..

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 719, 788.

Civil liability of tax assessor to taxpayer for excessive or improper assessment of real property, 82 A.L.R.2d 1148.

Suspension of running of period of limitation, under 26 U.S.C.A. § 6503, for federal tax assessment or collection, 160 A.L.R. Fed. 1

85 C.J.S. Taxation §§ 1514 to 1524.

## 7-1-19. Limitation of actions.

No action or proceeding shall be brought to collect taxes administered under the provisions of the Tax Administration Act and due under an assessment or notice of the assessment of taxes after the later of either ten years from the date of such assessment or notice or, with respect to undischarged amounts in a bankruptcy proceeding, one year after the later of the issuance of the final order or the date of the last scheduled payment.

**History:** 1953 Comp., § 72-7-35.1, enacted by Laws 1971, ch. 21, § 1; 1972, ch. 73, § 2; recompiled as 1953 Comp., § 72-13-33.1, by Laws 1973, ch. 258, § 154; 1979, ch. 144, § 18; 1986, ch. 20, § 14; 2000, ch. 28, § 7; 2013, ch. 27, § 4.

**ANNOTATIONS**

**The 2013 amendment,** effective July 1, 2013, corrected a spelling error, changing "afer" to "after".

**The 2000 amendment,** effective July 1, 2000, inserted "the later of either" and added "or, with respect to undischarged amounts in a bankruptcy proceeding, one year after the later of the issuance of the final order or the date of the last scheduled payment."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 876, 877, 896, 1141.

Claim of government against taxpayer which is barred by lapse of time as available to defeat or diminish claim of taxpayer against government, or vice versa, 109 A.L.R. 1354, 130 A.L.R. 838, 154 A.L.R. 1052, 12 A.L.R.2d 815.

84 C.J.S. Taxation §§ 1041 to 1043; 85 C.J.S. Taxation § 1982 et seq.

## 7-1-20. Compromise of taxes; closing agreements.

A. At any time after the assessment of any tax, if the secretary in good faith is in doubt of the liability for the payment thereof, the secretary may, with the written approval of the attorney general, compromise the asserted liability for taxes by entering with the taxpayer into a written agreement that adequately protects the interests of the state.

B. The agreement provided for in this section is to be known as a "closing agreement". If entered into after any court acquires jurisdiction of the matter, the agreement shall be part of a stipulated order or judgment disposing of the case.

C. As a condition for entering into a closing agreement, the secretary may require the taxpayer to furnish security for payment of any taxes due according to the terms of the agreement.

D. A closing agreement is conclusive as to liability or nonliability for payment of assessed taxes relating to the periods referred to in the agreement, and except upon a showing of fraud or malfeasance, or misrepresentation or concealment of a material fact:

(1) the agreement shall not be modified by any officer, employee or agent of the state; and

(2) in any suit, action or proceeding, the agreement or any determination, assessment, collection, payment, abatement, refund or credit made in accordance therewith shall not be annulled, modified, set aside or disregarded.

**History:** 1953 Comp., § 72-13-34, enacted by Laws 1965, ch. 248, § 22; 1979, ch. 144, § 19; 1995, ch. 70, § 1.

**ANNOTATIONS**

**Cross references.** — For compromise, satisfaction or release by attorney general or district attorney, *see* 36-1-22 NMSA 1978.

**The 1995 amendment,** effective July 1, 1995, substituted references to "the secretary" for references to "the director" in Subsections A and C.

**Attorney general's approval necessary.** — A settlement agreement compromising tax liability was not valid or enforceable since it lacked the attorney general's written approval as required by this section. Johnson & Johnson v. Taxation & Revenue Dep't, 1997-NMCA-030, 123 N.M. 190, 936 P.2d 872, cert. denied, 123 N.M. 168, 936 P.2d 337.

**No authority for settlement.** — Employees of the Taxation and Revenue Department did not have apparent authority to enter into a compromise tax settlement agreement without the attorney general's written approval. Johnson & Johnson v. Taxation & Revenue Dep't, 1997-NMCA-030, 123 N.M. 190, 936 P.2d 872, cert. denied, 123 N.M. 168, 936 P.2d 337.

**No estoppel to permit enforcement of invalid settlement.** — The doctrine of equitable estoppel did not apply to preclude disavowal of a compromise tax settlement agreement entered into without the attorney general's written approval. Johnson & Johnson v. Taxation & Revenue Dep't, 1997-NMCA-030, 123 N.M. 190, 936 P.2d 872, cert. denied, 123 N.M. 168, 936 P.2d 337.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation § 310; 72 Am. Jur. 2d State and Local Taxation §§ 853 to 855, 1074.

Power of legislature to remit, release or compromise tax claim, 28 A.L.R.2d 1425.

84 C.J.S. Taxation §§ 907 to 909, 1052.

## 7-1-21. Installment payments of taxes; installment agreements.

A. Whenever justified by the circumstances, the secretary or the secretary's delegate may enter into a written agreement with a taxpayer in which the taxpayer admits conclusive liability for the entire amount of taxes due and agrees to make monthly installment payments according to the terms of the agreement, but not for a period longer than seventy-two months. No installment agreement shall prevent the accrual of interest otherwise provided by law.

B. The agreement provided for in this section is to be known as an "installment agreement". If entered into after a court acquires jurisdiction over the matter, the agreement shall be part of a stipulated order or judgment disposing of the case.

C. At the time of entering into an installment agreement, the secretary shall require the affected taxpayer or person to furnish security for payment of the taxes admitted to be due according to the terms of the agreement, but if the taxpayer does not provide security, the secretary shall cause a notice of lien to be filed in accordance with the provisions of Section 7-1-38 NMSA 1978, and when so filed it shall constitute a lien upon all the property or rights to property of the taxpayer in that county in the same manner as in the case of the lien provided for in Section 7-1-37 NMSA 1978.

D. An installment agreement is conclusive as to liability for payment of the amount of taxes specified therein but does not preclude the assessment of any additional tax.

E. After entering into the agreement, except in unusual circumstances as require the secretary in the secretary's discretion to take further action to protect the interests of the state, no further attempts to enforce payment of the tax by levy or injunction shall be made; however, if installment payments are not made on or before the times specified in the agreement, if any other condition contained in the agreement is not met or if the taxpayer does not make payment of all other taxes for which the taxpayer becomes liable as they are due, the secretary may proceed to enforce collection of the tax as if the agreement had not been made or may proceed, as provided in Section 7-1-54 NMSA 1978, against the security furnished.

F. Records of installment agreements in excess of one thousand dollars ($1,000) shall be available for inspection by the public. The department shall keep the records for a minimum of three years from the date of the installment agreement.

**History:** 1953 Comp., § 72-13-35, enacted by Laws 1965, ch. 248, § 23; 1979, ch. 144, § 20; 1987, ch. 169, § 5; 2003, ch. 439, § 2; 2017, ch. 63, § 23.

## ANNOTATIONS

**The 2017 amendment,** effective June 16, 2017, increased the amount of time over which a taxpayer may make installment payments on taxes due, and made technical changes; in Subsection A, after "for a period no longer than", deleted "sixty" and added "seventy-two"; and in Subsection E, after "the secretary in", deleted "his" and added "the secretary's", and after "all other taxes for which", deleted "he" and added "the taxpayer".

**The 2003 amendment,** effective July 1, 2003, substituted "sixty months" for "thirty-six months" near the end of Subsection A.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation § 135; 72 Am. Jur. 2d State and Local Taxation § 845.

Constitutionality of statute permitting payment of taxes in installments, 101 A.L.R. 1335.

Failure of property owner to make formal election to avail himself of privilege of paying taxes or special assessment in installments, 140 A.L.R. 1442.

84 C.J.S. Taxation §§ 851 et seq., 884, 915 to 916.

## 7-1-21.1. Special agreements; alternative gross receipts taxpayer.

A. To allow the payment of gross receipts tax by a person who is not the liable taxpayer, the secretary may approve a request by a person to assume the liability for gross receipts tax or governmental gross receipts tax owed by another provided that the person requesting approval agrees to assume the rights and responsibilities as taxpayer pursuant to the Tax Administration Act for:

(1) an agreement to collect and pay over taxes for persons in a business relationship, which is an agreement that may be entered into by persons who wish to remit gross receipts tax on behalf of another person with whom the taxpayer has a business relationship;

(2) an agreement to collect and pay over taxes for a direct sales company:

(a) which agreement may be entered into by a direct sales company that has distributors of tangible personal property in New Mexico; and

(b) in which the direct sales company agrees to pay the gross receipts tax liability of the distributor at the same time the company remits its own gross receipts tax; and

(3) a manufacturer's agreement to pay gross receipts tax or governmental gross receipts tax on behalf of a utility company, which agreement:

(a) allows a person engaged in manufacturing in New Mexico to pay gross receipts tax or governmental gross receipts tax on behalf of a utility company on receipts from sales of utilities that are: 1) not consumed in the manufacturing process; or 2) not otherwise deductible; and

(b) is only applicable to transactions between a manufacturer and a utility company that are associated with the gross receipts tax deduction pursuant to Subsection B of Section 7-9-46 NMSA 1978.

B. To enter into the agreements authorized in this section, a person shall complete a form prescribed by the secretary and provide any additional information or documentation required by department rules or instructions that will assist in the approval of agreements listed in Subsection A of this section.

C. Once approved, an agreement shall be effective only for the period of time specified in each agreement. Any person entering into an agreement to pay tax on

behalf of another person shall fulfill all of the requirements set out in the agreement. Failure to fulfill all of the requirements set out in the agreement may result in the revocation of the agreement by the department. An approved agreement may only be revoked prior to expiration by written notification to all persons who are party to the agreement and shall be applied beginning on the first day of a month that occurs at least one month following the date on which the agreement is revoked.

D. A person approved by the secretary to pay the gross receipts tax or governmental gross receipts tax pursuant to Subsection A of this section shall be deemed to be the taxpayer with respect to that tax pursuant to the Tax Administration Act with respect to all rights and responsibilities related to that tax, except that:

(1) the person shall not be entitled to take any credit against the tax for which the person has assumed liability pursuant to this section; and

(2) the person shall not claim a refund of tax on the basis that the person is not statutorily liable to pay the tax.

E. The department shall relieve from liability and hold harmless from the payment of a tax assumed by another person pursuant to an agreement approved pursuant to this section a taxpayer that would otherwise be liable for that tax.

History: Laws 2013, ch. 87, § 1.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2013, ch. 87, § 4 contained an emergency clause and was approved April 1, 2013.

**Applicability.** — Laws 2013, ch. 87, § 3 provided that the provisions of Laws 2013, ch. 87, §§ 1 and 2 apply to gross receipts or governmental gross receipts received in tax periods beginning on or after May 1, 2013.

## 7-1-22. Exhaustion of administrative remedies.

No court of this state has jurisdiction to entertain any proceeding by a taxpayer in which the taxpayer calls into question the taxpayer's liability for any tax or the application to the taxpayer of any provision of the Tax Administration Act, except as a consequence of the appeal by the taxpayer to the court of appeals from the order of a hearing officer, or except as a consequence of a claim for refund as specified in Section 7-1-26 NMSA 1978.

History: 1953 Comp., § 72-13-36, enacted by Laws 1965, ch. 248, § 24; 1966, ch. 30, § 1; 1979, ch. 144, § 21; 1995, ch. 70, § 2; 2015, ch. 73, § 14.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, provided jurisdiction to the court of appeals to review orders of hearing officers; after "court of appeals from the", deleted "action and order of the secretary, all as specified in Section 7-1-24 NMSA 1978" and added "order of a hearing officer".

**The 1995 amendment,** effective July 1, 1995, substituted "secretary" for "director" near the end of the section, and made gender neutral changes throughout the section.

**Exhaustion of remedies required.** — Challenges to the validity of the Tax Administration Act must be first presented either through the protest remedy or the refund remedy. Neff v. State Taxation & Revenue Dep't, 1993-NMCA-116, 116 N.M. 240, 861 P.2d 281.

**Doctrine of vicarious or virtual exhaustion of remedies does not apply.** — The Tax Administration Act provides the exclusive remedies for tax refunds and requires taxpayers to individually seek a refund. Each member of the class of taxpayers challenging the constitutionality of a tax must individually exhaust their administrative remedies and only after individual exhaustion by each class member can the district court have jurisdiction over the class. The doctrine of vicarious or virtual exhaustion of remedies that allows a class action for tax refunds to proceed when only a few members of the proposed class have exhausted their administrative remedies does not apply to proceedings under the Tax Administration Act. U.S. Xpress v. N.M. Taxation & Revenue Dep't, 2006-NMSC-017, 139 N.M. 589, 136 P.3d 999, *rev'g* 2005-NMCA-091, 138 N.M. 55, 116 P.3d 846.

**Federal claims.** — Where taxpayers were seeking exemption from taxes under a claimed federal right, the Federal Supremacy Clause did not preclude a state from requiring exhaustion of administrative remedies before its courts will decide state tax matters, unless taxpayers would thereby be denied a plain, adequate and complete remedy. Neff v. State Taxation & Revenue Dep't, 1993-NMCA-116, 116 N.M. 240, 861 P.2d 281.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation §§ 97, 605; 72 Am. Jur. 2d State and Local Taxation § 811.

85 C.J.S. Taxation § 1091.

## 7-1-23. Disputing liabilities; election of remedies.

Any taxpayer must elect to dispute the taxpayer's liability for the payment of taxes either by protesting the assessment thereof as provided in Section 7-1-24 NMSA 1978 without making payment of the disputed tax liability or by claiming a refund thereof as provided in Section 7-1-26 NMSA 1978 after making payment of the disputed tax liability. The pursuit of one of the two remedies described herein constitutes an unconditional waiver of the right to pursue the other.

**History:** 1953 Comp., § 72-13-37, enacted by Laws 1965, ch. 248, § 25; 1979, ch. 144, § 22; 2013, ch. 27, § 5; 2017, ch. 63, § 24.

**ANNOTATIONS**

**The 2017 amendment,** effective June 16, 2017, after each occurrence of "making payment", added "of the disputed tax liability".

**The 2013 amendment,** effective July 1, 2013, at the beginning of the title, added "Disputing liabilities".

## 7-1-24. Disputing liabilities; administrative protest.

A. A taxpayer may dispute:

(1) the assessment to the taxpayer of any amount of tax;

(2) the application to the taxpayer of any provision of the Tax Administration Act except the issuance of a subpoena or summons; or

(3) the denial of or failure either to allow or to deny a:

(a) credit or rebate; or

(b) claim for refund made in accordance with Section 7-1-26 NMSA 1978.

B. The taxpayer may dispute a matter described in Subsection A of this section by filing with the secretary a written protest. Every protest shall identify the taxpayer and the tax credit, rebate, property or provision of the Tax Administration Act involved and state the grounds for the taxpayer's protest and the affirmative relief requested. The statement of grounds for protest shall specify individual grounds upon which the protest is based and evidence supporting each ground asserted; provided that the taxpayer may supplement the statement at any time prior to ten days before the hearing conducted on the protest pursuant to the provisions of the Administrative Hearings Office Act [7-1B-1 through 7-1B-9 NMSA 1978] or, if a scheduling order has been issued, in accordance with the scheduling order. The secretary may, in appropriate cases, provide for an informal conference before a hearing of the protest is set by the administrative hearings office or before acting on a claim for refund.

C. In the case of an assessment of tax by the department, a protest may be filed without making payment of the amount assessed; provided that, if only a portion of the assessment is in dispute, any unprotested amounts of tax, interest or penalty shall be paid, or, if applicable, an installment agreement pursuant to Section 7-1-21 NMSA 1978 shall be entered into for the unprotested amounts, on or before the due date for the protest.

D. A protest by a taxpayer shall be filed within ninety days of the date of the mailing to or service upon the taxpayer by the department of the notice of assessment or other peremptory notice or demand, the date of mailing or filing a return, the date of the application to the taxpayer of the applicable provision of the Tax Administration Act, the date of denial of a claim pursuant to Section 7-1-26 NMSA 1978 or the last date upon which the department was required to take action on the claim but failed to take action.

E. If a protest to a notice of assessment is not filed within the time required:

(1) the amount of tax determined to be due becomes final;

(2) the taxpayer is deemed to have waived and abandoned the right to question the amount of tax determined to be due, unless the taxpayer pays the tax and claims a refund of the tax pursuant to Section 7-1-26 NMSA 1978; and

(3) the secretary may proceed to enforce collection of any tax if the taxpayer is delinquent within the meaning of Section 7-1-16 NMSA 1978.

F. The fact that the department did not mail the assessment or other peremptory notice or demand by certified or registered mail or otherwise demand and receive acknowledgment of receipt by the taxpayer shall not be deemed to demonstrate the taxpayer's inability to protest within the required time.

G. No proceedings other than those to enforce collection of an amount assessed as tax and to protect the interest of the state by injunction, as provided in Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56 and 7-1-58 NMSA 1978, are stayed by timely filing of a protest pursuant to the provisions of this section.

H. Nothing in this section shall be construed to authorize a criminal proceeding or to authorize an administrative protest of the issuance of a subpoena or summons.

**History:** 1953 Comp., § 72-13-38, enacted by Laws 1965, ch. 248, § 26; 1966, ch. 30, § 2; 1971, ch. 276, § 8; 1979, ch. 144, § 23; 1982, ch. 18, § 10; 1986, ch. 20, § 15; 1989, ch. 325, § 6; 1993, ch. 5, § 8; 2000, ch. 28, § 8; 2003, ch. 398, § 8; 2013, ch. 27, § 6; 2015, ch. 73, § 15; 2017, ch. 63, § 25.

## ANNOTATIONS

**Cross references.** — For Rules of Procedure for the District Courts, *see* Rule 1-001 NMRA et seq.

**The 2017 amendment,** effective June 16, 2017, revised the list of information that must be included in a taxpayer protest, clarified that, in a taxpayer protest of an assessment, payment of the disputed tax liability is not required in order to protest, but any undisputed amounts are required to be paid, and provided that if a protest to a notice of assessment is not filed within the time required, the amount of tax determined to be due

becomes final and the taxpayer is deemed to have waived the right to protest, unless the taxpayer were to pay the tax and claim a refund of the tax; in Subsection B, after "upon which the protest is based and", deleted "a summary statement of the", and after "evidence", deleted "if any, expected to be produced"; designated the last sentence of Subsection B as new Subsection C and designated the first sentence of former Subsection C as Subsection D, designated the second sentence of former Subsection C as Subsection E, and designated the third sentence of former Subsection C as Subsection F, and redesignated former Subsections D and E as Subsections G and H, respectively; in Subsection C, after "assessed", added "provided that, if only a portion of the assessment is in dispute, any unprotested amounts of tax, interest or penalty shall be paid, or, if applicable, an installment agreement pursuant to Section 7-1-21 NMSA 1978 shall be entered into for the unprotested amounts, on or before the due date for the protest"; and in Subsection E, after "If a protest", added "to a notice of assessment", added Paragraphs E(1) and E(2), and added the paragraph designation "(3)" to the last sentence of the subsection.

**The 2015 amendment,** effective July 1, 2015, provided that administrative protests are to be conducted pursuant to the Administrative Hearings Office Act; in Subsection A, deleted "Any" and added "A"; in Subsection B, after "ten days before", deleted "any" and added "the", after "pursuant to", deleted "Section 7-1-24.1 NMSA 1978" and added "the provisions of the Administrative Hearings Office Act", after "informal conference before", deleted "setting", after "hearing of the protest", added "is set by the administrative hearings office" and after "or", added "before", and after "acting on", deleted "any " and added "a"; in Subsection C, after "C.", deleted "Any" and added "A", after "pursuant to Section", deleted "7-1-24.1" and added "7-1-26"; in Subsection D, after "collection of", deleted "any" and added "an", and after "filing of a protest", deleted "under" and added "pursuant to the provisions of"; and in Subsection E, after "authorize", deleted "any" and added "a", and after "criminal", deleted "proceedings hereunder" and added "proceeding".

**Temporary provisions.** — Laws 2015, ch. 73, § 36 provided:

A. On July 1, 2015, all personnel, functions, appropriations, money, records, furniture, equipment and other property of, or attributable to, the hearings bureau of the office of the secretary of taxation and revenue shall be transferred to the administrative hearings office.

B. On July 1, 2015, all contractual obligations of the hearings bureau of the office of the secretary of taxation and revenue shall be binding on the administrative hearings office.

C. On July 1, 2015, all references in statute to the hearings bureau of the office of the secretary of taxation and revenue or hearing officers of the taxation and revenue department in Chapters 7 and 66 NMSA 1978 shall be deemed to be references to the administrative hearings office or a hearing officer of the office.

D. Rules of the taxation and revenue department pertaining to hearing officers and the conduct of hearings pursuant to actions related to Chapter 7 or 66 NMSA 1978 shall be deemed to be the rules of the administrative hearings office until amended or repealed by the office.

**The 2013 amendment,** effective July 1, 2013, prohibited the disputation of the issuance of a subpoena or summons; permitted the disputation of the denial of a credit or rebate; prescribed the content of a protest; permitted a protest to be filed without making a payment of the amount assessed; extended the deadline for filing a protest; deleted former provisions governing hearings; at the beginning of the title, added "Disputing liabilities", and after "administrative", deleted "hearing procedure", and added "protest"; in Paragraph (2) of Subsection A, after "Tax Administration Act", added "except the issuance of a subpoena or summons"; added Subparagraph (a) of Paragraph (3) of Subsection A; in Subsection B, at the beginning of the first sentence, added "The taxpayer may dispute a matter described in Subsection A of this section" and after "written protest", deleted "against the assessment or against the application to the taxpayer of the provision or against the denial of or the failure to allow or deny the amount claimed to have been erroneously paid as tax", in the second sentence, after "and the tax", added "credit, rebate, property or provision of the Tax Administration Act", and in the third sentence, after "summary statement of the evidence", added "if any", after "supporting each ground asserted", deleted "if any", and after "protest pursuant to", deleted "Subsection D of this" and after "Section", added "7-1-24.1 NMSA 1978", and added the last sentence; in Subsection C, in the first sentence, after "shall be filed within", deleted "thirty" and added "ninety", after "date of the mailing to", added "or service upon", after "notice of assessment or", deleted "mailing to, or service upon, the taxpayer of", after "peremptory notice or demand", deleted "or", and after "date of mailing or filing a return" added the remainder of the sentence, deleted the former second sentence which provided for an extension of time to file a protest, in the current second sentence, after "within the time required", deleted "for filing a protest or, if an extension has been granted, within the extended time", deleted the former third sentence, which provided for a retroactive extension of time to file a protest, in the current third sentence, after "taxpayer's inability to protest", deleted "or request an extension of time for filing a protest", and deleted the former fourth sentence which prohibited a retroactive extension of time to file a protest if there is a levy or jeopardy assessment; deleted former Subsection C, which provided for claims for refund; deleted former Subsection D, which provided for the setting of a hearing date; deleted former Subsection E, which provided for the appointment of a hearing officer and the procedure for a hearing; deleted former Subsection F, which prohibited a hearing officer from engaging in activity as an employee of the department other than conducting the hearing; deleted former Subsection G, which prohibited ex-parte communications; deleted former Subsection H, which provided guidelines for ruling on the admissibility of evidence; deleted former Subsection I, which provided guidelines for conducting hearings; deleted former Subsection J, which provided for the creation of a record and required the hearing officer to issue a written decision and to inform the taxpayer of the right of appeal; and deleted former Subsection K, which provided for the consolidation of multiple protests.

**Applicability.** — Laws 2013, ch. 27, § 13 provided that the following time limits for filing a written protest shall apply pursuant to that version of Section 7-1-24 NMSA 1978 in effect:

A. immediately prior to July 1, 2013, if the date of mailing or service of process, application of the applicable provision of the Tax Administration Act, denial or failure to deny or allow with the time prescribed occurred on or before June 1, 2013; or

B. on or after July 1, 2013, if the date of mailing or service of process, application of the applicable provision of the Tax Administration Act, denial or failure to deny or allow with the time prescribed occurred on or after June 2, 2013.

**The 2003 amendment,** effective July 1, 2003, substituted "D" for "E" following "pursuant to Subsection" near the end of Subsection A; added present Subsections F and G and redesignated the subsequent subsections accordingly; added "A taxpayer may request a written ruling on any contested question of evidence in a matter in which the taxpayer has filed a written protest and that protest is pending" following "is in reasonable doubt." at the end of present Subsection H; added "A taxpayer may request a written ruling on any contested question of procedure in a matter in which the taxpayer has filed a written protest and that protest is pending" following "evidence presented and admitted." at the end of present Subsection L; and added Subsection K and redesignated former Subsection I as present Subsection L.

**The 2000 amendment,** effective July 1, 2000, in Subsection A, deleted "or taxes" following "shall identify the taxpayer and the tax" in the second sentence and specified that a taxpayer has until ten days before the hearing to supplement his statement of grounds for protest or, if a scheduling order has been issued, must act in accordance with the scheduling order; and substituted "Section 7-1-31 or 7-1-33" for "Sections 7-1-31, 7-1-33 and 7-1-34" in Subsection B.

**The 1993 amendment,** effective July 1, 1993, in Subsection A, substituted "against the denial of or the failure to allow or deny" for "a written claim for refund of" near the end of the first sentence, rewrote the second sentence which read "Every protest shall state the nature of the taxpayer's complaint and the affirmative relief requested", inserted the current third sentence, and made a minor stylistic change; rewrote Subsection B; and, in Subsection H, deleted the former final sentence which read "All decisions and orders shall be signed by the secretary".

**The 1989 amendment,** effective June 16, 1989, in Subsection A, inserted "or the denial of, or failure to either allow or deny, a claim for refund made in accordance with Section 7-1-26 NMSA 1978"; in Subsection B, in the next-to-last sentence, substituted "protest" for "appeal" in two places; in Subsection D, deleted "or a request for hearing after denial of a claim for refund" preceding "the department or hearing officer"; in Subsection G, in the last sentence, inserted "permit discovery"; in Subsection H, in the first sentence, deleted "or claim for refund" following "any protest", in the third sentence, deleted "The hearing officer may announce the decision at the conclusion of the hearing or may take

the matter under advisement, but he shall, in either case" from the beginning, substituted "The hearing officer" for "The secretary", inserted "of the hearing, shall", deleted "or claimant" preceding "in writing"; and made minor stylistic changes throughout the section.

**Claims for refund.** — Subsection B of this section does not mention claims for refund. Kilmer v. Goodwin, 2004-NMCA-122, 136 N.M. 440, 99 P.3d 690.

**Defects in proceedings.** — The hearing officer's failure to take an oath or obtain a faithful performance bond; the failure of the hearing officer to submit a written request to the IRS for federal tax information as provided in 26 U.S.C. §6103(d)(1); the reliance by the hearing officer on the IRS Income Tax Examination Changes; and the lack of a valid control number on applicable tax forms as provided in the Paperwork Reduction Act, 44 U.S. C. §§ 3501 to 3520, do not affect the taxpayer's tax liability or absolve the taxpayer of liability. Stockton v. N.M. Taxation and Revenue Dept., 2007-NMCA-071, 141 N.M. 860, 161 P.3d 905.

**Appealable final order.** — Hearing officer's order dismissing taxpayer's appeal was not an appealable final order, since it had not been approved or signed by the secretary of taxation and revenue. Harris v. Revenue Div. of Taxation & Revenue Dep't, 1987-NMCA-034, 105 N.M. 721, 737 P.2d 80 (decided under prior law).

**No abatement of assessment for lack of prompt hearing.** — Assessments are not abated merely because taxpayers were not given prompt hearing on protests. In re Ranchers-Tufco Limestone Project Joint Venture, 1983-NMCA-126, 100 N.M. 632, 674 P.2d 522, cert denied, 100 N.M. 506, 672 P.2d 1136.

**Thirty-day requirement for hearing officer decision** does not affect "the essential power" of the hearing officer to decide complex and time-consuming tax protests. Kmart Props., Inc. v. N.M. Taxation & Revenue Dep't., 2006-NMCA-026, 139 N.M. 177, 131 P.3d 27, *rev'd on other grounds*, Kmart Corp. v. N.M. Taxation and Revenue Dep't, 2006-NMSC-006, 139 N.M. 172, 131 P.3d 22.

**Taxpayer appearing alone does so at own peril.** — Taxpayer has a right to appear by himself or by an attorney or an accountant, but if he chose to appear alone, he appeared at his own peril. McConnell v. State ex rel. Bureau of Revenue, 1971-NMCA-181, 83 N.M. 386, 492 P.2d 1003.

**Hearing officer need not assume duties of counsel at second hearing.** — Since taxpayer's rights were amply protected at the first hearing, and the second hearing was a continuation of the first, at which the only issue was taxpayer's duty to secure additional proof that its sales were nontaxable transactions, taxpayer was granted a full and fair hearing, at which he voluntarily and willingly waived his right to counsel, and the hearing officer was not required to assume the duties of counsel for taxpayer at the second hearing. Al Zuni Traders v. Bureau of Revenue, 1977-NMCA-025, 90 N.M. 258, 561 P.2d 1351.

**Taxpayer must establish timely filing.** — Where a taxpayer failed to establish that he filed a protest of an audit by the Taxation and Revenue Department within 30 days of notice, as required by this section, the issue of an improper audit was not before the hearing officer. Lopez v. N.M. Dep't of Taxation & Revenue, 1997-NMCA-115, 124 N.M. 270, 949 P.2d 284, cert. denied, 124 N.M. 311, 950 P.2d 284.

**Decision upheld when arguments based on taxpayer's unpreparedness.** — Since the record showed that hearing officer carefully advised taxpayer as to the statutory procedures and his rights in connection with hearing and it also showed the taxpayer did not come prepared for the hearing, taxpayer's claims that revenue bureau (department) should have given him opportunity to present his evidence at a later time and, although it was his burden to proceed, that he was denied the right to cross-examine a witness who was never called were based on taxpayer's lack of preparation and do not provide a basis for overturning the commissioner's (hearing officer's) decision. McConnell v. State ex rel. Bureau of Revenue, 1971-NMCA-181, 83 N.M. 386, 492 P.2d 1003.

**Technical rules of evidence do not apply** in hearings before the commissioner (hearing officer) and as the oral evidence provided reasonable substantiation of the documents, they were properly admitted. Garfield Mines Ltd. v. O'Cheskey, 1973-NMCA-128, 85 N.M. 547, 514 P.2d 304.

**Evidential rules governing weight, applicability or materiality not limited.** — The rules governing the admissibility of evidence before administrative boards are frequently relaxed to expedite administrative procedure but the rules relating to weight, applicability or materiality of evidence are not thus limited. Eaton v. Bureau of Revenue, 1972-NMCA-114, 84 N.M. 226, 501 P.2d 670, cert. denied, 84 N.M. 219, 501 P.2d 663.

**Director (hearing officer) has no authority to catalogue which evidence considered.** — The state has not given to the commissioner (hearing officer) authority to catalogue which evidence shall be considered in determining a taxpayer's employment status. Eaton v. Bureau of Revenue, 1972-NMCA-114, 84 N.M. 226, 501 P.2d 670, cert. denied, 84 N.M. 219, 501 P.2d 663.

**If testimony based on supposition, Subsection H not satisfied.** — Since taxpayer's books and records are not adequate to permit an accurate computation of the state tax, and his testimony is based on supposition and guess, he does not satisfy the requirements of Subsection H. Archuleta v. O'Cheskey, 1972-NMCA-165, 84 N.M. 428, 504 P.2d 638.

**Ruling reversed if director (hearing officer) failed to consider all evidence.** — Since the commissioner (hearing officer), before arriving at a decision, did not consider all of the evidence presented at the hearing but only that pertaining to the "indicia" under G.R. Regulation 12.5:1 (3.2.105.7 NMAC), the court could not say that he would have reached the same conclusion had all of "the evidence presented and admitted" been considered, as required by Subsection G (Subsection I), and, therefore, held the

ruling reversed for arbitrariness. Eaton v. Bureau of Revenue, 1972-NMCA-114, 84 N.M. 226, 501 P.2d 670, cert. denied, 84 N.M. 219, 501 P.2d 663.

**Evidence presented after hearing.** — Where the taxpayer's alternative theory for a deduction was raised in the taxpayer's formal protest; the issue was not set forth in the prehearing statement of issues; and the taxpayer failed to tender any evidence on the issue at the hearing, the hearing officer did abuse the officer's discretion by refusing to consider evidence tendered by the taxpayer in a post-hearing brief forty days after the hearing. TPL, Inc. v. N.M. Taxation & Revenue Dep't, 2000-NMCA-083, 129 N.M. 539, 10 P.3d 863, *rev'd on other grounds*, 2003-NMSC-007, 133 N.M. 447, 64 P.3d 474.

**Record must indicate reasoning and basis for denial.** — Although the commissioner (hearing officer) is not required to make formal findings of fact and conclusions of law, the record presented to the court for review must indicate his reasoning and the basis on which he denied the taxpayer's protest and in the absence of this matter must be remanded to him for further proceedings. Title Servs., Inc. v. Comm'r of Revenue, 1974-NMCA-014, 86 N.M. 128, 520 P.2d 284.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 603 to 605; 72 Am. Jur. 2d State and Local Taxation §§ 782 to 787, 802 to 809, 812 to 816.

Notice to property owners of increase in assessment or valuation by board of equalization or review, 24 A.L.R. 331, 84 A.L.R. 197.

Power or duty of tax review or equalization boards to act after date for adjournment or closing of books, 105 A.L.R. 624.

Power of board of tax review to receive evidence as to assessable value, without notice to taxpayer, 113 A.L.R. 990.

Sufficiency of compliance with statute providing for service by mail of notice in tax procedure, 155 A.L.R. 1279.

84 C.J.S. Taxation §§ 678 to 751.

## 7-1-24.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2015, ch. 73, § 37 repealed 7-1-24.1 NMSA 1978, as enacted by Laws 2013, ch. 27, § 7, relating to hearing officers for disputing liabilities, effective July 1, 2015. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com*.

## 7-1-25. Appeals from hearing officer's decision and order.

A. If the protestant or secretary is dissatisfied with the decision and order of the hearing officer, the party may appeal to the court of appeals for further relief, but only to the same extent and upon the same theory as was asserted in the hearing before the hearing officer. All such appeals shall be upon the record made at the hearing and shall not be de novo. All such appeals to the court of appeals shall be taken within thirty days of the date of mailing or delivery of the written decision and order of the hearing officer to the protestant, and, if not so taken, the decision and order are conclusive.

B. The procedure for perfecting an appeal under this section to the court of appeals shall be as provided by the Rules of Appellate Procedure.

C. Upon appeal, the court shall set aside a decision and order of the hearing officer only if found to be:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the record; or

(3) otherwise not in accordance with the law.

D. If the secretary appeals a decision of the hearing officer and the court's decision, from which either no appeal is taken or no appeal may be taken, upholds the decision of the hearing officer, the court shall award reasonable attorney fees to the protestant. If the decision upholds the hearing officer's decision only in part, the award shall be limited to reasonable attorney fees associated with the portion upheld.

History: 1953 Comp., § 72-13-39, enacted by Laws 1965, ch. 248, § 27; 1966, ch. 30, § 3; 1973, ch. 167, § 1; 1979, ch. 144, § 24; 1985, ch. 65, § 15; 1986, ch. 20, § 16; 1989, ch. 325, § 7; 2015, ch. 73, § 16.

## ANNOTATIONS

**Cross references.** — For Rules of Appellate Procedure, *see* Rule 12-101 NMRA et seq.

**The 2015 amendment,** effective July 1, 2015, provided for appeals from hearing officers' decisions; in the catchline, after "Appeals from", deleted "secretary's" and added "hearing officer's"; and in Subsection D, after "shall award reasonable", deleted "attorney's" and added "attorney", and after "limited to reasonable" deleted "attorney's" and added "attorney".

**Temporary provisions.** — Laws 2015, ch. 73, § 36 provided:

A. On July 1, 2015, all personnel, functions, appropriations, money, records, furniture, equipment and other property of, or attributable to, the hearings bureau of the

office of the secretary of taxation and revenue shall be transferred to the administrative hearings office.

B. On July 1, 2015, all contractual obligations of the hearings bureau of the office of the secretary of taxation and revenue shall be binding on the administrative hearings office.

C. On July 1, 2015, all references in statute to the hearings bureau of the office of the secretary of taxation and revenue or hearing officers of the taxation and revenue department in Chapters 7 and 66 NMSA 1978 shall be deemed to be references to the administrative hearings office or a hearing officer of the office.

D. Rules of the taxation and revenue department pertaining to hearing officers and the conduct of hearings pursuant to actions related to Chapter 7 or 66 NMSA 1978 shall be deemed to be the rules of the administrative hearings office until amended or repealed by the office.

**The 1989 amendment,** effective June 16, 1989, in Subsection A, substituted "protestant or secretary" for "protestant or claimant" and "the hearing officer, the party" for "the secretary, the protestant or claimant" in the first sentence and "the hearing officer to the protestant" for "the secretary to the protestant, or claimant" in the last sentence of the subsection; substituted present Subsection B for the provisions of former Subsections B and C, specifying the procedure for perfecting an appeal under this section; redesignated former Subsection D as present Subsection C, substituting "hearing officer" for "secretary" near the beginning; and added present Subsection D.

## I. GENERAL CONSIDERATION.

**Section grants court of appeals jurisdiction to review director's ( hearing officer's) decisions.** — Court of appeals lacks jurisdiction to review decisions of the commissioner (hearing officer) under the Administrative Procedures Act (12-8-1 to 12-8-25 NMSA 1978), but does have jurisdiction to review such decisions under this section of the Tax Administration Act. Westland Corp. v. Commissioner of Revenue, 1971-NMCA-083, 83 N.M. 29, 487 P.2d 1099, cert. denied, 83 N.M. 22, 487 P.2d 1092.

**Scope of jurisdiction.** — The court of appeals has jurisdiction in appeals from a hearing officer's decision and order whether the issues are deemed to arise out of a claim for refund or out of the protest of an assessment. Kaiser Steel Corp. v. Revenue Div., Taxation & Revenue Dep't, 1981-NMCA-042, 96 N.M. 117, 628 P.2d 687, cert. denied, 96 N.M. 116, 628 P.2d 686.

## II. APPEAL.

### A. IN GENERAL.

**Record must indicate reasoning and basis of denial of protest.** — Although the commissioner (hearing officer) is not required to make formal findings of fact and conclusions of law, the record presented to the court for review must indicate his reasoning and the basis on which he denied the taxpayer's protest and in the absence of this matter must be remanded for further proceedings. Title Servs., Inc. v. Commissioner of Revenue, 1974-NMCA-014, 86 N.M. 128, 520 P.2d 284.

**Meaning of "claimant" and "taxpayer".** — The court of appeals had no jurisdiction over the appeal of an Indian tribe which had been denied the right to intervene in a protest brought by a construction company over assessment of gross receipts tax on receipts under a contract between the tribe and the company, despite the fact that contractual indemnity provisions would ultimately render the tribe liable to the company for any tax due; the tribe was not a "claimant," (term "claimant" no longer in statute) since no taxes had yet been paid, and was not a "taxpayer" since the taxes were assessed not to it but to the company. Mescalero Apache Tribe v. Bureau of Revenue, 1975-NMCA-130, 88 N.M. 525, 543 P.2d 493, cert. denied, 89 N.M. 206, 549 P.2d 284 (1976).

**"Unjust enrichment".** — A hearing officer acted in a manner inconsistent with the law in weighing additional equitable factors beyond those required by the doctrine of equitable recoupment, thereby undercutting the required factors, where taxpayer paid correct amount of tax but mistakenly did so as a compensating use, not gross receipts, tax. Teco Invs., Inc. v. Taxation & Revenue Dep't, 1998-NMCA-055, 125 N.M. 103, 957 P.2d 532.

## B. ISSUE AT HEARING.

**Waiver of issues.** — The taxation and revenue department waived the issue whether the taxpayer failed to properly pursue its remedies under the Tax Administration Act by not raising the issue prior to appeal. Kaiser Steel Corp. v. Revenue Div., Taxation & Revenue Dep't, 1981-NMCA-042, 96 N.M. 117, 628 P.2d 687, cert. denied, 96 N.M. 116, 628 P.2d 686.

**Issue not raised at hearing cannot be heard on appeal.** — The appeal to a court of appeals from the commissioner's (hearing officer's) decision is on the record made at the hearing. If the record does not show an issue was raised at the hearing, this issue is not before the appellate court for review. Till v. Jones, 1972-NMCA-046, 83 N.M. 743, 497 P.2d 745, cert. denied, 83 N.M. 740, 497 P.2d 742.

If an issue is not raised at the formal hearing, it is not an issue in the appeal. In re Ranchers-Tufco Limestone Project Joint Venture, 1983-NMCA-126, 100 N.M. 632, 674 P.2d 522, cert. denied, 100 N.M. 505, 672 P2d 1136.

**Appeal to same extent and upon same theory as hearing.** — This section provides that the appeal to an appellate court is only to the same extent and upon the same

theory as was asserted in the hearing. N.M. Sheriffs & Police Ass'n v. Bureau of Revenue, 1973-NMCA-130, 85 N.M. 565, 514 P.2d 616.

A party will not be permitted to change his theory of a case on appeal, thus precluding from consideration questions or issues which were not raised at the hearing. Kaiser Steel Corp. v. Revenue Div., 1981-NMCA-042, 96 N.M. 117, 628 P.2d 687, cert. denied, 96 N.M. 116, 628 P.2d 686.

**Audit items not protested or issue in hearing not reviewable.** — Since the appellant did not protest items included in audit and these items were not an issue at the hearing, appellant may not challenge, in the court of appeals, the sufficiency of the evidence as to receipts from these items when they were not an issue in the hearing because this section authorizes appeals to this court only to the same extent and upon the same theory as was asserted in the hearing before the commissioner (hearing officer). Archuleta v. O'Cheskey, 1972-NMCA-165, 84 N.M. 428, 504 P.2d 638.

**Arguments not raised at hearing not reviewable.** — The taxpayer did not raise the argument before the bureau (hearing officer) that the base figure for the gross receipts tax was not correct and therefore it need not be considered on appeal. Floyd & Berry Davis Co. v. Bureau of Revenue, 1975-NMCA-143, 88 N.M. 576, 544 P.2d 291.

## III. RECORD.

**Question of law not binding but inference from facts conclusive.** — As all facts before the commissioner (hearing officer) and relating to both questions were stipulated, accordingly, if but one inference can reasonably be drawn from the stipulated facts, a question of law is presented and a finding of the commissioner (hearing officer) to the contrary is not binding on the reviewing court. If, however, more than one inference can reasonably be drawn, then the finding of the commissioner (hearing officer) is conclusive. Rust Tractor Co. v. Bureau of Revenue, 1970-NMCA-107, 82 N.M. 82, 475 P.2d 779, cert. denied, 82 N.M. 81, 475 P.2d 778; Rock v. Commissioner of Revenue, 1972-NMCA-012, 83 N.M. 478, 493 P.2d 963.

## IV. GROUNDS FOR REVERSAL.

### A. ARBITRARY.

**If Paragraphs (2) and (3) of Subsection D (now Subsection C) are satisfied, then Paragraph (1) satisfied.** — Since the order was supported by substantial evidence and was in accordance with applicable law, it was neither arbitrary nor capricious and its entry was not an abuse of discretion. Union Cnty. Feedlot, Inc. v. Vigil, 1968-NMCA-088, 79 N.M. 684, 448 P.2d 485.

**Double taxation** is not necessarily arbitrary or capricious. N.M. Sheriffs & Police Ass'n v. Bureau of Revenue, 1973-NMCA-130, 85 N.M. 565, 514 P.2d 616.

**"Income".** — The New Mexico taxation and revenue department's determination of the taxpayers' tax liability was not arbitrary and capricious; the taxpayers' arguments that their wages from their employment were not "income" were frivolous and without any legal support. Holt v. N.M. Dep't of Taxation & Revenue, 2002-NMSC-034, 133 N.M. 11, 59 P.3d 491.

**Ruling arbitrary if all evidence not considered.** — Since the commissioner (hearing officer), before arriving at a decision, did not consider all of the evidence presented at the hearing but only that pertaining to the "indicia" under G.R. Regulation 12.5:1 (3.2.105.7 NMAC), the court could not say that the commissioner (hearing officer) would have reached the same conclusion had all of "the evidence presented and admitted" been considered as required by Section 7-1-24G NMSA 1978 (now Section 7-1-24(I) NMSA 1978), and therefore held the ruling reversed for arbitrariness. Eaton v. Bureau of Revenue, 1972-NMCA-114, 84 N.M. 226, 501 P.2d 670, cert. denied, 84 N.M. 219, 501 P.2d 663.

## B. SUBSTANTIAL EVIDENCE.

**Evidence viewed in light most favorable to director's (hearing officer's) decision.** — The duty of the court of appeals is to determine whether there is substantial evidence in the record to support the order, viewing all evidence in the light most favorable to the commissioner's (hearing officer's) decision. Floyd & Berry Davis Co. v. Bureau of Revenue, 1975-NMCA-143, 88 N.M. 576, 544 P.2d 291.

**Review of evidence.** — Whether previous owner sold out its business and whether plaintiff purchased that business is a question of fact and, accordingly, this court examines the facts. In doing so, it views the evidence in the light most favorable to the commissioner's (hearing officer's) decision. Sterling Title Co. v. Commissioner of Revenue, 1973-NMCA-086, 85 N.M. 279, 511 P.2d 765.

**Only favorable evidence considered.** — In determining whether there is substantial evidence in the record, the court considers only favorable evidence and views that evidence in a light most favorable to the commissioner's (hearing officer's) decision. Westland Corp. v. Commissioner of Revenue, 1972-NMCA-147, 84 N.M. 327, 503 P.2d 151, cert. denied, 83 N.M. 22, 487 P.2d 1092; C & D Trailer Sales v. Taxation & Revenue Dep't, 1979-NMCA-151, 93 N.M. 697, 604 P.2d 835.

**Director's (hearing officer's) determination conclusive if more than one inference drawn.** — If more than one inference can reasonably be drawn from the evidence, then the determination made by the commissioner (hearing officer), that the books and records were inadequate, is conclusive. Waldroop v. O'Cheskey, 1973-NMCA-146, 85 N.M. 736, 516 P.2d 1119.

**Conclusion must be supported by entire record.** — In resolving conflicts in the evidence in support of the findings, it is not contemplated, nor is it consistent with reason, that words, phrases, clauses or sentences may be selected out of context and

then combined to give support for a conclusion which is not supportable by the entire text of the testimony of the witnesses on the particular subject or subjects from which the selections are taken. McVean & Barlow, Inc. v. N.M. Bureau of Revenue, 1975-NMCA-128, 88 N.M. 521, 543 P.2d 489, cert. denied, 89 N.M. 6, 546 P.2d 71.

**Presumption of assessment's correctness overcome when no substantial evidence supports.** — The assessment is presumed to be correct; the taxpayer may overcome the presumption of correctness of the assessment by presenting evidence and showing that the decision of the bureau (now department) is not supported by substantial evidence. Floyd & Berry Davis Co. v. Bureau of Revenue, 1975-NMCA-143, 88 N.M. 576, 544 P.2d 291.

**Presumption not overcome when contradictory evidence presented.** — Evidence that the construction contract between the taxpayer, a contracting business, and a corporation created a ceiling price was not compelling in view of the contradictory evidence as to the actual cost of the construction, and the presumption of correctness of the assessment of gross receipts tax was not overcome. Floyd & Berry Davis Co. v. Bureau of Revenue, 1975-NMCA-143, 88 N.M. 576, 544 P.2d 291.

**Since there was substantial evidence to support decision** that the moneys paid to taxpayer were used solely for taxpayer's own obligations and purposes, and the appellate court found nothing in the record to indicate that any of the sums were used by taxpayer to pay the debts of any of the other three corporations, they were properly taxable under Gross Receipts and Compensating Tax Act (Chapter 7, Article 9 NMSA 1978). Westland Corp. v. Commissioner of Revenue, 1972-NMCA-147, 84 N.M. 327, 503 P.2d 151, cert. denied, 83 N.M. 22, 487 P.2d 1092.

### C. ACCORDANCE WITH LAW.

**Decision not in accordance with law if record not complete.** — Under Subsection D(3) (Subsection C(3)), the court will set aside a decision and order of the commissioner (hearing officer) if it is found to be not in accordance with law, and the court's review, pursuant to Subsection A, must be based upon the record. Since there was nowhere in the record any indication that the ordinance in question even existed and the court found it impossible to proceed without some knowledge of the considerations underlying the bureau's (department's) action, the case was remanded so that the record could indicate the bureau's (department's) reasoning and basis for denial of taxpayer's request. Co-Con, Inc. v. Bureau of Revenue, 1974-NMCA-134, 87 N.M. 118, 529 P.2d 1239, cert. denied, 87 N.M. 111, 529 P.2d 1232.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 711, 718, 786, 787, 820, 827.

Propriety of certiorari to review decisions of tax boards, 77 A.L.R. 1357.

84 C.J.S. Taxation §§ 452 et seq., 654 to 655, 763 to 773, 815 to 823; 85 C.J.S. Taxation §§ 907 et seq., 1073 et seq., 1762 et seq.

## 7-1-26. Disputing liabilities; claim for credit, rebate or refund.

A. A person who believes that an amount of tax has been paid by or withheld from that person in excess of that for which the person was liable, who has been denied any credit or rebate claimed or who claims a prior right to property in the possession of the department pursuant to a levy made under authority of Sections 7-1-31 through 7-1-34 NMSA 1978 may claim a refund by directing to the secretary, within the time limited by the provisions of Subsections F and G of this section, a written claim for refund. At the time the written claim is submitted, except as provided in Subsection K of this section, a refund claim shall include:

(1) the taxpayer's name, address and identification number;

(2) the type of tax for which a refund is being claimed, the credit or rebate denied or the property levied upon;

(3) the sum of money or other property being claimed;

(4) with respect to refund, the period for which overpayment was made;

(5) a brief statement of the facts and the law on which the claim is based, which may be referred to as the "basis for the refund", which shall include documentation that substantiates the written claim and supports the taxpayer's basis for the refund; and

(6) a copy of an amended return for each tax period for which the refund is claimed.

B. A claim for refund that meets the requirements of Subsection A of this section shall be deemed to be properly before the department for consideration, regardless of whether the department requests additional documentation after receipt of the claim for refund; provided that the claim for refund is filed within the time limitations provided in Subsections F and G of this section.

C. If the department requests additional relevant documentation from a taxpayer who has submitted a claim for refund, the claim for refund will not be considered complete until the taxpayer provides the requested documentation. The provisions of Paragraph (2) of Subsection D of this section and of Section 7-1-68 NMSA 1978 do not apply until a refund claim is complete.

D. The secretary or the secretary's delegate may allow the claim in whole or in part or may deny the claim. If the:

(1) claim is denied in whole or in part in writing, no claim may be refiled with respect to that which was denied, but the person, within ninety days after either the mailing or delivery of the denial of all or any part of the claim, may elect to pursue one, but not more than one, of the remedies in Subsection E of this section; and

(2) department has neither granted nor denied any portion of a complete claim for refund within one hundred eighty days of the date the claim was mailed or otherwise delivered to the department, the person may elect to treat the claim as denied and elect to pursue one, but not more than one, of the remedies provided in Subsection D [E] of this section.

E. A person may elect to pursue no more than one of the remedies in Paragraphs (1) and (2) of this subsection. A person who timely pursues more than one remedy shall be deemed to have elected the first remedy invoked. The person may:

(1) direct to the secretary, pursuant to the provisions of Section 7-1-24 NMSA 1978, a written protest that shall set forth:

(a) the circumstances of: 1) an alleged overpayment; 2) a denied credit; 3) a denied rebate; or 4) a denial of a prior right to property levied upon by the department;

(b) an allegation that, because of that overpayment or denial, the state is indebted to the taxpayer for a specified amount, including any allowed interest, or for the property;

(c) demanding the refund to the taxpayer of that amount or that property; and

(d) reciting the facts of the claim for refund; or

(2) commence a civil action in the district court for Santa Fe county by filing a complaint setting forth the circumstance of the claimed overpayment, denied credit or rebate or denial of a prior right to property levied upon by the department alleging that on account thereof the state is indebted to the plaintiff in the amount or property stated, together with any interest allowable, demanding the refund to the plaintiff of that amount or property and reciting the facts of the claim for refund. The plaintiff or the secretary may appeal from any final decision or order of the district court to the court of appeals.

F. Except as otherwise provided in Subsection G of this section, no credit or refund of any amount may be allowed or made to any person unless as the result of a claim made by that person as provided in this section:

(1) within three years of the end of the calendar year in which:

(a) the payment was originally due or the overpayment resulted from an assessment by the department pursuant to Section 7-1-17 NMSA 1978, whichever is later;

(b) the final determination of value occurs with respect to any overpayment that resulted from a disapproval by any agency of the United States or the state of New Mexico or any court of increase in value of a product subject to taxation under the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978], the Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978], the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978], the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978] or the Natural Gas Processors Tax Act [Chapter 7, Article 33 NMSA 1978];

(c) property was levied upon pursuant to the provisions of the Tax Administration Act; or

(d) an overpayment of New Mexico tax resulted from: 1) an internal revenue service audit adjustment or a federal refund paid due to an adjustment of an audit by the internal revenue service or an amended federal return; or 2) making a change to a federal return for which federal approval is required by the Internal Revenue Code;

(2) when an amount of a claim for credit under the provisions of the Investment Credit Act [Chapter 7, Article 9A NMSA 1978], Laboratory Partnership with Small Business Tax Credit Act [Chapter 7, Article 9E NMSA 1978] or Technology Jobs and Research and Development Tax Credit Act [7-9F-1 through 7-9F-12 NMSA 1978] or for the rural job tax credit pursuant to Section 7-2E-1.1 NMSA 1978 or similar credit has been denied, the taxpayer may claim a refund of the credit no later than one year after the date of the denial;

(3) when a taxpayer under audit by the department has signed a waiver of the limitation on assessments on or after July 1, 1993 pursuant to Subsection F of Section 7-1-18 NMSA 1978, the taxpayer may file a claim for refund of the same tax paid for the same period for which the waiver was given, until a date one year after the later of the date of the mailing of an assessment issued pursuant to the audit, the date of the mailing of final audit findings to the taxpayer or the date a proceeding is begun in court by the department with respect to the same tax and the same period;

(4) if the payment of an amount of tax was not made within three years of the end of the calendar year in which the original due date of the tax or date of the assessment of the department occurred, a claim for refund of that amount of tax can be made within one year of the date on which the tax was paid; or

(5) when a taxpayer has been assessed a tax on or after July 1, 1993 under Subsection B, C or D of Section 7-1-18 NMSA 1978 and when the assessment applies to a period ending at least three years prior to the beginning of the year in which the assessment was made, the taxpayer may claim a refund for the same tax for the period of the assessment or for any period following that period within one year of the date of the assessment unless a longer period for claiming a refund is provided in this section.

G. No credit or refund shall be allowed or made to any person claiming a refund of gasoline tax under Section 7-13-11 NMSA 1978 unless notice of the destruction of the gasoline was given to the department within thirty days of the actual destruction and the claim for refund is made within six months of the date of destruction. No credit or refund shall be allowed or made to any person claiming a refund of gasoline tax under Section 7-13-17 NMSA 1978 unless the refund is claimed within six months of the date of purchase of the gasoline and the gasoline has been used at the time the claim for refund is made.

H. If as a result of an audit by the department or a managed audit covering multiple periods an overpayment of tax is found in any period under the audit, that overpayment may be credited against an underpayment of the same tax found in another period under audit pursuant to Section 7-1-29 NMSA 1978, provided that the taxpayer files a claim for refund for the overpayments identified in the audit.

I. Any refund of tax paid under any tax or tax act administered under Subsection B of Section 7-1-2 NMSA 1978 may be made, at the discretion of the department, in the form of credit against future tax payments if future tax liabilities in an amount at least equal to the credit amount reasonably may be expected to become due.

J. For the purposes of this section, "oil and gas tax return" means a return reporting tax due with respect to oil, natural gas, liquid hydrocarbons, carbon dioxide, helium or nonhydrocarbon gas pursuant to the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978].

K. The filing of a fully completed original income tax return, corporate income tax return, corporate income and franchise tax return, estate tax return or special fuel excise tax return that shows a balance due the taxpayer or a fully completed amended income tax return, an amended corporate income tax return, an amended corporate income and franchise tax return, an amended estate tax return, an amended special fuel excise tax return or an amended oil and gas tax return that shows a lesser tax liability than the original return constitutes the filing of a claim for refund for the difference in tax due shown on the original and amended returns.

**History:** 1953 Comp., § 72-13-40, enacted by Laws 1965, ch. 248, § 28; 1966, ch. 30, § 4; 1971, ch. 276, § 9; 1974, ch. 32, § 1; 1975, ch. 213, § 2; 1979, ch. 144, § 25; 1982, ch. 18, § 11; 1983, ch. 211, § 27; 1985, ch. 65, § 16; 1986, ch. 20, § 17; 1989, ch. 325, § 8; 1990, ch. 86, § 7; 1993, ch. 5, § 9; 1994, ch. 51, § 5; 1996, ch. 15, § 4; 1997, ch. 67, § 3; 1999, ch. 84, § 2; 2000, ch. 28, § 9; 2001, ch. 16, § 5; 2003, ch. 398, § 9; 2007, ch. 275, § 2; 2013, ch. 27, § 8; 2015, ch. 73, § 17; 2017, ch. 63, § 26.

## ANNOTATIONS

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law.

The bracketed reference in Subsection D(2) was to correct an apparent enrolling and engrossing omission.

**Cross references. —** For managed audit, *see* 7-1-11.1 NMSA 1978.

For allowance of interest on overpayments, *see* 7-1-68 NMSA 1978.

For the Internal Revenue Code, *see* 26 U.S.C. § 1 et seq.

**The 2017 amendment,** effective June 16, 2017, clarified the information required in a refund claim, clarified the time a claim for refund is deemed to be properly before the department for consideration, clarified that, if the department requests additional documentation from a taxpayer who has submitted a claim for refund, the claim for refund is not considered complete until the taxpayer provides the requested documentation, and provided that taxpayers have a right to treat a refund claim denied for purposes of protesting if the department has failed to act on the refund claim within 180 days; in Subsection A, in the introductory paragraph, after "Subsections", changed "D" to "F", and "E" to "G", added "At the time the written claim is submitted", after "Subsection", changed "I" to "K", in Paragraph A(5), added "which shall include documentation that substantiates the written claim and supports the taxpayer's basis for the refund", and added Paragraph A(6); added new Subsections B and C and redesignated former Subsections B through I as Subsections D through K, respectively; in Subsection D, added "If the", in Paragraph D(1), deleted "If the", after "Subsection", changed "C" to "E", in Paragraph D(2), deleted "If the", after "any portion of a", added "complete", and after "one hundred", deleted "twenty days of the date the claim was mailed or delivered to the department, the person may refile it within the time limits set forth in Subsection D of this section or may within ninety days elect to pursue one, but only one, of the remedies in Subsection C of this section. After the expiration of the two hundred ten days from the date the claim was mailed or delivered to the department, the department may not approve or disapprove the claim unless the person has pursued one of the remedies under Subsection C of this section" and added the remainder of the paragraph; and in Subsection F, in the introductory clause, after "Subsection", changed "E" to "G", and in Paragraph F(2), after "Technology Jobs", added "and Research and Development".

**The 2015 amendment,** effective July 1, 2015, provided for the required contents of a written protest of tax liability; in Subsection A, deleted "Any" and added "A"; in Subsection C, after "elect to pursue", deleted "one, but only" and added "no more than", after "subsection", deleted "In any case, if", after "A person", deleted "does timely pursue" and added "who timely pursues", after "one remedy", deleted "the person", and after "The", deleted "remedies are as follows:", deleted the paragraph designation for Paragraph (1) of Subsection C, after "(1)" in former Paragraph (1) of Subsection C, deleted "the", and after "person may" in former Paragraph (1) of Subsection C,

designated the remainder of former Paragraph (1) of Subsection C as new Paragraph (1) of Subsection C; in Paragraph (1) of Subsection C, after "written protest", deleted "against the denial of, or failure to either allow or deny, the claim or portion of the claim" and added "that shall set forth:"; added Paragraphs (1)(a), (b), (c) and (d) of Subsection C; and in Subsection C, Paragraph (2), after "(2)", deleted "the person may".

**The 2013 amendment,** effective July 1, 2013, prescribed the content of a refund claim; in the title, added "Disputing liabilities" and after "claim for", added "credit, rebate or"; in Subsection A, in the first sentence, after "Subsections D", changed "E and F" to "and E"; in Paragraph (2) of Subsection A, after "refund is being claimed", added "the credit or rebate denied or the property levied upon"; in Paragraph (3) of Subsection A, after "sum of money", added "or other property"; in Paragraph (4) of Subsection A, at the beginning of the sentence, added "with respect to refund" and after "overpayment was made; and", deleted "the basis for the refund. As used in this subsection, 'basis for the refund' means"; in Paragraph (5) of Subsection A, after "claim is based", added "which may be referred to as the 'basis for the refund'"; in Paragraph (1) of Subsection C, after "direct to the secretary", added "pursuant to the provisions of Section 7-1-24 NMSA 1978", and after "deny the claim or portion", deleted language which provided for a hearing and appeal and added "of the claim"; in Paragraph (2) of Subsection C, in the first sentence, after "claimed overpayment", added "denied credit or rebate or denial of a prior right to property levied upon by the department", after "plaintiff in the amount", added "or property" and after "plaintiff of that amount", added "or property"; in Subsection D, in the first sentence, after "Except as otherwise provided in", changed "Subsections E and F" to "Subsection E"; added Subparagraph (d) of Paragraph (1) of Subsection D; in Paragraph (2) of Subsection D, after "rural job tax credit pursuant to", deleted "Sections 7-2E-1 and 7-2E-2" and added "Section 7-2E-1.1"; and deleted former Subsection F which provided for a credit or refund, with interest, when the adjustment of federal tax results in an overpayment of tax.

**The 2007 amendment,** effective July 1, 2007, eliminated the one-year limitation to claim a credit under the Capital Equipment Tax Credit Act and eliminated returns reporting taxes due with respect to helium and nonhydrocarbon gas from the definition of "oil and gas tax return".

**The 2003 amendment,** effective July 1, 2003, added "As used in this subsection, 'basis for the refund' means a brief statement of the facts and the law on which the claim is based" following "basis for the refund." at the end of Subsection A.

**The 2001 amendment,** effective July 1, 2001, rewrote Subsection D, added Subsection G and redesignated the remaining subsections accordingly.

**The 2000 amendment,** effective July 1, 2000, in Subsection B, inserted the paragraph designations (1) and (2), substituted "no claim may be refiled with respect to that which was denied, but the person" for "the claim may not be refiled. If the claim is not granted in full the person" in Paragraph (1); added the last sentence to Paragraph (2); redesignated part of former Subsection B as present Subsection C, adding the first

sentence and redesignating the subsequent subsections; in Subsection D, deleted "the payment was made" following "due" in Paragraph (1)(a); substituted "or Capital Equipment Tax Credit Act or the rural job tax credit pursuant to Sections 7-2E-1 and 7-2E-2 NMSA 1978" for "or Filmmaker's Credit Act" in Paragraph (2)(a) and added Paragraph (2)(d); and substituted "Section 7-13-17" for "Section 7-13-14" in Subsection E.

**The 1999 amendment,** effective July 1, 1999, inserted "the payment was made" in Subsection C(1)(a).

**The 1997 amendment,** effective July 1, 1997, redesignated the second paragraph of Subsection A as Subsection B, inserted "or delivery" following "mailing" in the second sentence, inserted "the department may not approve or deny the claim but" preceding "the person may refile" in the third sentence; and redesignated former Subsections B through G as C through H and made related stylistic changes.

**The 1996 amendment,** effective July 1, 1996, rewrote the second sentence of Subsection A, added Subparagraph B(2)(a) and designated the existing provisions of Paragraph B(2) as Subparagraphs B(2)(b) and (c).

**The 1994 amendment,** effective July 1, 1994, substituted the exception clause at the end of the second sentence in the introductory paragraph of Subsection A for the former proviso clause, relating to the same subject matter; substituted "person" for "taxpayer" in the next-to-last sentence in the introductory paragraph of Subsection A, in Paragraph A(1) and in both sentences in Paragraph A(2), and "July 1, 1993" for "the effective date of this act" in Paragraph B(3); and added Subsection G.

**The 1993 amendment,** effective July 1, 1993, rewrote this section to the extent that a detailed comparison would be impracticable.

**Defining a pending case.—** A taxpayer's request for a tax refund is a "pending case" within the meaning of N.M. Const., art. IV, § 34. Phelps Dodge Corp. v. Revenue Div., N.M. Taxation & Revenue Dep't, 1985-NMCA-055, 103 N.M. 20, 702 P.2d 10.

**Tax protestor can avoid hearing process altogether** by electing to pay the tax assessed and filing a refund claim with the district court. Kmart Props., Inc. v. N.M. Taxation & Revenue Dep't., 2006-NMCA-026, 139 N.M. 177, 131 P.3d 27, *rev'd on other grounds*, 2006-NMSC-006, 139 N.M. 172, 131 P.3d 22.

**It was mandatory that taxpayers follow administrative procedures of this section** before questioning in court the constitutionality of the tax at issue, and district court correctly determined that it lacked jurisdiction because of the failure to timely appeal. Neff v. State ex rel. Taxation & Revenue Dep't, 1993-NMCA-116, 116 N.M. 240, 861 P.2d 281.

**Section provides adequate remedy at law.** — Taxpayers have standing under this section to contest the constitutionality of New Mexico taxes assessed against them; thus, under the rule of National Private Truck Council v. Oklahoma Tax Commission, 515 U.S. 582, 115 S. Ct. 2351, 132 L. Ed. 2d 509 (1995), a § 1983 action for injunctive or declaratory relief cannot lie with respect to imposition of a state tax, because taxpayers have been provided an adequate remedy at law. Ramah Navajo Sch. Bd., Inc. v. N.M. Taxation & Revenue Dep't, 1999-NMCA-050, 127 N.M. 101, 977 P.2d 1021, cert. denied, 127 N.M. 389, 981 P.2d 1207.

**Secretary decides actions on refund claims.** — Secretary of the Taxation and Revenue Department has discretion to act or refuse to act on refund claims under Sections 7-1-26A and 7-1-29A NMSA 1978. Unisys Corp. v. N.M. Taxation & Revenue Dep't, 1994-NMCA-059, 117 N.M. 609, 874 P.2d 1273.

**Purpose of time deadline** in this section is to avoid stale claims, which protects the department's ability to stabilize and predict, with some degree of certainty, the funds it collects and manages. Kilmer v. Goodwin, 2004-NMCA-122, 136 N.M. 440, 99 P.3d 690.

**Burden of maintaining active claim.** — The time deadline in this section places the burden of maintaining an active claim on the taxpayer and department does not have implied authority to allow claim after 210 days. Kilmer v. Goodwin, 2004-NMCA-122, 136 N.M. 440, 99 P.3d 690.

**Strictness of time requirement.** — The legislature has stated a definite requirement that it was incumbent upon taxpayers to act within the 210-day window in this section. Kilmer v. Goodwin, 2004-NMCA-122, 136 N.M. 440, 99 P.3d 690.

**Running of statutory period.** — The statutory period to pursue a remedy under 7-1-26(B)(1) NMSA 1978 begins from the delivery of a notice of denial of refund when the taxation and revenue department mails rather than hand delivers the notice. Schneider Nat'l, Inc. v. N.M. Taxation & Revenue Dep't, 2006-NMCA-128, 140 N.M. 561, 144 P.3d 120.

**Letter does not start time running.** — Because this section prohibited the department from approving or denying the claim for refund, a letter stating that essential conclusion does not start the time running again. Kilmer v. Goodwin, 2004-NMCA-122, 136 N.M. 440, 99 P.3d 690.

**Time limitation not denial of plain and speedy remedy.** — Fact that this section limits claims for refund to periods three years from the end of the calendar year in which payment of the New Mexico income tax was due did not deny plaintiffs a plain, speedy and efficient remedy under New Mexico law so as to invoke federal jurisdiction in tax refund case. Lung v. O'Cheskey, 358 F. Supp. 928 (D.N.M.), *aff'd*, 414 U.S. 802, 94 S. Ct. 159, 38 L. Ed. 2d 39 (1973).

**Enactment of limitation not impermissible exercise of state's legislative power.** — The enactment of a statute fixing a period of limitations within which to sue the state for a refund does not constitute an impermissible exercise of legislative power of a state. When a statute creates a substantive right and in connection therewith specifies the time within which an action for the enforcement thereof must be instituted, upon failure to institute the action within the specified period, not only the remedy, but the right of action itself, is extinguished. United States v. Bureau of Revenue, 217 F. Supp. 849 (D.N.M. 1963).

**Failure to institute action constitutes waiver of protest.** — Failure of the atomic energy commission, which had become subrogated to the rights of certain uranium producers to protest the imposition of certain taxes on the proceeds of the uranium sold to it, to bring suit within four months constituted a waiver of the protest and of all claims against the state on account of any illegality in the tax so paid, since the statute created the substantive right to sue the state for a refund and fixed the time within which suit for the enforcement of the right must be instituted. U.S. v. Bureau of Revenue, 217 F. Supp. 849 (D.N.M. 1963).

**Estoppel.** — Where the department did not make any written representations during the 210-day period about how taxpayers should proceed, and department representative's statements merely informed parties' accountant to wait to see the manner in which the department would decide the issue, such a generic, oral representation does not provide a basis for estoppel. Kilmer v. Goodwin, 2004-NMCA-122, 136 N.M. 440, 99 P.3d 690.

**No offset of overpayment against prior liability.** — No statute expressly authorizes the taxation and revenue department to apply overpayments of taxes for one reporting period as offsets against underpayments for another prior reporting period. In fact, the legislature has granted the department only the specific authority to credit refunds or overpayments of gas production taxes against future tax payments. The department complied with this provision by allowing taxpayer to net out its overpayment against current tax liabilities on the estimated tax term form when taxpayer filed its amended form reporting an overpayment of taxes for a prior reporting period. Amoco Prod. Co. v. N.M. Taxation & Revenue Dep't, 1994-NMCA-086, 118 N.M. 72, 878 P.2d 1021.

**Section not applicable to real property taxes.** — Refund procedures of this section are not applicable to real property taxes. Lovelace Ctr. for Health Sciences v. Beach, 1980-NMCA-004, 93 N.M. 793, 606 P.2d 203.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 494, 608 to 611, 629; 72 Am. Jur. 2d State and Local Taxation §§ 1039, 1064 to 1114, 1138, 1154.

Recovery of tax paid under unconstitutional statute or ordinance, 48 A.L.R. 1381, 74 A.L.R. 1301.

Action to recover back tax illegally exacted as one upon contract as regards applicability of limitation statutes, 92 A.L.R. 1360.

Mandamus as a proper remedy for return of a tax illegally or erroneously exacted, 93 A.L.R. 585.

Payment of tax in installments as affecting time for claiming refund under statute requiring claim to be made within specified time after payment of tax, 94 A.L.R. 978.

Right to recover back taxes paid upon property assessed in wrong district, 94 A.L.R. 1223.

Constitutionality of statutes providing for refund of taxes illegally or erroneously exacted, 98 A.L.R. 284.

Who as between grantor and grantee, immediate or remote, is entitled to refund of tax or assessment for public improvement against land, 105 A.L.R. 698.

Excessive assessments as within contemplation of statute providing for refunding of taxes "erroneously or illegally charged," 110 A.L.R. 670.

Right to amend claim for refund to taxes after time for filing has expired, 113 A.L.R. 1291.

Grounds stated in protest against payment of property tax as a limitation of grounds upon which recovery of back tax may be claimed, 113 A.L.R. 1479.

Statute repealing or modifying previous statute providing for refunding of taxes illegally or erroneously assessed, collected or paid, as applicable retroactively, 124 A.L.R. 1480.

When statute of limitation commences to run against action to recover tax, 131 A.L.R. 822.

Assignability of claim for tax refund and rights of assignee in respect thereof, 134 A.L.R. 1202.

Right of taxpayer to maintain action for refund of income tax paid by him, without paying the entire tax assessed against him or shown on his return, 138 A.L.R. 1426.

Power or duty, in absence of statute, to allow tax or license fee illegally exacted or erroneously paid as credit on valid tax or license fee, 160 A.L.R. 1423.

Retrospective operation of statute enlarging or shortening period for claim of tax refund, 163 A.L.R. 778.

Right to refund or recovery of back taxes paid on property not owned by taxpayer, 165 A.L.R. 879.

When does special limitation period for filing applications for tax refund begin to run, 175 A.L.R. 1100.

When right to refund of state or local taxes accrues, within statute limiting time for applying for refund, 46 A.L.R.2d 1350.

Propriety of class action in state courts to recover taxes, 10 A.L.R.4th 655.

Effect of delay in receipt or negotiation of refund check in determining right to interest under § 6611 of the Internal Revenue Code (26 USCA § 6611), 145 A.L.R. Fed. 437.

What constitutes payment for purposes of commencing limitations period under Internal Revenue Code (26 U.S.C.A. § 6511(a)) for refund of tax overpayments, 160 A.L.R. Fed. 137.

84 C.J.S. Taxation §§ 910-911; 85 C.J.S. Taxation §§ 1763 to 1764.

## 7-1-26.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 67, § 10 repealed 7-1-26.1 NMSA 1978, as enacted by Laws 1991, ch. 9, § 23, providing limitation on claims for refund based on net operating losses, effective July 1, 1997. For provisions of former section, *see* the 1996 NMSA 1978 on *NMOneSource.com.*

## 7-1-27. Conclusiveness of court order on liability for payment of tax.

Whenever the jurisdiction of the district court of Santa Fe county or the court of appeals is invoked according to the provisions of Section 7-1-25, 7-1-26 or 7-1-59 NMSA 1978, or whenever the jurisdiction of any federal court is invoked or whenever the jurisdiction of any district court of this state is invoked according to the provisions of Section 7-1-58 NMSA 1978, a final decision of that court or of any higher court which reviews the matter and from which decision no appeal or review is successfully taken is conclusive as regards the liability or nonliability of any person for payment of any tax.

**History:** 1953 Comp., § 72-13-41, enacted by Laws 1965, ch. 248, § 29; 1966, ch. 30, § 5; 1999, ch. 84, § 3.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, updated statutory references.

**If liability nonexistent under one theory then also under another theory.** — The language of this section does not contemplate that, having imposed tax liability under a theory held to be erroneous, the commissioner (secretary) can then proceed anew against a taxpayer under another theory. Leaco Rural Tel. Coop., Inc. v. Bureau of Revenue, 1974-NMCA-076, 86 N.M. 629, 526 P.2d 426.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 1149, 1150.

84 C.J.S. Taxation §§ 647 to 653, 720 to 723.

## 7-1-28. Authority for abatements of assessments of tax.

A. In response to a written protest against an assessment, submitted in accordance with the provisions of Section 7-1-24 NMSA 1978, but before any court acquires jurisdiction of the matter, or when a "notice of assessment of taxes" is incorrect, the secretary or the secretary's delegate may abate any part of an assessment determined by the secretary or the secretary's delegate to have been incorrectly, erroneously or illegally made. An abatement in the amount of twenty thousand dollars ($20,000) or more shall be made with the prior approval of the attorney general; except that the secretary or the secretary's delegate may make abatements with respect to the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978], the Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978], the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978], the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978], the Natural Gas Processors Tax Act [Chapter 7, Article 33 NMSA 1978] or the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978], abatements of gasoline tax made under Section 7-13-17 NMSA 1978 and abatements of cigarette tax made under the Cigarette Tax Act [Chapter 7, Article 12 NMSA 1978] without the prior approval of the attorney general regardless of the amount.

B. Pursuant to the final order of the district court, the court of appeals, the supreme court of New Mexico or any federal court, from which order, appeal or review is not successfully taken by the department, adjudging that any person is not required to pay any portion of tax assessed to that person, the secretary or the secretary's delegate shall cause that amount of the assessment to be abated.

C. Pursuant to a compromise of taxes agreed to by the secretary and according to the terms of the closing agreement formalizing the compromise, the secretary or the secretary's delegate shall cause the abatement of the appropriate amount of any assessment of tax.

D. The secretary or the secretary's delegate shall cause the abatement of the amount of an assessment of tax that is equal to the amount of fee paid to or retained by an out-of-state attorney or collection agency from a judgment or the amount collected by the attorney or collection agency pursuant to Section 7-1-58 NMSA 1978.

E. Records of abatements made in excess of ten thousand dollars ($10,000) shall be available for inspection by the public. The department shall keep such records for a minimum of three years from the date of the abatement.

F. In response to a timely protest pursuant to Section 7-1-24 NMSA 1978 of an assessment by the department and notwithstanding any other provision of the Tax Administration Act, the secretary or the secretary's delegate may abate that portion of an assessment of tax, including applicable penalties and interest, representing the amount of tax previously paid by another person on behalf of the taxpayer on the same transaction; provided that the requirements of equitable recoupment are met. For purposes of this subsection, the protest pursuant to Section 7-1-24 NMSA 1978 of the department's assessment may be made by the taxpayer to whom the assessment was issued or by the other person who claims to have previously paid the tax on behalf of the taxpayer.

**History:** 1953 Comp., § 72-13-42, enacted by Laws 1965, ch. 248, § 30; 1966, ch. 30, § 6; 1971, ch. 32, § 1; 1975, ch. 116, § 2; 1977, ch. 297, § 1; 1979, ch. 144, § 26; 1986, ch. 20, § 18; 1996, ch. 15, § 5; 2000, ch. 28, § 10; 2003, ch. 439, § 3; 2013, ch. 27, § 9.

## ANNOTATIONS

**Cross references.** — For compromises of taxes and closing agreements, *see* 7-1-20 NMSA 1978.

**The 2013 amendment,** effective July 1, 2013, required the attorney general to approve only abatements of twenty thousand dollars or more; provided for abatement of tax that was paid by a person on behalf of the taxpayer; in Subsection A, in the first sentence, after "the secretary’s delegate", deleted "with prior written approval of the attorney general" and added the second sentence; deleted former Paragraph (2) of Subsection A, which required attorney general approval of abatements under the General Income and Franchise Tax Act of amounts of twenty thousand dollars or more; deleted former Paragraph (3) of Subsection A, which required attorney general approval of abatements of ten thousand dollars or more; in Subsection B, after "district court", deleted "for Santa Fe county"; and added Subsection F.

**The 2003 amendment,** effective July 1, 2003, increased the dollar amount in Paragraph A(3) and Subsection E from $5,000 to $10,000.

**The 2000 amendment,** effective July 1, 2000, in the introductory paragraph of Subsection A, inserted "prior" preceding "written approval" and deleted "Notwithstanding the above, abatements of assessments incorrectly, erroneously or illegally made to one person amounting to less than five thousand dollars ($5,000) in one calendar year may be made without the prior written approval of the attorney general" preceding "except that"; substituted "Section 7-13-17" for "Sections 7-13-13 through 7-13-15" in Subsection A(1); added Subsection A(3); and deleted "or assessments" preceding "of tax" in Subsection C.

**The 1996 amendment,** effective July 1, 1996, added "except that:" at the end of the introductory paragraph of Subsection A and made related changes in that subsection, added Paragraphs A(1) and (2), substituted "five thousand dollars ($5,000)" for "one thousand dollars ($1,000)" in Subsection E, and made a minor stylistic change in Subsection D.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 795 to 816.

84 C.J.S. Taxation §§ 805-823; 85 C.J.S. Taxation § 1762 et seq.

## 7-1-29. Authority to make refunds or credits.

A. In response to a claim for refund, credit or rebate made as provided in Section 7-1-26 NMSA 1978, but before a court acquires jurisdiction of the matter, the secretary or the secretary's delegate may authorize payment to a person in the amount of the credit or rebate claimed or refund an overpayment of tax determined by the secretary or the secretary's delegate to have been erroneously made by the person, together with allowable interest. A payment of a credit rebate claimed or a refund of tax and interest erroneously paid amounting to twenty thousand dollars ($20,000) or more shall be made with the prior approval of the attorney general, except that the secretary or the secretary's delegate may make refunds with respect to the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978], the Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978], the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978], the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978], the Natural Gas Processors Tax Act [Chapter 7, Article 33 NMSA 1978] or the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978], Section 7-13-17 NMSA 1978 and the Cigarette Tax Act [Chapter 7, Article 12 NMSA 1978] without the prior approval of the attorney general regardless of the amount.

B. Pursuant to the final order of the district court, the court of appeals, the supreme court of New Mexico or a federal court, from which order, appeal or review is not successfully taken, adjudging that a person has properly claimed a credit or rebate or made an overpayment of tax, the secretary shall authorize the payment to the person of the amount thereof.

C. In the discretion of the secretary, any amount of credit or rebate to be paid or tax to be refunded may be offset against any amount of tax for which the person due to receive the credit, rebate payment or refund is liable. The secretary or the secretary's delegate shall give notice to the taxpayer that the credit, rebate payment or refund will be made in this manner, and the taxpayer shall be entitled to interest pursuant to Section 7-1-68 NMSA 1978 until the tax liability is credited with the credit, rebate or refund amount.

D. In an audit by the department or a managed audit covering multiple reporting periods in which both underpayments and overpayments of a tax have been made in different reporting periods, the department shall credit the tax overpayments against the underpayments, provided that the taxpayer files a claim for refund of the overpayments. An overpayment shall be applied as a credit first to the earliest underpayment and then to succeeding underpayments. An underpayment of tax to which an overpayment is credited pursuant to this section shall be deemed paid in the period in which the overpayment was made or the period to which the overpayment was credited against an underpayment, whichever is later. If the overpayments credited pursuant to this section exceed the underpayments of a tax, the amount of the net overpayment for the periods covered in the audit shall be refunded to the taxpayer.

E. When a taxpayer makes a payment identified to a particular return or assessment, and the department determines that the payment exceeds the amount due pursuant to that return or assessment, the secretary may apply the excess to the taxpayer's other liabilities pursuant to the tax acts to which the return or assessment applies, without requiring the taxpayer to file a claim for a refund. The liability to which an overpayment is applied pursuant to this section shall be deemed paid in the period in which the overpayment was made or the period to which the overpayment was applied, whichever is later.

F. If the department determines, upon review of an original or amended income tax return, corporate income and franchise tax return, estate tax return, special fuels excise tax return or oil and gas tax return, that there has been an overpayment of tax for the taxable period to which the return or amended return relates in excess of the amount due to be refunded to the taxpayer pursuant to the provisions of Subsection K of Section 7-1-26 NMSA 1978, the department may refund that excess amount to the taxpayer without requiring the taxpayer to file a refund claim.

G. Records of refunds and credits made in excess of ten thousand dollars ($10,000) shall be available for inspection by the public. The department shall keep such records for a minimum of three years from the date of the refund or credit.

H. In response to a timely refund claim pursuant to Section 7-1-26 NMSA 1978 and notwithstanding any other provision of the Tax Administration Act, the secretary or the secretary's delegate may refund or credit a portion of an assessment of tax paid, including applicable penalties and interest representing the amount of tax previously paid by another person on behalf of the taxpayer on the same transaction, provided that the requirements of equitable recoupment are met. For purposes of this subsection, the refund claim may be filed by the taxpayer to whom the assessment was issued or by another person who claims to have previously paid the tax on behalf of the taxpayer. Prior to granting the refund or credit, the secretary may require a waiver of all rights to claim a refund or credit of the tax previously paid by another person paying a tax on behalf of the taxpayer.

**History:** 1953 Comp., § 72-13-43, enacted by Laws 1965, ch. 248, § 31; 1966, ch. 30, § 7; 1970, ch. 17, § 1; 1975, ch. 116, § 3; 1977, ch. 297, § 2; 1979, ch. 144, § 27; 1982, ch. 18, § 12; 1989, ch. 325, § 9; 1992, ch. 55, § 12; 2001, ch. 16, § 6; 2002, ch. 11, § 1; 2003, ch. 398, § 11; 2003, ch. 439, § 4; 2006, ch. 38, § 1; 2013, ch. 27, § 10; 2017, ch. 63, § 27.

## ANNOTATIONS

**Cross references.** — For managed audits, *see* 7-1-11.1 NMSA 1978.

For compromises of taxes and closing agreements, *see* 7-1-20 NMSA 1978.

For interest on overpayments, *see* 7-1-68 NMSA 1978.

**The 2017 amendment,** effective June 16, 2017, in Subsection A, after "the amount of the", deleted "creditor" and added "credit"; and in Subsection F, after "Subsection", changed "I" to "K".

**The 2013 amendment,** effective July 1, 2013, increased the maximum amount of a refund or a credit that requires attorney general approval; provided for abatement of tax that was paid by a person on behalf of the taxpayer; in Subsection A, in the first sentence, after "claim for refund", added "credit or rebate", after "in the amount of", added "the creditor or rebate claimed or refund", and in the second sentence, after "A", added "payment of a credit rebate claimed or a", after "erroneously paid amounting to", deleted "more than ten thousand dollars ($10,000) may" and added "twenty thousand dollars ($20,000) or more shall"; deleted former Paragraph (2) of Subsection A, which required attorney general approval of abatements under the General Income and Franchise Tax Act of amounts of twenty thousand dollars or more; in Subsection B, after "adjudging that a person has" added "properly claimed a credit or rebate or"; in Subsection C, in the first sentence, after "any amount of", added "credit or rebate to be paid or" and after "due to receive the", added "credit, rebate payment or", and in the second sentence, after "notice to the taxpayer that the", added "credit, rebate payment or" and after "liability is credited with the", added "credit, rebate or"; and added Subsection H.

**The 2006 amendment,** effective July 1, 2006, provided in Subsection C that the secretary shall give notice to a taxpayer that a refund will be made and that the taxpayer is entitled to interest and provides in Subsection G that records of refunds and credits in excess of $10,000 shall be available for public inspection.

**The 2003 amendment,** effective July 1, 2003, added Subsection E and F and redesignated Subsection E as G.

Laws 2003, ch. 398, § 11, effective July 1, 2003, also amended this section. The section was set out as amended by Laws 2003, ch. 439, § 4. *See* 12-1-8 NMSA 1978.

**The 2002 amendment,** effective July 1, 2002, substituted "ten thousand dollars ($10,000)" for "five thousand dollars ($5,000)" in Subsections A and E.

**The 2001 amendment,** effective July 1, 2001, updated the internal reference in Paragraph A(1); added Subsection D and redesignated the remaining subsection accordingly.

**The 1992 amendment,** effective July 1, 1992, in Subsection A, substituted "Any refund" for "Refunds" and deleted "during any one calendar year" following "($5,000)" in the second sentence, inserted the colon and Paragraph (1) designation, and added Paragraph (2); and substituted "five thousand dollars ($5,000)" for "one thousand dollars ($1,000)" in the first sentence of Subsection D.

**The 1989 amendment,** effective June 16, 1989, in Subsection A, in the first sentence, substituted "secretary or the secretary's delegate" for "director or his delegate" in two places, deleted "with the written approval of the attorney general" preceding "authorize the refund", in the second sentence, deleted "Notwithstanding the above" from the beginning, substituted "more than five thousand dollars" for "less than five thousand dollars", "only with the prior approval" for "without the prior approval" and "through 7-13-15 NMSA 1978" for "through 7-13-16 NMSA 1978" and inserted the language beginning with "except that" and ending with "Oil and Gas Production Equipment Ad Valorem Tax Act"; in Subsections B and C, substituted "the secretary" for "the director or his delegate"; in Subsection D, substituted "department" for "division" in the second sentence; and made minor stylistic changes.

**Secretary decides actions on refund claims.** — Secretary of the Taxation and Revenue Department has discretion to act or refuse to act on refund claims under Sections 7-1-26A and 7-1-29A NMSA 1978. Unisys Corp. v. N.M. Taxation & Revenue Dep't, 1994-NMCA-059, 117 N.M. 609, 874 P.2d 1273.

**Director (secretary) was within his discretion in applying amount wrongfully paid** to the amount he determined to be owing. G.M. Shupe, Inc. v. Bureau of Revenue, 1976-NMCA-040, 89 N.M. 265, 550 P.2d 277, cert. denied, 89 N.M. 321, 551 P.2d 1368.

**No offset of overpayment against prior liability.** — No statute expressly authorizes the taxation and revenue department to apply overpayments of taxes for one reporting period as offsets against underpayments for another prior reporting period. In fact, the legislature has granted the department only the specific authority to credit refunds or overpayments of gas production taxes against future tax payments. The department complied with this provision by allowing taxpayer to net out its overpayment against current tax liabilities on the estimated tax term form when taxpayer filed its amended form reporting an overpayment of taxes for a prior reporting period. Amoco Prod. Co. v. N.M. Taxation & Revenue Dep't, 1994-NMCA-086, 118 N.M. 72, 878 P.2d 1021.

**Calculating interest on underpayment.** — Interest on underpayment of taxes is calculated without regard to receipt by the taxation and revenue department of any overpayment of taxes. The department, once a claim for refund is made, is authorized only to allow a taxpayer claiming a refund for overpayment of gas production taxes to credit the refund against current or future tax liabilities. Amoco Prod. Co. v. N.M. Taxation & Revenue Dep't, 1994-NMCA-086, 118 N.M. 72, 878 P.2d 1021.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 549 to 552; 72 Am. Jur. 2d State and Local Taxation §§ 846, 1064 to 1076.

85 C.J.S. Taxation §§ 910 et seq., 1777 and 1778.

## 7-1-29.1. Awarding of costs and fees.

A. In any administrative or court proceeding that is brought by or against the taxpayer on or after July 1, 2003 in connection with the determination, collection or refund of any tax, interest or penalty for a tax governed by the provisions of the Tax Administration Act, the taxpayer shall be awarded a judgment or a settlement for reasonable administrative costs incurred in connection with an administrative proceeding with the department or the administrative hearings office or reasonable litigation costs incurred in connection with a court proceeding, if the taxpayer is the prevailing party.

B. As used in this section:

(1) "administrative proceeding" means any procedure or other action before the department or the administrative hearings office;

(2) "court proceeding" means any civil action brought in state district court;

(3) "reasonable administrative costs" means:

(a) any administrative fees or similar charges imposed by the department or the administrative hearings office; and

(b) actual charges for: 1) filing fees, court reporter fees, service of process fees and similar expenses; 2) the services of expert witnesses; 3) any study, analysis, report, test or project reasonably necessary for the preparation of the party's case; and 4) fees and costs paid or incurred for the services in connection with the proceeding of attorneys or of certified public accountants who are authorized to practice in the context of an administrative proceeding; and

(4) "reasonable litigation costs" means:

(a) reasonable court costs; and

(b) actual charges for: 1) filing fees, court reporter fees, service of process fees and similar expenses; 2) the services of expert witnesses; 3) any study, analysis, report, test or project reasonably necessary for the preparation of the party's case; and 4) fees and costs paid or incurred for the services of attorneys in connection with the proceeding.

C. For purposes of this section:

(1) the taxpayer is the prevailing party if the taxpayer has:

(a) substantially prevailed with respect to the amount in controversy; or

(b) substantially prevailed with respect to most of the issues involved in the case or the most significant issue or set of issues involved in the case;

(2) the taxpayer shall not be treated as the prevailing party if, prior to July 1, 2015, the department establishes or, on or after July 1, 2015, the hearing officer finds that the position of the department in the proceeding was based upon a reasonable application of the law to the facts of the case. For purposes of this paragraph, the position of the department shall be presumed not to be based upon a reasonable application of the law to the facts of the case if:

(a) the department did not follow applicable published guidance in the proceeding; or

(b) the assessment giving rise to the proceeding is not supported by substantial evidence determined at the time of the issuance of the assessment;

(3) as used in Subparagraph (a) of Paragraph (2) of this subsection, "applicable published guidance" means:

(a) department or administrative hearings office regulations, information releases, instructions, notices, technical advice memoranda and announcements; and

(b) private letter rulings and letters issued by the department to the taxpayer; and

(4) the determination of whether the taxpayer is the prevailing party and the amount of reasonable litigation costs or reasonable administrative costs shall be made by agreement of the parties or:

(a) in the case where the final determination with respect to the tax, interest or penalty is made in an administrative proceeding, by the hearing officer; or

(b) in the case where the final determination is made by the court, the court.

D. An order granting or denying in whole or in part an award for reasonable litigation costs pursuant to Subsection A of this section in a court proceeding may be incorporated as a part of the decision or judgment in the court proceeding and shall be subject to appeal in the same manner as the decision or judgment. A decision or order granting or denying in whole or in part an award for reasonable administrative costs pursuant to Subsection A of this section by a hearing officer shall be reviewable in the same manner as a decision of a hearing officer.

E. No agreement for or award of reasonable administrative costs or reasonable litigation costs in any administrative or court proceeding pursuant to Subsection A of this section shall exceed the lesser of twenty percent of the amount of the settlement or judgment or fifty thousand dollars ($50,000). A taxpayer awarded administrative litigation costs pursuant to this section may not receive an award of attorney fees pursuant to Subsection D of Section 7-1-25 NMSA 1978.

History: 1978 Comp., § 7-1-29.1, enacted by Laws 2003, ch. 398, § 12; 2015, ch. 73, § 18.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, amended the Tax Administration Act to include the administrative hearings office in provisions related to awarding administrative costs and fees; in Subsection A, after "proceeding with the department", added "or the administrative hearings office"; in Subsection B, Paragraph (1), after "department", added "or the administrative hearings office"; in Subsection, B, Paragraph (3)(a), after "department", added "or the administrative hearings office"; in Subsection B, Paragraph (3)(b), after "authorized to practice", deleted "before the department" and added "in the context of an administrative proceeding"; in Subsection C, Paragraph (1)(a), after "amount", added "in"; in Subsection C, Paragraph (2), after "prevailing party if," added "prior to July 1, 2015", after "establishes", added "or, on or after July 1, 2015, the hearing officer finds"; in Subsection C, Paragraph (3)(a), after "department", added "or administrative hearings office"; in Subsection C, Paragraph (4)(a), after "proceeding, by the", deleted "department"; and in Subsection D, after "this section by", deleted "the department" and added "a", and after "decision of", deleted "the department" and added “a”.

## 7-1-29.2. Credit claims.

Any taxpayer who requests approval of a statutory tax credit is deemed to have received such approval if the request has not been granted or denied within one hundred eighty days of the date it was filed. Nothing in this section shall be construed to prevent the department from auditing taxes paid or from assessing taxes owed, including any tax resulting from tax credits found not to be valid.

**History:** Laws 2003, ch. 398, § 10.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 398, § 16 made the act effective on July 1, 2003.

## 7-1-30. Collection of penalties and interest.

Any amount of civil penalty and interest may be collected in the same manner as, and concurrently with, the amount of tax to which it relates, without assessment or separate proceedings of any kind.

**History:** 1953 Comp., § 72-13-44, enacted by Laws 1965, ch. 248, § 32.

**ANNOTATIONS**

**Cross references.** — For interest on deficiencies, *see* 7-1-67 NMSA 1978.

For penalties generally, *see* 7-1-69 to 7-1-71 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 856 to 865, 1068, 1069.

Retroactive effect of statutes relating to interest on or penalties in respect of delinquent taxes, 77 A.L.R. 1034.

Liability to penalty imposed for failure to pay tax of one who in good faith contested its validity, 96 A.L.R. 925, 147 A.L.R. 142.

Penalty for nonpayment of taxes when due as affected by lack of notice to taxpayer, 102 A.L.R. 405.

Doubt as to liability for, or as to person to whom to pay, tax, as affecting liability for penalties and interest, 137 A.L.R. 306.

Time of mailing or time of receipt as determinative of liability for penalty or additional amount for failure to pay tax or license fee within prescribed time, 158 A.L.R. 370.

Debts arising from tax penalties as exceptions to bankruptcy discharge under § 523(a)(7)(A) and (B) of Bankruptcy Code of 1978 (11 U.S.C.A. § 523(a)(7)(A) and (B)), 157 A.L.R. Fed. 313.

85 C.J.S. Taxation §§ 1579 et seq.

## 7-1-31. Seizure of property by levy for collection of taxes.

A. The secretary or secretary's delegate may proceed to collect tax from a delinquent taxpayer by levy upon all property or rights to property of the delinquent taxpayer and convert the property or rights to property to money by appropriate means.

B. A levy is made by taking possession of property pursuant to authority contained in a warrant of levy or by the service, by the secretary or secretary's delegate or any sheriff or certified law enforcement employee of the department of public safety, of the warrant upon the taxpayer or other person in possession of property or rights to property of the taxpayer, upon the taxpayer's employer or upon any person or depositary owing or who will owe money to or holding funds of the taxpayer, ordering the taxpayer or other person to reveal the extent thereof and surrender it to the secretary or secretary's delegate forthwith or agree to surrender it or the proceeds therefrom in the future, but in any case on the terms and conditions stated in the warrant.

C. Upon agreement between the department and a financial institution, the department may serve a warrant of levy on the financial institution in electronic format pursuant to the Electronic Authentication of Documents Act [14-15-1 through 14-15-6 NMSA 1978] and the Uniform Electronic Transactions Act [Chapter 14, Article 16 NMSA 1978].

History: 1953 Comp., § 72-13-45, enacted by Laws 1965, ch. 248, § 33; 1979, ch. 144, § 28; 1993, ch. 242, § 1; 2015, ch. 15, § 1.

## ANNOTATIONS

**The 2015 amendment,** effective July 1, 2015, provided the department of taxation and revenue with the authority to collect delinquent property taxes by serving a warrant of levy on a financial institution in electronic format and expanded the authority to collect delinquent property taxes by allowing any certified law enforcement employee of the department of public safety to serve warrants of levy; in Subsection A, after "property of", deleted "such person and the conversion thereof" and added "the delinquent taxpayer and convert the property or rights to property"; in Subsection B, after "sheriff", added "or certified law enforcement employee of the department of public safety", and after "ordering", deleted "him" and added "the taxpayer or other person"; and added Subsection C.

**The 1993 amendment,** effective July 1, 1993, substituted "secretary or secretary's delegate" for "director or his delegate" in Subsection A and in two places in Subsection B, and inserted "upon the taxpayer's employer" near the middle of Subsection B.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 866 to 880.

Enforceability, against undivided tract, of tax or special assessment levied against part of it at one rate and part at another, 112 A.L.R. 73.

85 C.J.S. Taxation §§ 1032 et seq.

## 7-1-32. Contents of warrant of levy.

A warrant of levy shall:

A. bear on its face a statement of the authority for its service and compelling compliance with its terms, shall be attested by the secretary by electronic signature, if necessary, unless the warrant is served in electronic format upon a financial institution pursuant to the Electronic Authentication of Documents Act [14-15-1 through 14-15-6 NMSA 1978] and the Uniform Electronic Transactions Act [Chapter 14, Article 16 NMSA 1978] and shall bear the seal of the department;

B. identify the taxpayer whose liability for taxes is sought to be enforced, the amount thereof and the date or approximate date on which the tax became due;

C. order the person on whom it is served to reveal the amount of property or rights to property in the person's possession that belong to the taxpayer and the extent of the person's interest therein and to reveal the amount and kind of property or rights to property of the taxpayer that are, to the best of the person's knowledge, in the possession of others;

D. order the person on whom it is served to surrender the property forthwith but may allow the person to agree in writing to surrender the property or the proceeds therefrom on a certain date in the future when the taxpayer's right to it would otherwise mature;

E. order the employer of the taxpayer to surrender wages or salary of the taxpayer in excess of the amount exempt under Section 7-1-36 NMSA 1978 owed by the employer to the taxpayer at the time of service of the levy and that may become owed by the employer to the taxpayer subsequent to the service of the levy until the full amount of the liability stated on the levy is satisfied or until notified by the secretary or the secretary's delegate;

F. state on its face the penalties for willful failure by any person upon whom it is served to comply with its terms; and

G. state that the state of New Mexico claims a lien for the entire amount of tax asserted to be due, including applicable interest and penalties.

History: 1953 Comp., § 72-13-46, enacted by Laws 1965 , ch. 248, § 34; 1979, ch. 144, § 29; 1986, ch. 20, § 19; 1993, ch. 242, § 2; 2015, ch. 15, § 2.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, provided for warrants of levy to be signed electronically except for those warrants of levy served in electronic format upon a

financial institution pursuant to the Electronic Authentication of Documents Act and the Uniform Electronic Transactions Act; in Subsection A, after "secretary", added "by electronic signature, if necessary, unless the warrant is served in electronic formation upon a financial institution pursuant to the Electronic Authentication of Documents Act and the Uniform Electronic Transactions Act"; in Subsection C, deleted "his" and "his own" and added "the person's" in three places; in Subsection D, after "allow", deleted "him" and added "the person"; and in Subsection E, after "levy and", deleted "which" and added "that", and after "become", deleted "owing" and added "owed".

**The 1993 amendment,** effective July 1, 1993, added current Subsection E and redesignated former Subsections E and F as Subsections F and G.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 866, 868.

Use of abbreviations in description of land in tax proceedings, 1 A.L.R. 1228.

Sufficiency of description of property on tax rolls or in tax proceedings, by reference to map, plat or survey, 137 A.L.R. 184.

85 C.J.S. Taxation §§ 1037 to 1048.

## 7-1-33. Successive seizures.

Whenever any property or right to property upon which levy has been made by virtue of Section 7-1-31 NMSA 1978 is not sufficient to satisfy the claim for which levy is made, the secretary or secretary's delegate may thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property or rights to property subject to levy of the person against whom the claim exists, until the amount due from him is fully paid. Successive levies are not necessary in the case of a levy served on an employer of the taxpayer with respect to wages or salary of the taxpayer.

**History:** 1953 Comp., § 72-13-47, enacted by Laws 1965, ch. 248, § 35; 1979, ch. 144, § 30; 1993, ch. 242, § 3.

**ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, substituted "secretary or secretary's delegate" for "director or his delegate" in the first sentence and added the second sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Power to make additional tax levy necessitated by failure of some property owners to pay their proportion of original levy, 79 A.L.R. 1157.

85 C.J.S. Taxation §§ 688, 694, 1037, 1041 et seq.

## 7-1-34. Surrender of property subject to levy; penalty.

A. Any person in possession of or obligated with respect to property or rights to property subject to levy upon which a levy has been made shall surrender the property or rights, or discharge such obligation, to the secretary or the secretary's delegate, except that part of the property or right as is, at the time of such demand, the subject of a bona fide attachment, execution, levy or other similar process, unless the person is entitled to and does redeem it according to the provisions of Section 7-1-47 NMSA 1978.

B. Upon demand of the secretary or the secretary's delegate, any employer owing a taxpayer wages or salary subject to levy upon which a levy has been made shall surrender to the secretary or the secretary's delegate each subsequent pay period that portion of the taxpayer's wages or salary not exempted under Section 7-1-36 NMSA 1978 and not subject to a prior bona fide attachment, execution, levy, garnishment or similar process, until the amount of the levy is satisfied in full or until notified by the secretary or the secretary's delegate. The secretary or secretary's delegate shall notify the employer promptly when the levy has been satisfied.

C. Any person who wrongfully fails or refuses to surrender or redeem, as required by this section, any property or rights to property levied upon, upon demand by the secretary or the secretary's delegate, is liable for a civil penalty in an amount equal to the lesser of the value of the property or rights not so surrendered or the amount of the taxes for the collection of which such levy has been made.

D. Notwithstanding any other provision of law, the surrender by a person in possession of or obligated with respect to property, rights to property or proceeds from the sale or other disposition of property subject to levy upon which a levy has been made by the secretary or the secretary's delegate of such property or rights to property, discharges such obligation to the department. A surrender by a person shall be a defense against the assertion of any obligation or liability to the delinquent taxpayer or any other person with respect to such property or rights to property arising from a surrender or payment.

E. The term "person", as used in this section, includes an officer or employee of a corporation or a member or employee of a partnership, who, as such officer, employee or member, is under a duty to surrender the property or rights to property or to discharge the obligation.

**History:** 1953 Comp., § 72-13-48, enacted by Laws 1965, ch. 248, § 36; 1979, ch. 144, § 31; 1986, ch. 20, § 20; 1993, ch. 242, § 4.

### ANNOTATIONS

**The 1993 amendment,** effective July 1, 1993, deleted "upon demand of the secretary or the secretary's delegate" preceding "surrender the property" in Subsection A; added

current Subsections B and D; redesignated former Subsections B and C as Subsections C and E; substituted "is liable for a civil penalty in an amount equal to the lesser of" for "shall be liable in his own person and estate to the state of New Mexico in a sum equal to", substituted "or the amount" for "but not exceeding the amount" and deleted "together with costs and interests on such sum at the rate specified in Section 7-1-67 NMSA 1978 from the date of such levy" at the end, in Subsection C; and deleted "Subsections A and B of" preceding "this section" in Subsection E.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 85 C.J.S. Taxation §§ 1033 to 1040.

## 7-1-35. Stay of levy.

Levy shall not be made on the property or rights to property of any taxpayer who furnishes security in accordance with the provisions of Section 7-1-54 NMSA 1978. A levy made under authority of Section 7-1-31 NMSA 1978 shall be released as otherwise provided in the Tax Administration Act upon compliance by a taxpayer with the pertinent provisions of Section 7-1-54 NMSA 1978.

**History:** 1953 Comp., § 72-13-49, enacted by Laws 1965, ch. 248, § 37; 1969, ch. 9, § 1.

## 7-1-36. Property exempt from levy.

A. There shall be exempt from levy the money or property of a delinquent taxpayer in a total amount or value not in excess of one thousand dollars ($1,000).

B. In addition to the property exempt under Subsection A of this section, there shall also be exempt from levy on an employer of the taxpayer the greater of the following portions of the taxpayer's disposable earnings:

(1) seventy-five percent of the taxpayer's disposable earnings for any pay period; or

(2) an amount each week equal to forty times the federal minimum hourly wage rate.

The superintendent of the regulation and licensing department shall provide a table giving equivalent exemptions for pay periods of other than one week.

C. As used in this section:

(1) "disposable earnings" means that part of a taxpayer's wages or salary remaining after deducting the amounts that are required by law to be withheld; and

(2) "federal minimum hourly wage" means the current highest federal minimum hourly wage rate for an eight-hour day and a forty-hour week. It is immaterial

whether the employer is exempt under federal law from paying the federal minimum hourly wage rate.

**History:** 1953 Comp., § 72-13-50, enacted by Laws 1965, ch. 248, § 38; 1993, ch. 242, § 5.

**ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, designated the formerly undesignated provision as Subsection A and added Subsections B and C.

**Creditor's assignee entitled to exemption.** — Defendant, as assignee for the benefit of creditors of delinquent corporate taxpayer, is entitled to $1,000 exemption of taxpayer's assets under this section. Regents of N.M. Coll. of Agric. & Mechanic Arts v. Academy of Aviation, Inc., 1971-NMSC-087, 83 N.M. 86, 488 P.2d 343.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 866, 869.

Enforcement against tax-exempt property of tax on nonexempt property or on owner of tax-exempt property, 159 A.L.R. 461.

85 C.J.S. Taxation §§ 1037, 1041 to 1043.

## 7-1-37. Assessment as lien.

A. If any person liable for any tax neglects or refuses to pay the tax after assessment and demand for payment as provided in Section 7-1-17 NMSA 1978 or if any person liable for tax pursuant to Section 7-1-63 NMSA 1978 neglects or refuses to pay after demand has been made, unless and only so long as such a person is entitled to the protection afforded by a valid order of a United States court entered pursuant to Section 362 or 1301 of Title 11 of the United States Code, as amended or renumbered, the amount of the tax shall be a lien in favor of the state upon all property and rights to property of the person.

B. The lien imposed by Subsection A of this section shall arise at the time both assessment and demand, as provided in Section 7-1-17 NMSA 1978, have been made or at the time demand has been made pursuant to Section 7-1-63 NMSA 1978 and shall continue until the liability for payment of the amount demanded is satisfied or extinguished.

C. As against any mortgagee, pledgee, purchaser, judgment creditor, person claiming a lien under Sections 48-2-1 through 48-11-9 NMSA 1978, lienor for value or other encumbrancer for value, the lien imposed by Subsection A of this section shall not be considered to have arisen or have any effect whatever until notice of the lien has been filed as provided in Section 7-1-38 NMSA 1978.

**History:** 1953 Comp., § 72-13-51, enacted by Laws 1965, ch. 248, § 39; 1979, ch. 144, § 32; 1982, ch. 18, § 13; 1993, ch. 242, § 6.

## ANNOTATIONS

**The 1993 amendment,** effective July 1, 1993, substituted "person claiming a lien under Sections 48-2-1 through 48-11-9 NMSA 1978, lienor for value" for "lienor" in Subsection C and made minor stylistic changes in Subsection A.

**Jeopardy assessments become liens on all property** and rights to property of a person when that person neglects or refuses to pay the tax after it has been assessed. Regents of N.M. Coll. of Agric. & Mechanic Arts v. Academy of Aviation, Inc., 1971-NMSC-087, 83 N.M. 86, 488 P.2d 343.

**The requirements of Section 7-1-38 NMSA 1978 must be met** in order to effectuate a lien under this section. In re What D'Ya Call It, Inc., 1986-NMSC-098, 105 N.M. 164, 730 P.2d 467.

**Liens arising upon transfer of liquor license.** — The tax liability referred to in Section 7-1-82 NMSA 1978, governing transfer of a liquor license, may become a lien in favor of the state in the amount of taxes due if the procedures set forth in this section and Section 7-1-38 NMSA 1978 are followed. In re What D'Ya Call It, Inc., 1986-NMSC-098, 105 N.M. 164, 730 P.2d 467 (1986).

**Wholesaler's lien.** — A lien pursuant to former Section 60-6B-3E NMSA 1978, which gives a lien to wholesale creditors of a liquor licensee, has a superpriority status over other lienholders, including the tax lien in favor of the state, unless the latter liens were perfected under Section 7-1-38 NMSA 1978 or under applicable general law prior to the date that the licensee incurred debts owed to wholesale creditors. In re What D'Ya Call It, Inc., 1986-NMSC-098, 105 N.M. 164, 730 P.2d 467.

**Payment may be required prior to transfer of liquor license.** — The state may require payment of delinquent taxes prior to transfer of a liquor license, pursuant to Section 7-1-82 NMSA 1978, where its liens under this section and Section 7-1-38 NMSA 1978 have been foreclosed. First Interstate Bank v. Taxation & Revenue Dep't, 1989-NMCA-067, 108 N.M. 756, 779 P.2d 133, cert. denied, 108 N.M. 771, 779 P.2d 549.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 891 to 897.

Lien for tax imposed by one taxing unit as affected by lien or sale for tax imposed by another taxing unit of same state, 135 A.L.R. 1464.

85 C.J.S. Taxation §§ 804 to 842.

## 7-1-38. Notice of lien.

A notice of the lien provided for in Section 7-1-37 NMSA 1978 may be recorded in any county in the state in the tax lien index established by Sections 48-1-1 through 48-1-7 NMSA 1978 and a copy thereof shall be sent to the taxpayer affected. Any county clerk to whom the notices are presented shall record them as requested without charge. The notice of lien shall identify the taxpayer whose liability for taxes is sought to be enforced and the date or approximate date on which the tax became due and shall state that New Mexico claims a lien for the entire amount of tax asserted to be due, including applicable interest and penalties. Recording of the notice of lien shall be effective as to all property and rights to property of the taxpayer.

**History:** 1953 Comp., § 72-13-52, enacted by Laws 1965, ch. 248, § 40; 1979, ch. 144, § 33; 1996, ch. 15, § 6.

**ANNOTATIONS**

**The 1996 amendment,** effective July 1, 1996, made stylistic changes in the second and third sentences, and substituted "all property and rights to property of the taxpayer" for "both real and tangible personal property" at the end of the section.

**Requirements of this section must be met** to effectuate a lien under Section 7-1-37 NMSA 1978. In re What D'Ya Call It, Inc., 1986-NMSC-098, 105 N.M. 164, 730 P.2d 467.

**Liens arising upon transfer of liquor license.** — The tax liability referred to in Section 7-1-82 NMSA 1978, governing transfer of a liquor license, may become a lien in favor of the state in the amount of taxes due if the procedures set forth in Section 7-1-37 NMSA 1978 and this section are followed. In re What D'Ya Call It, Inc., 1986-NMSC-098, 105 N.M. 164, 730 P.2d 467.

**Wholesaler's lien.** — A lien pursuant to former Section 60-6B-3E NMSA 1978, which gives a lien to wholesale creditors of a liquor licensee, has a superpriority status over other lienholders, including the tax lien in favor of the state, unless the latter liens were perfected under this section or under applicable general law prior to the date that the licensee incurred debts owed to wholesale creditors. In re What D'Ya Call It, Inc., 1986-NMSC-098, 105 N.M. 164, 730 P.2d 467.

**Payment may be required prior to transfer of liquor license.** — The state may require payment of delinquent taxes prior to transfer of a liquor license, pursuant to Section 7-1-82 NMSA 1978, where its liens under this section and Section 7-1-37 NMSA 1978 have been foreclosed. First Interstate Bank v. Taxation & Revenue Dep't, 1989-NMCA-067, 108 N.M. 756, 779 P.2d 133, cert. denied, 108 N.M. 771, 779 P.2d 549.

**The object of the notice of tax lien** is to give constructive notice to mortgagees, pledgees, purchasers, and other potential creditors. In re Hill, 166 Bankr. 444 (Bankr. D.N.M. 1993).

**Priority of tax lien.** — Liquor wholesalers have a superpriority lien over all lien holders, with the exception of the state taxation and revenue department, if the tax lien is perfected pursuant to this section. The tax lien is effective as of the date the notice is filed. In re D & M, Inc., 114 Bankr. 274 (Bankr. D.N.M. 1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 891 to 894.

Sufficiency of designation of taxpayer in recorded notice of federal tax lien, 3 A.L.R.3d 633.

85 C.J.S. Taxation §§ 824 to 827.

## 7-1-39. Release or extinguishment of lien; limitation on actions to enforce lien.

A. When any substantial part of the amount of tax due from a taxpayer is paid, the department shall immediately file, in the same county in which a notice of lien was filed, and in the same records, a document completely or partially releasing the lien. The county clerk to whom such a document is presented shall record it without charge.

B. The department may file, in the same county as the notice of lien was filed, a document releasing or partially releasing any lien filed in accordance with Section 7-1-38 NMSA 1978 when the filing of the lien was premature or did not follow requirements of law or when release or partial release would facilitate collection of taxes due. The county clerk to whom the document is presented shall record it without charge.

C. In all cases when a notice of lien for taxes, penalties and interest has been filed under Section 7-1-38 NMSA 1978 and a period of ten years has passed from the date the lien was filed, as shown on the notice of lien, the taxes, penalties and interest for which the lien is claimed shall be conclusively presumed to have been paid and the lien is thereby extinguished. No action shall be brought to enforce any lien extinguished in accordance with this subsection.

**History:** 1953 Comp., § 72-13-53, enacted by Laws 1965, ch. 248, § 41; 1972, ch. 73, § 1; 1979, ch. 144, § 34; 1985, ch. 58, § 1; 1986, ch. 20, § 21; 1997, ch. 67, § 4; 2013, ch. 214, § 1.

**ANNOTATIONS**

**The 2013 amendment,** effective June 14, 2013, removed the notice requirement of the expiration of tax liens; and in Subsection C, in the first sentence, after "presumed to

have been paid", deleted "The county clerk shall enter in his records a notice including the words ‘canceled by act of legislature’".

**The 1997 amendment,** effective July 1, 1997, added Subsection B, redesignated former Subsection B as Subsection C, and made a minor stylistic change.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 895, 896.

Effect of receiver's failure to discharge tax liens, 39 A.L.R. 1415.

Constitutionality, construction and application of statute permitting release of part of property subject to tax liens or special assessments, 100 A.L.R. 418.

Applicability of general statute of limitations to real estate tax lien foreclosure action, 59 A.L.R.2d 1144.

85 C.J.S. Taxation §§ 831 to 833.

## 7-1-40. Foreclosure of lien.

The liens provided for in the Tax Administration Act may be foreclosed or satisfied by seizure and sale of property or rights to property as provided in the Tax Administration Act, except the lien provided for in Section 7-1-47 NMSA 1978.

**History:** 1953 Comp., § 72-13-54, enacted by Laws 1965, ch. 248, § 42; 1979, ch. 144, § 35.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 896, 897, 904 to 915.

Persons in possession of real property as affected by decree foreclosing tax lien, upon service by publication, or in a proceeding against unknown owners, 128 A.L.R. 114.

Constitutionality, construction and application of statutes providing for impleading other taxing units in suit by taxing unit for foreclosure of tax lien and the sale of the property free from lien of taxes due to such impleaded units, 134 A.L.R. 1286.

Constitutional validity of statute providing for in rem or summary foreclosure of delinquent tax liens on real property, 160 A.L.R. 1026.

85 C.J.S. Taxation §§ 1133 to 1167.

## 7-1-41. Notice of seizure.

As soon as practicable after the levy, the secretary or the secretary's delegate shall notify the owner thereof of the amount and kind of property seized and of the total amount demanded in payment of tax.

**History:** 1953 Comp., § 72-13-55, enacted by Laws 1965, ch. 248, § 43; 1979, ch. 144, § 36; 2001, ch. 56, § 5.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, substituted "secretary or the secretary's delegate" for "director or his delegate".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 868, 916 to 930.

Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party, 45 A.L.R.4th 447.

84 C.J.S. Taxation §§ 359, 605; 85 C.J.S. Taxation § 773.

## 7-1-42. Notice of sale.

As soon as practicable after the levy, the secretary or the secretary's delegate shall decide on a time and place for the sale of the property, shall make a diligent inquiry as to the identity and whereabouts of the owner of the property and persons having an interest therein and shall notify the owner and persons having an interest therein of the time and place for the sale. The fact that any person entitled thereto does not receive the notice provided for in this section does not affect the validity of the sale.

**History:** 1953 Comp., § 72-13-56, enacted by Laws 1965, ch. 248, § 44; 1979, ch. 144, § 37; 2001, ch. 56, § 6.

**ANNOTATIONS**

**Cross references.** — For publication of notice generally, *see* 14-11-1 to 14-11-13 NMSA 1978.

**The 2001 amendment,** effective July 1, 2001, substituted "secretary or the secretary's delegate" for "director or his delegate".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 916 to 930.

Effect of misnomer of landowner or delinquent taxpayer in notice, advertisement, etc., of tax foreclosure or sale, 43 A.L.R.2d 967.

Validity of notice of tax sale or of tax sale proceeding which fails to state tax year or kind or type of taxes covered by tax assessments, 43 A.L.R.2d 988.

What is "public place" within requirements as to posting of notices, 90 A.L.R.2d 1210.

Inclusion or exclusion of first and last days in computing the time for performance of an act or event which must take place a certain number of days before a known future date, 98 A.L.R.2d 1331.

Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party, 45 A.L.R.4th 447.

## 7-1-43. Sale of indivisible property.

If any property of the taxpayer subject to levy is not divisible so as to enable the secretary or the secretary's delegate by sale of a part thereof to raise the whole amount of the tax and expenses, the whole of the taxpayer's interest in the property shall be sold but is always subject to redemption before sale according to the provisions of Section 7-1-47 NMSA 1978.

**History:** 1953 Comp., § 72-13-57, enacted by Laws 1965, ch. 248, § 45; 1979, ch. 144, § 38; 2001, ch. 56, § 7.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, substituted "secretary or the secretary's delegate" for "director or his delegate".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation § 938.

Lump-sum assessment for taxes on public improvement against property owned by cotenants in undivided shares, 80 A.L.R. 862.

Interest of spouse in estate by entireties as subject to satisfaction of his or her individual debt, 75 A.L.R.2d 1172.

85 C.J.S. Taxation § 1186.

## 7-1-44. Requirements of sale.

No sale of imperishable property shall be held until after the expiration of thirty days from the date of the levy thereon, and no sale of imperishable property shall be held until after publication of notice thereof in a newspaper of general circulation in the county wherein the property was located when levied upon once each week for three successive weeks stating the time and place of the sale and describing the property to

be sold. Perishable property may be sold immediately after seizure without publication or notice of the sale. The department shall make special efforts to give notice of the sale to persons with a particular interest in special property and shall, apart from the requirements stated above, advertise the sale in a manner appropriate to the kind of property to be sold.

**History:** 1953 Comp., § 72-13-58, enacted by Laws 1965, ch. 248, § 46; 1971, ch. 276, § 10; 1979, ch. 144, § 39; 1986, ch. 20, § 22.

**ANNOTATIONS**

**Cross references. —** For publication of notice generally, *see* 14-11-1 to 14-11-13 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 72 Am. Jur. 2d State and Local Taxation §§ 908 to 910.

Use of abbreviations in description of land in tax proceedings, 1 A.L.R. 1228.

Sufficiency of description of land in notice of tax sale, 67 A.L.R. 890.

Failure of advertisement in judicial proceeding for sale of land for delinquent taxes on foreclosure of tax lien, to describe lands affected, as contrary to due process of law or other constitutional objection, 107 A.L.R. 285.

Sufficiency of description of property on tax rolls or in tax proceedings, by reference to map, plat or survey, 137 A.L.R. 184.

Effect of misnomer of landowner on delinquent taxpayer in notice, advertisement, etc., of tax foreclosure or sale, 43 A.L.R.2d 967.

Validity of notice of tax sale or of tax sale proceeding which fails to state tax year or kind or type of taxes covered by tax assessments, 43 A.L.R.2d 988.

85 C.J.S. Taxation §§ 1108 to 1112, 1179 to 1182.

## 7-1-45. Manner of sale or conversion to money.

All property levied upon, not consisting of money, shall be sold at public auction at one o'clock in the afternoon on the steps or in front of the courthouse of the county in which the property was located when levied upon or may be consigned to an auctioneer for sale. Payment may be accepted only in full and immediately after the acceptance of a bid for the property. Stocks, bonds, securities and similar property may be negotiated or surrendered for money in accordance with uniform regulations issued by the secretary, notwithstanding the above.

**History:** 1953 Comp., § 72-13-59, enacted by Laws 1965, ch. 248, § 47; 1979, ch. 144, § 40; 2001, ch. 56, § 8.

**ANNOTATIONS**

**Cross references.** — For auctions generally, *see* 61-16-1 and 61-16-2 NMSA 1978.

**The 2001 amendment,** effective July 1, 2001, substituted "secretary" for "director" at the end of the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 931 to 939.

Validity of judicial, execution, tax or other public sale as affected by the particular point in courthouse or other place identified by notice, or designated by statute or by mortgage or trust deed, at which the sale was made, or by indefiniteness of notice as regards that point, 120 A.L.R. 660.

What constitutes "public sale," 4 A.L.R.2d 575.

85 C.J.S. Taxation §§ 1178 to 1194.

## 7-1-46. Minimum prices.

Before the sale, the secretary or the secretary's delegate shall determine a minimum price for which the property shall be sold, and if no person offers for the property at the sale the amount of the minimum price, the property shall not be sold but the sale shall be readvertised and held at a later time. In determining the minimum price, the secretary or the secretary's delegate shall take into account and determine the expense of making the levy and sale.

**History:** 1953 Comp., § 72-13-60, enacted by Laws 1965, ch. 248, § 48; 1979, ch. 144, § 41; 2001, ch. 56, § 9.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, substituted "secretary or the secretary's delegate" for "director or his delegate" in two places.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 933, 934.

Sale of property at tax sale for more or less than the amount of taxes, penalties and costs as affecting its validity, 97 A.L.R. 842, 147 A.L.R. 1141.

Constitutionality of statutes authorizing tax sale or resale for less than the amount of the taxes due, 155 A.L.R. 1177.

85 C.J.S. Taxation §§ 1183 to 1185.

## 7-1-47. Redemption before sale.

Any person whose property has been levied upon shall have the right to pay the amount due, together with the expenses of the proceeding, or furnish acceptable security for the payment thereof according to the provisions of Section 7-1-54 NMSA 1978 to the department at any time prior to the sale thereof, and upon payment or furnishing of security, the secretary or the secretary's delegate shall restore the property to that person, and all further proceedings in connection with the levy on the property shall cease from the time of the payment. Any person who has a sufficient interest in property or rights to property levied upon to entitle the person to redeem it from sale, according to the provisions of this section, who does pay the amount due and accomplishes the redemption shall have a lien against the property in the amount paid and may file a notice thereof in the records of any county in the state in which the property is located and may foreclose the lien as provided by law.

**History:** 1953 Comp., § 72-13-61, enacted by Laws 1965, ch. 248, § 49; 1979, ch. 144, § 42; 2001, ch. 56, § 10.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, substituted "to the department" for "to the director or his delegate" following "NMSA 1978"; and substituted "secretary or the secretary's delegate" for "director or his delegate".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 988 to 1030.

Constitutionality of statute extending period for redemption from judicial or tax sale, or sale upon mortgage foreclosure, 1 A.L.R. 143, 38 A.L.R. 229, 89 A.L.R. 966.

Right after redemption from tax sale or forfeiture to maintain action for trespass committed between sale or forfeiture and redemption, 33 A.L.R. 302.

Right of person under disability to redeem from tax sale, 65 A.L.R. 582, 159 A.L.R. 1467.

Payment of tax or redemption from tax sale by public officer for benefit of owner, 66 A.L.R. 1035.

Necessity and sufficiency of statement in notice of application for tax deed, or notice to redeem from tax sale, as regards time for redemption, 82 A.L.R. 502.

Right and remedy of mortgagee who for the protection of his security pays taxes on, or redeems from tax sale of, mortgaged property, 84 A.L.R. 1366, 123 A.L.R. 1248.

Judgment as lien on judgment debtor's equity of redemption in land sold for taxes, 91 A.L.R. 647.

Erroneous or incomplete information by public officials, or refusal to give information, as excusing taxpayer's failure to redeem within required time, 134 A.L.R. 1299, 21 A.L.R.2d 1273.

Refusal of tender, made under protest, of amount required for redemption from tax sale, 142 A.L.R. 1198.

Constitutionality of provision for service by publication of notice of proceeding by purchaser at tax sale to foreclose delinquent owner's right of redemption, or of other proceeding to perfect tax purchaser's title, 145 A.L.R. 597.

Constitutionality, construction and application of statutes providing for partial or proportional redemption from tax sale of land, 145 A.L.R. 1328.

Who entitled to rents and profits, or rental value, during the redemption period following tax sale, 147 A.L.R. 1084.

Retroactive application, to previous sales, of statutes reducing period of redemption from tax sales, as unconstitutional impairment of contract obligations, 147 A.L.R. 1123.

Sufficiency of tax redemption notice which includes more than one tax assessment for which land was sold, or more than one tract of land, 155 A.L.R. 1198.

One in adverse possession as within class of persons entitled to redeem from tax sale, 164 A.L.R. 1285.

What constitutes "execution" of tax deed beginning or ending period for redemption from tax sale, 166 A.L.R. 853.

Holder of tax certificate as affected by public official's waiver of, or failure to require, compliance with conditions of redemption, 21 A.L.R.2d 1273.

Provisions of Soldiers' and Sailors' Civil Relief Act relating to taxation of property of military personnel, 32 A.L.R.2d 618.

Who may redeem, from a tax foreclosure or sale, property to which title or record ownership is held by corporation, 54 A.L.R.2d 1172.

Applicability of tax redemption statutes to separate mineral estates, 56 A.L.R.2d 621.

Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party, 45 A.L.R.4th 447.

85 C.J.S. Taxation §§ 1242 et seq.

## 7-1-48. Documents of title.

In case property is sold as above provided, the department, after payment for the property is received, shall prepare and deliver to the purchaser thereof a certificate of sale, in the case of personalty, or, in the case of realty, a deed, in a form as the secretary shall by regulation prescribe. Such documents of title shall recite the authority for the transaction, the date of the sale, the interest in the property that is conveyed and the price paid therefor.

**History:** 1953 Comp., § 72-13-62, enacted by Laws 1965, ch. 248, § 50; 1979, ch. 144, § 43; 2001, ch. 56, § 11.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, substituted "department" for "director or his delegate" and "secretary" for "director".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 973 to 987.

Necessity and sufficiency of statement in notice of application for tax deed, or notice to redeem from tax sale, as regards time for redemption, 82 A.L.R. 520.

Payment, tender or deposit of tax as condition of injunction against issuance of tax deed upon ground that it had become barred by lapse of time or that the property had been redeemed, 134 A.L.R. 543.

85 C.J.S. Taxation §§ 1354 et seq.

## 7-1-49. Legal effect of certificate of sale.

In all cases of sale of property other than real property, the certificate of sale provided for in Section 7-1-48 NMSA 1978 shall:

A. be prima facie evidence of the right of the department to make the sale and conclusive evidence of the regularity of the proceedings in making the sale;

B. transfer to the purchaser all right, title and interest of the delinquent taxpayer in and to the property sold, subject to all outstanding prior interests and encumbrances of record and free of any subsequent encumbrance;

C. if such property consists of stock certificates, be notice, when received, to any corporation, company or association of such transfer and be authority to such corporation, company or association to record the transfer on its books and records in the same manner as if the stock certificates were transferred or assigned by the record owner;

D. if the subject of sale is securities or other evidences of debt, be a good and valid receipt to the person holding the same, as against any person holding or claiming to hold possession of the securities or other evidences of debt; and

E. if such property consists of a motor vehicle as represented by its title, be notice, when received, to any public official charged with the registration of title to motor vehicles of the transfer and be authority to that official to record the transfer on the official's books and records in the same manner as if the certificate of title to the motor vehicle were transferred or assigned by the record owner.

**History:** 1953 Comp., § 72-13-63, enacted by Laws 1965, ch. 248, § 51; 1979, ch. 144, § 44; 2001, ch. 56, § 12.

## ANNOTATIONS

**Cross references.** — For records and recording generally, *see* 14-1-1 NMSA 1978 et seq.

For record of shareholders of corporation, *see* 53-11-50 NMSA 1978.

For purchase of investment securities generally, *see* 55-8-301 NMSA 1978 et seq.

For registration, certificates of title and transfers of motor vehicles, *see* 66-3-2, 66-3-3 and 66-3-9 NMSA 1978.

**The 2001 amendment,** effective July 1, 2001, in Subsection A, substituted "department" for "director or his delegate" and "the proceedings" for "his proceedings"; and substituted "the official's books" for "his books" in Subsection E.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Right of public officer to purchase tax certificate or tax titles, 5 A.L.R. 969.

Right of holder of tax title or certificate of sale to reimbursement by taxing authorities where sale proves invalid, 77 A.L.R. 824, 116 A.L.R. 1408.

Statutory enactment or repeal subsequent to tax sale or issuance of tax certificates as affecting rights of holders of tax certificates or purchasers at tax sale, 111 A.L.R. 237.

Doctrine of constructive trust or unjust enrichment as applicable between owner and one who fraudulently procures tax certificates, 175 A.L.R. 700.

Effect of certificate, statement (or refusal thereof), or error by tax collector or other public official regarding unpaid taxes or assessments against specific property, 21 A.L.R.2d 1273.

Void tax deed, tax sale certificate, and the like, as constituting color of title, 38 A.L.R.2d 986.

## 7-1-50. Legal effect of deed to real property.

In the case of the sale of real property:

A. the deed of sale given pursuant to Section 7-1-48 NMSA 1978 shall be prima facie evidence of the facts therein stated;

B. if the proceedings have been substantially in accordance with the provisions of law, the deed shall be considered and operate as a conveyance of all the right, title and interest of the delinquent taxpayer in and to the real property thus sold at the time the notice of lien was filed as provided in Section 7-1-38 NMSA 1978 or immediately before the sale, whichever is earlier; and

C. neither the taxpayer nor anyone claiming through or under him shall bring an action after one year from the date of sale to challenge the conveyance.

**History:** 1953 Comp., § 72-13-64, enacted by Laws 1965, ch. 248, § 52; 1979, ch. 144, § 45.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 982 to 987.

Tax deed and recitals therein as evidence of regularity of tax proceedings as to advertising and notice of sale, and as to time, manner and place of sale, 30 A.L.R. 8, 88 A.L.R. 264.

Necessity of recording tax deed to protect title as against interest derived from former owner, 65 A.L.R. 1015.

What informalities, irregularities or defects in respect to the execution of a tax deed prevent the running of the statute of limitations or period of adverse possession, 113 A.L.R. 1343.

Tax title or deed as subject to attack for want of notice of application for tax deed or of expiration of redemption period, where a statute makes tax deed conclusive evidence of matters preliminary to its issuance or limits attack thereon to specified grounds or exempts deed from attack for procedural irregularities or omissions, 134 A.L.R. 796.

What constitutes "execution" of tax deed beginning or ending period for redemption from tax sale, 166 A.L.R. 853.

Statutory limitation of period for attack on tax deed as affected by failure to comply with statutory requirement as to notice before tax deed, 5 A.L.R.2d 1021.

Void tax deed, tax sale certificate, and the like, as constituting color of title, 38 A.L.R.2d 986.

Property owner's liability for unpaid taxes following acquisition of property by another at tax sale, 100 A.L.R.3d 593.

85 C.J.S. Taxation §§ 1444 et seq.

## 7-1-51. Proceeds of levy and sale.

A. Money realized by levy or sale under provision of the Tax Administration Act shall be first applied against the expenses of the proceedings;

B. The amount, if any, remaining shall then be applied to the liability for tax in respect of which the levy was made; and

C. The balance, if any, remaining shall be returned to a person legally entitled thereto.

**History:** 1953 Comp., § 72-13-65, enacted by Laws 1965, ch. 248, § 53.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation § 911.

85 C.J.S. Taxation §§ 1197 et seq.

## 7-1-52. Release of levy.

It shall be lawful for the secretary or the secretary's delegate, under regulations prescribed by the secretary, to release the levy upon all or part of the property or rights to property levied upon if the secretary or the secretary's delegate determines that such action will facilitate the collection of the liability, but the release shall not operate to prevent any subsequent levy.

**History:** 1953 Comp., § 72-13-66, enacted by Laws 1965, ch. 248, § 54; 1979, ch. 144, § 46; 2001, ch. 56, § 13.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, substituted "secretary or the secretary's delegate" for "director or his delegate" in two places, and substituted "secretary" for "director".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation § 215; 72 Am. Jur. 2d State and Local Taxation §§ 895, 896.

Effect of receiver's failure to discharge tax liens, 39 A.L.R. 1415.

Constitutionality, construction and application of statute permitting release of part of property subject to tax liens or special assessments, 100 A.L.R. 418.

85 C.J.S. Taxation §§ 832, 907 to 909, 1007.

## 7-1-53. Enjoining delinquent taxpayer from continuing in business.

A. To ensure or to compel payment of taxes and to aid in the enforcement of the provisions of the Tax Administration Act, the secretary may apply to a district court of this state to have any delinquent taxpayer or person who may be or may become liable for payment of any tax enjoined from engaging in business until the delinquent taxpayer ceases to be a delinquent taxpayer or until the delinquent taxpayer or person complies with other requirements, reasonably necessary to protect the revenues of the state, placed on the delinquent taxpayer or person by the secretary.

B. Upon application to a court for an injunction against a delinquent taxpayer, the court may forthwith issue an order temporarily restraining the delinquent taxpayer from doing business. The court shall hear the matter within fifteen days. Upon written request of the taxpayer, the hearing may be held earlier. Upon a showing by a preponderance of the evidence that the taxpayer is delinquent and has been given notice of the hearing as required by law, the court may enjoin the taxpayer from engaging in business in New Mexico until the taxpayer ceases to be a delinquent taxpayer. Upon issuing an injunction, the court may also order the business premises of the taxpayer sealed by the sheriff and may allow the taxpayer access thereto only upon approval of the court.

C. Upon application to a court for an injunction against a person other than a delinquent taxpayer, the court:

(1) may issue an order temporarily restraining the person other than the delinquent taxpayer from engaging in business;

(2) shall hear the matter within fifteen days, except that the hearing may be held earlier if requested in writing by the person who is the subject of the temporary restraining order; and

(3) may without delay issue an injunction to the taxpayer in terms commanding the person who is the subject of the temporary restraining order to refrain

from engaging in business until that person complies in full with the demand of the department to furnish security, if there is a showing that:

(a) the person who is the subject of the temporary restraining order has been given notice of the hearing for the injunction as required by law;

(b) a demand by the department has been made upon the taxpayer to furnish security;

(c) the taxpayer has not furnished security; and

(d) the secretary considers the collection from the person primarily responsible for the total amount of tax due or reasonably expected to become due to be in jeopardy.

D. A temporary restraining order or injunction shall not issue by provision of this section against any person who has furnished security in accordance with the provisions of Section 7-1-54 NMSA 1978. Upon a showing to the court by any person against whom a temporary restraining order or writ of injunction has issued by provision of this section that that person has furnished security in accordance with the provisions of Section 7-1-54 NMSA 1978, the court shall dissolve or set aside the temporary restraining order or injunction.

**History:** 1953 Comp., § 72-13-67, enacted by Laws 1965, ch. 248, § 55; 1979, ch. 144, § 47; 2001, ch. 56, § 14; 2003, ch. 439, § 5.

**ANNOTATIONS**

**The 2003 amendment,** effective July 1, 2003, rewrote the section.

**The 2001 amendment,** effective July 1, 2001, substituted "secretary" for "director" throughout the section, in Subsection A, substituted "the delinquent taxpayer ceases" for "he ceases", substituted "the delinquent taxpayer or person complies" for "he complies" and substituted "placed on the delinquent taxpayer or person by the secretary" for "placed on him by the director"; in Subsection B, substituted "restraining the delinquent taxpayer" for "restraining him" and substituted "the taxpayer" for "he" or "him" throughout the subsection; and substituted "department" for "director" in Paragraph C(4).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Payment of taxes to prevent closing of, or interference with, business as involuntary so as to permit recovery, 80 A.L.R.2d 1040.

## 7-1-54. Security for payment of tax.

A. Whenever it is necessary to ensure payment of any tax due or reasonably expected to become due, the department is authorized to require or allow any person subject to the provisions of the Tax Administration Act to furnish an acceptable surety bond in an appropriate amount, payable to the state and conditioned upon the payment to the state of the taxes therein identified on a date no later than that on which his liability for the payment thereof becomes conclusive, or to furnish other acceptable security in an appropriate amount and to require any person to furnish additional security as becomes necessary.

B. If, after notice of a requirement that he furnish security, any person neglects or refuses to comply, the department may demand of him by certified mail or in person that he furnish security in a stated amount. Upon the failure of any person to comply within ten days of the date of the making of such demand upon him for the furnishing of security, the secretary may institute a proceeding to enjoin him from doing business as provided in Section 7-1-53 NMSA 1978.

C. When a serious and immediate risk exists that an amount of tax due or reasonably expected to become due will not be paid, the secretary may require any person liable or prospectively liable for tax to furnish security as otherwise provided in the Tax Administration Act, and, upon a refusal by the person immediately to comply with the requirement, the secretary may without further notice of any kind apply to any district court of the state for an injunction as provided in Section 7-1-53 NMSA 1978.

D. The secretary may require taxpayers who protest, in accordance with Section 7-1-24 NMSA 1978, an assessment or the payment of any tax administered by the department under Subsection B of Section 7-1-2 NMSA 1978 to furnish security pursuant to this section with respect to amounts in excess of two hundred thousand dollars ($200,000) whenever the total amount protested, whether by a single protest or a series of protests by a single taxpayer with respect to one or more tax acts administered by the department under Subsection B of Section 7-1-2 NMSA 1978, exceeds two hundred thousand dollars ($200,000). If the taxpayer fails to provide security as required by this subsection, the department may take all appropriate actions authorized by the Tax Administration Act to collect the amount assessed, provided that any proceeds collected shall be held as the security required by this subsection until the protest is resolved.

**History:** 1953 Comp., § 72-13-68, enacted by Laws 1965, ch. 248, § 56; 1971, ch. 276, § 11; 1979, ch. 144, § 48; 1985, ch. 65, § 17; 1986, ch. 20, § 23.

## ANNOTATIONS

**Cross references. —** For redemption of property before sale, *see* 7-1-47 NMSA 1978.

For when and to whom surety bonds are payable, *see* 7-1-57 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation § 1094.

Bond as condition of injunction in suits by or in interest of state or other political unit, or taxpayer, 83 A.L.R. 205.

Constitutionality, construction and application of statutes requiring bond or security for costs and expenses in taxpayers' action, 41 A.L.R.5th 47.

Constitutionality, construction, and application of statutes requiring bond or other security in taxpayers' action, 41 A.L.R.5th 47.

## 7-1-55. Contractor's bond for gross receipts; tax; penalty.

A. A person engaged in the construction business who does not have a principal place of business in New Mexico and who enters into a prime construction contract to be performed in this state shall, at the time such contract is entered into, furnish the secretary or the secretary's delegate with a surety bond, or other acceptable security, in a sum equivalent to the gross receipts to be paid under the contract multiplied by the sum of the applicable rate of the gross receipts tax imposed by Section 7-9-4 NMSA 1978 plus the applicable rate or rates of tax imposed pursuant to local option gross receipts taxes to secure payment of the tax imposed on the gross receipts from the contract and shall obtain a certificate from the secretary or the secretary's delegate that the requirements of this subsection have been met.

B. If the total sum to be paid under the contract is changed by ten percent or more subsequent to the date the surety bond or other acceptable security is furnished to the secretary or the secretary's delegate, such person shall increase or decrease, as the case may be, the amount of the bond or security within fourteen days after the change.

C. If a person fails to comply with Subsection A or B of this section, the secretary or the secretary's delegate:

(1) may demand of the person by certified mail or in person that the person comply. Upon the failure of the person to comply within ten days of the date of the mailing of such demand, the secretary may institute a proceeding to enjoin the person from doing business as provided in Section 7-1-53 NMSA 1978; or

(2) may, when a serious and immediate risk exists that an amount of tax due or reasonably expected to become due from the person on gross receipts from a prime construction contract will not be paid, request the person to comply with Subsections A and B of this section, and, upon failure immediately to comply, the secretary may, without further notice of any kind, apply to any district court of the state for an injunction as provided in Section 7-1-53 NMSA 1978.

D. Subsections A, B and C of this section shall not apply if the total gross receipts to be paid under the construction contract, including any change in such amount, are less than fifty thousand dollars ($50,000).

E. As used in this section, "construction" shall have the meaning set forth in Section 7-9-3.4 NMSA 1978 and "engaging in business" shall have the meaning set forth in Section 7-9-3.3 NMSA 1978.

F. A municipality or other political subdivision of the state or any agency of the state shall not issue a building or other construction permit to any person subject to the requirements of Subsection A of this section without first having been furnished by the construction contractor with the certificate from the secretary or the secretary's delegate specified in Subsection A of this section. Any person who issues any such permit before receiving the certificate shall be deemed guilty of a misdemeanor and, upon conviction, be fined not less than fifty dollars ($50.00) nor more than one hundred dollars ($100) for each offense.

**History:** 1953 Comp., § 72-13-68.1, enacted by Laws 1975, ch. 251, § 3; 1979, ch. 144, § 49; 1986, ch. 20, § 24; 1992, ch. 55, § 13; 2003, ch. 272, § 1.

**ANNOTATIONS**

**Cross references.** — For when and to whom surety bonds payable, *see* 7-1-57 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, substituted "the" for "any" following "the failure of" in Paragraph C(1) and rewrote Subsection E.

**The 1992 amendment,** effective July 1, 1992, substituted "local option gross receipts taxes" for "Sections 7-19-1 through 7-21-7 NMSA 1978" near the middle of Subsection A.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — State or local government's liability to subcontractors, laborers, or materialmen for failure to require general contractor to post bond, 54 A.L.R.5th 649.

## 7-1-56. Sale of or proceedings against security.

If liability for any tax for the payment of which security has been furnished becomes conclusive, the department may:

A. redeem for cash or, as specified in the Tax Administration Act for sale of property levied upon, sell such security; or

B. compel the surety directly to discharge the liability for payment of the principal debtor by serving demand upon him therefor.

**History:** 1953 Comp., § 72-13-69, enacted by Laws 1965, ch. 248, § 57; 1979, ch. 144, § 50; 2001, ch. 56, § 15.

**ANNOTATIONS**

**Cross references.** — For sale of property for taxes generally, *see* 7-1-42 to 7-1-52 NMSA 1978.

**The 2001 amendment,** effective July 1, 2001, substituted "department" for "director or his delegate" in the introductory language of the section.

## 7-1-57. Surety bonds.

Surety bonds accepted by the secretary as security in compliance with the provisions of Sections 7-1-54 and 7-1-55 NMSA 1978 shall be payable to the state of New Mexico upon demand by the secretary or the secretary's delegate and a showing to the surety that the principal debtor is a delinquent taxpayer.

**History:** 1953 Comp., § 72-13-70, enacted by Laws 1965, ch. 248, § 58; 1970, ch. 15, § 1; 1975, ch. 251, § 4; 1979, ch. 144, § 51; 2001, ch. 56, § 16.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, substituted "secretary" for "director" and "secretary or the secretary's delegate" for "director or his delegate".

## 7-1-58. Permanence of tax debt; civil actions to collect tax.

The total amount of all taxes due and assessed is a personal debt of the taxpayer to the state of New Mexico until paid and may be collected by civil action to that end commenced subject to the limitations in Section 7-1-19 NMSA 1978 by the secretary or attorney general in district court or in federal courts. Final judgments for taxes may be enforced in appropriate courts of other states by the secretary or the attorney general pursuant to agreement between the other state and this state or by attorneys or other agents in that state retained by the department or the attorney general. This remedy is in addition to any other remedy provided by law.

**History:** 1953 Comp., § 72-13-71, enacted by Laws 1965, ch. 248, § 59; 1971, ch. 32, § 2; 1979, ch. 144, § 52; 1992, ch. 55, § 14.

**ANNOTATIONS**

**The 1992 amendment,** effective July 1, 1992, deleted "or paid over" following "paid" in the first sentence and substituted all of the present language of that sentence following "commenced" for "by the director or attorney general in district court at any time or by

actions commenced in federal courts", and inserted "secretary or the" and "or other agents" in the second sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation § 5; 72 Am. Jur. 2d State and Local Taxation §§ 876 to 878.

Right to maintain action or proceeding in one state or country to collect or enforce tax due to another state or country or political subdivision thereof, 165 A.L.R. 796.

84 C.J.S. Taxation §§ 1 to 3; 85 C.J.S. §§ 1049 to 1080.

## 7-1-59. Jeopardy assessments.

A. If the secretary at any time reasonably believes that the collection of any tax for which a taxpayer is liable will be jeopardized by delay, the secretary may immediately make a jeopardy assessment of the amount of tax the payment of which to the state the secretary believes to be in jeopardy.

B. A jeopardy assessment is effective upon the delivery, in person or by certified mail, to the taxpayer against whom the liability for tax is asserted, of a document entitled "notice of jeopardy assessment of taxes", issued in the name of the secretary, stating the nature and amount of the taxes assertedly owed by the taxpayer to the state, demanding of the taxpayer the immediate payment of that amount of tax and briefly informing the taxpayer of the steps that may be taken against the taxpayer as well as of the remedies available to the taxpayer.

C. Notwithstanding any other provision of the Tax Administration Act, if any taxpayer against whom a jeopardy assessment has been made neglects or refuses either to pay the amount of tax demanded of the taxpayer or furnish satisfactory security therefor within five days of the service upon the taxpayer of the notice of jeopardy assessment, the secretary may immediately proceed to collect the tax by levy, as provided in Section 7-1-31 NMSA 1978, on sufficient property of the taxpayer to satisfy the deficiency, protect the interests of the state by, as provided in Section 7-1-53 NMSA 1978, enjoining the taxpayer from doing business in New Mexico or both.

D. A taxpayer to whom a jeopardy assessment has been made may cause the procedure of levy or injunction as set forth in Subsection C of this section to be stayed by filing with the department acceptable security in an amount equal to the amount of taxes assessed, as provided in Section 7-1-54 NMSA 1978. A taxpayer to whom a jeopardy assessment has been made may dispute the jeopardy assessment either by furnishing security and otherwise following the procedures set forth in Section 7-1-24 NMSA 1978 or by paying the tax and claiming a refund as provided by Section 7-1-26 NMSA 1978.

**History:** 1953 Comp., § 72-13-72, enacted by Laws 1965, ch. 248, § 60; 1979, ch. 144, § 53; 1993, ch. 30, § 9.

**ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, substituted "secretary" for "director" in Subsections A, B, and C; substituted "department" for "division" in the first sentence of Subsection D; and made related and other minor stylistic changes.

**Enforcement action.** State officials are not entitled to absolute immunity for jeopardy tax assessments which are primarily investigatory and administrative in nature. Perez v. Ellington, 421 F.3d 1128 (10th Cir. 2005).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation § 711.

## 7-1-60. Estoppel against state.

In any proceeding pursuant to the provisions of the Tax Administration Act, the department shall be estopped from obtaining or withholding the relief requested if it is shown by the party adverse to the department that the party's action or inaction complained of was in accordance with any regulation effective during the time the asserted liability for tax arose or in accordance with any ruling addressed to the party personally and in writing by the secretary, unless the ruling had been rendered invalid or had been superseded by regulation or by another ruling similarly addressed at the time the asserted liability for tax arose.

**History:** 1953 Comp., § 72-13-73, enacted by Laws 1965, ch. 248, § 61; 1979, ch. 144, § 54; 1993, ch. 30, § 10.

**ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, substituted "department" for "director or the division" and for "director" near the beginning; substituted "secretary" for "director" near the end; and made minor stylistic changes.

**State was not estopped** from applying extended limitation period to taxpayer, since taxpayer had not acted reasonably in relying on taxation and revenue department's oral representations that department would not change its policy regarding taxation of cigarette sales on Indian reservations. Taxation & Revenue Dep't v. Bien Mur Indian Mkt. Ctr., Inc., 1989-NMSC-015, 108 N.M. 228, 770 P.2d 873.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation § 712.

Estoppel of state or local government in tax matters, 21 A.L.R.4th 573.

## 7-1-61. Duty of successor in business.

A. As used in Sections 7-1-61 through 7-1-63 NMSA 1978, "tax" means the amount of tax due, including penalties and interest, imposed by provisions of the taxes or tax acts set forth in Subsections A and B of Section 7-1-2 NMSA 1978, except the Income Tax Act.

B. The tangible and intangible property used in any business remains subject to liability for payment of the tax due on account of that business to the extent stated herein, even though the business changes hands.

C. If any person liable for any amount of tax from operating a business transfers that business to a successor, the successor shall place in a trust account sufficient money from the purchase price or other source to cover such amount of tax until the secretary or secretary's delegate issues a certificate stating that no amount is due, or the successor shall pay over the amount due to the department upon proper demand for, or assessment of, that amount due by the secretary.

**History:** 1953 Comp., § 72-13-74, enacted by Laws 1965, ch. 248, § 62; 1966, ch. 56, § 1; 1968, ch. 52, § 1; 1975, ch. 116, § 4; 1979, ch. 144, § 55; 1983, ch. 211, § 28; 1989, ch. 325, § 10; 1997, ch. 67, § 5; 2017, ch. 63, § 28.

## ANNOTATIONS

**The 2017 amendment,** effective June 16, 2017, provided that penalties and interest are included in the meaning of "tax" for certain sections of the Tax Administration Act; in Subsection A, after "through", changed "7-1-64" to "7-1-63", and after "tax due", added "including penalties and interest".

**The 1997 amendment,** effective July 1, 1997, rewrote Subsections A and C.

**The 1989 amendment,** effective June 16, 1989, in Subsection A, substituted "or any municipal or county sales or gross receipts tax" for "the County Sales Tax Act, the Municipal Gross Receipts Tax Act or the Supplemental Municipal Gross Receipts Tax Act"; in Subsection C, substituted "the secretary" for "the director or his delegate" in two places and "department" for "division".

**Question of fact whether business was sold or purchased.** — Whether previous owner sold out its business and whether plaintiff purchased that business is a question of fact and, accordingly, this court examines the facts. In doing so, it views the evidence in the light most favorable to the commissioner's (secretary's) decision. Sterling Title Co. v. Comm'r of Revenue, 1973-NMCA-086, 85 N.M. 279, 511 P.2d 765.

**Business need not be active for section to apply.** — The business which changed hands need not be an active business for the provisions of this section to apply. Sterling Title Co. v. Comm'r of Revenue, 1973-NMCA-086, 85 N.M. 279, 511 P.2d 765.

**Taking over assets of insolvent business meets requirement.** — The taking over of assets of an insolvent or defunct business was sufficient to meet the statutory requirements. Sterling Title Co. v. Comm'r of Revenue, 1973-NMCA-086, 85 N.M. 279, 511 P.2d 765.

**Duty is on the successor in business to cover tax liability.** — This statute places the duty on the successor who acquires the business from the entity liable for the taxes to set aside from the purchase price, or other sources, sufficient funds to cover any remaining tax liability from the previous owner. The policy behind placing this duty on the successor is to secure collection of taxes by imposing derivative liability on purchasers of a business who are generally in a better financial position to collect or pay the tax from the sale price than the seller quitting the business. Hi-Country Buick GMC v. N.M. Taxation and Revenue Dep't., 2016-NMCA-027, cert. denied, 2016-NMCERT-____.

**This section limits the tax that can be collected.** — This section specifically deals with the narrow circumstances involving successor in business tax liability, and limits the tax that can be collected to the amount of tax imposed by the provisions of 7-1-2 NMSA 1978. Hi-Country Buick GMC v. N.M. Taxation and Revenue Dep't., 2016-NMCA-027, cert. denied, 2016-NMCERT-____.

Where the taxation and revenue department imposed a tax assessment on appellant, as a successor in business to a car dealership, including penalties and interest, after appellant acquired the car dealership from the prior owners who defaulted on a promissory note, and where appellant acquired inventory from the prior dealership, entered into a management agreement for the continued operation of the car dealership, and where certain liabilities of the prior dealership were paid, appellant, as a successor in business, was liable for unpaid withholding and gross receipts taxes, but was not liable for penalties and interest, because the provisions of 7-1-2 NMSA 1978 do not impose penalties or interest for withholding tax or gross receipts tax. Hi-Country Buick GMC v. N.M. Taxation and Revenue Dep't., 2016-NMCA-027, cert. denied, 2016-NMCERT-____.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation § 216.

Liability of purchaser of personal property for taxes assessed against former owner, 41 A.L.R. 187.

85 C.J.S. Taxation §§ 979 to 983.

## 7-1-62. Duty of secretary; release of successor.

A. Within thirty days after receiving from the successor a written request for a certificate, or within thirty days from the date the former owner's records are made available for audit, whichever period expires the later, but in any event not later than

sixty days after receiving the request, the secretary or secretary's delegate shall either issue the certificate or mail a notice to the successor of the amount of tax due from operating the business for which the former owner is liable and which must be paid as a condition of issuing the certificate.

B. Failure of the department to mail or deliver the notice of tax due within the required time releases the successor from any obligation as a successor under Section 7-1-61 NMSA 1978.

**History:** 1953 Comp., § 72-13-75, enacted by Laws 1965, ch. 248, § 63; 1979, ch. 144, § 56; 1997, ch. 67, § 6.

**ANNOTATIONS**

**The 1997 amendment,** effective July 1, 1997, substituted "secretary" for "director" and "successor" for "purchaser" in the section heading and throughout the section; in Subsection A, inserted "due from operating the business" following "of the amount of tax" and substituted "former owner" for "vendor" at the end of the sentence; and in Subsection B, inserted "or deliver" following "to mail", inserted "of tax due" following "the notice", and substituted "as a successor under" for "to withhold from the purchase price and releases the property from the operation of".

## 7-1-63. Assessment of tax due; application of payment.

A. If, after any business is transferred to a successor, any tax from operating the business for which the former owner is liable remains due, the successor shall pay the amount due within thirty days. If the successor fails to pay within thirty days of the date notice provided for in Section 7-1-62 NMSA 1978 was mailed or if a certificate was not requested, the department shall assess the successor the amount due.

B. Upon the payment of the amount due from the amount placed in a trust account as provided by Subsection C of Section 7-1-61 NMSA 1978, the balance, if any, remaining may be released to the former owner or otherwise lawfully disposed of. The former owner shall be credited with the payment of tax.

C. A successor may discharge an assessment made pursuant to this section by paying to the department the full value of the transferred tangible and intangible property. The successor shall remain liable for the amount assessed, however, until the amount is paid if:

(1) the business has been transferred to evade or defeat any tax;

(2) the transfer of the business amounts to a de facto merger, consolidation or mere continuation of the transferor's business; or

(3) the successor has assumed the liability.

**History:** 1953 Comp., § 72-13-76, enacted by Laws 1965, ch. 248, § 64; 1979, ch. 144, § 57; 1997, ch. 67, § 7.

**ANNOTATIONS**

**The 1997 amendment,** effective July 1, 1997, substituted "assessment of tax due" for "demand for payment" in the section heading; rewrote Subsection A; substituted "due from the amount placed in a trust account" for "required to be withheld" and made a stylistic change in Subsection B; and added Subsection C.

**"Successor" defined.** — A successor means any transferee of a business or property of a business, except to the extent it would be materially inconsistent with the rights of secured creditors that have perfected security interests or other perfected liens on the business or property of the business. Implicit in the taxation and revenue department's definition of "successor" is the notion that the future intent of a transferee of a business, once it has received the business, is an important aspect of determining whether it is a "successor". A successor may include a business that is acquired and run for an indefinite period by a creditor of the predecessor, but does not include one who acquires and operates a business for a limited period of time in order to protect its collateral. The distinguishing feature is whether the entity acquiring the business intends to retain and operate the business. Hi-Country Buick GMC v. N.M. Taxation and Revenue Dep't., 2016-NMCA-027, cert. denied, 2016-NMCERT-____.

Where the taxation and revenue department imposed a tax assessment on appellant, as a successor in business to a car dealership, including penalties and interest, after appellant acquired the car dealership from the prior owners who defaulted on a promissory note, and where appellant acquired inventory from the prior dealership, entered into a management agreement for the continued operation of the car dealership, and where certain liabilities of the prior dealership were paid, there was a presumption that appellant was a successor in business and appellant failed to rebut this presumption. Hi-Country Buick GMC v. N.M. Taxation and Revenue Dep't., 2016-NMCA-027, cert. denied, 2016-NMCERT-____.

## 7-1-64. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 67, § 10 repealed 7-1-64 NMSA 1978, as amended by Laws 1979, ch. 144, § 58, relating to failure to withhold, effective July 1, 1997. For provisions of former section, *see* the 1996 NMSA 1978 on *NMOneSource.com.*

## 7-1-65. Reciprocal enforcement of tax judgments.

A. The courts of the state shall recognize and enforce the tax judgments of other jurisdictions to the same extent to which the courts of the other jurisdictions would

recognize and enforce similar tax judgments of this state or its political subdivisions, agencies or instrumentalities, except as provided in Subsection C of this section.

B. The secretary, with the permission of the attorney general, or the attorney general may employ on a contingency fee basis only members of the bars of other jurisdictions to recover taxes due this state.

C. All property in this state of a judgment debtor is exempt from execution issuing from a tax judgment of another jurisdiction that is in favor of any state for failure to pay that state's income tax on benefits received from a pension or other retirement plan.

**History:** 1953 Comp., § 72-13-78, enacted by Laws 1965, ch. 248, § 66; 1992, ch. 55, § 15; 1994, ch. 48, § 1.

**ANNOTATIONS**

**The 1994 amendment,** effective May 18, 1994, added the exception clause at the end of Subsection A and added Subsection C.

**Applicability.** — Laws 1994, ch. 48, § 3 made the act applicable to judgments filed with a court in New Mexico on or after May 18, 1994.

**The 1992 amendment,** effective July 1, 1992, rewrote Subsection B, which formerly read: "The attorney general may employ members of the bars of other jurisdictions to recover taxes due this state and may fix their fees".

**Law reviews.** — For article, "Enforcement of tribal court Tax Judgments Outside of Indian Country: The Ways and Means", see 34 N.M.L. Rev. 339 (2004).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation § 878.

Right to maintain action or proceeding in one state or country to collect or enforce tax due to another state or country or political subdivision thereof, 165 A.L.R. 796.

## 7-1-66. Immunity of property of Indian nations, tribes or pueblos and of the United States.

Liens will attach or levy may be made by terms of any provision of the Tax Administration Act to or on property belonging to the United States of America or to an Indian nation, tribe or pueblo or to any Indian only to the extent allowed by law.

**History:** 1953 Comp., § 72-13-79, enacted by Laws 1965, ch. 248, § 67; 1995, ch. 70, § 3.

**ANNOTATIONS**

**The 1995 amendment,** effective July 1, 1995, inserted "nations" and "or pueblos" in the section heading, and substituted "Indian nation, tribe or pueblo or to any Indian" for "Indian tribe an Indian pueblo or any Indian".

**New Mexico may not tax income and gross receipts of Indians** residing on a reservation when the income and gross receipts involved are derived solely from activities within the reservation. Hunt v. O'Cheskey, 1973-NMCA-026, 85 N.M. 381, 512 P.2d 954, cert. quashed, 85 N.M. 388, 512 P.2d 961.

**Indian's fee interest not taxable but non-Indian leasehold is. —** Since non-Indians entered into a long-term lease with an Indian tribe, under which the non-Indians were to develop the leased land as a residential subdivision, state's ad valorem tax provision was broad enough to encompass the lessee's interest in the otherwise tax-exempt property. Therefore, whatever interest that was not part of the fee and could be taxed as separate from the fee interest of the Indians was taxable by the state, but any tax that purported to touch or create a lien on the land could not be levied by the state. Norvell v. Sangre de Cristo Dev. Co., 372 F. Supp. 348 (D.N.M. 1974), rev'd on other grounds, 519 F.2d 370 (10th Cir. 1975).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation §§ 221, 228, 235, 236.

Power of state to tax debts from United States under contracts other than loans, 30 A.L.R. 1462.

Federal government or agencies of federal government as subject to payment of tax or fee imposed upon, or for, recording or filing instrument, 124 A.L.R. 1267.

Consent to state taxation of federal property or instrumentalities as affecting exemption thereof under provision of state enabling act, constitution or statute, 168 A.L.R. 547.

84 C.J.S. Taxation §§ 291 to 304.

## 7-1-67. Interest on deficiencies.

A. If a tax imposed is not paid on or before the day on which it becomes due, interest shall be paid to the state on that amount from the first day following the day on which the tax becomes due, without regard to any extension of time or installment agreement, until it is paid, except that:

(1) for income tax imposed on a member of the armed services of the United States serving in a combat zone under orders of the president of the United States, interest shall accrue only for the period beginning the day after any applicable extended due date if the tax is not paid;

(2) if the amount of interest due at the time payment is made is less than one dollar ($1.00), then no interest shall be due;

(3) if demand is made for payment of a tax, including accrued interest, and if the tax is paid within ten days after the date of the demand, no interest on the amount paid shall be imposed for the period after the date of the demand;

(4) if a managed audit is completed by the taxpayer on or before the date required, as provided in the agreement for the managed audit, and payment of any tax found to be due is made in full within one hundred eighty days of the date the secretary has mailed or delivered an assessment for the tax to the taxpayer, no interest shall be due on the assessed tax;

(5) when, as the result of an audit or a managed audit, an overpayment of a tax is credited against an underpayment of tax pursuant to Section 7-1-29 NMSA 1978, interest shall accrue from the date the tax was due until the tax is deemed paid;

(6) if the department does not issue an assessment for the tax program and period within the time provided in Subsection D of Section 7-1-11.2 NMSA 1978, interest shall be paid from the first day following the day on which the tax becomes due until the tax is paid, excluding the period between either:

(a) the one hundred eightieth day after giving a notice of outstanding records or books of account and the date of the assessment of the tax; or

(b) the ninetieth day after the expiration of the additional time requested by the taxpayer to comply pursuant to Section 7-1-11.2 NMSA 1978, if such request was granted, and the date of the assessment of the tax; and

(7) if the taxpayer was not provided with proper notices as required in Section 7-1-11.2 NMSA 1978, interest shall be paid from the first day following the day on which the tax becomes due until the tax is paid, excluding the period between one hundred eighty days prior to the date of assessment and the date of assessment.

B. Interest due to the state under Subsection A or D of this section shall be at the underpayment rate established for individuals pursuant to Section 6621 of the Internal Revenue Code computed on a daily basis; provided that if a different rate is specified by a compact or other interstate agreement to which New Mexico is a party, that rate shall be applied to amounts due under the compact or other agreement.

C. Nothing in this section shall be construed to impose interest on interest or interest on the amount of any penalty.

D. If any tax required to be paid in accordance with Section 7-1-13.1 NMSA 1978 is not paid in the manner required by that section, interest shall be paid to the state on the amount required to be paid in accordance with Section 7-1-13.1 NMSA 1978. If interest

is due under this subsection and is also due under Subsection A of this section, interest shall be due and collected only pursuant to Subsection A of this section.

History: 1953 Comp., § 72-13-80, enacted by Laws 1965, ch. 248, § 68; 1982, ch. 18, § 14; 1990, ch. 86, § 8; 1991, ch. 97, § 1; 1993, ch. 5, § 10; 1996, ch. 15, § 7; 2000, ch. 28, § 11; 2001, ch. 16, § 7; 2003, ch. 398, § 13; 2007, ch. 45, § 2; 2007, ch. 262, § 4; 2013, ch. 27, § 11.

## ANNOTATIONS

**Cross references.** — For managed audits, *see* 7-1-1.11 NMSA 1978.

For collection of penalties and interest, *see* 7-1-30 NMSA 1978.

**The 2013 amendment,** effective July 1, 2013, provided that interest shall be paid at the underpayment rate for individuals pursuant to the Internal Revenue Code; in Subparagraph (b) of Paragraph (6) of Subsection A, after "taxpayer to comply", added “pursuant to Section 7-1-11.2 NMSA 1978”; and in Subsection B, after "shall be at the", added "underpayment".

**The 2007 amendment,** effective July 1, 2007, in Paragraph (4) of Subsection A, increased the time to pay taxes found to be due by a managed audit from thirty to one hundred eighty days.

**The 2003 amendment,** effective July 1, 2003, added Subsections A(6) and A(7).

**The 2001 amendment,** effective July 1, 2001, added Paragraphs A(4) and (5).

**The 2000 amendment,** effective January 1, 2001, substituted "on a daily basis" for "at the rate of one and one-fourth percent per month or any fraction thereof," in Subsection B.

**The 1996 amendment,** effective July 1, 1996, added the proviso at the end of Subsection B.

**The 1993 amendment,** effective July 1, 1993, in Subsection A, substituted "except" for "provided, however," at the end of the introductory paragraph, inserted the paragraph designation "(1)", and added Paragraphs (2) and (3); in Subsection B, inserted "or D" and deleted "except that if the amount of interest due at the time payment is made is less than one dollar ($1.00), then no interest shall be due"; deleted former Subsection C, relating to the effect of payment of any tax within ten days after demand; redesignated former Subsections D and E as Subsections C and D; and, in the first sentence of Subsection D, deleted "the interest due under this subsection shall be one and one quarter percent of the amount" preceding "required to be paid".

**The 1991 amendment,** effective April 2, 1991, added the proviso in Subsection A and rewrote the final sentence in Subsection E which read "Interest due under this subsection shall be in addition to any interest due under Subsection A of this section".

**The 1990 amendment,** effective July 1, 1990, substituted "Interest due to the state under Subsection A of this section shall be" for "Interest shall be due to the state" at the beginning of Subsection B and added Subsection E.

**No offset of overpayment against prior liability. —** Interest on underpayment of taxes is calculated without regard to receipt by the taxation and revenue department of any overpayment of taxes. The department, once a claim for refund is made, is authorized only to allow a taxpayer claiming a refund for overpayment of gas production taxes to credit the refund against current or future tax liabilities. Amoco Prod. Co. v. N.M. Taxation & Revenue Dep't, 1994-NMCA-086, 118 N.M. 72, 878 P.2d 1021.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation § 858.

85 C.J.S. Taxation §§ 1605, 1617 to 1624.

## 7-1-67.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 5, § 11, repealed 7-1-67.1 NMSA 1978, as enacted by Laws 1982, ch. 18, § 25, relating to the effective date of the increase in the interest rate pursuant to § 7-1-67 NMSA 1978, effective July 1, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 7-1-68. Interest on overpayments.

A. As provided in this section, interest shall be allowed and paid on the amount of tax overpaid by a person that is subsequently refunded or credited to that person.

B. Interest on overpayments of tax shall accrue and be paid at the underpayment rate established pursuant to Section 6621 of the Internal Revenue Code, computed on a daily basis; provided that if a different rate is specified by a compact or other interstate agreement to which New Mexico is a party, that rate shall apply to amounts due under the compact or other agreement.

C. Unless otherwise provided by this section, interest on an overpayment not arising from an assessment by the department shall be paid from the date of the claim for refund until a date preceding by not more than thirty days the date of the credit or refund to any person; and interest on an overpayment arising from an assessment by the department shall be paid from the date of overpayment until a date preceding by not more than thirty days the date of the credit or refund to any person.

D. No interest shall be allowed or paid with respect to an amount credited or refunded if:

(1) the amount of interest due is less than one dollar ($1.00);

(2) the credit or refund is made within:

(a) fifty-five days of the date of the complete claim for refund of income tax, pursuant to either the Income Tax Act [Chapter 7, Article 2 NMSA 1978] or the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] for the tax year immediately preceding the tax year in which the claim is made;

(b) sixty days of the date of the complete claim for refund of any tax not provided for in this paragraph;

(c) seventy-five days of the date of the complete claim for refund of gasoline tax to users of gasoline off the highways;

(d) one hundred twenty days of the date of the complete claim for refund of tax imposed pursuant to the Resources Excise Tax Act [Chapter 7, Article 25 NMSA 1978], the Severance Tax Act [7-26-1 through 7-26-8 NMSA 1978], the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978], the Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978], the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978], the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978], the Natural Gas Processors Tax Act [Chapter 7, Article 33 NMSA 1978] or the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978]; or

(e) one hundred twenty days of the date of the complete claim for refund of income tax, pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act, for any tax year more than one year prior to the year in which the claim is made;

(3) Sections 6611(f) and 6611(g) of the Internal Revenue Code, as those sections may be amended or renumbered, prohibit payment of interest for federal income tax purposes;

(4) the credit results from overpayments found in an audit of multiple reporting periods and applied to underpayments found in that audit or refunded as a net overpayment to the taxpayer pursuant to Section 7-1-29 NMSA 1978;

(5) the department applies the credit or refund to an intercept program, to the taxpayer's estimated payment prior to the due date for the estimated payment or to offset prior liabilities of the taxpayer pursuant to Subsection E of Section 7-1-29 NMSA 1978;

(6) the credit or refund results from overpayments the department finds pursuant to Subsection F of Section 7-1-29 NMSA 1978 that exceed the refund claimed by the taxpayer on the return; or

(7) the refund results from a tax credit pursuant to the Investment Credit Act [Chapter 7, Article 9A NMSA 1978], Laboratory Partnership with Small Business Tax Credit Act [Chapter 7, Article 9E NMSA 1978], Technology Jobs and Research and Development Tax Credit Act [Chapter 7, Article 9F NMSA 1978], Film Production Tax Credit Act [Chapter 7, Article 2F NMSA 1978], Affordable Housing Tax Credit Act [Chapter 7, Article 9I NMSA 1978] or a rural job tax credit or high-wage jobs tax credit.

E. Nothing in this section shall be construed to require the payment of interest upon interest.

**History:** 1953 Comp., § 72-13-81, enacted by Laws 1965, ch. 248, § 69; 1971, ch. 266, § 1; 1979, ch. 144, § 59; 1982, ch. 18, § 15; 1989, ch. 325, § 11; 1994, ch. 44, § 1; 1996, ch. 15, § 8; 2000, ch. 28, § 12; 2001, ch. 16, § 8; 2002, ch. 13, § 1; 2003, ch. 2, § 1; 2003, ch. 439, § 6; 2007, ch. 45, § 3; 2011, ch. 177, § 1; 2013, ch. 27, § 12; 2016 (2nd S.S.), ch. 3, § 2; 2017, ch. 63, § 29.

## ANNOTATIONS

**Cross references.** — For the authority to make refunds or credits, *see* 7-1-29 NMSA 1978.

For Section 6611 of the United States Internal Revenue Code, *see* 26 U.S.C.S. § 6611.

**The 2017 amendment,** effective June 16, 2017, included additional tax credits to the current list of tax credits for which no interest is allowed or paid, and clarified certain language; in Subsection D, Paragraph D(2), added "complete" preceding each occurrence of "claim for refund" throughout the paragraph, and in Paragraph D(7), added "Investment Credit Act, Laboratory Partnership with Small Business Tax Credit Act, Technology Jobs and Research and Development Tax Credit Act", and "Affordable Housing Tax Credit Act", and after "or a", added "rural job tax credit or".

**The 2016 (2nd S.S.) amendment,** effective October 19, 2016, provided that no interest shall be allowed or paid with respect to an amount credited or refunded if the refund results from a tax credit pursuant to a high-wage jobs tax credit; in Paragraph D(7), after "refund results from a", deleted "film production", after "tax credit pursuant to", deleted "Section 7-2F-1 NMSA 1978" and added "the Film Production Tax Credit Act or a high-wage jobs tax credit".

**The 2013 amendment,** effective July 1, 2013, provided that interest shall be paid at the underpayment rate for individuals pursuant to the Internal Revenue Code; prohibits payment of interest on a refund of any tax that is not specifically provided for and that is made within sixty days after a claim for refund; in Subsection B, after "be paid at the",

added "underpayment"; added Subparagraph (b) of Paragraph (2) of Subsection D; between Subparagraph (d) of Paragraph (2) of Subsection D and Subparagraph (e) of Paragraph (2) of Subsection D, deleted "(3) the credit or refund is made within"; and deleted former Paragraph (5) of Subsection D, which prohibited payment of interest if a credit or refund is made within sixty days of a claim of refund of any tax other than income tax.

**The 2011 amendment,** effective July 1, 2011, prohibited the payment of interest on refunds from a film production tax credit.

**The 2007 amendment,** effective January 1, 2008, in Subsection B, changed the interest rate from fifteen percent a year to the rate established for individuals pursuant to Section 6621 of the Internal Revenue Code and adds Subparagraph (c) of Paragraph (2) of Subsection D.

**The 2003 amendments,** effective July 1, 2003, in Subsection B, deleted "payable" following "interest" and inserted "accrue and" following "tax shall"; rewrote Paragraph D(2) and added Paragraphs D(7) and (8).

**The 2002 amendment,** effective May 15, 2002, added the Subparagraph designation D(2)(a), and added Subparagraph D(2)(b); deleted Paragraph D(6), which read: "gasoline tax is refunded or credited under the Gasoline Tax Act to users of gasoline off the highways"; and redesignated the following paragraph accordingly.

**The 2001 amendment,** effective July 1, 2001, added Paragraph D(7).

**The 2000 amendment,** effective January 1, 2001, substituted "on a daily basis" for "at the rate of one and one-fourth percent per month or fraction thereof;" in Subsection B; deleted "or the Banking and Financial Corporations Tax Act" following "Franchise Tax Act" in Subsection D(3); and added Subsection E.

**The 1996 amendment,** effective July 1, 1996, added the proviso at the end of Subsection B and deleted "the Corporate Income Tax Act" following "the Income Tax Act" in Paragraph D(3).

**The 1994 amendment,** effective July 1, 1994, substituted "sixty" for "one hundred twenty" in Paragraph D(5).

**The 1989 amendment,** effective June 16, 1989, rewrote the section to the extent that a detailed comparison would be impracticable.

**No offset of overpayment against prior liability. —** Interest on underpayment of taxes is calculated without regard to receipt by the taxation and revenue department of any overpayment of taxes. The department, once a claim for refund is made, is authorized only to allow a taxpayer claiming a refund for overpayment of gas production

taxes to credit the refund against current or future tax liabilities. Amoco Prod. Co. v. N.M. Taxation & Revenue Dep't, 1994-NMCA-086, 118 N.M. 72, 878 P.2d 1021.

**Refund requirement not state obligation which creates vested right.** — Statutory requirement that the state pay interest on refunds of taxes judicially determined to have been illegally collected, cannot be said to create an obligation of the state to the taxpayer which gives rise to a vested right in the taxpayer within the meaning of N.M. Const., art. IV, § 34. Bradbury & Stamm Constr. Co. v. Bureau of Revenue, 1962-NMSC-078, 70 N.M. 226, 372 P.2d 808.

**Requirement to pay interest statutory liability in nature of penalty.** — The requirement that the state pay interest on protested taxes judicially determined to have been illegally collected is only a statutory liability and is in the nature of a penalty. Bradbury & Stamm Constr. Co. v. Bureau of Revenue, 1962-NMSC-078, 70 N.M. 226, 372 P.2d 808.

**If interest rate changes, old rate before, new rate after.** — If the statutory rate of interest on tax refunds is changed after the cause of action accrues, the interest should be allowed at the old rate before, and at the new rate after, the altering enactment takes effect. Bradbury & Stamm Constr. Co. v. Bureau of Revenue, 1962-NMSC-078, 70 N.M. 226, 372 P.2d 808.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 1068, 1069.

Right to interest on tax refunds, 57 A.L.R. 357, 76 A.L.R. 1012, 112 A.L.R. 1183, 88 A.L.R.2d 823.

Interest on tax refund or credit in absence of specific controlling statute, 88 A.L.R.2d 823.

Effect of delay in receipt or negotiation of refund check in determining right to interest under § 6611 of the Internal Revenue Code (26 USCA § 6611), 145 A.L.R. Fed. 437.

## 7-1-69. Civil penalty for failure to pay tax or file a return.

A. Except as provided in Subsection C of this section, in the case of failure due to negligence or disregard of department rules and regulations, but without intent to evade or defeat a tax, to pay when due the amount of tax required to be paid, to pay in accordance with the provisions of Section 7-1-13.1 NMSA 1978 when required to do so or to file by the date required a return regardless of whether a tax is due, there shall be added to the amount assessed a penalty in an amount equal to the greater of:

(1) two percent per month or any fraction of a month from the date the tax was due multiplied by the amount of tax due but not paid, not to exceed twenty percent of the tax due but not paid;

(2) two percent per month or any fraction of a month from the date the return was required to be filed multiplied by the tax liability established in the late return, not to exceed twenty percent of the tax liability established in the late return; or

(3) a minimum of five dollars ($5.00), but the five-dollar ($5.00) minimum penalty shall not apply to taxes levied under the Income Tax Act [Chapter 7, Article 2 NMSA 1978] or taxes administered by the department pursuant to Subsection B of Section 7-1-2 NMSA 1978.

B. No penalty shall be assessed against a taxpayer if the failure to pay an amount of tax when due results from a mistake of law made in good faith and on reasonable grounds.

C. If a different penalty is specified in a compact or other interstate agreement to which New Mexico is a party, the penalty provided in the compact or other interstate agreement shall be applied to amounts due under the compact or other interstate agreement at the rate and in the manner prescribed by the compact or other interstate agreement.

D. In the case of failure, with willful intent to evade or defeat a tax, to pay when due the amount of tax required to be paid, there shall be added to the amount fifty percent of the tax or a minimum of twenty-five dollars ($25.00), whichever is greater, as penalty.

E. If demand is made for payment of a tax, including penalty imposed pursuant to this section, and if the tax is paid within ten days after the date of such demand, no penalty shall be imposed for the period after the date of the demand with respect to the amount paid.

F. If a taxpayer makes electronic payment of a tax but the payment does not include all of the information required by the department pursuant to the provisions of Section 7-1-13.1 NMSA 1978 and if the department does not receive the required information within five business days from the later of the date a request by the department for that information is received by the taxpayer or the due date, the taxpayer shall be subject to a penalty of two percent per month or any fraction of a month from the fifth day following the date the request is received. If a penalty is imposed under Subsection A of this section with respect to the same transaction for the same period, no penalty shall be imposed under this subsection.

G. No penalty shall be imposed on:

(1) tax due in excess of tax paid in accordance with an approved estimated basis pursuant to Section 7-1-10 NMSA 1978;

(2) tax due as the result of a managed audit; or

(3) tax that is deemed paid by crediting overpayments found in an audit or managed audit of multiple periods pursuant to Section 7-1-29 NMSA 1978.

History: 1953 Comp., § 72-13-82, enacted by Laws 1965, ch. 248, § 70; 1970, ch. 20, § 1; 1973, ch. 146, § 1; 1982, ch. 18, § 16; 1985, ch. 65, § 18; 1986, ch. 20, § 25; 1987, ch. 169, § 6; 1988, ch. 99, § 4; 1990, ch. 86, § 9; 1992, ch. 55, § 16; 1996, ch. 15, § 9; 1997, ch. 67, § 8; 2000, ch. 28, § 13; 2001, ch. 16, § 9; 2003, ch. 398, § 14; 2007, ch. 45, § 4.

## ANNOTATIONS

**Cross references. —** For managed audits, *see* 7-1-11.1 NMSA 1978.

For collection of penalties and interest, *see* 7-1-30 NMSA 1978.

**The 2007 amendment,** effective January 1, 2008, changed the maximum rate from ten to twenty percent in Paragraphs (1) and (2) of Subsection A.

**The 2003 amendment,** effective July 1, 2003, in Subsection A substituted "C" for "B" following "provided in Subsection" near the beginning, inserted "department" preceding "rules and regulations" near the middle, substituted "assessed a" for "as" following "added to the amount" near the end, and inserted "in an amount equal to" preceding "the greater of" near the end; and added present Subsection B and redesignated the subsequent subsections accordingly.

**The 2001 amendment,** effective July 1, 2001, added Subsection F.

**The 2000 amendment,** effective July 1, 2000, added Subsection E.

**The 1996 amendment,** effective July 1, 1996, added "Except as provided in Subsection B of this section," at the beginning of Subsection A, added Subsection B, and redesignated former Subsections B and C as Subsections C and D.

**The 1992 amendment,** effective July 1, 1992, rewrote Subsection A, restructured the former three sentences of Subsection C so as to constitute a single sentence, while making minor stylistic changes therein, and, in Subsection C, substituted all of the present language following "imposed by this subsection" for "shall be in addition to any penalty due under Subsection A of this section".

**The 1990 amendment,** effective July 1, 1990, added Subsection C.

### I. GENERAL CONSIDERATION.

**Section is divided into two parts:** penalty for fraud and penalty for negligence. Stohr v. N.M. Bureau of Revenue, 1976-NMCA-118, 90 N.M. 43, 559 P.2d 420, cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977) (decided under prior law).

**Presumption of correctness,** in 7-1-17 NMSA 1978, also applies to this penalty section. Tiffany Constr. Co. v. Bureau of Revenue, 1976-NMCA-127, 90 N.M. 16, 558 P.2d 1155, cert. denied, 90 N.M. 255, 561 P.2d 1348 (1977).

**Penalty provision not denial of equal protection.** — Penalties imposed on taxpayers based upon negligent failure to pay taxes when due did not deny the taxpayers equal protection of the law. Gathings v. Bureau of Revenue, 1975-NMCA-016, 87 N.M. 334, 533 P.2d 107.

**The date of assessment determines the applicable penalty to be imposed.** — The statutory penalty is determined at the time of assessment and the law in place at the time of assessment governs the penalty to be imposed. GEA Integrated Cooling Technology v. N.M. Taxation & Rev. Dep't, 2012-NMCA-010, 268 P.3d 48.

**Application of increased penalty to prior tax period was not retroactive.** — The application of a new statutory penalty in place at the time of the assessment of tax liabilities that arose for tax periods occurring prior to the effective date of the statutory amendment that imposes the new penalty gives the amendment proper prospective effect. GEA Integrated Cooling Technology v. N.M. Taxation & Rev. Dep't, 2012-NMCA-010, 268 P.3d 48.

**The date of assessment determines the applicable penalty to be imposed.** — Where the taxpayer failed to pay gross receipts taxes for periods between June 1, 2006 and July 1, 2007; effective January 1, 2008, the legislature increased the maximum statutory penalty to twenty percent of the amount of unpaid taxes; prior to January 1, 2008, the maximum statutory penalty was ten percent; and in 2009, the N.M. taxation and revenue department assessed the taxpayer for unpaid taxes due for periods June 1, 2006 and July 1, 2007 and imposed the twenty percent penalty, the new statutory penalty of twenty percent was the applicable maximum penalty, because it was in effect at the time of the outstanding taxes were assessed. GEA Integrated Cooling Technology v. N.M. Taxation & Rev. Dep't, 2012-NMCA-010, 268 P.3d 48.

**Every person is charged with reasonable duty** to ascertain possible tax consequences of his action. This can be done by consultation with one's legal advisor. Tiffany Constr. Co. v. Bureau of Revenue, 1976-NMCA-127, 90 N.M. 16, 558 P.2d 1155, cert. denied, 90 N.M. 255, 561 P.2d 1348 (1977).

**Responsibility to ascertain tax consequences.** — Every person is charged with the reasonable duty to ascertain the possible tax consequences of his action or inaction, and a taxpayer cannot abdicate this responsibility merely by appointing an accountant as its agent in tax matters. El Centro Villa Nursing Ctr. v. Taxation & Revenue Dep't, 1989-NMCA-070, 108 N.M. 795, 779 P.2d 982.

## II. NEGLIGENCE.

**Taxpayers were not negligent** in failing to pay natural gas processor's tax on operation which removed carbon dioxide from coal seam gas where, at the time the applicable tax was enacted, coal seam gas was not processed and the applicable tax law accordingly did not directly address whether the removal of carbon dioxide from coal seam gas constituted "processing." Amoco Prod. Co. v. N.M. Taxation & Revenue Dep't, 2003-NMCA-092, 134 N.M. 162, 74 P.3d 96.

**Propriety of penalty.** — Taxpayer's penalty was proper where her failure to pay gross receipts tax was negligent based on the hearing officer's finding that the failure was due to the taxpayer's lack of knowledge and her erroneous belief that gross receipts tax was not due on certain transactions. Grogan v. N.M. Taxation & Revenue Dep't, 2003-NMCA-033, 133 N.M. 354, 62 P.3d 1236, cert. denied, 133 N.M. 413, 63 P.3d 516 (2003).

**Reliance on manufacturer's advice.** — Where taxpayer, who operated a retail tobacco store, failed to pay gross receipts tax from buy-down and shelf-display contracts with cigarette manufacturers in reliance upon discussions of taxpayer's tax liability with the manufacturers was negligent because taxpayer did not reasonably attempt to determine whether taxpayer's actions were justifiable under the tax statutes and regulations. Grogan v. N.M. Taxation & Revenue Dep't, 2002, NMCA-033, 133 N.M. 354, 62 P.3d 1236, cert. denied, 133 N.M. 413, 63 P.3d 516.

**Minimum penalty for negligence when no tax due under equitable recoupment.** — When the amount erroneously paid by the taxpayer for a particular tax equals the amount that should have been paid for another tax and, under the doctrine of equitable recoupment, no further sums are due from the taxpayer, there is no basis for assessing a penalty as a percentage of the tax due, but the taxpayer may be required to pay the $5 minimum penalty if the error resulted from the taxpayer's negligence. Teco Invs. v. Taxation & Revenue Dep't, 1998-NMCA-055, 125 N.M. 103, 957 P.2d 532.

**Ordinary business care required.** — Taxpayer was liable for civil penalties when taxpayer's failure to pay the gross receipts tax due was based on its erroneous beliefs, inattention, inaction where action would be reasonably required, or a failure to exercise the degree of ordinary business care that similarly situated businesses would exercise. Arco Materials, Inc. v. State, Taxation & Revenue Dep't, 1994-NMCA-062, 118 N.M. 12, 878 P.2d 330, *rev'd on other grounds sub nom*. Blaze Constr. Co. v. Taxation & Revenue Dep't, 1994-NMSC-110, 118 N.M. 647, 884 P.2d 803, cert. denied, 514 U.S. 1016, 115 S. Ct. 1359, 131 L. Ed. 2d 216 (1995).

**Negligence not excused by actions of auditors.** — A negligence penalty assessed against a taxpayer for its total failure to pay any compensating tax for a period of years was proper, since the taxpayer's sole excuse was that the failure to pay the tax was not uncovered by the accountants who certified the accuracy of the taxpayer's financial statements for the annual reports to shareholders required by federal securities law. The taxpayer offered no evidence that the outside auditors reviewed the taxpayer's monthly state tax returns, did not explain why the audit for the annual reports should

have uncovered the failure to pay the compensating tax, and did not explain why the failure of the auditors to discover the error would excuse the taxpayer's failure to comply with clear state law. Vivigen, Inc. v. Minzner, 1994-NMCA-027, 117 N.M. 224, 870 P.2d 1382.

**Substantial evidence of negligence.** — Substantial evidence supported hearing officer's finding that nursing home's failure to pay tax was due to negligence, since the home failed to show the hearing officer that it acted reasonably in not reporting a medicaid readjustment to income payments as gross receipts. El Centro Villa Nursing Ctr. v. Taxation & Revenue Dep't, 1989-NMCA-070, 108 N.M. 795, 779 P.2d 982.

**Taxpayer's erroneous belief tantamount to negligence.** — A taxpayer's mere belief that he is not liable to pay taxes is tantamount to negligence within the meaning of this section and invocation of the penalty is appropriate. C & D Trailer Sales v. Taxation & Revenue Dep't, 1979-NMCA-151, 93 N.M. 697, 604 P.2d 835.

**Taxpayer's erroneous belief and no further investigation constituted negligence.** — When taxpayer, an Arizona corporation headquartered in Phoenix, failed to file a return for work performed on the Navajo reservation within New Mexico (the first road job taxpayer had done in New Mexico), its belief that no taxes were due and that there were no taxes that they had to file for or register for, without further investigation, constituted negligence so as to justify the penalty imposed. Tiffany Constr. Co. v. Bureau of Revenue, 1976-NMCA-127, 90 N.M. 16, 558 P.2d 1155, cert. denied, 90 N.M. 255, 561 P.2d 1348 (1977).

**"Negligent" means** indifferent, careless or off-hand or lacking reasonable cause. Tiffany Constr. Co. v. Bureau of Revenue, 1976-NMCA-127, 90 N.M. 16, 558 P.2d 1155, cert. denied, 90 N.M. 255, 561 P.2d 1348 (1977).

**Negligence is general standard defining director's duties.** — "Negligence" as used in Subsection A is a general standard capable of reasonable application and sufficient to limit and define the commissioner's (now director's) powers in imposing a penalty. Gathings v. Bureau of Revenue, 1975-NMCA-016, 87 N.M. 334, 533 P.2d 107.

**Negligence should be equated with federal standard.** — "Negligence," as used in Subsection A, should be equated with the federal standard of "lack of reasonable cause" as set forth in 26 U.S.C. § 6651(a). Gathings v. Bureau of Revenue, 1975-NMCA-016, 87 N.M. 334, 533 P.2d 107.

## III. PROTEST.

**Evidence of diligent protest based on informed consultation and advice.** — Conclusory and self-serving statements in affidavits of an officer of the taxpayer and a tax attorney were insufficient to give rise to a genuine issue of material fact as to the existence of any acceptable ground for excusing the taxpayer's failure to report and pay

gross receipts tax. Sonic Indus., Inc. v. State, 2000-NMCA-087, 129 N.M. 657, 11 P.3d 1219, *rev'd on other grounds*, 2006-NMSC-038, 140 N.M. 212, 141 P.3d 1266.

**"Diligent protest" negates negligence.** — When a taxpayer's failure to pay taxes is the result of a "diligent protest" and his decision to challenge a tax is based on informed consultation and advice (i.e., from his attorney or accountant), the taxpayer negates any inference of negligence and the application of the penalty provision is inappropriate. C & D Trailer Sales v. Taxation & Revenue Dep't, 1979-NMCA-151, 93 N.M. 697, 604 P.2d 835.

**Reasonable doubt negates disregard of rules.** — Penalty was improperly assessed and taxpayer is not liable for penalty and interest where diligent protest by the taxpayer negated the possibility of negligence, and the taxpayer did not disregard the rules and regulations because there was reasonable doubt as to the correctness of the taxes imposed by the commissioner (now secretary). Stohr v. N.M. Bureau of Revenue, 1976-NMCA-118, 90 N.M. 43, 559 P.2d 420, cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977).

**Not negligence to protest rulings or disregard where reasonable doubt.** — This section provides that a penalty shall be added to the amount owed only in the event of failure to pay an assessed amount due to negligence or disregard of rules and regulations. Taxpayers were neither negligent nor heedless of any rules and regulations where they carried forward a thorough protest against the rulings of the commissioner (now secretary) with reasonable doubt as to the interpretation and applicability of the various taxes sought to be imposed by his order. Any presumptions of correctness which might have attached to the commissioner's (now secretary's) decision had been sufficiently overcome. The decision to assess penalties, not being in accordance with the law, was reversed in its entirety. Co-Con, Inc. v. Bureau of Revenue, 1974-NMCA-134, 87 N.M. 118, 529 P.2d 1239, cert. denied, 87 N.M. 111, 529 P.2d 1232.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 856 to 865.

Retroactive effect of statutes relation to interest on or penalties in respect of delinquent taxes, 77 A.L.R. 1034.

Liability to penalty imposed for failure to pay tax of one who in good faith contested its validity, 96 A.L.R. 925, 147 A.L.R. 142.

Penalty for nonpayment of taxes when due as affected by lack of notice to taxpayer, 102 A.L.R. 405.

Doubt as to liability for, or as to person to whom to pay, tax, as affecting liability for penalties and interest, 137 A.L.R. 306.

Time of mailing or time of receipt as determinative of liability for penalty or additional amount for failure to pay tax or license fee within prescribed time, 158 A.L.R. 370.

What amounts to reasonable cause for failure to file, or delay in filing, tax return, 3 A.L.R.2d 617.

Penalties or interest incurred because of delinquency of execution, administration or trustee, in respect of taxes as a charge against him personally or against estate, 47 A.L.R.3d 507.

Retailer's or buyer's defenses against exaction of penalties for failure to file, or deficiency in, state or local sales tax return, 20 A.L.R.4th 952.

85 C.J.S. Taxation §§ 1529 et seq.

## 7-1-69.1. Civil penalty for failure to file an information return.

A taxpayer, wholesaler, retailer or rack operator who fails to file an information return on time pursuant to the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978] or the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978] shall pay a penalty of fifty dollars ($50.00) for each late report. This penalty shall be in addition to other applicable penalties.

History: Laws 2005, ch. 109, § 1; 2007, ch. 45, § 5.

**ANNOTATIONS**

**The 2007 amendment,** effective January 1, 2008, added "wholesaler, retailer or rack operator".

## 7-1-69.2. Civil penalty for failure to correctly file certain deductions.

In the case of a taxpayer that deducts gross receipts pursuant to Section 7-9-92 or 7-9-93 NMSA 1978 instead of deducting or exempting gross receipts pursuant to another applicable provision of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] as required by those sections, there shall be assessed a penalty on the taxpayer in an amount equal to twenty percent of the value of the hold harmless distribution resulting from the incorrect deduction.

History: Laws 2016 (2nd S.S.), ch. 3, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2016 (2nd S.S.), ch. 3, § 9 made Laws 2016 (2nd S.S.), ch. 3, § 3 November 1, 2016.

## 7-1-70. Civil penalty for bad checks.

If any payment required to be made by provision of the Tax Administration Act is attempted to be made by check that is not paid upon presentment, such dishonor is presumptive of negligence. The penalty shall never be less than ten dollars ($10.00). This penalty is in addition to any other penalty imposed by law.

**History:** 1953 Comp., § 72-13-83, enacted by Laws 1965, ch. 248, § 71; 1996, ch. 15, § 10.

**ANNOTATIONS**

**Cross references.** — For presentment and dishonor generally, *see* 55-3-501 NMSA 1978 et seq.

**The 1996 amendment,** effective July 1, 1996, made a minor stylistic change in the first sentence and added the third sentence.

## 7-1-71. Civil penalty for failure to collect and pay over tax.

If any person required to collect and pay over any tax fails, neglects or refuses to collect such tax or to account for and pay over such tax, he shall either pay the amount of tax himself or he shall pay a penalty equal to the total amount of the tax not collected or not accounted for and paid over, in either case in addition to other penalties provided by law.

**History:** 1953 Comp., § 72-13-84, enacted by Laws 1965, ch. 248, § 72.

**ANNOTATIONS**

**Cross references.** — For defaulting officers and prosecution for shortages, *see* 10-17-9 and 10-17-10 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Retailer's failure to pay to government sales or use tax funds as constituting larceny or embezzlement, 8 A.L.R.4th 1068.

Retailer's or buyer's defenses against exaction of penalties for failure to file, or deficiency in, state or local sales tax return, 20 A.L.R.4th 952.

Sufficient nexus for state to require foreign entity to collect state's compensating, sales, or use tax - post-Complete Auto Transit cases, 71 A.L.R.5th 671.

## 7-1-71.1. Tax return preparers; requirements; penalties.

A. The secretary may require by regulation any tax return preparer with respect to any return of income tax or claim for refund with respect to income tax to sign such return or claim for refund.

B. The secretary may require by regulation any tax return preparer with respect to any return of income tax or claim for refund with respect to income tax to furnish the tax return preparer's identification number on such return or claim for refund.

C. Any tax return preparer with respect to any return of income tax or claim for refund with respect to income tax who is required by regulations promulgated by the secretary to sign a return or claim for refund or to furnish an identification number on such return or claim for refund and who fails to sign such return or claim for refund or to furnish an identification number on such return or claim for refund shall pay a penalty of twenty-five dollars ($25.00) for such failure unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

D. Any tax return preparer who endorses or otherwise negotiates, either directly or through an agent, any warrant in respect of the Income Tax Act [Chapter 7, Article 2 NMSA 1978] issued to a taxpayer, other than the tax return preparer, shall pay a penalty of five hundred dollars ($500) with respect to each such warrant; provided that the provisions of this subsection shall not apply with respect to the deposit by a bank, savings and loan association, credit union or other financial corporation of the full amount of the warrant in the taxpayer's account for the benefit of the taxpayer.

E. For the purposes of this section, any penalty determined to be due shall be considered to be tax due.

**History:** 1978 Comp., § 7-1-71.1, enacted by Laws 1985, ch. 65, § 19; 2001, ch. 56, § 17.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, substituted "secretary" for "director" throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation § 592.

Who is an "income tax return preparer" under 26 USCS § 7701(a)(36)?, 132 A.L.R. Fed. 265.

## 7-1-71.2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 45, § 14 repealed 7-1-71.2 NMSA 1978, as enacted by Laws 2004, ch. 116, § 3, relating to the penalty for incorrect reporting of food deduction or health care practitioner services, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

## 7-1-71.3. Willful failure to collect and pay over taxes.

A. A person who is required to collect, account for and pay over a tax imposed by the state and who willfully, with the intent to defraud, fails to collect or truthfully account for and pay over the tax due to the state is guilty of a felony, and upon conviction thereof, shall be fined not more than five thousand dollars ($5,000) or imprisoned for a period of not less than six months and not more than three years, or both, together with the costs of prosecution.

B. As used in this section:

(1) "tax" does not include civil penalties or interest; and

(2) "willfully" means intentionally, deliberately or purposely, but not necessarily maliciously.

History: Laws 2005, ch. 108, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 108 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 7-1-71.4. Tax return preparer; electronic filing requirement; penalty.

A. In taxable years beginning on or after January 1, 2008, a tax return preparer who prepares over twenty-five personal income tax returns for a taxable year shall ensure that each return is submitted to the department by a department-approved electronic media, unless a person for whom the preparer files a return requests, in a form prescribed by the department, that the return be filed by other means in accordance with department rule.

B. A tax return preparer shall pay to the department a penalty not to exceed five dollars ($5.00) for each tax return filed in violation of this section.

History: Laws 2007, ch. 127, § 2.

**ANNOTATIONS**

**Cross references.** — For electronic payments, *see* 7-1-13.4 NMSA 1978.

**Effective dates.** — Laws 2007, ch. 127, § 4 made Laws 2007, ch. 127, § 2 effective July 1, 2007.

## 7-1-72. Attempts to evade or defeat tax.

Any person who willfully attempts to evade or defeat any tax or the payment thereof is, in addition to other penalties provided by law, guilty of a felony and, upon conviction thereof, shall be fined not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000), or imprisoned not less than one year nor more than five years, or both such fine and imprisonment, together with the costs of prosecution.

**History:** 1953 Comp., § 72-13-85, enacted by Laws 1965, ch. 248, § 73.

**ANNOTATIONS**

**Prior assessment not needed.** — This section covers all willful attempts to evade taxes, including willful failure to file returns if that results in evasion of taxes and willful failure to pay taxes required by law if that is motivated by an attempt to evade. There need not be a prior assessment of taxes before a defendant may be convicted of evasion of taxes. State v. Long, 1996-NMCA-011, 121 N.M. 333, 911 P.2d 227.

**Traditional standard of proof applied in tax fraud cases.** — Court of appeals would not require a higher standard of proof in terms of criminal intent in tax fraud cases, choosing instead to follow the traditional standard of appellate review in criminal cases. State v. Martin, 1977-NMCA-049, 90 N.M. 524, 565 P.2d 1041, cert. denied, 90 N.M. 636, 567 P.2d 485, *overruled on other grounds by* State v. Wilson, 1994-NMSC-009, 116 N.M. 793, 867 P.2d 1175.

**Appropriateness of incarceration as penalty.** — It was not error for the trial court to impose a sentence of incarceration pursuant to the plea and disposition agreement where defendant was given an opportunity to explain what efforts he had made to acquire funds for restitution and failed to present evidence sufficient to excuse his inability to present any funds. State v. Bowie, 1990-NMCA-068, 110 N.M. 283, 795 P.2d 88.

**Attorney convicted for violation of this section** was suspended from the practice of law. In re Cox, 1994-NMSC-054, 117 N.M. 575, 874 P.2d 783.

**Tax evasion is a crime involving moral turpitude,** because fraud is an essential part of tax evasion. Wittgenstein v. Immigration & Naturalization Serv., 124 F.3d 1244 (10th Cir. 1997).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation § 7.

Right of grantor or transferor or his privies to attack conveyance or transfer made for purpose of evading taxation, 118 A.L.R. 1184.

Actionability of accusation or imputation of tax evasion, 32 A.L.R.3d 1427.

Construction and application of United States Sentencing Guideline § 2T1.4(b)(2) (18 USCS § 2T1.4(b)(2)), authorizing increase in base offense level for individual for use of "sophisticated means" to impede discovery of tax fraud, 131 A.L.R. Fed. 601.

Construction and application of 26 USCA § 6015(b)(1)(C) requiring that spouse not know of understatement of tax arising from erroneous deduction, credit, or basis to obtain innocent spouse exemption from liability for tax, 154 A.L.R. Fed. 233.

Construction and application of 26 U.S.C.A. § 6015(b)(1)(C), requiring that spouse not know of omission of gross income from joint tax return to obtain innocent spouse exemption from liability for tax, 161 A.L.R. Fed. 373.

## 7-1-72.1. Civil penalty; willful attempt to cause evasion of another's tax.

Any person other than the taxpayer who willfully causes or attempts to cause the evasion of a taxpayer's obligation to report and pay tax may be assessed a civil penalty in an amount equal to the amount of the tax, penalty and interest attempted to be evaded.

**History:** Laws 1997, ch. 67, § 9.

## 7-1-73. Tax fraud.

A. A person is guilty of tax fraud if the person:

(1) willfully makes and subscribes any return, statement or other document that contains or is verified by a written declaration that it is true and correct as to every material matter and that the person does not believe it to be true and correct as to every material matter;

(2) willfully assists in, willfully procures, willfully advises or willfully provides counsel regarding the preparation or presentation of a return, affidavit, claim or other document pursuant to or in connection with any matter arising under the Tax Administration Act or a tax administered by the department, knowing that it is fraudulent or knowing that it is false as to a material matter, whether or not that fraud or falsity is with knowledge or consent of:

(a) the taxpayer or other person liable for taxes owed on the return; or

(b) a person who signs a document stating that the return, affidavit, claim or other document is true, correct and complete to the best of that person's knowledge;

(3) files any return electronically, knowing the information in the return is not true and correct as to every material matter; or

(4) with intent to evade or defeat the payment or collection of any tax, or, knowing that the probable consequences of the person's act will be to evade or defeat the payment or collection of any tax, removes, conceals or releases any property on which levy is authorized or that is liable for payment of tax under the provisions of Section 7-1-61 NMSA 1978, or aids in accomplishing or causes the accomplishment of any of the foregoing.

B. Whoever commits tax fraud when the amount of the tax owed is two hundred fifty dollars ($250) or less is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

C. Whoever commits tax fraud when the amount of the tax owed is over two hundred fifty dollars ($250) but not more than five hundred dollars ($500) is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

D. Whoever commits tax fraud when the amount of the tax owed is over five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500) is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. Whoever commits tax fraud when the amount of the tax owed is over two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

F. Whoever commits tax fraud when the amount of the tax owed is over twenty thousand dollars ($20,000) is guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

G. In addition to the fines imposed pursuant to this section, a person who commits tax fraud shall pay the costs of the prosecution of the person's case.

H. As used in this section:

(1) "tax" does not include civil penalties or interest; and

(2) "willfully" means intentionally, deliberately or purposely, but not necessarily maliciously.

**History**: 1953 Comp., § 72-13-86, enacted by Laws 1965, ch. 248, § 74; 1979, ch. 144, § 60; 1989, ch. 325, § 12; 1992, ch. 55, § 17; 2005, ch. 108, § 3; 2006, ch. 29, § 1.

## ANNOTATIONS

**The 2006 amendment,** effective July 1, 2006, changed the crime from "false statement and fraud" to "tax fraud" in Subsection A; deleted the former provision at the end of Paragraph (4) of Subsection A, which provided that a violation of Subsection A was a felony; added Subsections B through F to provide a schedule for sentencing for different degrees of tax fraud; and added Subsection G to provide that in addition to fines, a person who commits tax fraud shall pay the cost of prosecution.

**The 2005 amendment,** effective June 17, 2005, added Subsection A(2) to provide that a person is guilty of a felony if the person willfully acts in the preparation or presentation of a document with respect to a matter under the Tax Administration Act or a tax administered by the taxation and revenue department knowing that it is false or fraudulent; deleted from Subsection A(4) the statement of the penalty for conviction of a felony under this section ; and added Subsection B to provide definitions of "tax" and "willfully".

**The 1992 amendment,** effective July 1, 1992, added Subsection B, redesignated former Subsection B as Subsection C, and made minor stylistic changes throughout the section.

**The 1989 amendment,** effective June 16, 1989, in Subsection A, substituted "that it is true and correct as to every material matter and which the individual or person does not" for "that it is made under the penalties of perjury and which he does not".

**Traditional standard of proof applied in tax fraud cases.** — Court of appeals would not require a higher standard of proof in terms of criminal intent in tax fraud cases, choosing instead to follow the traditional standard of appellate review in criminal cases. State v. Martin, 1977-NMCA-049, 90 N.M. 524, 565 P.2d 1041, cert. denied, 90 N.M. 636, 567 P.2d 485, *overruled on other grounds by* State v. Wilson, 1994-NMSC-009, 116 N.M. 793, 867 P.2d 1175.

**To meet willfulness requirement of section,** all that is required is proof that the person acted intentionally in the sense that he was aware of what he was doing. State v. Sparks, 1985-NMCA-004, 102 N.M. 317, 694 P.2d 1382.

**UJI Criminal 1.50 (UJI 14-141 NMRA), the instruction on general criminal intent,** is required in prosecutions for false statements on tax returns. State v. Sparks, 1985-NMCA-004, 102 N.M. 317, 694 P.2d 1382.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Reliance on attorney, accountant or other expert in preparing income tax returns as defense against fraud penalties, 22 A.L.R.2d 972.

Tax preparer's willful assistance in preparation of false or fraudulent tax returns under § 7206(2) of Internal Revenue Code of 1954 (26 USCS § 7206(2)), 43 A.L.R. Fed. 128.

85 C.J.S. Taxation § 1591.

## 7-1-74. Interference or attempts corruptly, forcibly or by threat to interfere with administration of revenue laws.

Whoever forcibly, or by bribe, threat or other corrupt practice obstructs or impedes or attempts to obstruct or impede the due administration of the provisions of the Tax Administration Act shall, upon conviction thereof, be fined not less than two hundred fifty dollars ($250) nor more than ten thousand dollars ($10,000) or imprisoned for not less than three months nor more than one year, or both, together with costs of prosecution.

**History:** 1953 Comp., § 72-13-87, enacted by Laws 1965, ch. 248, § 75.

## 7-1-75. Assault and battery of a department employee.

Whoever assaults and batters or attempts to assault and batter an employee of the department acting within the scope of his employment shall, upon conviction thereof, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or be imprisoned for not less than three days nor more than six months, or both, together with costs of prosecution. Jurisdiction over actions brought under this section is hereby granted to magistrate courts.

**History:** 1953 Comp., § 72-13-87.1, enacted by Laws 1971, ch. 276, § 12; 1979, ch. 144, § 61.

## 7-1-76. Revealing information concerning taxpayers.

A person who reveals to another person any return or return information that is prohibited from being revealed pursuant to Section 7-1-8 NMSA 1978 or who uses a return or return information for any purpose that is not authorized by Sections 7-1-8 through 7-1-8.11 NMSA 1978 is guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than one thousand dollars ($1,000) or imprisoned up to one year, or both, together with costs of prosecution, and shall not be employed by the state for a period of five years after the date of the conviction.

**History:** 1953 Comp., § 72-13-88, enacted by Laws 1965, ch. 248, § 76; 1979, ch. 144, § 62; 2009, ch. 243, § 13; 2017, ch. 63, § 30.

**ANNOTATIONS**

**The 2017 amendment,** effective June 16, 2017, after "Sections 7-1-8 through", changed "7-1-8.10" to "7-1-8.11".

**The 2009 amendment,** effective July 1, 2009, in the first sentence, after "other disposition", added "of district facilities" and in the fourth sentence, after "pending use", added "pursuant to the provisions of this section".

## 7-1-77. Timeliness when last day for performance falls on Saturday, Sunday or legal holiday.

When by any provision of the Tax Administration Act the last day for performing any act falls on Saturday, Sunday or a legal state or national holiday, the performance of the act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal state or national holiday.

**History:** 1953 Comp., § 72-13-89, enacted by Laws 1965, ch. 248, § 80.

**ANNOTATIONS**

**Cross references.** — For general rule as to computation of time, *see* 12-2A-7 NMSA 1978.

## 7-1-78. Burden of proof in fraud cases.

In any proceeding involving the issue of whether any person has been guilty of fraud or corruption, the burden of proof in respect of such issue shall be upon the secretary or the state.

**History:** 1953 Comp., § 72-13-90, enacted by Laws 1965, ch. 248, § 81; 1979, ch. 144, § 63; 2001, ch. 56, § 18.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, substituted "secretary" for "director".

## 7-1-79. Enforcement officials.

Every individual to whom the director delegates the function of enforcing any of the provisions of the Tax Administration Act:

A. shall be furnished with credentials identifying him; and

B. may request the assistance of any sheriff or deputy sheriff or of the state police in order to perform his duties, which assistance shall be afforded in appropriate circumstances.

**History:** 1953 Comp., § 72-13-91, enacted by Laws 1965, ch. 248, § 82; 1979, ch. 144, § 64.

## 7-1-80. Dissolution or withdrawal of corporation.

The secretary of state shall not issue any certificate of dissolution to any taxpayer or allow any corporate taxpayer to withdraw from the state until:

A. the taxpayer files with the secretary of state a certificate signed by the secretary of taxation and revenue or the secretary of taxation and revenue's delegate stating that as of a certain date the taxpayer is not liable for any tax and containing a statement verified by a responsible official of the corporation to the effect that the taxpayer has not engaged in business after the date above specified. If the taxpayer has so engaged in business, any certificate of dissolution or withdrawal shall be of no effect and all liabilities of the corporation shall continue as if no certificate had been granted;

B. a successor, acceptable to the secretary of taxation and revenue or the secretary's delegate, to any corporation requesting dissolution or withdrawal enters into a binding agreement by provision of which the successor assumes full liability for payment of all taxes due or expected to become due from the corporation and certification thereof is given by the secretary of taxation and revenue or the secretary's delegate; or

C. satisfactory security for payment of the taxes due or expected to become due from the corporation is furnished in accordance with the provisions of Section 7-1-54 NMSA 1978 and certification thereof is given by the secretary of taxation and revenue or the secretary's delegate.

**History:** 1953 Comp., § 72-13-92, enacted by Laws 1965, ch. 248, § 83; 1979, ch. 144, § 65; 1985, ch. 65, § 20; 1993, ch. 30, § 11; 2013, ch. 75, § 8.

**ANNOTATIONS**

**Cross references.** — For sale of assets of a corporation, *see* 53-15-1 to 53-15-4 NMSA 1978.

For dissolution of corporations generally, *see* 53-16-1 to 53-16-24 NMSA 1978.

**The 2013 amendment,** effective July 1, 2013, required taxpayers to file certificates signed by the secretary of taxation and revenue that they are not liable for any tax; in the introductory sentence, deleted "state corporation commission" and added "secretary of state"; in Subsection A, after "the taxpayer filed with the", deleted "state corporation commission" and added "secretary of state", after "certificate signed by the secretary", added "of taxation and revenue", after "taxation and revenue or the", deleted "secretary's" and added "secretary of taxation and revenue's"; in Subsection B, after "acceptable to the secretary", added "of taxation and revenue" and after "given by the secretary of", added "of taxation and revenue"; and in Subsection C, after "given by the secretary", added "of taxation and revenue".

**The 1993 amendment,** effective June 18, 1993, substituted "secretary or the secretary's delegate" for "director of the revenue division or his delegate" in four places and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 19 Am. Jur. 2d Corporations § 2880; 36 Am. Jur. 2d Foreign Corporations § 313.

19 C.J.S. Corporations §§ 811 to 882.

## 7-1-81. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 144, § 67, repealed 7-1-81 NMSA 1978, relating to bar of actions for tort against bureau employees and limited liability of bureau.

## 7-1-82. Transfer, assignment, sale, lease or renewal of liquor license.

A. The director of the alcohol and gaming division of the regulation and licensing department shall not allow the transfer, assignment, lease or sale of any liquor license pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978 et seq.] until the director receives written notification from the secretary or secretary's delegate that:

(1) the licensee or any person authorized to use the license is not a delinquent taxpayer as defined in Section 7-1-16 NMSA 1978; or

(2) the transferee, assignee, buyer or lessee has entered into a written agreement with the secretary or secretary's delegate in which the transferee, assignee, buyer or lessee has assumed full liability for payment of all taxes due or which may become due from engaging in business authorized by the liquor license.

B. The director of the alcohol and gaming division of the regulation and licensing department shall not allow the renewal of any liquor license pursuant to the provisions of the Liquor Control Act until the director receives notification from the secretary or secretary's delegate that on a certain date:

(1) there is no assessed tax liability from engaging in business authorized by the liquor license or, if there is assessed tax liability, the licensee is not a delinquent taxpayer; and

(2) there are no unfiled tax returns due from engaging in business authorized by the liquor license.

**History:** 1953 Comp., § 72-13-94, enacted by Laws 1973, ch. 179, § 1; 1975, ch. 116, § 5; 1979, ch. 144, § 66; 1995, ch. 70, § 4.

**ANNOTATIONS**

**The 1995 amendment,** effective July 1, 1995, substituted "alcohol and gaming division of the regulation and licensing department" for "department of alcoholic beverage control" and "the director" for "he" in the introductory paragraphs of Subsections A and B, substituted "the transferee, assignee, buyer or lessee" for "he" in Paragraph A(2), and substituted "secretary or secretary's delegate" for "director or his delegate" throughout the section.

**Subsections A(1) and (2) are alternatives;** if either one is satisfied, the department must issue a clearance for transfer of the license. Bank of Commerce v. N.M. Taxation & Revenue Dep't, 1998-NMCA-063, 125 N.M. 183, 958 P.2d 753, cert. denied, 125 N.M. 145, 958 P.2d 103.

**Tax liability as lien.** — The tax liability referred to in this section may become a lien in favor of the state in the amount of taxes due if the procedures set forth in Sections 7-1-37 and 7-1-38 NMSA 1978 are followed. In re What D'Ya Call It, Inc., 1986-NMSC-098, 105 N.M. 164, 730 P.2d 467.

**Payment of delinquent taxes may be required before transfer.** — The state may require payment of delinquent taxes prior to transfer of a liquor license, pursuant to this section, where its liens under Sections 7-1-37 and 7-1-38 NMSA 1978 have been foreclosed. First Interstate Bank v. Taxation & Revenue Dep't, 1989-NMCA-067, 108 N.M. 756, 779 P.2d 133, cert. denied, 108 N.M. 771, 779 P.2d 549.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 45 Am. Jur. 2d Intoxicating Liquors §§ 174, 177.

48 C.J.S. Intoxicating Liquors §§ 145 to 147, 151.

## 7-1-83. Business and employee status during disaster response period.

A. An out-of-state business that conducts operations within the state for purposes of performing disaster- or emergency-related work in response to a declared state disaster or emergency during the disaster response period shall not be considered to have established a level of presence that would require that business to register, file or remit state or local taxes or fees, including gross receipts taxes or property tax on equipment brought into the state temporarily for use during the disaster response period and subsequently removed from the state. For purposes of any state or local tax on or measured by, in whole or in part, net or gross income or receipts, all activity of the out-of-state business that is conducted in this state pursuant to this section shall be disregarded with respect to any filing requirements for such tax, including the filing required for a unitary or combined group of which the out-of-state business may be a part. For the purpose of apportioning income, revenue or receipts, the performance by an out-of-state business of any work in accordance with this section shall not be

sourced to or otherwise impact or increase the amount of income, revenue or receipts apportioned to this state.

B. An out-of-state employee shall not be considered to have established residency or a presence in the state that would require that person or that person's employer to file and pay income taxes or to be subjected to tax withholdings or to file and pay any other state or local tax or fee during the disaster response period. This includes any related state or local employer withholding and remittance obligations but does not include any transaction taxes or fees pursuant to Subsection C of this section.

C. Out-of-state businesses and out-of-state employees shall be required to pay transaction taxes and fees, including fuel taxes or gross receipts taxes on materials or services consumed or used in the state subject to gross receipts tax, hotel taxes, car rental taxes or fees that the out-of-state affiliated business or out-of-state employee purchases for use or consumption in the state during the disaster response period, unless such taxes are otherwise exempted during a disaster response period.

D. An out-of-state business or out-of-state employee that remains in the state after the disaster response period will become subject to the state's normal standards for establishing residency or presence or doing business in the state and will therefore become responsible for any business or employee tax requirements that ensue.

E. As used in this section:

(1) "critical infrastructure" means property, equipment and related support facilities that service multiple customers or residents, including real and personal property such as buildings, offices, lines, poles, pipes, structures and equipment that is owned or used by:

(a) communications networks;

(b) electric generation, transmission and distribution systems;

(c) natural gas and natural gas liquids gathering, processing, storage, transmission and distribution systems;

(d) crude oil and refined product pipelines; and

(e) water pipelines;

(2) "declared state disaster or emergency" means a disaster or emergency event for which:

(a) a governor's state of emergency proclamation has been issued;

(b) a presidential declaration of a federal major disaster or emergency has been issued; or

(c) another authorized official of the state receives notification from a registered business of a disaster or emergency and that official designates the event as a declared state disaster or emergency, thereby invoking the provisions of this section;

(3) "disaster- or emergency-related work" means repairing, renovating, installing, building, rendering services or conducting other business activities that relate to critical infrastructure that has been damaged, impaired or destroyed by a declared state disaster or emergency;

(4) "disaster response period" means a period that begins ten days prior to the first day of the governor's proclamation, the president's declaration or the designation by another authorized official of the state of a declared state disaster or emergency and that extends sixty calendar days after the declared state disaster or emergency;

(5) "out-of-state business" means a business entity that, except for disaster- or emergency-related work, has no presence in the state and that conducts no business in the state and whose services are requested by a registered business or by a state or local government for purposes of performing disaster- or emergency-related work in the state. "Out-of-state business" includes a business entity that is affiliated with a registered business in the state solely through common ownership and that has no registrations or tax filings or nexus in the state other than disaster- or emergency-related work during the tax year immediately preceding the declared state disaster or emergency;

(6) "out-of-state employee" means an employee who does not work in the state, except for disaster- or emergency-related work during the disaster response period; and

(7) "registered business in the state" means a business entity that is currently registered to do business in the state prior to the declared state disaster or emergency.

History: Laws 2016, ch. 59, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 59 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

# ARTICLE 1A
# Project Mainstream Employment Tax Credit

(Repealed by Laws 1988, ch. 126, § 7.)

## 7-1A-1 to 7-1A-5. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1988, ch. 126, § 7 repealed 7-1A-1 to 7-1A-5 NMSA 1978, as enacted by Laws 1988, ch. 126, §§ 1 to 5, relating to the Project Mainstream Employment Tax Credit Act, effective July 1, 1990.

# ARTICLE 1B
# Administrative Hearings Office

## 7-1B-1. Short title.

Sections 1 through 9 [7-1B-1 through 7-1B-9 NMSA 1978] of this act may be cited as the "Administrative Hearings Office Act".

History: Laws 2015, ch. 73, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 73, § 38 made the Administrative Hearings Office Act, §§ 7-1B-1 through 7-1B-9 NMSA 1978, effective July 1, 2015.

**Temporary provisions.** — Laws 2015, ch. 73, § 36 provided:

A. On July 1, 2015, all personnel, functions, appropriations, money, records, furniture, equipment and other property of, or attributable to, the hearings bureau of the office of the secretary of taxation and revenue shall be transferred to the administrative hearings office.

B. On July 1, 2015, all contractual obligations of the hearings bureau of the office of the secretary of taxation and revenue shall be binding on the administrative hearings office.

C. On July 1, 2015, all references in statute to the hearings bureau of the office of the secretary of taxation and revenue or hearing officers of the taxation and revenue department in Chapters 7 and 66 NMSA 1978 shall be deemed to be references to the administrative hearings office or a hearing officer of the office.

D. Rules of the taxation and revenue department pertaining to hearing officers and the conduct of hearings pursuant to actions related to Chapter 7 or 66 NMSA 1978 shall be deemed to be the rules of the administrative hearings office until amended or repealed by the office.

## 7-1B-2. Administrative hearings office; created.

The "administrative hearings office" is created and is administratively attached pursuant to the provisions of Section 9-1-7 NMSA 1978 to the department of finance and administration.

History: Laws 2015, ch. 73, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 73, § 38 made the Administrative Hearings Office Act, §§ 7-1B-1 through 7-1B-9 NMSA 1978, effective July 1, 2015.

## 7-1B-3. Chief hearing officer; appointment.

The head of the administrative hearings office is the "chief hearing officer", who shall be appointed for a term of six years, except that the initial term shall begin on July 1, 2015 and shall end on December 31, 2015. The chief hearing officer may be reappointed to successive terms. An appointed chief hearing officer shall serve and have all the duties, responsibilities and authority of that office during the period of time prior to appointment of a new chief hearing officer. The initial chief hearing officer shall be the person who is the chief of the hearings bureau of the taxation and revenue department on July 1, 2015. The chief hearing officer shall be removed only for malfeasance, misfeasance or abuse of office.

History: Laws 2015, ch. 73, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 73, § 38 made the Administrative Hearings Office Act, §§ 7-1B-1 through 7-1B-9 NMSA 1978, effective July 1, 2015.

## 7-1B-4. Chief hearing officer selection committee; duties.

A. The "chief hearing officer selection committee" is created and consists of nine members, including:

(1) four members who are selected by the New Mexico legislative council, no more than two of whom are from the same political party;

(2) four members who are selected by the governor, no more than two of whom are from the same political party; and

(3) a committee chair, whom a majority of the other eight members select and who is:

(a) not a candidate for the position of chief hearing officer; and

(b) either a former chief of the hearings bureau of the taxation and revenue department, a former chief hearing officer or another person with extensive knowledge of the tax law.

B. The chief hearing officer selection committee shall meet exclusively for the purpose of nominating persons to fill a current or impending vacancy in the position of chief hearing officer of the administrative hearings office. The committee shall actively solicit, accept and evaluate applications for the position of chief hearing officer and may require applicants to submit any information that the committee deems relevant to the consideration of applications. Within ninety days before the date on which the term of a chief hearing officer ends or no later than thirty days after the occurrence of a vacancy in the chief hearing officer position, the chief hearing officer selection committee shall convene and, within thirty days after convening, submit to the governor the names of persons who:

(1) are attorneys licensed to practice law in New Mexico or another state;

(2) have knowledge of the tax law and substantial experience making the record in an administrative hearing suitable for judicial review; and

(3) are recommended for appointment to the position by a majority of the committee.

C. Immediately after receiving nominations for chief hearing officer, the governor may make one request of the committee for submission of additional names. The committee shall promptly submit those additional names if a majority of the committee finds that additional persons would be qualified and recommends those persons for appointment as chief hearing officer. The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in the office of chief hearing officer within thirty days after receiving final nominations from the committee by appointing one of the persons nominated by the committee.

D. The chief hearing officer selection committee is administratively attached pursuant to the provisions of Section 9-1-7 NMSA 1978 to the department of finance and administration.

History: Laws 2015, ch. 73, § 4.

## ANNOTATIONS

**Effective dates.** — Laws 2015, ch. 73, § 38 made the Administrative Hearings Office Act, §§ 7-1B-1 through 7-1B-9 NMSA 1978, effective July 1, 2015.

## 7-1B-5. Chief hearing officer; powers and duties; employees of the office.

A. The chief hearing officer may:

(1) adopt and promulgate rules pertaining to administrative hearings; and

(2) subject to appropriations, hire and contract for such professional, technical and support staff as needed to carry out the functions of the administrative hearings office; provided that such hiring and contracting be without regard to party affiliation and solely on the grounds of competence and fitness to perform the duties of the position. Employees of the administrative hearings office, except the chief hearing officer, are subject to the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978].

B. The chief hearing officer shall:

(1) oversee the administrative hearings office; and

(2) considering the knowledge and experience of particular hearing officers, efficiency in the hearing process and potential conflicts of interest, assign and distribute the work of the office.

History: Laws 2015, ch. 73, § 5.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 73, § 38 made the Administrative Hearings Office Act, §§ 7-1B-1 through 7-1B-9 NMSA 1978, effective July 1, 2015.

## 7-1B-6. Hearing officer code of conduct; independence.

A. The chief hearing officer shall:

(1) adopt and promulgate a hearing officer code of conduct; and

(2) periodically evaluate each hearing officer's performance for competency, efficiency and professional demeanor in accord with relevant legal standards and the hearing officer code of conduct.

B. The chief hearing officer shall ensure that each hearing officer has decisional independence; however, the chief hearing officer may:

(1) consult with a hearing officer about a genuine question of law; and

(2) review with a hearing officer any issue on appeal addressed by a court of this state.

C. The administrative hearings office shall:

(1) hear all tax protests pursuant to the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978];

(2) hear property tax protests pursuant to the provisions of the Property Tax Code [Articles 35 through 38 of Chapter 7];

(3) hear all certificate-denial protests pursuant to the provisions of Section 13-1-22 NMSA 1978;

(4) conduct all adjudicatory hearings pursuant to the Motor Vehicle Code [Articles 1 through 8 of Chapter 66 NMSA 1978 except 66-7-102.1 NMSA 1978];

(5) conduct all driver's license revocation hearings pursuant to the provisions of the Implied Consent Act [66-8-105 through 66-8-112 NMSA 1978];

(6) make and preserve a complete record of all proceedings; and

(7) maintain confidentiality regarding taxpayer information as required by the provisions of Section 7-1-8 NMSA 1978.

D. In hearings conducted pursuant to the Tax Administration Act, Section 13-1-22 NMSA 1978 and the Motor Vehicle Code:

(1) the Rules of Evidence do not apply. The hearing officer may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt, to rule on the admissibility of evidence. A taxpayer or the taxation and revenue department may request a written ruling on a contested question of evidence in a matter in which the taxpayer has filed a written protest and for which that protest is pending. The administrative hearings office shall issue a copy of its written ruling to the taxation and revenue department at the time the ruling is issued to the taxpayer;

(2) the Rules of Civil Procedure for the District Courts do not apply. The hearing officer shall conduct a hearing to allow the ample and fair presentation of complaints and defenses. The hearing officer shall hear arguments, permit discovery, entertain and dispose of motions, require written expositions of the case as the circumstances justify and render a decision in accordance with the law and the evidence presented and admitted. A taxpayer or the taxation and revenue department may request a written ruling on a contested question of procedure in a matter in which the taxpayer has filed a written protest and for which that protest is pending. The administrative hearings office shall issue a copy of its written ruling to the taxation and revenue department at the time the ruling is issued to the taxpayer; and

(3) the hearing officer may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books and papers, and for hearings conducted for a license suspension pursuant to Section 66-5-30 NMSA 1978, the hearing officer may require a reexamination of the licensee.

History: Laws 2015, ch. 73, § 6.

**ANNOTATIONS**

**Cross references.** — For the Rules of Evidence, *see*11-101 NMRA et seq.

For the Rules of Civil Procedure for the District Courts *see* 1-001 NMRA et seq.

**Effective dates.** — Laws 2015, ch. 73, § 38 made the Administrative Hearings Office Act, §§ 7-1B-1 through 7-1B-9 NMSA 1978, effective July 1, 2015.

## 7-1B-7. Certain actions prohibited.

A hearing officer shall not:

A. engage or participate in any way in the enforcement or formulation of general tax policy other than to conduct hearings. A taxpayer or the taxation and revenue department may request that the chief hearing officer determine whether a hearing officer has engaged or participated in the enforcement or formulation of general tax policy and whether that engagement or participation affects the hearing officer's impartiality in a particular matter. To avoid actual or apparent prejudice, the chief hearing officer may designate another hearing officer for the matter; and

B. engage in ex-parte communications concerning the substantive issues of any matter that has been protested while that matter is pending. If the chief hearing officer determines that a hearing officer has engaged in prohibited ex-parte communications, the chief hearing officer shall designate another hearing officer for that matter.

History: Laws 2015, ch. 73, § 7.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 73, § 38 made the Administrative Hearings Office Act, §§ 7-1B-1 through 7-1B-9 NMSA 1978, effective July 1, 2015.

## 7-1B-8. Tax protests; procedures.

A. Upon timely receipt of a tax protest filed pursuant to the provisions of Section 7-1-24 NMSA 1978, the taxation and revenue department shall promptly acknowledge the protest by letter to the protesting taxpayer or the taxpayer's representative. If the protest is not filed in accordance with the provisions of Section 7-1-24 NMSA 1978, the

department shall inform the taxpayer of the deficiency and the opportunity to correct it. Within forty-five days after receipt of a protest filed pursuant to the provisions of Section 7-1-24 NMSA 1978 that has not been resolved, the taxation and revenue department shall request from the administrative hearings office a hearing and shall send to the office a copy of the protest. The chief hearing officer shall promptly designate a hearing officer and shall set a date for a hearing to take place within ninety days after receipt of a protest filed pursuant to Section 7-1-24 NMSA 1978.

B. A taxpayer may appear at the hearing on the taxpayer's own behalf or may be represented by a bona fide employee, an attorney, a certified public accountant or, with respect only to tax imposed pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978], a person who is an enrolled agent for federal income tax purposes. If the taxation and revenue department and the taxpayer agree, the hearing may be conducted via videoconference. At the beginning of the hearing, the hearing officer shall inform the taxpayer of the taxpayer's right to representation. A hearing shall not be open to the public except upon request of the taxpayer. A hearing officer may postpone or continue a hearing at the hearing officer's discretion.

C. Within thirty days after the hearing, the hearing officer shall inform the taxation and revenue department and the taxpayer in writing of the decision and, pursuant to the provisions of Section 7-1-25 NMSA 1978, of the aggrieved party's right to, and the requirements for perfection of, an appeal from the decision to the court of appeals and of the consequences of a failure to appeal. The written decision shall embody an order granting or denying the relief requested or granting or denying a part of the relief requested, as appropriate.

D. A taxpayer with two or more protests containing related issues may request that the protests be combined and heard jointly. The hearing officer shall grant the request to combine protests unless it would create an unreasonable burden on the administrative hearings office or the taxation and revenue department.

E. Nothing in this section shall be construed to authorize a criminal proceeding or to authorize an administrative protest of the issuance of a subpoena or summons.

History: Laws 2015, ch. 73, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 73, § 38 made the Administrative Hearings Office Act, §§ 7-1B-1 through 7-1B-9 NMSA 1978, effective July 1, 2015.

## 7-1B-9. Motor vehicle administrative hearings; procedures.

A. A person may dispute the denial of or failure to either allow or deny a license, permit, placard or registration provided for in the Motor Vehicle Code [Articles 1 through 8 of Chapter 66 NMSA 1978 except 66-7-102.1 NMSA 1978]. Upon timely receipt of a

protest, the chief hearing officer shall promptly designate a hearing officer to conduct a hearing and shall set a date for the hearing. On that date, the hearing officer shall hear the protest.

B. A person may appear at a hearing set pursuant to the provisions of Subsection A of this section for the person's self or be represented by a bona fide employee or an attorney. A hearing shall not be open to the public except if held pursuant to the provisions of the Implied Consent Act [66-8-105 through 66-8-112 NMSA 1978] or upon request of the person. A hearing officer may postpone or continue a hearing.

C. At the beginning of the hearing, the hearing officer shall inform the person of the person's right to representation. Within thirty days after the hearing, the hearing officer shall inform the protestant in writing of the decision and of the protestant's right to, and the requirements for perfection of, an appeal from the decision to the district court and of the consequences of a failure to appeal. The written decision shall embody an order granting or denying the relief requested or granting such part of the relief requested, as appropriate.

D. If the protestant or the secretary of taxation and revenue is dissatisfied with the decision and order of the hearing officer, the party may appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

E. No court of this state has jurisdiction to entertain a proceeding by any person in which the person calls into question the application to that person of any provision of the Motor Vehicle Code, except as a consequence of the appeal by that person to the district court from the action and order of the hearing officer as provided for in this section.

F. Nothing in this section shall be construed to authorize a criminal proceeding or to authorize an administrative protest of the issuance of a subpoena or summons.

History: Laws 2015, ch. 73, § 9.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 73, § 38 made the Administrative Hearings Office Act, §§ 7-1B-1 through 7-1B-9 NMSA 1978, effective July 1, 2015.

# ARTICLE 2
# Income Tax General Provisions

## 7-2-1. Short title.

Chapter 7, Article 2 NMSA 1978 may be cited as the "Income Tax Act".

**History:** 1953 Comp., § 72-15A-1, enacted by Laws 1965, ch. 202, § 1; 1979, ch. 92, § 1.

**ANNOTATIONS**

**Cross references. —** For administration and enforcement, *see* 7-1-2 and 7-2-22 NMSA 1978.

For limitations on power of municipalities to tax incomes, *see* 3-18-2 NMSA 1978.

**Law reviews. —** For article, "An Intergovernmental Approach to Tax Reform," see 4 N.M.L. Rev. 189 (1974).

For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

For article, "The Indian Tax Cases - A Territorial Analysis," see 9 N.M.L. Rev. 221 (1979).

For article, "New Mexico Taxes: Taking Another Look," see 32 N.M.L. Rev. 351 (2002).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation §§ 443 to 611.

What constitutes "reasonable cause" under state statutes imposing penalty on taxpayer for failure to file timely tax return unless such failure was due to "reasonable cause," 29 A.L.R.4th 413.

Damages for breach of contract as affected by income tax considerations, 50 A.L.R.4th 452.

Decision to take foreign income taxes as federal credit under § 901 of the Internal Revenue Code (26 USCS § 901) as precluding their deduction for state income tax purposes, 77 A.L.R.4th 823.

85 C.J.S. Taxation §§ 1693 et seq.

## 7-2-2. Definitions.

For the purpose of the Income Tax Act and unless the context requires otherwise:

A. "adjusted gross income" means adjusted gross income as defined in Section 62 of the Internal Revenue Code, as that section may be amended or renumbered;

B. "base income":

(1) means, for estates and trusts, that part of the estate's or trust's income defined as taxable income and upon which the federal income tax is calculated in the Internal Revenue Code for income tax purposes plus, for taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and taken by the taxpayer for that year;

(2) means, for taxpayers other than estates or trusts, that part of the taxpayer's income defined as adjusted gross income plus, for taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and taken by the taxpayer for that year;

(3) includes, for all taxpayers, any other income of the taxpayer not included in adjusted gross income but upon which a federal tax is calculated pursuant to the Internal Revenue Code for income tax purposes, except amounts for which a calculation of tax is made pursuant to Section 55 of the Internal Revenue Code, as that section may be amended or renumbered; "base income" also includes interest received on a state or local bond; and

(4) includes, for all taxpayers, an amount deducted pursuant to Section 7-2-32 NMSA 1978 in a prior taxable year if:

(a) such amount is transferred to another qualified tuition program, as defined in Section 529 of the Internal Revenue Code, not authorized in the Education Trust Act [Chapter 21, Article 21K NMSA 1978]; or

(b) a distribution or refund is made for any reason other than: 1) to pay for qualified higher education expenses, as defined pursuant to Section 529 of the Internal Revenue Code; or 2) upon the beneficiary's death, disability or receipt of a scholarship;

C. "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services;

D. "department" means the taxation and revenue department, the secretary or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "fiduciary" means a guardian, trustee, executor, administrator, committee, conservator, receiver, individual or corporation acting in any fiduciary capacity;

F. "filing status" means "married filing joint returns", "married filing separate returns", "head of household", "surviving spouse" and "single", as those terms are generally defined for federal tax purposes;

G. "fiscal year" means any accounting period of twelve months ending on the last day of any month other than December;

H. "head of household" means "head of household" as generally defined for federal income tax purposes;

I. "individual" means a natural person, an estate, a trust or a fiduciary acting for a natural person, trust or estate;

J. "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended;

K. "lump-sum amount" means, for the purpose of determining liability for federal income tax, an amount that was not included in adjusted gross income but upon which the five-year-averaging or the ten-year-averaging method of tax computation provided in Section 402 of the Internal Revenue Code, as that section may be amended or renumbered, was applied;

L. "modified gross income" means all income of the taxpayer and, if any, the taxpayer's spouse and dependents, undiminished by losses and from whatever source, including:

(1) compensation;

(2) net profit from business;

(3) gains from dealings in property;

(4) interest;

(5) net rents;

(6) royalties;

(7) dividends;

(8) alimony and separate maintenance payments;

(9) annuities;

(10) income from life insurance and endowment contracts;

(11) pensions;

(12) discharge of indebtedness;

(13) distributive share of partnership income;

(14) income in respect of a decedent;

(15) income from an interest in an estate or a trust;

(16) social security benefits;

(17) unemployment compensation benefits;

(18) workers' compensation benefits;

(19) public assistance and welfare benefits;

(20) cost-of-living allowances; and

(21) gifts;

M. "modified gross income" excludes:

(1) payments for hospital, dental, medical or drug expenses to or on behalf of the taxpayer;

(2) the value of room and board provided by federal, state or local governments or by private individuals or agencies based upon financial need and not as a form of compensation;

(3) payments pursuant to a federal, state or local government program directly or indirectly to a third party on behalf of the taxpayer when identified to a particular use or invoice by the payer; or

(4) payments for credits and rebates pursuant to the Income Tax Act and made for a credit pursuant to Section 7-3-9 NMSA 1978;

N. "net income" means, for estates and trusts, base income adjusted to exclude amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States and means, for taxpayers other than estates or trusts, base income adjusted to exclude:

(1) an amount equal to the standard deduction allowed the taxpayer for the taxpayer's taxable year by Section 63 of the Internal Revenue Code, as that section may be amended or renumbered;

(2) an amount equal to the itemized deductions defined in Section 63 of the Internal Revenue Code, as that section may be amended or renumbered, allowed the taxpayer for the taxpayer's taxable year less the amount excluded pursuant to

Paragraph (1) of this subsection and less the amount of state and local income and sales taxes included in the taxpayer's itemized deductions;

(3) an amount equal to the product of the exemption amount allowed for the taxpayer's taxable year by Section 151 of the Internal Revenue Code, as that section may be amended or renumbered, multiplied by the number of personal exemptions allowed for federal income tax purposes;

(4) income from obligations of the United States of America less expenses incurred to earn that income;

(5) other amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States;

(6) for taxable years that began prior to January 1, 1991, an amount equal to the sum of:

(a) net operating loss carryback deductions to that year from taxable years beginning prior to January 1, 1991 claimed and allowed, as provided by the Internal Revenue Code; and

(b) net operating loss carryover deductions to that year claimed and allowed;

(7) for taxable years beginning on or after January 1, 1991 and prior to January 1, 2013, an amount equal to the sum of any net operating loss carryover deductions to that year claimed and allowed, provided that the amount of any net operating loss carryover from a taxable year beginning on or after January 1, 1991 and prior to January 1, 2013 may be excluded only as follows:

(a) in the case of a timely filed return, in the taxable year immediately following the taxable year for which the return is filed; or

(b) in the case of amended returns or original returns not timely filed, in the first taxable year beginning after the date on which the return or amended return establishing the net operating loss is filed; and

(c) in either case, if the net operating loss carryover exceeds the amount of net income exclusive of the net operating loss carryover for the taxable year to which the exclusion first applies, in the next four succeeding taxable years in turn until the net operating loss carryover is exhausted for any net operating loss carryover from a taxable year prior to January 1, 2013; in no event shall a net operating loss carryover from a taxable year beginning prior to January 1, 2013 be excluded in any taxable year after the fourth taxable year beginning after the taxable year to which the exclusion first applies;

(8) for taxable years beginning on or after January 1, 2013, an amount equal to the sum of any net operating loss carryover deductions to that year claimed and allowed; provided that the amount of any net operating loss carryover may be excluded only as follows:

(a) in the case of a timely filed return, in the taxable year immediately following the taxable year for which the return is filed; or

(b) in the case of amended returns or original returns not timely filed, in the first taxable year beginning after the date on which the return or amended return establishing the net operating loss is filed; and

(c) in either case, if the net operating loss carryover exceeds the amount of net income exclusive of the net operating loss carryover for the taxable year to which the exclusion first applies, in the next nineteen succeeding taxable years in turn until the net operating loss carryover is exhausted for any net operating loss carryover from a taxable year beginning on or after January 1, 2013; in no event shall a net operating loss carryover from a taxable year beginning: 1) prior to January 1, 2013 be excluded in any taxable year after the fourth taxable year beginning after the taxable year to which the exclusion first applies; and 2) on or after January 1, 2013 be excluded in any taxable year after the nineteenth taxable year beginning after the taxable year to which the exclusion first applies; and

(9) for taxable years beginning on or after January 1, 2011, an amount equal to the amount included in adjusted gross income that represents a refund of state and local income and sales taxes that were deducted for federal tax purposes in taxable years beginning on or after January 1, 2010;

O. "net operating loss" means any net operating loss, as defined by Section 172(c) of the Internal Revenue Code, as that section may be amended or renumbered, for a taxable year as further increased by the income, if any, from obligations of the United States for that year less related expenses;

P. "net operating loss carryover" means the amount, or any portion of the amount, of a net operating loss for any taxable year that, pursuant to Paragraph (6), (7) or (8) of Subsection N of this section, may be excluded from base income;

Q. "nonresident" means every individual not a resident of this state;

R. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, joint venture, syndicate or other association; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or agency, department or instrumentality thereof;

S. "resident" means an individual who is domiciled in this state during any part of the taxable year or an individual who is physically present in this state for one hundred eighty-five days or more during the taxable year; but any individual, other than someone who was physically present in the state for one hundred eighty-five days or more during the taxable year, who, on or before the last day of the taxable year, changed the individual's place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently without this state is not a resident for the purposes of the Income Tax Act for periods after that change of abode;

T. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

U. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of the United States or any political subdivision of a foreign country;

V. "state or local bond" means a bond issued by a state other than New Mexico or by a local government other than one of New Mexico's political subdivisions, the interest from which is excluded from income for federal income tax purposes under Section 103 of the Internal Revenue Code, as that section may be amended or renumbered;

W. "surviving spouse" means "surviving spouse" as generally defined for federal income tax purposes;

X. "taxable income" means net income less any lump-sum amount;

Y. "taxable year" means the calendar year or fiscal year upon the basis of which the net income is computed under the Income Tax Act and includes, in the case of the return made for a fractional part of a year under the provisions of the Income Tax Act, the period for which the return is made; and

Z. "taxpayer" means any individual subject to the tax imposed by the Income Tax Act.

History: 1978 Comp., § 7-2-2, enacted by Laws 1986, ch. 20, § 26; 1987, ch. 277, § 1; 1988, ch. 41, § 1; 1990, ch. 49, § 1; 1991, ch. 9, § 24; 1993, ch. 307, § 1; 2003, ch. 13, § 1; 2003, ch. 275, § 1; 2007, ch. 45, § 7; 2010 (2nd S.S.), ch. 7, § 7; 2014, ch. 53, § 1.

## ANNOTATIONS

**Cross references.** — For Sections 55, 62, 63, 103, 151, 172, and 402 of the Internal Revenue Code, *see* 26 U.S.C. §§ 55, 62, 63, 103, 151, 172, and 402 respectively.

**The 2014 amendment,** effective May 21, 2014, excluded net operating loss carryover from net income for twenty years; in Subsection N, in Paragraph (7), after the first and second instances of "January 1, 1991", added "and prior to January 1, 2013"; in

Subsection N, in Paragraph (7), in Subparagraph (c), after "carryover is exhausted", added "for any net operating loss carryover from a taxable year prior to January 1, 2013", after "operating loss carryover", added "from a taxable year beginning prior to January 1, 2013"; in Subsection N, added Paragraph (8), including Subparagraphs (a) through (c); and in Subsection P, after "Paragraph (6), (7)", added "or (8)".

**Applicability.** — Laws 2014, ch. 53, § 3 provided that the provisions of Laws 2014, ch. 53, §§ 1 and 2 applies to taxable years beginning on or after January 1, 2013.

**The 2010 (2nd S.S.) amendment,** effective July 1, 2010, in Subsection N(2), after "Paragraph (1) of this subsection", added the remainder of the sentence; and added Paragraph (8) of Subsection N.

**Temporary provisions.** — Laws 2010, ch. 7, § 12 provided that for the 2010 taxable year, a taxpayer is deemed to have complied with the provisions of Section 7-2-12.2 NMSA 1978 if the taxpayer has made the required annual payments of estimated taxes due for taxable year 2010 based on the definition of net income in Section 7-2-2 NMSA 1978 applicable prior to January 1, 2010.

**The 2007 amendment,** effective June 15, 2007, in Paragraph (4) of Subsection M, changed "pursuant to Sections 7-2-14, 7-2-18, 7-2-18.1" to "for credits and rebates pursuant to the Income Tax Act" and added "made for a credit pursuant to Section 7-3-9 NMSA 1978".

**The 2003 amendment,** effective June 20, 2003, added Paragraph B(4); in Subsection K, deleted "an amount that" near the beginning, inserted "an amount that" following "federal income tax"; deleted "derived" near the end of Subsection L and in Paragraphs L(2) and (3); substituted "excludes" for "does not include" in Subsection M; deleted "whether made" following "or drug expenses" in Paragraph M(1); deleted "made" near the beginning of Paragraphs M(3) and (4); deleted "7-2-14.1" in Paragraph M(4); in Subsection S, substituted "or an individual who is physically present in this state for one hundred eighty-five days or more during the taxable year; but any individual, other than someone who was physically present in the state for one hundred eighty-five days or more during the taxable year," for "but any individual" preceding "who, on or", inserted "for periods after that change of abode" at the end.

This section was also amended by Laws 2003, ch. 13, § 1, effective June 20, 2003. The section was set out as amended by Laws 2003, ch. 275, § 1. *See* 12-1-8 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, added the language beginning "in no event" at the end of Subparagraph (7)(c) of Subsection N and inserted "limited liability company" in Subsection R.

**The 1991 amendment,** effective June 14, 1991, rewrote Subsection B; deleted "or 'division'" following "'department'" in Subsection D; in Subsection M, substituted "or" for "and" at the end of Paragraph (3) and deleted reference to 7-2-15 NMSA 1978 in

Paragraph (4); rewrote Subsection N; added present Subsections O, P and V; redesignated former Subsections O to S and T to W as present Subsections Q to U and W to Z, respectively; in present Subsection T, deleted "or 'director'" following "'secretary'"; and made a minor stylistic change in Subsection K.

**The 1990 amendment,** effective May 16, 1990, deleted former Subsection E which defined "director" as "the secretary of taxation and revenue or the secretary's delegate"; redesignated former Subsections F to K as present Subsections E to J; substituted "a trust or a fiduciary" for "trust or fiduciary" in present Subsection I; inserted "of 1986" after "Code" in present Subsection J; added present Subsection K; in Subsection L; inserted "of the taxpayer and, if any, the taxpayer's spouse and dependents" and substituted "workers' " for "workmen's" in Paragraph (18); in Paragraph (1) of Subsection N, inserted "the greater of the basic standard deduction allowed the taxpayer for the taxpayer's taxable year by Section 63 of the Internal Revenue Code, as that section may be amended or renumbered, or an amount equal to"; inserted the subparagraph designation "(a)"; redesignated former Paragraphs (2) to (4) of Subsection N as present Subparagraphs (b) to (d) of Paragraph (1) and deleted "an amount equal to" at the beginning of each of the redesignated subparagraphs; in Subsection N, redesignated former Paragraphs (5) to (7) as present Paragraphs (2) to (4), substituted "Paragraph (1) of this subsection" for "Paragraph (1), (2), (3) or (4) of this subsection" in present Paragraph (2), rewrote present Paragraph (3) which read "an amount equal to two thousand dollars ($2,000) multiplied by the number of personal exemptions allowed for federal income tax purposes"; inserted "or 'director' " in Subsection R; and added present Subsection U and redesignated former Subsections U and V as present Subsections V and W.

**"Income".** — Taxpayers' wages and salaries from employment constituted "income" for purposes of determining their tax liability. Holt v. N.M. Dep't of Taxation & Revenue, 2002-NMSC-034, 133 N.M. 11, 59 P.3d 491.

**"Resident" defined.** — New Mexico "resident" is an individual domiciled in New Mexico at any time during the taxable year who does not intentionally change his domicile by the end of the year. Murphy v. Taxation & Revenue Dep't, 1980-NMSC-012, 94 N.M. 54, 607 P.2d 592.

**Basis of residence.** — Definition of "resident" is based on both person's domicile and his intent. Murphy v. Taxation & Revenue Dep't, 1980-NMSC-012, 94 N.M. 54, 607 P.2d 592.

**State tax statutes may constitutionally refer to federal definitions.** — A state has the power to gauge its income tax by reference to the income on which the taxpayer is required to pay a tax to the United States, and the constitutionality of state statutes which refer to the Internal Revenue Code definitions have been upheld. Champion Int'l Corp. v. Bureau of Revenue, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

**Election to treat unrealized gain as federal income makes it state income.** — When multistate corporate taxpayer elected to treat the cutting of certain timber as a sale or exchange, eligible for taxation at capital gains rates, even though the timber had not actually been sold, it was held that since its federal income tax was calculated by use of this gain, the gain was includable in its base income for New Mexico income tax purposes. Champion Int'l Corp. v. Bureau of Revenue, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

**Gain may be included in apportionable income of multistate corporation.** — New Mexico was not taxing on out-of-state activity where it included gain from the cutting of timber treated by the taxpayer as a sale or exchange for federal tax purposes in the apportionable business income of the corporation. Champion Int'l Corp. v. Bureau of Revenue, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

**Law reviews.** — For symposium, "Tax Implications of the Equal Rights Amendment," see 3 N.M.L. Rev. 69 (1973).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 483 to 511.

Construction and application of state corporate income tax statutes allowing net operating loss deductions, 33 A.L.R.5th 509.

85 C.J.S. Taxation §§ 1715 to 1719.

## 7-2-3. Imposition and levy of tax.

A tax is imposed at the rates specified in the Income Tax Act upon the net income of every resident individual and upon the net income of every nonresident individual employed or engaged in the transaction of business in, into or from this state, or deriving any income from any property or employment within this state.

**History:** 1953 Comp., § 72-15A-3, enacted by Laws 1965, ch. 202, § 3; 1979, ch. 92, § 2; 1981, ch. 37, § 14.

**ANNOTATIONS**

**Cross references.** — *See* case notes to 7-2-2 NMSA 1978.

For income tax rates, *see* 7-2-7 and 7-2-7.1 NMSA 1978.

**Constitutionality of tax on nonresidents.** — The opportunity to exercise "intelligence, skill and labor while employed in the State of New Mexico" is a sufficient benefit to support imposition of state income tax on nonresident employees of a federal enclave. Lung v. O'Chesky, 1980-NMSC-104, 94 N.M. 802, 617 P.2d 1317.

**Retirement income.** — An income tax exemption granted to retirees of New Mexico state educational institutions, but not extended to retirees of California state educational institutions, does not discriminate against the federal government in violation of the doctrine of intergovernmental tax immunity (ITI) when the federal government funds the retirement accounts of the California state educational institution retirees. The same exemption does not discriminate against the sovereign State of California in violation of the ITI doctrine. Alarid v. Sec'y of Dep't of Taxation & Revenue, 1994-NMCA-075, 118 N.M. 23, 878 P.2d 341, cert. denied, 118 N.M. 90, 879 P.2d 91, cert. denied, 513 U.S. 1081, 115 S.Ct. 733, 130 L.Ed.2d 636 (1994).

**Tax burden should fall with uniformity and equality** upon the class of persons sought to be taxed. N.M. Elec. Serv. Co. v. Jones, 1969-NMCA-111, 80 N.M. 791, 461 P.2d 924.

**"Income".** — Taxpayers' wages and salaries from employment constituted "income" for purposes of determining their tax liability. Holt v. N.M. Dep't of Taxation & Revenue, 2002-NMSC-034, 133 N.M. 11, 59 P.3d 491.

**State taxes domiciliaries' net income and nondomiciliaries' property income.** — New Mexico taxes the net income of all New Mexicans and all nondomiciliaries deriving income from property in New Mexico. Murphy v. Taxation & Revenue Dep't, 1980-NMSC-012, 94 N.M. 54, 607 P.2d 592.

**Income of Indians from activities on reservation exempt.** — New Mexico may not tax income and gross receipts of Indians residing on a reservation when the income and gross receipts involved are derived solely from activities within the reservation. Hunt v. O'Cheskey, 1973-NMCA-026, 85 N.M. 381, 512 P.2d 954, cert. quashed, 85 N.M. 388, 512 P.2d 961.

**Indian on other tribe's reservation may be taxed.** — Income earned by Native Americans while living and working on reservations of which they are not tribunal members is taxable by the state. N.M. Taxation & Revenue Dep't v. Greaves, 1993-NMCA-133, 116 N.M. 508, 864 P.2d 324.

**State tax statutes may constitutionally refer to federal definitions.** — A state has the power to gauge its income tax by reference to the income on which the taxpayer is required to pay a tax to the United States, and the constitutionality of state statutes which refer to the Internal Revenue Code definitions have been upheld. Champion Int'l Corp. v. Bureau of Revenue, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

**Election to treat unrealized gain as federal income makes it state income.** — When multistate corporate taxpayer elected to treat the cutting of certain timber as a sale or exchange, eligible for taxation at capital gains rates, even though the timber had not actually been sold, it was held that since its federal income tax was calculated by use of this gain, the gain was includable in its base income for New Mexico income tax

purposes. Champion Int'l Corp. v. Bureau of Revenue, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

**Gain may be included in apportionable income of multistate corporation.** — New Mexico was not taxing on out-of-state activity where it included gain from the cutting of timber treated by the taxpayer as a sale or exchange for federal tax purposes in the apportionable business income of the corporation. Champion Int'l Corp. v. Bureau of Revenue, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

**Law reviews.** — For note, New Mexico Taxes Non-Member Indians Who Work on a Reservation: *New Mexico Taxation and Revenue Dep't v. Greaves*, see 25 N.M.L. Rev. 129 (1995).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 470 to 474, 512 to 517.

85 C.J.S. Taxation § 1715 to 1719.

## 7-2-4. Exemptions.

No income tax shall be imposed upon:

A. a trust organized or created in the United States and forming part of a stock bonus, pension or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries, which trust is exempt from taxation under the provisions of the Internal Revenue Code; or

B. religious, educational, benevolent or other organizations not organized for profit which are exempt from income taxation under the Internal Revenue Code except to the extent that such income is subject to federal income taxation as "unrelated business income" under the Internal Revenue Code.

**History:** 1953 Comp., § 72-15A-4, enacted by Laws 1965, ch. 202, § 4; 1969, ch. 152, § 2; 1971, ch. 20, § 2; 1981, ch. 37, § 15.

**ANNOTATIONS**

**Cross references.** — For exemption of severance tax bonds from taxation, *see* 7-27-24 NMSA 1978.

For exemption of mortgage finance authority and bonds and notes thereof, *see* 58-18-18 NMSA 1978.

For the Internal Revenue Code, *see* 26 U.S.C. § 1 et seq.

**Tax burden should fall with uniformity and equality** upon the class of persons sought to be taxed. N.M. Elec. Serv. Co. v. Jones, 1969-NMCA-111, 80 N.M. 791, 461 P.2d 924.

**Exemptions strictly construed.** — In pursuance of the beneficent public policy which favors equality in the distribution of the burden of government, all exemptions of persons or property from taxation are to be construed strictly against the exemption; the intention to create exemptions must affirmatively appear and cannot be raised by implication. N.M. Elec. Serv. Co. v. Jones, 1969-NMCA-111, 80 N.M. 791, 461 P.2d 924.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 362 to 391, 475 to 482.

Construction of exemption of religious body or society from taxation or special assessment, 17 A.L.R. 1027, 168 A.L.R. 1222.

Exemption of charitable organization from taxation or special assessment, 34 A.L.R. 634, 62 A.L.R. 328, 108 A.L.R. 284.

Extent of area within tax exemption extended to property used for educational, religious, or charitable purposes, 134 A.L.R. 1176.

Exemption of college fraternity house or dormitory from taxation, 66 A.L.R.2d 904.

When is corporation, community chest, fund, foundation or club "organized and operated exclusively" for charitable or other exempt purposes under Internal Revenue Code, 69 A.L.R.2d 871.

Qualification of health care entities for federal tax exemption as charitable organization under 26 USCS § 501(c)(3), 134 A.L.R. Fed. 395.

84 C.J.S. Taxation §§ 321 to 393; 85 C.J.S. Taxation §§ 1715 to 1719, 1736 to 1737.

## 7-2-5, 7-2-5.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 49, § 18 repealed 7-2-5 and 7-2-5.1 NMSA 1978, as enacted by Laws 1967, ch. 70, § 1, relating to exemptions for annuities to retired federal civil service employees and for military retirement pay, effective May 16, 1990. For provisions of former sections, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

## 7-2-5.2. Exemption; income of persons sixty-five and older or blind.

Any individual sixty-five years of age or older or who, for federal income tax purposes, is blind may claim an exemption in an amount specified in Subsections A through C of this section not to exceed eight thousand dollars ($8,000) of income includable except for this exemption in net income. Individuals having income both within and without this state shall apportion this exemption in accordance with regulations of the secretary:

A. for married individuals filing separate returns, for any taxable year beginning on or after January 1, 1987:

| If adjusted gross income is: | The maximum amount of exemption allowable under this section shall be: |
|---|---|
| Not over $15,000 | $8,000 |
| Over $15,000 but not over $16,500 | $7,000 |
| Over $16,500 but not over $18,000 | $6,000 |
| Over $18,000 but not over $19,500 | $5,000 |
| Over $19,500 but not over $21,000 | $4,000 |
| Over $21,000 but not over $22,500 | $3,000 |
| Over $22,500 but not over $24,000 | $2,000 |
| Over $24,000 but not over $25,500 | $1,000 |
| Over $25,500 | 0. |

B. for heads of household, surviving spouses and married individuals filing joint returns, for any taxable year beginning on or after January 1, 1987:

| If adjusted gross income is: | The maximum amount of exemption allowable under this section shall be: |
|---|---|
| Not over $30,000 | $8,000 |
| Over $30,000 but not over $33,000 | $7,000 |
| Over $33,000 but not over $36,000 | $6,000 |
| Over $36,000 but not over $39,000 | $5,000 |
| Over $39,000 but not over $42,000 | $4,000 |
| Over $42,000 but not over $45,000 | $3,000 |
| Over $45,000 but not over $48,000 | $2,000 |
| Over $48,000 but not over $51,000 | $1,000 |
| Over $51,000 | 0. |

C. for single individuals, for any taxable year beginning on or after January 1, 1987:

| If adjusted | The maximum amount of |
|---|---|

| gross income is: | exemption allowable under this section shall be: |
|---|---|
| Not over $18,000 | $8,000 |
| Over $18,000 but not over $19,500 | $7,000 |
| Over $19,500 but not over $21,000 | $6,000 |
| Over $21,000 but not over $22,500 | $5,000 |
| Over $22,500 but not over $24,000 | $4,000 |
| Over $24,000 but not over $25,500 | $3,000 |
| Over $25,500 but not over $27,000 | $2,000 |
| Over $27,000 but not over $28,500 | $1,000 |
| Over $28,500 | 0. |

**History:** 1978 Comp., § 7-2-5.2, enacted by Laws 1985, ch. 114, § 1; 1987, ch. 264, § 6.

**ANNOTATIONS**

**Applicability.** — Laws 1987, ch. 264, § 27 made the provisions of Sections 6 and 7 and Subsection B of Section 25 of the act applicable to taxable years beginning on or after January 1, 1987.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 334, 464.

85 C.J.S. Taxation §§ 1736 and 1737.

## 7-2-5.3. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 49, § 18 repealed 7-2-5.3 NMSA 1978, as amended by Laws 1987, ch. 277, § 2, relating to exemption for social security and railroad retirement benefits, effective May 16, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

## 7-2-5.4. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 45, § 14 repealed 7-2-5.4 NMSA 1978, being Laws 1988, ch. 59, § 1, relating to tax exemptions for an adopted special needs child, effective for tax years beginning on or after January 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

## 7-2-5.5. Exemption; earnings by Indians, their Indian spouses and Indian dependents on Indian lands.

Income earned by a member of a New Mexico federally recognized Indian nation, tribe, band or pueblo, his spouse or dependent, who is a member of a New Mexico federally recognized Indian nation, tribe, band or pueblo, is exempt from state income tax if the income is earned from work performed within and the member, spouse or dependent lives within the boundaries of the Indian member's or the spouse's reservation or pueblo grant or within the boundaries of lands held in trust by the United States for the benefit of the member or spouse or his nation, tribe, band or pueblo, subject to restriction against alienation imposed by the United States.

**History:** Laws 1995, ch. 42, § 1.

**ANNOTATIONS**

## 7-2-5.6. Exemption; medical care savings accounts.

Except as provided in Section 6 [59A-23D-6 NMSA 1978] of this act, employer and employee contributions to medical care savings accounts established pursuant to the Medical Care Savings Account Act [Chapter 59A, Article 23D NMSA 1978], the interest earned on those accounts and money reimbursed to an employee for eligible medical expenses from those accounts or money advanced to the employee by the employer for eligible medical expenses pursuant to that act are exempt from taxation.

**History:** Laws 1995, ch. 93, § 8.

**ANNOTATIONS**

## 7-2-5.7. Exemption; income of individuals one hundred years of age or older.

The income of an individual who is a natural person, who is one hundred years of age or older and who is not a dependent of another individual is exempt from state income tax.

**History:** Laws 2002, ch. 58, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2002, ch. 58 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 15, 2002, 90 days after adjournment of the legislature.

## 7-2-5.8. Exemption for low- and middle-income taxpayers.

A. An individual may claim an exemption in an amount specified in Subsections B through D of this section not to exceed an amount equal to the number of federal exemptions multiplied by two thousand five hundred dollars ($2,500) of income includable, except for this exemption, in net income.

B. For a married individual filing a separate return with adjusted gross income up to twenty-seven thousand five hundred dollars ($27,500):

(1) if the adjusted gross income is not over fifteen thousand dollars ($15,000), the amount of the exemption pursuant to this section shall be two thousand five hundred dollars ($2,500) for each federal exemption; and

(2) if the adjusted gross income is over fifteen thousand dollars ($15,000) but not over twenty-seven thousand five hundred dollars ($27,500), the amount of the exemption pursuant to this section for each federal exemption shall be calculated as follows:

(a) two thousand five hundred dollars ($2,500); less

(b) twenty percent of the amount obtained by subtracting fifteen thousand dollars ($15,000) from the adjusted gross income.

C. For single individuals with adjusted gross income up to thirty-six thousand six hundred sixty-seven dollars ($36,667):

(1) if the adjusted gross income is not over twenty thousand dollars ($20,000), the amount of the exemption pursuant to this section shall be two thousand five hundred dollars ($2,500) for each federal exemption; and

(2) if the adjusted gross income is over twenty thousand dollars ($20,000) but not over thirty-six thousand six hundred sixty-seven dollars ($36,667), the amount of the exemption pursuant to this section for each federal exemption shall be calculated as follows:

(a) two thousand five hundred dollars ($2,500); less

(b) fifteen percent of the amount obtained by subtracting twenty thousand dollars ($20,000) from the adjusted gross income.

D. For married individuals filing joint returns, surviving spouses or for heads of households with adjusted gross income up to fifty-five thousand dollars ($55,000):

(1) if the adjusted gross income is not over thirty thousand dollars ($30,000), the amount of the exemption pursuant to this section shall be two thousand five hundred dollars ($2,500) for each federal exemption; and

(2) if the adjusted gross income is over thirty thousand dollars ($30,000) but not over fifty-five thousand dollars ($55,000), the amount of the exemption pursuant to this section for each federal exemption shall be calculated as follows:

(a) two thousand five hundred dollars ($2,500); less

(b) ten percent of the amount obtained by subtracting thirty thousand dollars ($30,000) from the adjusted gross income.

History: Laws 2005, ch. 104, § 5; 2007, ch. 45, § 8.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, in Subsection A, deleted the provision that individuals who have income in and out of the state shall apportion the exemption in accordance with regulations of the secretary; in Subsection B, changed $20,333 to $27,500; in Paragraph (1) of Subsection B, changed $12,000 to $15,000; in Paragraph (2) of Subsection B, changed the minimum from $12,000 to $15,000 and the maximum from $20,333 to $27,500; in Subparagraph (b) of Paragraph (2) of Subsection B, changed $12,000 to $15,000; in Subsection C, changed $27,110 to $36,667; in Paragraph (1) of Subsection C, changed $16,000 to $20,000 and in Paragraph (2) of Subsection C, changed the maximum from $27,110 to $36,667; in Subparagraph (b) of Paragraph (2) of Subsection C, changed $16,000 to $20,000; in Subsection D, changed $40,667 to $55,000; in Paragraph (1) of Subsection D, changed $24,000 to $30,000; in Paragraph (2) of Subsection D, changed the minimum from $24,000 to $30,000 and the maximum from $40,667 to $55,000; in Subparagraph (b) of Paragraph (2) of Subsection D, changed $24,000 to $30,000; and deleted former Subsection E, which defined "federal exemption" as an exemption allowable for federal income tax purposes for an individual included in the return who is domiciled in New Mexico.

**Applicability.** — Laws 2007, ch. 45, § 15 provided that Laws 2007, ch. 45, § 8 applied to taxable years beginning on or after January 1, 2007.

## 7-2-5.9. Exemption; unreimbursed or uncompensated medical care expenses of individuals sixty-five years of age or older.

A. Any individual sixty-five years of age or older may claim an additional exemption from income includable, except for this exemption, in net income in an amount equal to three thousand dollars ($3,000) for medical care expenses paid by the individual for that individual or for the individual's spouse or dependent during the taxable year if those medical care expenses exceed twenty-eight thousand dollars ($28,000) and if the medical care expenses are not reimbursed or compensated for by insurance or otherwise.

B. As used in this section:

(1) "dependent" means "dependent" as defined in Section 152 of the Internal Revenue Code;

(2) "health care facility" means a hospital, outpatient facility, diagnostic and treatment center, rehabilitation center, freestanding hospice or other similar facility at which medical care is provided;

(3) "medical care" means the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body;

(4) "medical care expenses" means amounts paid for:

(a) the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body if provided by a physician or in a health care facility;

(b) prescribed drugs or insulin;

(c) qualified long-term care services as defined in Section 7702B(c) of the Internal Revenue Code;

(d) insurance covering medical care, including amounts paid as premiums under Part B of Title 18 of the Social Security Act or for a qualified long-term care insurance contract defined in Section 7702B(b) of the Internal Revenue Code, if the insurance or other amount is paid from income included in the taxpayer's adjusted gross income for the taxable year;

(e) specialized treatment or the use of special therapeutic devices if the treatment or device is prescribed by a physician and the patient can show that the expense was incurred primarily for the prevention or alleviation of a physical or mental defect or illness; and

(f) care in an institution other than a hospital, such as a sanitarium or rest home, if the principal reason for the presence of the person in the institution is to receive the medical care available; provided that if the meals and lodging are furnished as a necessary part of such care, the cost of the meals and lodging are "medical care expenses";

(5) "physician" means a medical doctor, osteopathic physician, dentist, podiatrist, chiropractic physician or psychologist licensed or certified to practice in New Mexico; and

(6) "prescribed drug" means a drug or biological that requires a prescription of a physician for its use by an individual.

History: Laws 2005, ch. 104, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 104, § 29, made the act effective January 1, 2006.

**Applicability.** — Laws 2005, ch. 104, § 29 provided that Laws 2005, ch. 104, § 6 applied to taxable years beginning on or after January 1, 2007.

## 7-2-5.10. Exemption; New Mexico national guard member premiums paid for group life insurance.

An individual who receives reimbursement from the service members' life insurance reimbursement fund may claim an exemption in the amount of that reimbursement, from income includable, except for this exemption, in net income.

**History:** Laws 2006, ch. 50, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2006, ch. 50, § 3 made the act effective March 2, 2006.

**Applicability.** — Laws 2006, ch. 50, § 2, effective March 2, 2006, provided that Laws 2006, ch. 50, § 1 applies to taxable years beginning on or after January 1, 2005.

## 7-2-5.11. Exemption; armed forces salaries.

A salary paid by the United States to a taxpayer for active duty service in the armed forces of the United States is exempt from state income taxation.

History: Laws 2007, ch. 45, § 11.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 45, § 11, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2007, ch. 45, § 15 provided that Laws 2007, ch. 45, §§ 7 through 11 apply to taxable years beginning on or after January 1, 2007.

## 7-2-6. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 49, § 18 repealed 7-2-6 NMSA 1978, as enacted by Laws 1977, ch. 300, § 1, relating to exemptions for annuities paid to retired judges of the district court, court of appeals judges, and supreme court justices, effective May 16, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

## 7-2-7. Individual income tax rates. (Effective January 1, 2006 through December 31, 2007.)

The tax imposed by Section 7-2-3 NMSA 1978 shall be at the following rates for taxable years beginning in 2006 or 2007:

A. For married individuals filing separate returns:

| If the taxable income is: | The tax shall be: |
|---|---|
| Not over $4,000 | 1.7% of taxable income |
| Over $ 4,000 but not over $ 8,000 | $ 68.00 plus 3.2% of excess over $ 4,000 |
| Over $ 8,000 but not over $ 12,000 | $ 196 plus 4.7% of excess over $ 8,000 |
| Over $ 12,000 | $ 384 plus 5.3% of excess over $ 12,000. |

B. For heads of household, surviving spouses and married individuals filing joint returns:

| If the taxable income is: | The tax shall be: |
|---|---|
| Not over $8,000 | 1.7% of taxable income |
| Over $ 8,000 but not over $ 16,000 | $ 136 plus 3.2% of excess over $ 8,000 |
| Over $ 16,000 but not over $ 24,000 | $ 392 plus 4.7% of excess over $ 16,000 |
| Over $ 24,000 | $ 768 plus 5.3% of excess over $ 24,000. |

C. For single individuals and for estates and trusts:

| If the taxable income is: | The tax shall be: |
|---|---|
| Not over $5,500 | 1.7% of taxable income |
| Over $ 5,500 but not over $ 11,000 | $ 93.50 plus 3.2% of excess over $ 5,500 |
| Over $ 11,000 but not over $ 16,000 | $ 269.50 plus 4.7% of excess over $ 11,000 |
| Over $ 16,000 | $ 504.50 plus 5.3% of excess over $ 16,000. |

D. The tax on the sum of any lump-sum amounts included in net income is an amount equal to five multiplied by the difference between:

(1) the amount of tax due on the taxpayer's taxable income; and

(2) the amount of tax that would be due on an amount equal to the taxpayer's taxable income and twenty percent of the taxpayer's lump-sum amounts included in net income.

History: 1953 Comp. 72-15A-5; 1994, ch. 5, § 20; 2003, ch. 2, § 2; repealed and reenacted by Laws 2003, ch. 2, § 3; repealed and reenacted by Laws 2003, ch. 2, § 4; 2005 (1st S.S.) ch. 3, § 1; repealed and reenacted by Laws 2005 (1st S.S.) ch. 3, § 2.

**ANNOTATIONS**

**2005 Multiple Amendments.** — Laws 2005 (1st S.S.), ch. 3, § 6, effective October 28, 2005, repealed Laws 2005, ch. 104, § 3 and Laws 2003, ch. 2, § 6, providing for personal income tax rates for the January 1, 2007 to December 31, 2007 tax year. Laws 2005 (1st S.S.), ch. 3, § 2 set out above, prescribed the personal income tax rates for both the 2006 and 2007 tax years.

Laws 2005, ch. 104, § 2, amended 7-2-7 NMSA 1978, as enacted by Laws 2003, ch. 2, § 5, for the January 1, 2006 to December 31, 2006 personal income tax year; Laws 2005 (1st S.S.), ch. 3, § 6 repealed Laws 2005, ch. 104, § 2 and Laws 2003, ch. 2, § 5, effective October 28, 2005. The above section was set out as amended by Laws 2005 (1st S.S.), ch. 3, §§ 1 and 2.

Laws 2005 (1st S.S.), ch. 3, § 2, amended the January 1, 2005 to December 31, 2005 version of 7-2-7 NMSA 1978 enacted by Laws 2003, ch. 2, § 4 and amended by Laws 2005 (1st S.S.), ch. 3, § 1 to reduce the top personal income tax rate from 5.7% to 5.3% for the January 1, 2006 to December 31, 2006 tax year for married individuals filing separate returns in excess of $12,000, for heads of household, surviving spouses and married individuals filing joint returns in excess of $24,000 and for single individuals and for estates and trusts in excess of $16,000; Subsection B is amended to include heads of household returns; former Subsection D providing for separate tax rates for heads of household returns is deleted; and Subsection E is relettered as Subsection D. Laws 2005, ch. 3, § 2 was made effective January 1, 2006 by Laws 2005, ch. 3, § 7.

## 7-2-7. Individual income tax rates. (Effective January 1, 2008.)

The tax imposed by Section 7-2-3 NMSA 1978 shall be at the following rates for any taxable year beginning on or after January 1, 2008:

A. For married individuals filing separate returns:

| If the taxable income is: | The tax shall be: |
|---|---|
| Not over $4,000 | 1.7% of taxable income |
| Over $ 4,000 but not over $ 8,000 | $ 68.00 plus 3.2% of excess over $ 4,000 |

| | |
|---|---|
| Over $ 8,000 but not over $ 12,000 | $ 196 plus 4.7% of excess over $ 8,000 |
| Over $ 12,000 | $ 384 plus 4.9% of excess over $ 12,000. |

B. For heads of household, surviving spouses and married individuals filing joint returns:

| If the taxable income is: | The tax shall be: |
|---|---|
| Not over $8,000 | 1.7% of taxable income |
| Over $ 8,000 but not over $ 16,000 | $ 136 plus 3.2% of excess over $ 8,000 |
| Over $ 16,000 but not over $ 24,000 | $ 392 plus 4.7% of excess over $ 16,000 |
| Over $ 24,000 | $ 768 plus 4.9% of excess over $ 24,000. |

C. For single individuals and for estates and trusts:

| If the taxable income is: | The tax shall be: |
|---|---|
| Not over $5,500 | 1.7% of taxable income |
| Over $ 5,500 but not over $ 11,000 | $ 93.50 plus 3.2% of excess over $ 5,500 |
| Over $ 11,000 but not over $ 16,000 | $ 269.50 plus 4.7% of excess over $ 11,000 |
| Over $ 16,000 | $ 504.50 plus 4.9% of excess over $ 16,000. |

D. The tax on the sum of any lump-sum amounts included in net income is an amount equal to five multiplied by the difference between:

(1) the amount of tax due on the taxpayer's taxable income; and

(2) the amount of tax that would be due on an amount equal to the taxpayer's taxable income and twenty percent of the taxpayer's lump-sum amounts included in net income.

History: Laws 2005, ch. 104, § 4.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 2005, ch. 104, § 4 repealed 7-2-7 NMSA 1978, as enacted by Laws 2003, ch. 2, § 6 and amended by Laws 2005, ch. 104, § 3 and enacted a new 7-2-7 NMSA 1978, effective January 1, 2008. Effective January 1, 2008, the top rate for a married individual filing a separate return, heads of households, surviving spouses and married individuals filing joint returns and single individuals and estate and trusts will be reduced from 5.3% to 4.9%. The imposition of the top rate varies for each group of taxpayers.

## 7-2-7.1. Tax tables.

In lieu of the tax rate computations required in Section 7-2-7 NMSA 1978, the secretary may adopt regulations requiring taxpayers to pay taxes in accordance with tax rate tables. The tax tables may be established either by regulation or by instruction but shall be computed substantially on the basis of the rates prescribed in Section 7-2-7 NMSA 1978. The secretary may by regulation or instruction exclude from the application of this section taxpayers having net incomes in excess of an amount to be determined by the secretary and may exclude taxpayers in any net-income class having more exemptions than the number of exemptions specified by the secretary for that category.

**History:** 1978 Comp., § 7-2-7.1, enacted by Laws 1980, ch. 102, § 1; 1981, ch. 37, § 18; 1990, ch. 49, § 3; 1995, ch. 11, § 2.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, inserted "may be established either by regulation or by instruction but" in the second sentence and "or instruction" near the beginning of the third sentence.

**The 1990 amendment,** effective May 16, 1990, substituted "secretary" for "director" in the first and third sentences and for "secretary of taxation and revenue" near the middle and end of the third sentence.

## 7-2-7.2. Tax rebate; 2005 taxable year. (Effective for 2005 tax year.)

A. Except as otherwise provided in this section, any resident who files an individual New Mexico income tax return and who is not a dependent of another individual is entitled to a tax rebate during the 2005 taxable year for a portion of state and local taxes to which the person has been subject during the 2005 taxable year, even if the resident has no income taxable pursuant to the Income Tax Act.

B. For the purposes of this section, the total number of exemptions for which a tax rebate may be claimed or allowed is determined by adding the number of federal exemptions allowable for federal income tax purposes for each individual; provided that, in the case of a husband and wife who have filed a joint return where only one individual is a New Mexico resident, the number of exemptions shall be reduced by one.

C. Except as otherwise provided in Subsection D of this section, the tax rebate provided for in this section is allowed for the amount shown in the following table:

| Adjusted Gross Income is: | | And the total number of exemptions is: | | | | | |
|---|---|---|---|---|---|---|---|
| Over | But Not Over | 1 | 2 | 3 | 4 | 5 | 6 or more |
| $0 | $10,000 | $139 | $179 | $214 | $244 | $269 | $289 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 10,000 | 20,000 | 124 | 164 | 189 | 214 | 234 | 249 |
| 20,000 | 35,000 | 109 | 139 | 164 | 184 | 199 | 209 |
| 35,000 | 45,000 | 94 | 119 | 139 | 154 | 164 | 169 |
| 45,000 | 60,000 | 79 | 104 | 124 | 139 | 149 | 154 |
| 60,000 | | 64 | 84 | 99 | 109 | 114 | 119. |

D. If a resident's adjusted gross income is less than or equal to zero, the resident is entitled to a rebate in the amount shown in the first row of the table appropriate for the resident's number of exemptions.

E. Except as otherwise provided in this section, the secretary shall make an advance payment of the tax rebate provided for in this section not later than November 15, 2005 to each resident who filed a 2004 New Mexico personal income tax return. Advance payment amounts shall be based on the number of federal exemptions allowable for federal income tax purposes on the 2004 New Mexico personal income tax return of the resident for whom a rebate is allowed pursuant to this section and on the federal adjusted gross income reported by that resident on the same return. A resident who does not receive an advance payment may claim the tax rebate provided for in this section on that resident's 2005 New Mexico personal income tax return based on the federal adjusted gross income and on the number of federal exemptions allowable for federal income tax purposes reported on that return.

F. The department shall not make an advance payment of the tax rebate provided for in this section to a person who:

(1) was an inmate of a public institution for more than six months during the 2004 taxable year; or

(2) was not a resident of New Mexico on the last day of the 2004 taxable year.

G. The department shall not allow a tax rebate provided in this section to a person who claims the rebate on that person's 2005 personal income tax return, but:

(1) was an inmate of a public institution for more than six months during the 2005 taxable year; or

(2) was not a resident of New Mexico on the last day of the 2005 taxable year.

H. The secretary may adopt regulations necessary to administer the provisions of this section.

I. For purposes of this section, "dependent" means "dependent" as defined by Section 152 of the Internal Revenue Code, but also includes any minor child or stepchild of the resident who would be a dependent for federal income tax purposes if the public assistance contributing to the support of the child or stepchild was considered to have been contributed by the resident.

History: Laws 2005 (1st S.S.), ch. 3, § 3.

**ANNOTATIONS**

## 7-2-7.3. Exemption; 2005 taxable year rebate. (Effective for 2005 tax year.)

The tax rebate made for the 2005 taxable year pursuant to this 2005 act is exempt from state income tax.

History: Laws 2005 (1st S.S.), ch. 3, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 2005 (1st S.S.), ch. 3, § 8 made the act effective October 28, 2005.

## 7-2-8. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1981, ch. 37, § 96, repealed 7-2-8 NMSA 1978, relating to corporate income tax rates, effective June 19, 1981.

## 7-2-9. Tax computation; alternative method.

For those taxpayers who do not compute an amount upon which the federal income tax is calculated or who do not compute their federal income tax payable for the taxable year, the secretary shall prescribe such regulations or instructions as the secretary may deem necessary to enable them to compute their state income tax due.

**History:** 1953 Comp., § 72-15A-7, enacted by Laws 1965, ch. 202, § 7; 1981, ch. 37, § 19; 1990, ch. 49, § 4.

**ANNOTATIONS**

**The 1990 amendment,** effective May 16, 1990, substituted "secretary shall" and "the secretary may deem" for "director shall" and "he may deem".

## 7-2-10. Income taxes applied to individuals on federal areas.

To the extent permitted by law, no individual shall be relieved from liability for income tax by reason of his residing within a federal area or receiving income from transactions occurring or work or services performed in such area.

**History:** 1953 Comp., § 72-15A-8, enacted by Laws 1965, ch. 202, § 8; 1981, ch. 37, § 20.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 474, 483, 493.

85 C.J.S. Taxation §§ 1693 et seq.

## 7-2-11. Tax credit; income allocation and apportionment.

A. Net income of any individual having income that is taxable both within and without this state shall be apportioned and allocated as follows:

(1) during the first taxable year in which an individual incurs tax liability as a resident, only income earned on or after the date the individual became a resident and, in addition, income earned in New Mexico while a nonresident of New Mexico shall be allocated to New Mexico;

(2) except as provided otherwise in Paragraph (1) of this subsection, income other than compensation or gambling winnings shall be allocated and apportioned as provided in the Uniform Division of Income for Tax Purposes Act [Chapter 7, Article 4 NMSA 1978], but if the income is not allocated or apportioned by that act, then it may be allocated or apportioned in accordance with instructions, rulings or regulations of the secretary;

(3) except as provided otherwise in Paragraph (1) of this subsection, compensation and gambling winnings of a resident taxpayer shall be allocated to this state;

(4) compensation of a nonresident taxpayer shall be allocated to this state to the extent that such compensation is for activities, labor or personal services within this state; provided that the compensation may be allocated to the taxpayer's state of residence:

(a) if the activities, labor or services are performed in this state for fifteen or fewer days during the taxpayer's taxable year;

(b) if the compensation is for activities, labor or services performed for a business in the manufacturing industry in New Mexico that is located within twenty miles of an international border, that has a minimum of five full-time employees who are New Mexico residents, that is not receiving development training funds under Section 21-19-7 NMSA 1978 and that meets the qualifications of one of Items 1) through 4) of this subparagraph: 1) the business had no payroll in New Mexico during the previous calendar year; 2) the business had a payroll in New Mexico for less than the entire previous calendar year, and the first payroll of the new calendar year includes payments to New Mexico residents exceeding the highest monthly payroll for such residents in the previous calendar year; 3) the business had a payroll in New Mexico for the entire previous calendar year, and the first payroll of the new calendar year includes payments to New Mexico residents exceeding by at least ten percent both the payroll for all employees in January 2001 and the payroll for New Mexico residents twelve months prior to the commencement of the new calendar year; or 4) the business had a payroll in New Mexico for the entire previous calendar year, but had no payroll in New Mexico within one year prior to January 1, 2001, and the first payroll of the new calendar year includes payments to New Mexico residents exceeding by at least ten percent the payroll for such residents twelve months earlier; or

(c) if the activities, labor or services are performed in this state for disaster- or emergency-related critical infrastructure work in response to a declared state disaster or emergency during a disaster response period, as defined in the Tax Administration Act [Chapter 7, Article 1 NMSA 1978];

(5) gambling winnings of a nonresident shall be allocated to this state if the gambling winnings arose from a source within this state; and

(6) other deductions and exemptions allowable in computing net income and not specifically allocated in the Uniform Division of Income for Tax Purposes Act shall be equitably allocated or apportioned in accordance with instructions, rulings or regulations of the secretary.

B. For the purposes of this section, "non-New Mexico percentage" means the percentage determined by dividing the difference between the taxpayer's net income and the sum of the amounts allocated or apportioned to New Mexico by that net income.

C. A taxpayer may claim a credit in an amount equal to the amount of tax determined to be due under Section 7-2-7 or 7-2-7.1 NMSA 1978 multiplied by the non-New Mexico percentage.

**History:** 1953 Comp., § 72-15A-9, enacted by Laws 1965, ch. 202, § 9; 1969, ch. 152, § 5; 1974, ch. 56, § 1; 1981, ch. 37, § 21; 1986, ch. 20, § 28; 1990, ch. 49, § 5; 1995, ch. 11, § 3; 1996, ch. 16, § 1; 2001, ch. 329, § 1; 2016, ch. 59, § 1.

## ANNOTATIONS

**Cross references.** — *See* case notes to 7-2-3 NMSA 1978.

For Multistate Tax Compact, *see* 7-5-1 NMSA 1978.

**The 2016 amendment,** effective May 18, 2016, provided a tax exemption for certain out-of-state businesses and individuals who respond to declared disasters within New Mexico; in Subsection A, Paragraph (4), after "provided", added "that the compensation may be allocated to the taxpayer's state of residence", in Subparagraph A(4)(a), after "taxable year", deleted "the compensation may be allocated to the taxpayer's state of residence; and", in Subparagraph A(4)(b), after "Items 1) through 4) of this subparagraph", deleted "the compensation may be allocated to the taxpayer's state of residence", and after the semicolon, added "or", and added a new Subparagraph A(4)(c).

**The 2001 amendment,** effective June 15, 2001, designated the proviso in former Paragraph A(4) as Subparagraph A(4)(a); and added Subparagraph A(4)(b).

**The 1996 amendment,** effective April 1, 1996, in Subsection A, inserted "gambling winnings" in Paragraphs (2) and (3), rewrote Paragraph (5), and inserted "allocated or" and "instructions, rulings or" in Paragraph (6).

**The 1995 amendment,** effective June 16, 1995, substituted "Paragraph (1)" for "Paragraphs (1) and (7)" near the beginning of Paragraph A(2); added the proviso at the end of Paragraph A(4); deleted former Paragraph A(7) relating to accounting by a taxpayer having business income both within and without this state and who began business in this state after July 1, 1991, but prior to January 1, 1991; and made stylistic changes throughout the section.

**The 1990 amendment,** effective May 16, 1990, added "Tax credit" in the section heading; designated the introductory paragraph of the section as Subsection A and deleted "prior to the application of the tax rates provided in Section 7-2-7 NMSA 1978" following "state shall be" therein; redesignated former Subsections A to G as Paragraphs (1) to (7) of Subsection A; and, in Subsection A, substituted "Paragraphs (1) and (7) of this subsection" for "Subsections A, G and H of this section" in Paragraph (2), substituted "Paragraph (1) of this subsection" for "Subsection A of this section" in Paragraph (3), substituted "Paragraph (1)" for "Subsection (A) of this section" in Paragraph (5), substituted "secretary" for "director" in Paragraph (6), inserted "but prior to January 1, 1991" in Paragraph (7), and added Subsections B and C.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 467, 472, 570, 574.

Computation of income tax as affected by fact that taxpayer was domiciled within state for only part of the taxable year, 126 A.L.R. 455.

85 C.J.S. Taxation §§ 1693 et seq.

## 7-2-12. Taxpayer returns; payment of tax.

A. Every resident of this state and every individual deriving income from any business transaction, property or employment within this state and not exempt from tax under the Income Tax Act who is required by the laws of the United States to file a federal income tax return shall file a complete tax return with the department in form and content as prescribed by the secretary. Except as provided in Subsection B of this section, a resident or any individual who is required by the provisions of the Income Tax Act to file a return or pay a tax shall, on or before the due date of the resident's or individual's federal income tax return for the taxable year, file the return and pay the tax imposed for that year.

B. When the department approves electronic media for use by a taxpayer whose taxable year is a calendar year, the taxpayer who uses electronic media for both filing and payment must submit the required return and the tax imposed on residents and individuals under the Income Tax Act on or before the last day of the month in which the resident's or individual's federal income tax return is originally due for the taxable year. The due date provided in this subsection does not apply to residents or individuals who have received a filing extension from New Mexico or an automatic extension from the federal internal revenue service for the same taxable year.

**History:** 1953 Comp., § 72-15A-10, enacted by Laws 1965, ch. 202, § 10; 1971, ch. 20, § 3; 1981, ch. 37, § 22; 1990, ch. 49, § 6; 2003, ch. 275, § 2; 2016, ch. 15, § 1.

**ANNOTATIONS**

**Cross references.** — *See* case notes to 7-2-2 and 7-2-3 NMSA 1978.

For reporting on fiscal year basis, *see* 7-2-20 NMSA 1978.

For income tax withholding, *see* 7-3-1 to 7-3-10 NMSA 1978.

**The 2016 amendment,** effective May 18, 2016, changed the due dates of income taxes to conform with due dates pursuant to federal law, and provided certain exceptions; in Subsection A, after "Except as provided in Subsection B of this section", deleted "the return required and the tax imposed on individuals under the Income Tax Act are due and payment is required on or before the fifteenth day of the fourth month following the end of the taxable year" and added the remainder of the subsection; in Subsection B, after "tax imposed on", added "residents and", after "Income Tax Act on or before the", deleted "thirtieth" and added "last", after "day of", deleted "fourth", and after "month", deleted "following the end of the taxable year" and added the remainder of the subsection.

**Applicability.** — Laws 2016, ch. 15, § 3 provided that the provisions of Laws 2016, ch. 15, §§ 1 and 2 apply to taxable years beginning on or after January 1, 2016.

**The 2003 amendment,** effective June 20, 2003, added the Subsection A designation; inserted "Except as provided in Subsection B of this section" preceding "the return required" in Subsection A; and added Subsection B.

**Applicability.** — For the applicability of the Laws 2003, ch. 275 amendment to this section, *see* note following 7-2-2 NMSA 1978.

**The 1990 amendment,** effective May 16, 1990, substituted "shall file" for "must file," "department" for "division" and "secretary" for "director" in the first sentence.

**State returns used for audit although federal taxes filed on different basis.** — When a taxpayer filed consolidated federal income tax returns for a three-year period but, for the same period, elected to file its state income tax returns as a separate corporate entity, excluding its subsidiaries, and since it was not obligated to file its state returns on the same basis as its federal returns, the revenue department was not required to audit and assess the taxpayer's income taxes on the basis of consolidated income reported by the taxpayer in its federal returns rather than on the basis of its state returns which it had filed. Getty Oil Co. v. Taxation & Revenue Dep't, 1979-NMCA-131, 93 N.M. 589, 603 P.2d 328 (decided prior to 1981 amendment).

**New Mexico may not tax income and gross receipts of Indians residing on reservation** when the income and gross receipts involved are derived solely from activities within the reservation. Hunt v. O'Cheskey, 1973-NMCA-026, 85 N.M. 381, 512 P.2d 954, cert. quashed, 85 N.M. 388, 512 P.2d 961.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 450, 481.

Duress in obtaining waiver from taxpayer extending time for assessment of income tax, 78 A.L.R. 631.

Liability on bond given as condition of extension of time for payment of income tax, 117 A.L.R. 452.

What constitutes "reasonable cause" under state statutes imposing penalty on taxpayer for failure to file timely tax return unless such failure was due to "reasonable cause," 29 A.L.R.4th 413.

85 C.J.S. Taxation §§ 1701 et seq.

## 7-2-12.1. Limitation on claiming of credits and tax rebates.

A. Except as provided otherwise in this section, a credit or tax rebate provided in the Income Tax Act that is claimed shall be disallowed if the claim for the credit or tax rebate was first made after the end of the third calendar year following the calendar year

in which the return upon which the credit or tax rebate was first claimable was initially due.

B. Subsection A of this section does not apply to:

(1) the credit authorized by Section 7-2-13 NMSA 1978 for income taxes paid another state; or

(2) the credit authorized by Section 7-2-19 NMSA 1978 [repealed] for income taxes paid another state.

**History:** 1978 Comp., § 7-2-12.1, enacted by Laws 1990, ch. 23, § 1.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Section 7-2-19 NMSA 1978, referred to in Paragraph B(2), was repealed by Laws 1990, ch. 49, § 19, effective May 16, 1990.

## 7-2-12.2. Estimated tax due; payment of estimated tax; penalty.

A. Except as otherwise provided in this section, an individual who is required to file an income tax return under the Income Tax Act shall pay the required annual payment in installments through either withholding or estimated tax payments.

B. For the purposes of this section:

(1) "required annual payment" means the lesser of:

(a) ninety percent of the tax shown on the return of the taxable year or, if no return is filed, ninety percent of the tax for the taxable year; or

(b) one hundred percent of the tax shown on the return for the preceding taxable year if the preceding taxable year was a taxable year of twelve months and the taxpayer filed a New Mexico tax return for that preceding taxable year; and

(2) "tax" means the tax imposed under Section 7-2-3 NMSA 1978 less any amount allowed for applicable credits and rebates provided by the Income Tax Act.

C. There shall be four required installments for each taxable year. If a taxpayer is not liable for estimated tax payments on March 31, but becomes liable for estimated tax at some point after March 31, the taxpayer must make estimated tax payments as follows:

(1) if the taxpayer becomes required to pay estimated tax after March 31 and before June 1, fifty percent of the required annual payment must be paid on or before

June 15, twenty-five percent on September 15 and twenty-five percent on or before January 15 of the following taxable year;

(2) if the taxpayer becomes required to pay estimated tax after May 31, but before September 1, the taxpayer must pay seventy-five percent of the required annual payment on or before September 15 and twenty-five percent on or before January 15 of the following taxable year; and

(3) if the taxpayer becomes required to pay estimated tax after August 31, the taxpayer must pay one hundred percent of the required annual payment on or before January 15 of the following taxable year.

D. Except as otherwise provided in this section, for taxpayers reporting on a calendar year basis, estimated payments of the required annual payment are due on or before April 15, June 15 and September 15 of the taxable year and January 15 of the following taxable year. For taxpayers reporting on a fiscal year other than a calendar year, the due dates for the installments are the fifteenth day of the fourth, sixth and ninth months of the fiscal year and the fifteenth day of the first month following the fiscal year.

E. A rancher or farmer who expects to receive at least two-thirds of the rancher's or farmer's gross income for the taxable year from ranching or farming, or who has received at least two-thirds of the rancher's or farmer's gross income for the previous taxable year from ranching or farming, may:

(1) pay the required annual payment for the taxable year in one installment on or before January 15 of the following taxable year; or

(2) on or before March 1 of the following taxable year, file a return for the taxable year and pay in full the amount computed on the return as payable.

A penalty under Subsection G of this section shall not be imposed unless the rancher or farmer underpays the tax by more than one-third. If a joint return is filed, a rancher or farmer must consider the rancher's or farmer's spouse's gross income in determining whether at least two-thirds of gross income is from ranching or farming.

F. For the purposes of this section, the amount of tax deducted and withheld with respect to a taxpayer under the Withholding Tax Act [Chapter 7, Article 3 NMSA 1978] or the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act [Chapter 7, Article 3A NMSA 1978] shall be deemed a payment of estimated tax. An equal part of the amount of withheld tax shall be deemed paid on each due date for the applicable taxable year unless the taxpayer establishes the dates on which all amounts were actually withheld. In that case, the amounts withheld shall be deemed payments of estimated tax on the dates on which the amounts were actually withheld. The taxpayer may apply the provisions of this subsection separately to wage withholding and any other amounts withheld under the Withholding Tax Act or the Oil and Gas Proceeds and

Pass-Through Entity Withholding Tax Act. Amounts of tax paid by taxpayers pursuant to Section 7-3A-3 NMSA 1978 shall not be deemed a payment of estimated tax.

G. Except as otherwise provided in this section, in the case of an underpayment of the required annual payment by a taxpayer, there shall be added to the tax a penalty determined by applying the rate specified in Subsection B of Section 7-1-67 NMSA 1978 to the amount of the underpayment for the period of the underpayment, provided:

(1) the amount of the underpayment shall be the excess of the amount of the required annual payment over the amount, if any, paid on or before the due date for the installment;

(2) the period of the underpayment runs from the due date for the installment to whichever of the following dates is earlier:

(a) the fifteenth day of the fourth month following the close of the taxable year; or

(b) with respect to any portion of the underpayment, the date on which the portion was paid; and

(3) a payment of estimated tax shall be credited against unpaid or underpaid installments in the order in which the installments are required to be paid.

H. No penalty shall be imposed under Subsection G of this section for any taxable year if:

(1) the difference between the following is less than one thousand dollars ($1,000):

(a) the tax shown on the return for the taxable year or, when no return is filed, the tax for the taxable year; and

(b) any amount withheld under the provisions of the Withholding Tax Act or the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act for that taxpayer for that taxable year;

(2) the taxpayer's preceding taxable year was a taxable year of twelve months, the taxpayer did not have a tax liability for the preceding taxable year and the taxpayer was a resident of New Mexico for the entire taxable year;

(3) through either withholding or estimated tax payments, the taxpayer paid the required annual payment as defined in Subsection B of this section; or

(4) the secretary determines that the underpayment was not due to fraud, negligence or disregard of rules and regulations.

I. If on or before January 31 of the following taxable year the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, then a penalty under Subsection G of this section shall not be imposed on an underpayment of the fourth required installment for the taxable year.

J. This section applies to taxable years of less than twelve months and to taxpayers reporting on a fiscal year other than a calendar year in the manner determined by regulation or instruction of the secretary.

K. Except as otherwise provided in Subsection L of this section, this section applies to any estate or trust.

L. This section does not apply to any trust that is subject to the tax imposed by Section 511 of the Internal Revenue Code or that is a private foundation. For a taxable year that ends before the date two years after the date of the decedent's death, this section does not apply to:

(1) the estate of the decedent; or

(2) any trust all of which was treated under Subpart E of Part I of Subchapter J of Chapter 1 of the Internal Revenue Code as owned by the decedent and to which the residue of the decedent's estate will pass under the decedent's will or, if no will is admitted to probate, that is the trust primarily responsible for paying debts, taxes and expenses of administration.

M. The provisions of this section do not apply to first-year residents.

History: Laws 1996, ch. 17, § 1; 1997, ch. 63, § 1; 1999, ch. 47, § 2; 2003, ch. 275, § 3; 2010, ch. 53, § 1; 2011, ch. 116, § 1.

## ANNOTATIONS

**Cross references.** — For the Internal Revenue Code, *see* Title 26 of the United States Code.

**The 2011 amendment,** effective July 1, 2011, in Subsection H, increased the threshold amount for imposition of a penalty for underpayment of estimated taxes.

**Applicability.** — Laws 2011, ch. 116, § 2 provided that the provisions of Laws 2011, ch. 116, § 1 shall apply to taxable years beginning on or after January 1, 2012.

**The 2010 amendment,** effective May 19, 2010, in Subsection F, in the first and fourth sentences, after "Withholding Tax Act", added "or the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act"; and added the last sentence; and in Subsection H(1)(b), after "Withholding Tax Act", added "or the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act".

**Applicability.** — Laws 2010, ch. 53, § 19 provided that the provisions of this act are applicable to taxable years beginning on or after January 1, 2011.

**Temporary provisions.** — Laws 2010 (2nd S.S.), ch. 7, § 12 provided that for the 2010 taxable year, a taxpayer is deemed to have complied with the provisions of Section 7-2-12.2 NMSA 1978 if the taxpayer has made the required annual payments of estimated taxes due for taxable year 2010 based on the definition of net income in Section 7-2-2 NMSA 1978 applicable prior to January 1, 2010.

**The 2003 amendment,** effective June 20, 2003, substituted "applicable credits and" for "credits provided by Sections 7-2-13 and 7-2-18.1 through and 7-2-18.4 NMSA 1978 and for any applicable tax" following "amount allowed for" in Paragraph B(2); in Paragraphs C(2) and (3), inserted "the taxpayer must pay", deleted "must be paid" preceding "on or before"; substituted "a" for "an amount as" preceding "penalty determined by"; substituted "on an" for "with respect to any" preceding "underpayment of the"; substituted "applies" for "shall be applied" near the beginning of Subsection J; and substituted "For a taxable year that ends" for "With respect to any taxable year ending" preceding "before the date" in Subsection L.

**The 1999 amendment,** effective June 18, 1999, added Subsection M.

**The 1997 amendment,** effective April 8, 1997, in Subsection A, added "through either withholding or estimated tax payments" and deleted the former last sentence relating to installment payments of 25% of annual payment; added the last sentence in Subsection C and added paragraphs C(1) to (3); in Subsection D, added the exception at the beginning and substituted "estimated payments of the required annual payment are due on or before" for "the due dates for the installments are"; added Subsection E and redesignated the following subsections accordingly; substituted "required annual payment" for "estimated tax" in Subsection G; substituted "annual payment" for "installment" and deleted "of the installment" before "paid" in Paragraph G(1); rewrote Paragraph G(3); added Paragraph H(3) and redesignated the following paragraph accordingly; inserted "and to taxpayers reporting on a fiscal year other than a calendar year" in Subsection J; and made stylistic changes throughout the section.

## 7-2-13. Credit for taxes paid other states by resident individuals.

When a resident individual is liable to another state for tax upon income derived from sources outside this state but also included in net income under the Income Tax Act as income allocated or apportioned to New Mexico pursuant to Section 7-2-11 NMSA 1978, the individual, upon filing with the secretary satisfactory evidence of the payment of the tax to the other state, shall receive a credit against the tax due this state in the amount of the tax paid the other state with respect to income that is required to be either allocated or apportioned to New Mexico. However, in no case shall the credit exceed the amount of the taxpayer's New Mexico income tax liability on that portion of income that is required to be either allocated or apportioned to New Mexico on which the tax payable to the other state was determined. The credit provided by this section does not

apply to or include income taxes paid to any municipality, county or other political subdivision of a state.

**History:** 1953 Comp., § 72-15A-11, enacted by Laws 1965, ch. 202, § 11; 1970, ch. 34, § 1; 1973, ch. 133, § 1; 1974, ch. 56, § 2; 1981, ch. 37, § 23; 1990, ch. 49, § 7; 1992, ch. 78, § 1; 2013, ch. 179, § 1.

**ANNOTATIONS**

**The 2013 amendment,** effective July 1, 2013, limited the tax credit paid to another state to the amount of tax liability in New Mexico; and in the second sentence, after "credit exceed", deleted "five and one-half percent" and added "the amount of the taxpayer's New Mexico income tax liability on that portion".

**Applicability.** — Laws 2013, ch. 179, § 2 provided that the provisions of Laws 2013, ch. 179, § 1 apply to taxable years beginning on or after January 1, 2013.

**The 1992 amendment,** effective May 20, 1992, added all of the present language of the first sentence beginning with "with respect to income"; and inserted "that is required to be either allocated or apportioned to New Mexico" in the second sentence.

**The 1990 amendment,** effective May 16, 1990, deleted the subsection designation "A" and "Except as provided otherwise in Subsection B of this section" at the beginning, inserted "as income allocated or apportioned to New Mexico pursuant to Section 7-2-11 NMSA 1978" and substituted "secretary" for "director" in the first sentence, rewrote the third sentence which read "This credit does not apply to or include income taxes paid to any municipality" and deleted former Subsection B which read "This credit does not apply during the first taxable year in which an individual incurs tax liability as a resident. Income of such an individual shall be allocated and apportioned in accordance with Section 7-2-11 NMSA 1978".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d §§ 530 to 532, 549 to 551.

What constitutes doing business, business done, or the like, outside the state for purposes of allocation of income under tax laws, 167 A.L.R. 943.

Other state or country, credit for income tax paid to, construction and application of statutory provisions allowing, 12 A.L.R.2d 359.

84 C.J.S. Taxation §§ 60 to 68; 85 C.J.S. Taxation §§ 1738 to 1755.

## 7-2-14. Low-income comprehensive tax rebate.

A. Except as otherwise provided in Subsection B of this section, any resident who files an individual New Mexico income tax return and who is not a dependent of another

individual may claim a tax rebate for a portion of state and local taxes to which the resident has been subject during the taxable year for which the return is filed. The tax rebate may be claimed even though the resident has no income taxable under the Income Tax Act. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax rebate that would have been allowed on a joint return.

B. No claim for the tax rebate provided in this section shall be filed by a resident who was an inmate of a public institution for more than six months during the taxable year for which the tax rebate could be claimed or who was not physically present in New Mexico for at least six months during the taxable year for which the tax rebate could be claimed.

C. For the purposes of this section, the total number of exemptions for which a tax rebate may be claimed or allowed is determined by adding the number of federal exemptions allowable for federal income tax purposes for each individual included in the return who is domiciled in New Mexico plus two additional exemptions for each individual domiciled in New Mexico included in the return who is sixty-five years of age or older plus one additional exemption for each individual domiciled in New Mexico included in the return who, for federal income tax purposes, is blind plus one exemption for each minor child or stepchild of the resident who would be a dependent for federal income tax purposes if the public assistance contributing to the support of the child or stepchild was considered to have been contributed by the resident.

D. The tax rebate provided for in this section may be claimed in the amount shown in the following table:

| Modified Gross Income is: | | And the total number of exemptions is: | | | | | |
|---|---|---|---|---|---|---|---|
| Over | But Not Over | 1 | 2 | 3 | 4 | 5 | 6 or More |
| $ 0 | $ 500 | $120 | $160 | $200 | $240 | $280 | $320 |
| 500 | 1,000 | 135 | 195 | 250 | 310 | 350 | 415 |
| 1,000 | 1,500 | 135 | 195 | 250 | 310 | 350 | 435 |
| 1,500 | 2,000 | 135 | 195 | 250 | 310 | 350 | 450 |
| 2,000 | 2,500 | 135 | 195 | 250 | 310 | 350 | 450 |
| 2,500 | 3,000 | 135 | 195 | 250 | 310 | 350 | 450 |
| 3,000 | 3,500 | 135 | 195 | 250 | 310 | 350 | 450 |
| 3,500 | 4,000 | 135 | 195 | 250 | 310 | 355 | 450 |
| 4,000 | 4,500 | 135 | 195 | 250 | 310 | 355 | 450 |
| 4,500 | 5,000 | 125 | 190 | 240 | 305 | 355 | 450 |
| 5,000 | 5,500 | 115 | 175 | 230 | 295 | 355 | 430 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 5,500 | 6,000 | 105 | 155 | 210 | 260 | 315 | 410 |
| 6,000 | 7,000 | 90 | 130 | 170 | 220 | 275 | 370 |
| 7,000 | 8,000 | 80 | 115 | 145 | 180 | 225 | 295 |
| 8,000 | 9,000 | 70 | 105 | 135 | 170 | 195 | 240 |
| 9,000 | 10,000 | 65 | 95 | 115 | 145 | 175 | 205 |
| 10,000 | 11,000 | 60 | 80 | 100 | 130 | 155 | 185 |
| 11,000 | 12,000 | 55 | 70 | 90 | 110 | 135 | 160 |
| 12,000 | 13,000 | 50 | 65 | 85 | 100 | 115 | 140 |
| 13,000 | 14,000 | 50 | 65 | 85 | 100 | 115 | 140 |
| 14,000 | 15,000 | 45 | 60 | 75 | 90 | 105 | 120 |
| 15,000 | 16,000 | 40 | 55 | 70 | 85 | 95 | 110 |
| 16,000 | 17,000 | 35 | 50 | 65 | 80 | 85 | 105 |
| 17,000 | 18,000 | 30 | 45 | 60 | 70 | 80 | 95 |
| 18,000 | 19,000 | 25 | 35 | 50 | 60 | 70 | 80 |
| 19,000 | 20,000 | 20 | 30 | 40 | 50 | 60 | 65 |
| 20,000 | 21,000 | 15 | 25 | 30 | 40 | 50 | 55 |
| 21,000 | 22,000 | 10 | 20 | 25 | 35 | 40 | 45. |

E. If a taxpayer's modified gross income is zero, the taxpayer may claim a credit in the amount shown in the first row of the table appropriate for the taxpayer's number of exemptions.

F. The tax rebates provided for in this section may be deducted from the taxpayer's New Mexico income tax liability for the taxable year. If the tax rebates exceed the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

G. For purposes of this section, "dependent" means "dependent" as defined by Section 152 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, but also includes any minor child or stepchild of the resident who would be a dependent for federal income tax purposes if the public assistance contributing to the support of the child or stepchild was considered to have been contributed by the resident.

**History:** 1953 Comp., § 72-15A-11.1, enacted by Laws 1972, ch. 20, § 2; 1973, ch. 336, § 1; 1974, ch. 17, § 1; 1975, ch. 213, § 1; 1977, ch. 197, § 1; 1978, ch. 145, § 1; 1981, ch. 37, § 24; 1986, ch. 20, § 29; 1986 (3d S.S.), ch. 1, § 1; 1987, ch. 264, § 7; 1990, ch. 49, § 8; 1992, ch. 78, § 2; 1994, ch. 5, § 21; 1998, ch. 99, § 2.

## ANNOTATIONS

**Cross references.** — For Section 152 of the Internal Revenue Code, *see* 26 U.S.C.S. § 1152.

**The 1998 amendment,** rewrote the tax rebate table in Subsection D. Laws 1998, ch. 99, contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective May 20, 1998, 90 days after adjournment of the legislature.

**The 1994 amendment,** effective May 18, 1994, deleted "tax rebates for food and medical expenses" at the end of the section heading, and substituted the table in Subsection D for the former table.

**The 1992 amendment,** effective May 20, 1992, added present Subsection E; redesignated former Subsections E and F as present Subsections F and G; and inserted "of 1986" near the beginning of Subsection G.

**The 1990 amendment,** effective May 16, 1990, added the language beginning "plus one exemption for each minor child" at the end of Subsection C and added Subsection F.

**Law reviews.** — For article, "An Intergovernmental Approach to Tax Reform," see 4 N.M.L. Rev. 189 (1974).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 549 to 551.

84 C.J.S. Taxation §§ 60 to 68; 85 C.J.S. Taxation §§ 1738 to 1755.

## 7-2-14.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 356, § 1 repealed 7-2-14.1 NMSA 1978, as enacted by Laws 1987, ch. 264 § 8, relating to a tax rebate for gross receipts tax on food and medical expenses, effective July 1, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 7-2-14.2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 264, § 25B repealed 7-2-14.2 NMSA 1978, as enacted by Laws 1979, ch. 70, § 2, relating to withholding instructions, effective June 19, 1987.

## 7-2-14.3. Tax rebate of part of property tax due from low-income taxpayer; local option; refund.

A. The tax rebate provided by this section may be claimed for the taxable year for which the return is filed by an individual who:

(1) has his principal place of residence in a county that has adopted an ordinance pursuant to Subsection G of this section;

(2) is not a dependent of another individual;

(3) files a return; and

(4) incurred a property tax liability on his principal place of residence in the taxable year.

B. The tax rebate provided by this section shall be allowed for any individual eligible to claim the refund pursuant to Subsection A of this section and who:

(1) was not an inmate of a public institution for more than six months during the taxable year;

(2) was physically present in New Mexico for at least six months during the taxable year for which the rebate is claimed; and

(3) is eligible for the rebate as a low-income property taxpayer in accordance with the provisions of Subsection D of this section.

C. A husband and wife who file separate returns for the taxable year in which they could have filed a joint return may each claim only one-half of the tax rebate that would have been allowed on the joint return.

D. As used in the table in this subsection, "property tax liability" means the amount of property tax resulting from the imposition of the county and municipal property tax operating impositions on the net taxable value of the taxpayer's principal place of residence calculated for the year for which the rebate is claimed. The tax rebate provided in this section is as specified in the following table:

LOW-INCOME TAXPAYER'S PROPERTY TAX REBATE TABLE

| Taxpayer's Modified Gross Income | | Property Tax Rebate |
|---|---|---|
| Over | But Not Over | |
| $0 | $8,000 | 75% of property tax liability |
| 8,000 | 10,000 | 70% of property tax liability |
| 10,000 | 12,000 | 65% of property tax liability |
| 12,000 | 14,000 | 60% of property tax liability |
| 14,000 | 16,000 | 55% of property tax liability |
| 16,000 | 18,000 | 50% of property tax liability |
| 18,000 | 20,000 | 45% of property tax liability |

| | | |
|---|---|---|
| 20,000 | 22,000 | 40% of property tax liability |
| 22,000 | 24,000 | 35% of property tax liability. |

E. If a taxpayer's modified gross income is zero, the taxpayer may claim a tax rebate in the amount shown in the first row of the table. The tax rebate provided for in this section shall not exceed three hundred fifty dollars ($350) per return and, if a return is filed separately that could have been filed jointly, the tax rebate shall not exceed one hundred seventy-five dollars ($175). No tax rebate shall be allowed any taxpayer whose modified gross income exceeds twenty-four thousand dollars ($24,000).

F. The tax rebate provided for in this section may be deducted from the taxpayer's New Mexico income tax liability for the taxable year. If the tax rebate exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

G. In January of every odd-numbered year in which a county does not have in effect an ordinance adopted pursuant to this subsection, the board of county commissioners of the county shall conduct a public hearing on the question of whether the property tax rebate provided in this section benefiting low-income property taxpayers in the county should be made available through adoption of a county ordinance. Notice of the public hearing shall be published once at least two weeks prior to the hearing date in at least one newspaper of general circulation in the county and broadcast at some time within the week before the hearing on at least one radio station with substantial broadcasting coverage in the county. At the public hearing, the board shall take action on the question and if a majority of the members elected votes to adopt an ordinance, it shall be adopted no later than thirty days after the public hearing.

H. An ordinance adopted pursuant to Subsection G of this section shall specify the taxable years to which it is applicable. The board of county commissioners adopting an ordinance shall notify the department of the adoption of the ordinance and furnish a copy of the ordinance to the department no later than September 1 of the first taxable year to which the ordinance applies.

I. No later than December 31 of the year immediately following the first year in which the low-income taxpayer property tax rebate provided in the Income Tax Act is in effect for a county, and no later than December 31 of each year thereafter in which the tax rebate is in effect, the department shall certify to the county the amount of the loss of income tax revenue to the state for the previous taxable year attributable to the allowance of property tax rebates to taxpayers of that county. The county shall promptly pay the amount certified to the department. If a county fails to pay the amount certified within thirty days of the date of certification, the department may enforce collection of the amount by action against the county and may withhold from any revenue distribution to the county, not dedicated or pledged, amounts up to the amount certified.

J. As used in this section, "principal place of residence" means the dwelling owned and occupied by the taxpayer and so much of the land surrounding it, not to exceed five

acres, as is reasonably necessary for use of the dwelling as a home and may consist of a part of a multidwelling or a multipurpose building and a part of the land upon which it is built.

**History:** Laws 1994, ch. 111, § 1; 1997, ch. 196, § 1; 2003, ch. 275, § 4.

**ANNOTATIONS**

**The 2003 amendment,** effective June 20, 2003, substituted "taxable years" for "first taxable year" following "shall specify the" in Subsection H; substituted "December 31" for "July 1" twice in the first sentence of Subsection I.

**The 1997 amendment,** effective June 20, 1997, revised the table in Subsection D to add the last four income ranges; and in Subsection E, in the second sentence, substituted "three hundred fifty dollars ($350)" for "two hundred fifty dollars ($250)", substituted "one hundred seventy-five dollars ($175)" for "one hundred twenty-five dollars ($125)", and in the third sentence substituted "twenty-four thousand dollars ($24,000)" for "sixteen thousand dollars ($16,000)".

## 7-2-14.4. Authorization to fund property tax rebate for low-income taxpayers; tax imposition; election.

A. The board of county commissioners of any county may adopt a resolution to submit to the qualified electors of the county the question of whether a property tax at a rate not to exceed one dollar ($1.00) per thousand dollars ($1,000) of taxable value of property should be imposed for the purpose of providing the necessary funding for the property tax rebate for low-income taxpayers provided in the Income Tax Act if the county has adopted an ordinance providing the property tax rebate.

B. The resolution shall:

(1) specify the rate of the proposed tax, which shall not exceed one dollar ($1.00) per thousand dollars ($1,000) of taxable value of property;

(2) specify the date an election will be held to submit the question of imposition of the tax to the qualified electors of the county;

(3) impose the tax for one, two, three, four or five property tax years and limit the imposition of the proposed tax to no more than five property tax years; and

(4) pledge the revenue from the tax solely for the payment of the income tax revenue reduction resulting from the implementation of the property tax rebate for low-income taxpayers.

C. The resolution authorized in Subsection A of this section shall be adopted no later than May 15 in the year prior to the year in which the tax is proposed to be

imposed. By adoption of an appropriate resolution, the board of county commissioners may submit the question of imposing the tax for successive periods of one, two, three, four or five years to the qualified electors of the county. The procedures for the election and for the imposition of the tax for subsequent periods shall be the same as those applying to the initial imposition of the tax. The election shall be scheduled so that the imposition of the tax for successive periods results in continuity of the tax.

D. An election on the question of imposing the tax authorized pursuant to this section may be held in conjunction with a general election or may be conducted as or held in conjunction with a special election, but the election shall be held by the date necessary to assure that the results of the election on the question of imposing the tax may be certified no later than July 1 of the first property tax year in which the tax is proposed to be imposed. Conduct of the election shall be as provided by the Election Code [Chapter 1 NMSA 1978].

E. As used in this section, "taxable value of property" means the combined total of net taxable value of property allocated to the county under the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978]; the assessed value of products severed and sold in the county for the calendar year preceding the year for which a determination is made as determined under the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978]; the assessed value of equipment in the county as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978]; and the taxable value of copper mineral property in the county pursuant to Section 7-39-7 NMSA 1978.

**History:** Laws 1994, ch. 111, § 2; 2000, ch. 33, § 1.

**ANNOTATIONS**

**The 2000 amendment,** effective May 17, 2000, deleted former Subsection A(2), concerning counties that had not adopted an ordinance imposing a transfer tax, and deleted the designation from former Subsection A(1).

## 7-2-14.5. Imposition of tax; limitations.

A. If, as a result of an election held on the question of imposing a property tax to fund the property tax rebate for low-income taxpayers provided in the Income Tax Act, a majority of the qualified electors voting on the question votes in favor of the imposition of the tax, the tax rate shall be certified by the department of finance and administration for any year in which the tax is imposed. The rate certified shall be the rate specified in the authorizing resolution or any lower rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978. The tax shall be imposed at the rate certified unless the board of county commissioners determines that the tax imposition be decreased or not made pursuant to Subsection B of this section. The revenue produced by the tax shall be placed in a separate fund in the county treasury and is

pledged solely for the payment of the income tax revenue reduction resulting from the implementation of the property tax rebate for low-income taxpayers.

B. A tax imposed pursuant to Subsection A of this section shall be imposed for one, two, three, four or five years commencing with the property tax year in which the tax rate is first imposed. The board of county commissioners may direct that the rate of imposition of the tax be decreased for any year if, in its judgment, imposition of the total rate is not necessary for such year. The board of county commissioners shall direct that the imposition not be made for any property tax year for which the property tax rebate for low-income taxpayers is not provided or for any year in which the county has imposed a property transfer tax pursuant to the Transfer Tax Act.

**History:** Laws 1994, ch. 111, § 3.

**ANNOTATIONS**

## 7-2-15 to 7-2-17.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 264, § 25B repealed 7-2-15 NMSA 1978, as amended by Laws 1986 (3d S.S.), ch. 1, § 3, relating to rebate for gross receipts tax on medical and dental expenses, effective June 19, 1987.

Laws 1990, ch. 49, § 20 repealed Sections 7-2-16, 7-2-16.1 and 7-2-17, as enacted by Laws 1986, ch. 110, § 1 and as amended by Laws 1983, ch. 213, § 5 and Laws 1983, ch. 17, § 1, relating to credits for solar or wind energy equipment installation, solar capital investments, and solar irrigation, effective May 16, 1990. For provisions of former sections, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

Laws 1990, ch. 49, § 21 repealed 7-2-17.1 NMSA 1978, as enacted by Laws 1983, ch. 212, § 1, relating to tax credits for geothermal capital investments, effective January 1, 1991. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

## 7-2-18. Tax rebate of property tax due that exceeds the elderly taxpayer's maximum property tax liability; refund.

A. Any resident who has attained the age of sixty-five and files an individual New Mexico income tax return and is not a dependent of another individual may claim a tax rebate for the taxable year for which the return is filed. The tax rebate shall be the amount of property tax due on the resident's principal place of residence for the taxable year that exceeds the property tax liability indicated by the table in Subsection F or G, as appropriate, of this section, based upon the taxpayer's modified gross income.

B. Any resident otherwise qualified under this section who rents a principal place of residence from another person may calculate the amount of property tax due by multiplying the gross rent for the taxable year by six percent. The tax rebate shall be the amount of property tax due on the taxpayer's principal place of residence for the taxable year that exceeds the property tax liability indicated by the table in Subsection F or G, as appropriate, of this section, based upon the taxpayer's modified gross income.

C. As used in this section, "principal place of residence" means the resident's dwelling, whether owned or rented, and so much of the land surrounding it, not to exceed five acres, as is reasonably necessary for use of the dwelling as a home and may consist of a part of a multidwelling or a multipurpose building and a part of the land upon which it is built.

D. No claim for the tax rebate provided in this section shall be allowed a resident who was an inmate of a public institution for more than six months during the taxable year or who was not physically present in New Mexico for at least six months during the taxable year for which the tax rebate could be claimed.

E. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax rebate that would have been allowed on a joint return.

F. For taxpayers whose principal place of residence is in a county that does not have in effect for the taxable year a resolution in accordance with Subsection J of this section, the tax rebate provided for in this section may be claimed in the amount of the property tax due each taxable year that exceeds the amount shown as property tax due each taxable year that exceeds the amount shown as property tax liability in the following table:

ELDERLY HOMEOWNERS' MAXIMUM PROPERTY TAX LIABILITY TABLE

| Taxpayers' Modified Gross Income | | Property Tax Liability |
|---|---|---|
| Over | But Not Over | |
| $ 0 | $ 1,000 | $ 20 |
| 1,000 | 2,000 | 25 |
| 2,000 | 3,000 | 30 |
| 3,000 | 4,000 | 35 |
| 4,000 | 5,000 | 40 |
| 5,000 | 6,000 | 45 |
| 6,000 | 7,000 | 50 |
| 7,000 | 8,000 | 55 |
| 8,000 | 9,000 | 60 |
| 9,000 | 10,000 | 75 |

| | | |
|---|---|---|
| 10,000 | 11,000 | 90 |
| 11,000 | 12,000 | 105 |
| 12,000 | 13,000 | 120 |
| 13,000 | 14,000 | 135 |
| 14,000 | 15,000 | 150 |
| 15,000 | 16,000 | 180. |

G. For taxpayers whose principal place of residence is in a county that has in effect for the taxable year a resolution in accordance with Subsection J of this section, the tax rebate provided for in this section may be claimed in the amount of the property tax due each taxable year that exceeds the amount shown as property tax liability in the following table:

ELDERLY HOMEOWNERS' MAXIMUM PROPERTY TAX LIABILITY TABLE

| Taxpayers' Modified Gross Income | | Property Tax Liability |
|---|---|---|
| Over | But Not Over | |
| $ 0 | $ 1,000 | $ 20 |
| 1,000 | 2,000 | 25 |
| 2,000 | 3,000 | 30 |
| 3,000 | 4,000 | 35 |
| 4,000 | 5,000 | 40 |
| 5,000 | 6,000 | 45 |
| 6,000 | 7,000 | 50 |
| 7,000 | 8,000 | 55 |
| 8,000 | 9,000 | 60 |
| 9,000 | 10,000 | 75 |
| 10,000 | 11,000 | 90 |
| 11,000 | 12,000 | 105 |
| 12,000 | 13,000 | 120 |
| 13,000 | 14,000 | 135 |
| 14,000 | 15,000 | 150 |
| 15,000 | 16,000 | 165 |
| 16,000 | 17,000 | 180 |
| 17,000 | 18,000 | 195 |
| 18,000 | 19,000 | 210 |
| 19,000 | 20,000 | 225 |
| 20,000 | 21,000 | 240 |

| | | |
|---|---|---|
| 21,000 | 22,000 | 255 |
| 22,000 | 23,000 | 270 |
| 23,000 | 24,000 | 285 |
| 24,000 | 25,000 | 300. |

H. If a taxpayer's modified gross income is zero, the taxpayer may claim a tax rebate based upon the amount shown in the first row of the appropriate table. The tax rebate provided for in this section shall not exceed two hundred fifty dollars ($250) per return, and, if a return is filed separately that could have been filed jointly, the tax rebate shall not exceed one hundred twenty-five dollars ($125). No tax rebate shall be allowed any taxpayer whose modified gross income exceeds sixteen thousand dollars ($16,000) for taxpayers whose principal place of residence is in a county that does not have in effect for the taxable year a resolution in accordance with Subsection J of this section and twenty-five thousand dollars ($25,000) for all other taxpayers.

I. The tax rebate provided for in this section may be deducted from the taxpayer's New Mexico income tax liability for the taxable year. If the tax rebate exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

J. The board of county commissioners may adopt a resolution authorizing otherwise qualified taxpayers whose principal place of residence is in the county to claim the rebate provided by this section in the amounts set forth in Subsection G of this section. The resolution must also provide that the county will reimburse the state for the additional amount of tax rebates paid to such taxpayers over the amount that would have been paid to such taxpayers under Subsection F of this section. The resolution may apply to one or more taxable years and shall specify the period of time for which the rebate provided by this section may be claimed by qualified taxpayers. The county must adopt the resolution and notify the department of the adoption by no later than September 1 of the taxable year to which the resolution first applies. The department shall determine the additional amounts paid to taxpayers of the county for each taxable year and shall bill the county for the amount at the time and in the manner determined by the department. If the county fails to pay any bill within thirty days, the department may deduct the amount due from any amount to be transferred or distributed to the county by the state, other than debt interceptions.

**History:** 1953 Comp., § 72-15A-11.4, enacted by Laws 1977, ch. 196, § 1; 1981, ch. 37, § 28; 1993, ch. 307, § 2; 1997, ch. 117, § 1; 1999, ch. 47, § 3; 2003, ch. 275, § 5.

## ANNOTATIONS

**Cross references.** — For meaning of "modified gross income", *see* 7-2-2 NMSA 1978.

**Compiler's notes.** — Laws 1977, ch. 196, designated the above section as 72-15A-11.4, 1953 Comp. Since Laws 1977, ch. 114, had previously enacted a section

designated as 72-15A-11.4, 1953 Comp., then compiled as 7-2-17 NMSA 1978, the above section was designated as 72-15A-11.5, 1953 Comp., by the compiler.

**The 2003 amendment,** effective June 20, 2003, inserted "and shall specify the period of time for which the rebate provided by this section may be claimed by qualified taxpayers" following "more taxable years" in Subsection J.

**The 1999 amendment,** effective June 18, 1999, added additional amounts to the table in Subsection F.

**The 1997 amendment** made stylistic changes throughout the section, redesignated Subsection H as Subsection I, and added Subsections G, H, and J. Laws 1997, ch. 117 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 518, 545, 549, 551.

85 C.J.S. Taxation §§ 1715 to 1755.

## 7-2-18.1. Credit for expenses for dependent child day care necessary to enable gainful employment to prevent indigency.

A. As used in this section:

(1) "caregiver" means a corporation or an individual eighteen years of age or over who receives compensation from a resident for providing direct care, supervision and guidance to a qualifying dependent of the resident for less than twenty-four hours daily and includes related individuals of the resident but does not include a dependent of the resident;

(2) "cost of maintaining a household" means the expenses incurred for the mutual benefit of the occupants thereof by reason of its operation as the principal place of abode of such occupants, including property taxes, mortgage interest, rent, utility charges, upkeep and repairs, property insurance and food consumed on the premises. "Cost of maintaining a household" shall not include expenses otherwise incurred, including cost of clothing, education, medical treatment, vacations, life insurance, transportation and mortgages;

(3) "dependent" means "dependent" as defined by Section 152 of the Internal Revenue Code, as that section may be amended or renumbered, but also includes any minor child or stepchild of the resident who would be a dependent for federal income tax purposes if the public assistance contributing to the support of the child or stepchild was considered to have been contributed by the resident;

(4) "disabled person" means a person who has a medically determinable physical or mental impairment, as certified by a licensed physician or an advanced practice registered nurse, certified nurse-midwife or physician assistant working within that person's scope of practice, that renders such person unable to engage in gainful employment;

(5) "gainfully employed" means working for remuneration for others, either full time or part time, or self-employment in a business or partnership; and

(6) "qualifying dependent" means a dependent under the age of fifteen at the end of the taxable year who receives the services of a caregiver.

B. Any resident who files an individual New Mexico income tax return and who is not a dependent of another taxpayer may claim a credit for child day care expenses incurred and paid to a caregiver in New Mexico during the taxable year by such resident if the resident:

(1) singly or together with a spouse furnishes over half the cost of maintaining the household for one or more qualifying dependents for any period in the taxable year for which the credit is claimed;

(2) is gainfully employed for any period for which the credit is claimed or, if a joint return is filed, both spouses are gainfully employed or one is disabled for any period for which the credit is claimed;

(3) compensates a caregiver for child day care for a qualifying dependent to enable such resident together with the resident's spouse, if any and if not disabled, to be gainfully employed;

(4) is not a recipient of public assistance under a program of aid to families with dependent children, a program under the New Mexico Works Act [Chapter 27, Article 2B NMSA 1978] or any successor program during any period for which the credit provided by this section is claimed; and

(5) has a modified gross income, including child support payments, if any, of not more than the annual income that would be derived from earnings at double the federal minimum wage.

C. The credit provided for in this section shall be forty percent of the actual compensation paid to a caregiver by the resident for a qualifying dependent not to exceed four hundred eighty dollars ($480) for each qualifying dependent or a total of one thousand two hundred dollars ($1,200) for all qualifying dependents for a taxable year. For the purposes of computing the credit, actual compensation shall not exceed eight dollars ($8.00) per day for each qualifying dependent.

D. The caregiver shall furnish the resident with a signed statement of compensation paid by the resident to the caregiver for day care services. Such statements shall specify the dates and the total number of days for which payment has been made.

E. If the resident taxpayer has a federal tax liability, the taxpayer shall claim from the state not more than the difference between the amount of the state child care credit for which the taxpayer is eligible and the federal credit for child and dependent care expenses the taxpayer is able to deduct from federal tax liability for the same taxable year; provided, for first year residents only, the amount of the federal credit for child and dependent care expenses may be reduced to an amount equal to the amount of federal credit for child and dependent care expenses the resident is able to deduct from federal tax liability multiplied by the ratio of the number of days of residence in New Mexico during the resident's taxable year to the total number of days in the resident's taxable year.

F. The credit provided for in this section may be deducted from the taxpayer's New Mexico income tax liability for the taxable year. If the credit exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

G. A husband and wife maintaining a household for one or more qualifying dependents and filing separate returns for a taxable year for which they could have filed a joint return:

(1) may each claim only one-half of the credit that would have been claimed on a joint return; and

(2) are eligible for the credit provided in this section only if their joint modified gross income, including child support payments, if any, is not more than the annual income that would be derived from earnings at double the federal minimum wage.

History: Laws 1981, ch. 170, § 1; 1990, ch. 49, § 10; 1995, ch. 11, § 4; 1999, ch. 47, § 4; 2015, ch. 116, § 1.

## ANNOTATIONS

**Cross references.** — For Section 152 of the Internal Revenue Code, *see* 26 U.S.C. § 152.

**The 2015 amendment,** effective June 19, 2015, amended the definition of "disabled person" in the Income Tax Act to allow certain health care professions other than licensed physicians who may determine physical or mental impairment; in Paragraph (1) of Subsection A, after "compensation from", deleted "the" and added "a"; in Paragraph (4) of Subsection A, after "certified by a licensed physician", added "or an advanced practice registered nurse, certified nurse-midwife or physician assistant working within that person’s scope of practice"; and in Paragraph (3) of Subsection B, after "together with", deleted "his" and added "the resident’s".

**Temporary provisions.** — Laws 2015, ch. 116, § 16 provided that by January 1, 2016, every cabinet secretary, agency head and head of a political subdivision of the state shall update rules requiring an examination by, a certificate from or a statement of a licensed physician to also accept such examination, certificate or statement from an advanced practice registered nurse, certified nurse-midwife or physician assistant working within that person's scope of practice.

**The 1999 amendment,** effective June 18, 1999, inserted "a program under the New Mexico Works Act or any successor program" in Paragraph B(4).

**The 1995 amendment,** effective June 16, 1995, in Subsection E, substituted "federal credit for filed and dependent care expenses" for "federal child care credit", added the proviso at the end, and made stylistic changes.

**The 1990 amendment,** effective May 16, 1990, in Subsection A, substituted "dependent of the resident" for "dependent for whom the resident or his spouse would be eligible for an exemption for federal income tax purposes" at the end of Paragraph (1), added Paragraph (3), and redesignated former Paragraphs (3) to (5) as Paragraphs (4) to (6).

## 7-2-18.2. Credit for preservation of cultural property; refund.

A. Tax credits for the preservation of cultural property may be claimed as follows:

(1) to encourage the restoration, rehabilitation and preservation of cultural properties, a taxpayer who files an individual New Mexico income tax return and who is not a dependent of another individual and who is the owner of a cultural property listed on the official New Mexico register of cultural properties, with the taxpayer's consent, may claim a credit not to exceed a maximum aggregate of twenty-five thousand dollars ($25,000) in an amount equal to one-half of the cost of restoration, rehabilitation or preservation of a cultural property listed on the official New Mexico register; or

(2) if a cultural property, whose owner may otherwise claim the credit set forth in Paragraph (1) of this subsection is also located within an arts and cultural district certified by the state or a municipality pursuant to the Arts and Cultural District Act [15-5A-1 through 15-5A-7 NMSA 1978], the owner of that cultural property may claim a credit not to exceed fifty thousand dollars ($50,000), including any credit claimed pursuant to Paragraph (1) of this subsection, in an amount equal to one-half of the cost of restoration, rehabilitation or preservation of the cultural property.

B. The taxpayer may claim the credit if:

(1) the taxpayer submitted a plan and specifications for restoration, rehabilitation or preservation to the committee and received approval from the committee for the plan and specifications prior to commencement of the restoration, rehabilitation or preservation;

(2) the taxpayer received certification from the committee after completing the restoration, rehabilitation or preservation, or committee-approved phase, that it conformed to the plan and specifications and preserved and maintained those qualities of the property that made it eligible for inclusion in the official register; and

(3) the project is completed within twenty-four months of the date the project is approved by the committee in accordance with Paragraph (1) of this subsection.

C. A taxpayer may claim the credit provided in this section for each taxable year in which restoration, rehabilitation or preservation is carried out. Except as provided in Subsection F of this section, claims for the credit provided in this section shall be limited to three consecutive years, and the maximum aggregate credit allowable shall not exceed twenty-five thousand dollars ($25,000) if governed by Paragraph (1) of Subsection A of this section, or fifty thousand dollars ($50,000) if governed by Paragraph (2) of Subsection A of this section, for any single restoration, rehabilitation or preservation project for any cultural property listed on the official New Mexico register certified by the committee.

D. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

E. A taxpayer who otherwise qualifies and claims a credit on a restoration, rehabilitation or preservation project on property owned by a partnership of which the taxpayer is a member may claim a credit only in proportion to the taxpayer's interest in the partnership. The total credit claimed by all members of the partnership shall not exceed twenty-five thousand dollars ($25,000) in the aggregate if governed by Paragraph (1) of Subsection A of this section, or fifty thousand dollars ($50,000) in the aggregate if governed by Paragraph (2) of Subsection A of this section, for any single restoration, rehabilitation or preservation project for any cultural property listed on the official New Mexico register certified by the committee.

F. The credit provided in this section may only be deducted from the taxpayer's income tax liability. Any portion of the maximum tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for four consecutive years; provided, however, the total tax credits claimed under this section shall not exceed twenty-five thousand dollars ($25,000) if governed by Paragraph (1) of Subsection A of this section, or fifty thousand dollars ($50,000) if governed by Paragraph (2) of Subsection A of this section, for any single restoration, preservation or rehabilitation project for any cultural property listed on the official New Mexico register.

G. The historic preservation division shall promulgate regulations for the implementation of Subsection B of this section.

H. As used in this section:

(1) "committee" means the cultural properties review committee created in Section 18-6-4 NMSA 1978; and

(2) "historic preservation division" means the historic preservation division of the cultural affairs department created in Section 18-6-8 NMSA 1978.

History: 1978 Comp., § 7-2-18.2, enacted by Laws 1984, ch. 34, § 1; 2007, ch. 160, § 14.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, added Paragraph (2) of Subsection A and set limitations on the amount of the tax credit.

**Applicability.** — Laws 2007, ch. 160, § 16 provided that Laws 2007, ch. 160 applied to taxable years beginning on or after January 1, 2009.

## 7-2-18.3. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1998, ch. 95, § 5, effective January 1, 1998, and Laws 1998, ch. 99, § 3, effective May 20, 1998, both repealed former 7-2-18.3 NMSA 1978, concerning credit for prescription drugs effective for taxable years beginning on or after January 1, 1999. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*. The section was set out as repealed by Laws 1998, ch. 99, § 3. *See* 12-1-8 NMSA 1978.

## 7-2-18.4. Qualified business facility rehabilitation credit; income tax credit.

A. To stimulate the creation of new jobs and revitalize economically depressed areas within New Mexico enterprise zones, any taxpayer who files an individual New Mexico income tax return, who is not a dependent of another individual and who is the owner of a qualified business facility may claim a credit in an amount equal to one-half of the cost, not to exceed fifty thousand dollars ($50,000), incurred to restore, rehabilitate or renovate a qualified business facility.

B. A taxpayer may claim the credit provided in this section for each taxable year in which restoration, rehabilitation or renovation is carried out. Except as provided in Subsection E of this section, claims for the credit provided in this section shall be limited to three consecutive years, and the maximum aggregate credit allowable shall not exceed fifty thousand dollars ($50,000) for any single restoration, rehabilitation or renovation project for any qualified business facility. Each claim for a qualified business facility rehabilitation credit shall be accompanied by documentation and certification as the department may require by regulation or instruction.

C. No credit may be claimed or allowed pursuant to the provisions of this section for any costs incurred for a restoration, rehabilitation or renovation project for which a credit may be claimed pursuant to the provisions of Section 7-2-18.2 or Section 7-9A-1 NMSA 1978.

D. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

E. A taxpayer who otherwise qualifies and claims a credit on a restoration, rehabilitation or renovation project on a building owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to his interest in the partnership or association. The total credit claimed by all members of the partnership or association shall not exceed fifty thousand dollars ($50,000) in the aggregate for any single restoration, rehabilitation or renovation project for a qualified business facility.

F. The credit provided in this section may only be deducted from the taxpayer's income tax liability. Any portion of the maximum tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for four consecutive taxable years; provided, the total tax credits claimed under this section shall not exceed fifty thousand dollars ($50,000) for any single restoration, rehabilitation or renovation project for a qualified business facility.

G. As used in this section:

(1) "qualified business facility" means a building located in a New Mexico enterprise zone that is suitable for use and is put into service by a person in the manufacturing, distribution or service industry immediately following the restoration, rehabilitation or renovation project; provided, the building must have been vacant for the twenty-four month period immediately preceding the commencement of the restoration, rehabilitation or renovation project; and

(2) "restoration, rehabilitation or renovation" includes:

(a) the construction services necessary to ensure that a building is in compliance with applicable zoning codes, is safe for occupancy and meets the operating needs of a person in the manufacturing, distribution or service industry; and

(b) expansion of or an addition to a building if the expansion or addition does not increase the usable square footage of the building by more than ten percent of the usable square footage of the building prior to the restoration, rehabilitation or renovation project.

**History:** Laws 1994, ch. 115, § 1.

## 7-2-18.5. Welfare-to-work tax credit.

A. Any taxpayer who files an individual New Mexico income tax return and is not a dependent of another taxpayer and is entitled to claim the federal welfare-to-work credit provided by 26 U.S.C. Section 51A with respect to a state-qualified employee in a state-qualified job may take a tax credit equal to fifty percent of the amount of the welfare-to-work credit claimed and allowed under 26 U.S.C. Section 51A with respect to that employee in that job.

B. To be eligible for the credit provided by this section, a taxpayer must be in compliance with the following provisions:

(1) the hiring of any state-qualified employee shall not result in the displacement of any currently employed worker or position, including partial displacement such as a reduction in the hours of nonovertime work, wages or employment benefits, or in any infringement of the promotional opportunities of any currently employed individual;

(2) the hiring of any state-qualified employee shall not impair existing contracts for services or collective bargaining agreements, and no employment under the terms of this act [7-2-1 to 7-2-34 NMSA 1978] shall be inconsistent with the terms of a collective bargaining agreement or involve the performance of duties covered under a collective bargaining agreement unless the employer and the labor organization concur in writing;

(3) a state-qualified employee may fill or perform the duties of an employment position only in a manner that is consistent with existing laws, personnel procedures and collective bargaining contracts;

(4) no state-qualified employee shall be employed or assigned:

(a) when any other individual is on layoff from the same or any substantially equivalent job;

(b) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its work force with the effect of filling the vacancy so created with a state-qualified employee; or

(c) to any position at a particular work site when there is an ongoing strike or lockout at that particular work site;

(5) state-qualified employees shall be paid a wage that is substantially like the wage paid for similar jobs with the employer with appropriate adjustments for experience and training but not less than the federal minimum hourly wage; and

(6) employers shall:

(a) maintain health, safety and working conditions not less than those of comparable jobs offered by the employer; and

(b) maintain standard and customary entry-level wages and benefits and apply historical and normal increases in wages and benefits appropriate for experience and training of the state-qualified employee.

C. For the purposes of this section:

(1) "high-unemployment county" means a county in which the unemployment rate as reported by the labor department exceeds ten percent in six or more months of the calendar year preceding the year for which the tax credit provided by this section is claimed;

(2) "state-qualified employee" means a "long-term family assistance recipient", as that term is defined in 26 U.S.C. Section 51A(c), who resides in a high-unemployment county during the period of employment for which the welfare-to-work credit provided by 26 U.S.C. Section 51A applies with respect to that employee; and

(3) "state-qualified job" means a job established by the taxpayer that:

(a) when first occupied by a state-qualified employee results in the total number of the taxpayer's employees exceeding the average number of the taxpayer's employees during the taxpayer's preceding tax year; or

(b) was a position previously filled by a state-qualified employee and was vacant prior to the hiring of the new state-qualified employee in that position.

D. The labor department shall determine whether the employee is a state-qualified employee and whether the job is a state-qualified job and, if the employee is a state-qualified employee and the job is a state-qualified job, certify that fact to the employer. The taxpayer claiming the tax credit provided by this section shall provide a copy of the certification with respect to each employee for which the tax credit is claimed.

E. By July 1, 1998 and by January 31 of each subsequent year, the labor department shall certify to the taxation and revenue department the high-unemployment counties for the preceding calendar year.

F. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax credit provided by this section that would have been allowed on a joint return.

G. A taxpayer who otherwise qualifies may claim his pro rata share of the tax credit provided by this section with respect to state-qualified employees employed by a partnership or other business association of which the taxpayer is a member. The total tax credit claimed by all members of the partnership or association shall not exceed the

amount of tax credit provided pursuant to Subsection A of this section with respect to each state-qualified employee for which the credit is allowed.

H. The tax credit provided by this section may only be deducted from the taxpayer's income tax liability. Any portion of the tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for three consecutive taxable years.

**History:** Laws 1998, ch. 97, § 2.

## 7-2-18.6. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 217, § 4 repealed 7-2-18.6, as enacted by Laws 1999, ch. 217, § 1, relating to a job mentorship tax credit, effective January 1, 2002. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com.*

## 7-2-18.7. Tax rebate of property tax paid on property eligible for disabled veteran exemption; refund; limitation.

A. Any resident who files an individual New Mexico income tax return and paid property tax for the 1999 property tax year on property eligible for the property tax exemption authorized by Article 8, Section 15 of the constitution of New Mexico may claim a tax rebate for the amount of property tax paid.

B. The tax rebate provided for in this section may be deducted from the taxpayer's New Mexico income tax liability for taxable year 2000. If the tax rebate exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

C. The rebate provided for in this section may be claimed only on a return filed for taxable year 2000.

D. A husband and wife who file separate returns for taxable year 2000 and could have filed a joint return for taxable year 2000 may each claim only one-half of the tax rebate that would have been allowed on the joint return.

**History:** Laws 2000, ch. 64, § 1 and Laws 2000, ch. 78, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2000, ch. 78 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on May 17, 2000, 90 days after adjournment of the legislature.

**Compiler's notes.** — Laws 2000, ch. 64, § 1 and Laws 2000, ch. 78, § 1, both effective May 17, 2000, enacted identical sections. The section was set out as enacted by Laws 2000, ch. 78, § 1. *See* 12-1-8 NMSA 1978.

## 7-2-18.8. Credit; certain electronic equipment.

A. A taxpayer who files an individual New Mexico income tax return, who is not a dependent of another individual, is licensed by the state to sell cigarettes, other tobacco products or alcoholic beverages and has purchased and has in use equipment that electronically reads identification cards to verify age, may claim a one-time credit in an amount equal to three hundred dollars ($300) for each business location the taxpayer has such equipment in use.

B. The credit provided in this section may only be deducted from the taxpayer's New Mexico income tax liability for the taxable year.

C. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit provided in this section that would have been allowed on a joint return.

D. A taxpayer who otherwise qualifies and claims a credit pursuant to this section for equipment owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to his interest in the partnership or association. The total credit claimed by all members of the partnership or association shall not exceed three hundred dollars ($300) in the aggregate for each business location for which the partnership or association has purchased equipment and has it in use.

**History:** Laws 2001, ch. 73, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2001, ch. 73 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

## 7-2-18.9. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2002, ch. 91, § 3 repealed 7-2-18.9 NMSA 1978, as enacted by Laws 2002, ch. 91, § 1, relating to the solar market development tax credit, effective January 1, 2006. For provisions of former section, *see* the 2001 NMSA 1978 on *NMOneSource.com.*

## 7-2-18.10. Tax credit; certain conveyances of real property.

A. There shall be allowed as a credit against the tax liability imposed by the Income Tax Act, an amount equal to fifty percent of the fair market value of land or interest in land that is conveyed for the purpose of open space, natural resource or biodiversity conservation, agricultural preservation or watershed or historic preservation as an unconditional donation in perpetuity by the landowner or taxpayer to a public or private conservation agency eligible to hold the land and interests therein for conservation or preservation purposes. The fair market value of qualified donations made pursuant to this section shall be substantiated by a "qualified appraisal" prepared by a "qualified appraiser", as those terms are defined under applicable federal laws and regulations governing charitable contributions.

B. The amount of the credit that may be claimed by a taxpayer shall not exceed one hundred thousand dollars ($100,000) for a conveyance made prior to January 1, 2008 and shall not exceed two hundred fifty thousand dollars ($250,000) for a conveyance made on or after that date. In addition, in a taxable year the credit used may not exceed the amount of individual income tax otherwise due. A portion of the credit that is unused in a taxable year may be carried over for a maximum of twenty consecutive taxable years following the taxable year in which the credit originated until fully expended. A taxpayer may claim only one tax credit per taxable year.

C. Qualified donations shall include the conveyance in perpetuity of a fee interest in real property or a less-than-fee interest in real property, such as a conservation restriction, preservation restriction, agricultural preservation restriction or watershed preservation restriction, pursuant to the Land Use Easement Act [47-12-1 through 47-12-6 NMSA 1978] and provided that the less-than-fee interest qualifies as a charitable contribution deduction under Section 170(h) of the Internal Revenue Code. Dedications of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits shall not be considered as qualified donations pursuant to the Land Conservation Incentives Act [75-9-1 through 75-9-6 NMSA 1978].

D. Qualified donations shall be eligible for the tax credit if the donations are made to the state of New Mexico, a political subdivision thereof or a charitable organization described in Section 501(c)(3) of the Internal Revenue Code and that meets the requirements of Section 170(h)(3) of that code.

E. To be eligible for treatment as qualified donations under this section, land or interests in lands must be certified by the secretary of energy, minerals and natural resources as fulfilling the purposes as set forth in Section 75-9-2 NMSA 1978. The use and protection of the lands, or interests therein, for open space, natural area protection, biodiversity habitat conservation, land preservation, agricultural preservation, historic preservation or similar use or purpose of the property shall be assured in perpetuity.

F. A taxpayer may apply for certification of eligibility for the tax credit provided by this section from the energy, minerals and natural resources department. If the energy, minerals and natural resources department determines that the application meets the requirements of this section and that the property conveyed will not adversely affect the

property rights of contiguous landowners, it shall issue a certificate of eligibility to the taxpayer, which shall include a calculation of the maximum amount of tax credit for which the taxpayer would be eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection.

G. To receive a credit pursuant to this section, a person shall apply to the taxation and revenue department on forms and in the manner prescribed by the department. The application shall include a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to Subsection F of this section. If all of the requirements of this section have been complied with, the taxation and revenue department shall issue to the applicant a document granting the tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed for the qualified donation made pursuant to this section.

H. The tax credit represented by a document issued pursuant to Subsection G of this section for a conveyance made on or after January 1, 2008, or an increment of that tax credit, may be sold, exchanged or otherwise transferred, and may be carried forward for a period of twenty taxable years following the taxable year in which the credit originated until fully expended. A tax credit or increment of a tax credit may only be transferred once. The credit may be transferred to any taxpayer. A taxpayer to whom a credit has been transferred may use the credit for the taxable year in which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but in no event may the transferred credit be used more than twenty years after it was originally issued.

I. A tax credit issued pursuant to this section shall be transferred through a qualified intermediary. The qualified intermediary shall, by means of a sworn notarized statement, notify the taxation and revenue department of the transfer and of the date of the transfer within ten days of the transfer. Credits shall only be transferred in increments of ten thousand dollars ($10,000) or more. The qualified intermediary shall keep an account of the credits and have the authority to issue sub-numbers registered with the taxation and revenue department and traceable to the original credit.

J. If a charitable deduction is claimed on the taxpayer's federal income tax for any contribution for which the credit provided by this section is claimed, the taxpayer's itemized deductions for New Mexico income tax shall be reduced by the amount of the deduction for the contribution in order to determine the New Mexico taxable income of the taxpayer.

K. For the purposes of this section:

(1) "qualified intermediary" does not include a person who has been previously convicted of a felony, who has had a professional license revoked, who is engaged in the practice defined in Section 61-28B-3 NMSA 1978 and who is identified

in Section 61-29-2 NMSA 1978, and does not include any entity owned wholly or in part or employing any of the foregoing persons; and

(2) "taxpayer" means a citizen or resident of the United States, a domestic partnership, a limited liability company, a domestic corporation, an estate, including a foreign estate, or a trust.

History: 1978 Comp., § 7-2-18.10, enacted by Laws 2003, ch. 331, § 7; 2007, ch. 335, § 1.

**ANNOTATIONS**

**Cross references. —** For Internal Revenue Code §§ 501 (c)(3) and 170(h), *see* 26 U.S.C. § 501 (c)(3) and 26 U.S.C. § 170(h).

For the Land Conservation Incentives Act, *see* 75-9-1 to 75-9-6 NMSA 1978.

**The 2007 amendment,** effective June 15, 2007, provided that the credit shall not exceed $100,000 for a conveyance prior to January 1, 2008 and $250,000 on or after January 1, 2008 and added Subsections F through K.

## 7-2-18.11. Job mentorship tax credit.

A. To encourage New Mexico businesses to hire youth participating in career preparation education programs, a taxpayer who files an individual New Mexico income tax return, who is not a dependent of another individual and who is an owner of a New Mexico business may claim a credit in an amount equal to fifty percent of gross wages paid to qualified students who are employed by the business during the taxable year for which the return is filed. The tax credit provided by this section may be referred to as the "job mentorship tax credit".

B. A taxpayer who is an owner of a New Mexico business may claim the job mentorship tax credit for each taxable year in which the business employs one or more qualified students. The maximum aggregate credit allowable shall not exceed fifty percent of the gross wages paid to not more than ten qualified students employed by the business for up to three hundred twenty hours of employment of each qualified student in each taxable year for a maximum of three taxable years for each qualified student. In no event shall a taxpayer claim a credit in excess of twelve thousand dollars ($12,000) in any taxable year. The taxpayer shall certify that hiring the qualified student does not displace or replace a current employee.

C. The department shall issue job mentorship tax credit certificates upon request to any accredited New Mexico secondary school that has a school-sanctioned career preparation education program. The maximum number of certificates that may be issued in a school year to any one school is equal to the number of qualified students in

the school-sanctioned career preparation education program on October 15 of that school year, as certified by the school principal.

D. A job mentorship tax credit certificate may be executed by a school principal with respect to a qualified student, and the executed certificate may be transferred to a New Mexico business that employs that student. By executing the certificate with respect to a student, the school principal certifies that the school has a school-sanctioned career preparation education program and the student is a qualified student.

E. To claim the job mentorship tax credit, the taxpayer must submit with respect to each employee for whom the credit is claimed:

(1) a properly executed job mentorship tax credit certificate;

(2) information required by the secretary with respect to the employee's employment by the business during the taxable year for which the credit is claimed; and

(3) information required by the secretary that the employee was not also employed in the same taxable year by another New Mexico business qualifying for and claiming a job mentorship tax credit for that employee pursuant to this section or the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978].

F. The job mentorship tax credit may only be deducted from the taxpayer's New Mexico income tax liability for the taxable year. Any portion of the maximum credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for three consecutive taxable years; provided the total credits claimed under this section shall not exceed the maximum allowable pursuant to Subsection B of this section.

G. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

H. A taxpayer who otherwise qualifies for and claims a job mentorship tax credit for employment of qualified students by a partnership, limited partnership, limited liability company, S corporation or other business association of which the taxpayer is a member may claim a credit only in proportion to his interest in the partnership, limited partnership, limited liability company, S corporation or association. The total credit claimed by all members of the business shall not exceed the maximum credit allowable pursuant to Subsection B of this section.

I. As used in this section:

(1) "career preparation education program" means a work-based learning or school-to-career program designed for secondary school students to create academic

and career goals and objectives and find employment in a job meeting those goals and objectives;

(2) "New Mexico business" means a partnership, limited partnership, limited liability company treated as a partnership for federal income tax purposes, S corporation or sole proprietorship that carries on a trade or business in New Mexico and that employs in New Mexico fewer than three hundred full-time employees at any one time during the taxable year; and

(3) "qualified student" means an individual who is at least fourteen years of age but not more than twenty-one years of age who is attending full time an accredited New Mexico secondary school and who is a participant in a career preparation education program sanctioned by the secondary school.

**History:** Laws 2003, ch. 400, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 400 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

## 7-2-18.12. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 91, § 2 repealed 7-2-18.12 NMSA 1978, as enacted by Laws 2004, ch. 99, § 1, relating to income tax credit for payments to care facilities, effective June 17, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

## 7-2-18.13. Credit; unreimbursed or uncompensated medical care expenses of individuals sixty-five years of age or older.

A. A taxpayer who files an individual New Mexico income tax return, who is sixty-five years of age or older and who is not a dependent of another taxpayer may claim a credit in an amount equal to two thousand eight hundred dollars ($2,800) for medical care expenses paid by the taxpayer for that taxpayer or for the taxpayer's spouse or dependent if those expenses equal twenty-eight thousand dollars ($28,000) or more within a taxable year and if those expenses are not reimbursed or compensated for by insurance or otherwise.

B. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

C. The credit provided in this section may be deducted from the taxpayer's income tax liability. If the credit exceeds the income tax liability for the taxable year, the excess shall be refunded to the taxpayer.

D. As used in this section:

(1) "dependent" means "dependent" as defined in Section 152 of the Internal Revenue Code;

(2) "health care facility" means a hospital, outpatient facility, diagnostic and treatment center, rehabilitation center, freestanding hospice or other similar facility at which medical care is provided;

(3) "medical care" means the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body;

(4) "medical care expenses" means the amounts paid for:

(a) the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body, if provided by a physician or in a health care facility;

(b) prescribed drugs or insulin;

(c) qualified long-term care services as defined in Section 7702B(c) of the Internal Revenue Code;

(d) insurance covering medical care, including amounts paid as premiums under Part B of Title 18 of the Social Security Act or for a qualified long-term care insurance contract defined in Section 7702B(b) of the Internal Revenue Code, if the insurance or other amount is paid from income included in the taxpayer's adjusted gross income for the taxable year;

(e) specialized treatment or the use of special therapeutic devices if the treatment or device is prescribed by a physician and the patient can show that the expense was incurred primarily for the prevention or alleviation of a physical or mental defect or illness; and

(f) care in an institution other than a hospital, such as a sanitarium or rest home, if the principal reason for the presence of the person in the institution is to receive the medical care available; provided that if the meals and lodging are furnished as a necessary part of such care, the cost of meals and lodging are "medical care expenses";

(5) "physician" means a medical doctor, osteopathic physician, dentist, podiatrist, chiropractic physician or psychologist licensed or certified to practice in New Mexico; and

(6) "prescribed drug" means a drug or biological that requires a prescription of a physician for its use by an individual.

History: Laws 2005, ch. 267, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 267 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

**ANNOTATIONS**

**Applicability.** — Laws 2005, ch. 267, § 2 provided that Laws 2005, ch. 267, § 1 apply to taxable years beginning on or after January 1, 2005.

## 7-2-18.14. Solar market development tax credit; residential and small business solar thermal and photovoltaic market development tax credit.

A. Except as provided in Subsection C of this section, a taxpayer who files an individual New Mexico income tax return for a taxable year beginning on or after January 1, 2006 and who purchases and installs after January 1, 2006 but before December 31, 2016 a solar thermal system or a photovoltaic system in a residence, business or agricultural enterprise in New Mexico owned by that taxpayer may apply for, and the department may allow, a solar market development tax credit of up to ten percent of the purchase and installation costs of the system.

B. The total solar market development tax credit allowed for either a photovoltaic system or a solar thermal system shall not exceed nine thousand dollars ($9,000). The department shall allow solar market development tax credits only for solar thermal systems and photovoltaic systems certified by the energy, minerals and natural resources department.

C. Solar market development tax credits may not be claimed or allowed for:

(1) a heating system for a swimming pool or a hot tub; or

(2) a commercial or industrial photovoltaic system other than an agricultural photovoltaic system on a farm or ranch that is not connected to an electric utility transmission or distribution system.

D. The department may allow a maximum annual aggregate of:

(1) two million dollars ($2,000,000) in solar market development tax credits for solar thermal systems; and

(2) three million dollars ($3,000,000) in solar market development tax credits for photovoltaic systems.

E. A portion of the solar market development tax credit that remains unused in a taxable year may be carried forward for a maximum of ten consecutive taxable years following the taxable year in which the credit originates until fully expended.

F. Prior to July 1, 2006, the energy, minerals and natural resources department shall adopt rules establishing procedures to provide certification of solar thermal systems and photovoltaic systems for purposes of obtaining a solar market development tax credit. The rules shall address technical specifications and requirements relating to safety, code and standards compliance, solar collector orientation and sun exposure, minimum system sizes, system applications and lists of eligible components. The energy, minerals and natural resources department may modify the specifications and requirements as necessary to maintain a high level of system quality and performance.

G. As used in this section:

(1) "photovoltaic system" means an energy system that collects or absorbs sunlight for conversion into electricity; and

(2) "solar thermal system" means an energy system that collects or absorbs solar energy for conversion into heat for the purposes of space heating, space cooling or water heating.

History: Laws 2006, ch. 93, § 1; 2009, ch. 280, § 1.

## ANNOTATIONS

**The 2009 amendment,** effective June 19, 2009, in Subsection A, changed the reference from Subsection B to Subsection C; changed "December 31, 2015" to "December 31, 2016"; after "credit up to", changed "thirty percent" to "ten percent"; and after "costs of the system", deleted the remainder of the sentence and the former last sentence, which provided that the combined federal and state tax credits shall not exceed thirty percent of the cost of the system and which provided the method to determine the amount of the state tax credit.

**Applicability.** — Laws 2009, ch. 280, § 2 provided that the provisions of Laws 2009, ch. 280, § 1 apply to taxable years beginning on or after January 1, 2009.

## 7-2-18.15. Working families tax credit.

A. A resident who files an individual New Mexico income tax return may claim a credit in an amount equal to ten percent of the federal income tax credit for which that individual is eligible for the same taxable year pursuant to Section 32 of the Internal Revenue Code. The credit provided in this section may be referred to as the "working families tax credit".

B. The working families tax credit may be deducted from the income tax liability of an individual who claims the credit and qualifies for the credit pursuant to this section. If the credit exceeds the individual's income tax liability for the taxable year, the excess shall be refunded to the individual.

History: Laws 2007, ch. 45, § 9; 2008 (2nd S.S.), ch. 4, § 1.

**ANNOTATIONS**

**Cross references.** — For Section 32 of the Internal Revenue Code, *see* 26 U.S.C § 32.

**Compiler's notes.** — Laws 2009, ch. 2, § 1, effective February 6, 2009, reduced general fund appropriations in the General Appropriation Act of 2008.

Laws 2009, ch. 3, § 8, effective February 6, 2009, appropriated funds from the needy families contingency fund for payment of the working families tax credit.

Laws 2009, ch. 3, § 13, effective February 6, 2009, provided that Laws 2009, ch. 3, § 8 is contingent upon enactment into law of legislation of the first session of the forty-ninth legislature that reduced general fund appropriations in the General Appropriation Act of 2008.

**The 2008 amendment,** effective November 17, 2008, increased the working families tax credit from eight to ten percent of the federal income tax credit.

**Applicability.** — Laws 2008 (2nd S.S.), ch. 4, § 2 provided that the provisions of Laws 2008 (2nd S.S.), ch. 4, § 1 apply to taxable years beginning on or after January 1, 2008.

## 7-2-18.16. Credit; special needs adopted child tax credit; created; qualifications; duration of credit.

A. A taxpayer who files an individual New Mexico income tax return, who is not a dependent of another individual and who adopts a special needs child on or after January 1, 2007 or has adopted a special needs child prior to January 1, 2007, may claim a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act. The credit authorized pursuant to this section may be referred to as the "special needs adopted child tax credit".

B. A taxpayer may claim and the department may allow a special needs adopted child tax credit in the amount of one thousand dollars ($1,000) to be claimed against the taxpayer's tax liability for the taxable year imposed pursuant to the Income Tax Act.

C. A taxpayer may claim a special needs adopted child tax credit for each year that the child may be claimed as a dependent for federal taxation purposes by the taxpayer.

D. If the amount of the special needs adopted child tax credit due to the taxpayer exceeds the taxpayer's individual income tax liability, the excess shall be refunded.

E. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the special needs adopted child tax credit provided in this section that would have been allowed on a joint return.

F. As used in this section, "special needs adopted child" means an individual who may be over eighteen years of age and who is certified by the children, youth and families department or a licensed child placement agency as meeting the definition of a "difficult to place child" pursuant to the Adoption Act [Chapter 32A, Article 5 NMSA 1978]; provided, however, if the classification as a "difficult to place child" is based on a physical or mental impairment or an emotional disturbance the physical or mental impairment or emotional disturbance shall be at least moderately disabling.

History: Laws 2007, ch. 45, § 10.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 45, § 10, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2007, ch. 45, § 15 provided that Laws 2007, ch. 45, §10 apply to taxable years beginning on or after January 1, 2007.

## 7-2-18.17. Angel investment credit.

A. A taxpayer who files a New Mexico income tax return, is not a dependent of another taxpayer, is an accredited investor and makes a qualified investment may claim a credit in an amount not to exceed twenty-five percent of the qualified investment; provided that a credit for each qualified investment shall not exceed sixty-two thousand five hundred dollars ($62,500). The tax credit provided in this section shall be known as the "angel investment credit".

B. A taxpayer may claim the angel investment credit for not more than one qualified investment per investment round. A taxpayer may claim the angel investment credit for qualified investments in no more than five qualified businesses per taxable year.

C. A taxpayer may claim the angel investment credit no later than one year following the end of the calendar year in which the qualified investment was made; provided that a claim for the credit may not be made or allowed with respect to any investment made after December 31, 2025.

D. A taxpayer shall apply for certification of eligibility for the angel investment credit from the economic development department. Completed applications shall be considered in the order received. If the economic development department determines that the taxpayer is an accredited investor and the investment is a qualified investment, it shall issue a certificate of eligibility to the taxpayer, subject to the limitation in Subsection E of this section. The certificate shall be dated and shall include a calculation of the amount of the angel investment credit for which the taxpayer is eligible. The economic development department may issue rules governing the procedure for administering the provisions of this subsection.

E. The economic development department may issue a certificate of eligibility pursuant to Subsection D of this section only if the total amount of angel investment credits represented by certificates of eligibility issued by the economic development department in any calendar year will not exceed two million dollars ($2,000,000). If the applications for certificates of eligibility for angel investment credits represent an aggregate amount exceeding two million dollars ($2,000,000) for any calendar year, certificates shall be issued in the order that completed applications were received. The excess applications that would have been certified, but for the limit imposed by this subsection, shall be certified, subject to the same limit, in subsequent calendar years.

F. The economic development department shall report annually to the legislative finance committee on the utilization and effectiveness of the angel investment credit. The report shall include, at a minimum: the number of accredited investors to whom certificates of eligibility were issued by the economic development department in the previous year; the names of those investors; the amount of angel investment credit for which each investor was certified eligible; and the number and names of the businesses that the economic development department has determined are qualified businesses for purposes of an investment by an accredited investor. The report shall also include an evaluation of the success of the angel investment credit as an incubator of new businesses in New Mexico and of the continued viability and operation in New Mexico of businesses in which investments eligible for the angel investment credit have been made.

G. To claim the angel investment credit, the taxpayer must provide to the taxation and revenue department a certificate of eligibility issued by the economic development department pursuant to Subsection D of this section and any other information the taxation and revenue department may require to determine the amount of the tax credit due the taxpayer. If the requirements of this section have been complied with, the taxation and revenue department shall approve the claim for the credit.

H. A taxpayer who otherwise qualifies for and claims a credit pursuant to this section for a qualified investment made by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to the taxpayer's interest in the partnership or business association.

I. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim one-half of the credit that would have been allowed on a joint return.

J. The angel investment credit may only be deducted from the taxpayer's income tax liability. Any portion of the tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for five consecutive years.

K. As used in this section:

(1) "accredited investor" means a person who is an accredited investor within the meaning of Rule 501 issued by the federal securities and exchange commission pursuant to the federal Securities Act of 1933, as amended;

(2) "business" means a corporation, general partnership, limited partnership, limited liability company or other similar entity, but excludes an entity that is a government or a nonprofit organization designated as such by the federal government or any state;

(3) "equity" means common or preferred stock of a corporation, a partnership interest in a limited partnership or a membership interest in a limited liability company, including debt subject to an option in favor of the creditor to convert the debt into common or preferred stock, a partnership interest or a membership interest;

(4) "investment round" means an offer and sale of securities and all other offers and sales of securities that would be integrated with such offer and sale of securities under Regulation D issued by the federal securities and exchange commission pursuant to the federal Securities Act of 1933, as amended;

(5) "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include:

(a) construction;

(b) farming;

(c) processing natural resources, including hydrocarbons; or

(d) preparing meals for immediate consumption, on- or off-premises;

(6) "qualified business" means a business that:

(a) maintains its principal place of business and employs a majority of its full-time employees, if any, in New Mexico and a majority of its tangible assets, if any, are located in New Mexico;

(b) engages in qualified research or manufacturing activities in New Mexico;

(c) is not primarily engaged in or is not primarily organized as any of the following types of businesses: credit or finance services, including banks, savings and loan associations, credit unions, small loan companies or title loan companies; financial brokering or investment; professional services, including accounting, legal services, engineering and any other service the practice of which requires a license; insurance; real estate; construction or construction contracting; consulting or brokering; mining; wholesale or retail trade; providing utility service, including water, sewerage, electricity, natural gas, propane or butane; publishing, including publishing newspapers or other periodicals; broadcasting; or providing internet operating services;

(d) has not issued securities registered pursuant to Section 6 of the federal Securities Act of 1933, as amended; has not issued securities traded on a national securities exchange; is not subject to reporting requirements of the federal Securities Exchange Act of 1934, as amended; and is not registered pursuant to the federal Investment Company Act of 1940, as amended, at the time of the investment;

(e) has one hundred or fewer employees calculated on a full-time-equivalent basis in the taxable year in which the investment was made; and

(f) has not had gross revenues in excess of five million dollars ($5,000,000) in any fiscal year ending on or before the date of the investment;

(7) "qualified investment" means a cash investment in a qualified business for equity, but does not include an investment by a taxpayer if the taxpayer, a member of the taxpayer's immediate family or an entity affiliated with the taxpayer receives compensation from the qualified business in exchange for services provided to the qualified business within one year of investment in the qualified business; and

(8) "qualified research" means "qualified research" as defined by Section 41 of the Internal Revenue Code.

History: Laws 2007, ch. 172, § 1; 2012, ch. 38, § 1; 2015 (1st S.S.), ch. 2, § 2.

## ANNOTATIONS

**Repeals.** — Laws 2012, ch. 38, § 2 repealed Laws 2007, ch. 172, § 24, which provided for the repeal of the angel investment credit on January 1, 2013.

**Compiler's notes.** — Laws 2007, ch. 172, § 23, effective April 2, 2007, provided that in taxable years 2013 through 2015 a taxpayer may carry forward amounts resulting from

angel investment credits claimed and approved for qualified investments made in calendar year 2009, 2010 or 2011.

**Cross references.** — For Section 6 of the federal Securities Act of 1933, *see* 15 U.S.C. § 77f.

For the federal Securities Exchange Act of 1934, *see* 15 U.S.C. § 78a et seq.

For the federal Investment Company Act of 1940, *see* 15 U.S.C. § 80a-1 et seq.

**The 2015 (1st S.S.) amendment,** effective September 6, 2015, increased the maximum amount of an angel investment credit, changed the number of angel investment credits a taxpayer may claim, extended the angel investment credit until the year 2025, and limited the total amount of angel investment credits that may be approved by the economic development department; in Subsection A, after "not to exceed twenty-five percent of", deleted "not more than one hundred thousand dollars ($100,000) of", after "the qualified investment;", added "provided that a credit for each qualified investment shall not exceed sixty-two thousand five hundred dollars ($62,500)"; in Subsection B, after "for not more than", deleted "two" and added "one", after "qualified", deleted "investments in a taxable year; provided that each investment is in a different qualified business" and added "investment per investment round", after "qualified investments", deleted "made in the same qualified business or successor of that business for not more than three taxable years. The angel investment credit shall not exceed twenty-five thousand dollars ($25,000) for each qualified investment by the taxpayer" and added "in no more than five qualified businesses per taxable year"; in Subsection C, deleted "2016" and added "2025"; in Subsection D, added "Completed" preceding "applications shall be considered"; in Subsection E, after "in any calendar year will not exceed", deleted "seven hundred fifty thousand dollars ($750,000)" and added "two million dollars ($2,000,000)", after "in the order that", deleted "the" and added "completed"; in Subsection F, after "certificates of eligibility were issued by the", added "economic development", and after "the businesses that the", added "economic development"; in Subsection H, after "the taxpayer's interest in the partnership or business association.", deleted "The total credit claimed in the aggregate by all members of the partnership or business association in a taxable year with respect to a qualified investment shall not exceed twenty-five thousand dollars ($25,000)"; in Subsection J, after "may be carried forward for", deleted "three" and added "five"; in Subsection K, deleted former Paragraph (4) and added a new Paragraph (4); in Subparagraph K(6)(a), after "principal place of business", added "and employs a majority of its full-time employees, if any", and after "New Mexico", added "and a majority of its tangible assets, if any, are located in New Mexico"; in Subparagraph K(6)(b), after "engages in", deleted "high-technology" and added "qualified"; in Subparagraph K(6)(e), after "full-time-equivalent basis", deleted "at the time of the investment" and added "in the taxable year in which the investment was made"; and added Paragraph (8) of Subsection K.

**Applicability.** — Laws 2015 (1st S.S.), ch. 2, § 25 provided that the provisions of Laws 2015 (1st S.S.), ch. 2, §§ 2 through 7 and 17 apply to taxable years beginning on or after January 1, 2015.

**The 2012 amendment,** effective May 16, 2012, extended the angel investment credit for five years, and in Subsection C, after “December 31”, changed "2011" to "2016".

## 7-2-18.18. Renewable energy production tax credit.

A. The tax credit provided in this section may be referred to as the "renewable energy production tax credit". The tax credit provided in this section may not be claimed with respect to the same electricity production for which a tax credit pursuant to Section 7-2A-19 has been claimed.

B. A taxpayer who files an individual New Mexico income tax return and who is not a dependent of another taxpayer is eligible for the renewable energy production tax credit if the taxpayer:

(1) holds title to a qualified energy generator that first produced electricity on or before January 1, 2018; or

(2) leases property upon which a qualified energy generator operates from a county or municipality under authority of an industrial revenue bond and if the qualified energy generator first produced electricity on or before January 1, 2018.

C. The amount of the tax credit shall equal one cent ($.01) per kilowatt-hour of the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator in the taxable year using a wind- or biomass-derived qualified energy resource, provided that the total amount of tax credits claimed by all taxpayers for a single qualified energy generator in a taxable year using a wind- or biomass-derived qualified energy resource shall not exceed one cent ($.01) per kilowatt-hour of the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator.

D. The amount of the tax credit for electricity produced by a qualified energy generator in the taxable year using a solar-light-derived or solar-heat-derived qualified energy resource shall be at the amounts specified in Paragraphs (1) through (10) of this subsection; provided that the total amount of tax credits claimed for a taxable year by all taxpayers for a single qualified energy generator using a solar-light-derived or solar-heat-derived qualified energy resource shall be limited to the first two hundred thousand megawatt-hours of electricity produced by the qualified energy generator in the taxable year:

(1) one and one-half cents ($.015) per kilowatt-hour in the first taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(2) two cents ($.02) per kilowatt-hour in the second taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(3) two and one-half cents ($.025) per kilowatt-hour in the third taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(4) three cents ($.03) per kilowatt-hour in the fourth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(5) three and one-half cents ($.035) per kilowatt-hour in the fifth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(6) four cents ($.04) per kilowatt-hour in the sixth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(7) three and one-half cents ($.035) per kilowatt-hour in the seventh taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(8) three cents ($.03) per kilowatt-hour in the eighth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(9) two and one-half cents ($.025) per kilowatt-hour in the ninth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource; and

(10) two cents ($.02) per kilowatt-hour in the tenth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource.

E. A taxpayer eligible for a renewable energy production tax credit pursuant to Subsection B of this section shall be eligible for the renewable energy production tax credit for ten consecutive years, beginning on the date the qualified energy generator begins producing electricity.

F. As used in this section:

(1) "biomass" means organic material that is available on a renewable or recurring basis, including:

(a) forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low-commercial-value materials or undesirable species, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;

(b) agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws and stover, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey and lactose;

(c) animal waste, including manure and slaughterhouse and other processing waste;

(d) solid woody waste materials, including landscape or right-of-way tree trimmings, rangeland maintenance residues, waste pallets, crates and manufacturing, construction and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;

(e) crops and trees planted for the purpose of being used to produce energy;

(f) landfill gas, wastewater treatment gas and biosolids, including organic waste byproducts generated during the wastewater treatment process; and

(g) segregated municipal solid waste, excluding tires and medical and hazardous waste;

(2) "qualified energy generator" means a facility with at least one megawatt generating capacity located in New Mexico that produces electricity using a qualified energy resource and that sells that electricity to an unrelated person; and

(3) "qualified energy resource" means a resource that generates electrical energy by means of a fluidized bed technology or similar low-emissions technology or a zero-emissions generation technology that has substantial long-term production potential and that uses only the following energy sources:

(a) solar light;

(b) solar heat;

(c) wind; or

(d) biomass.

G. A person that holds title to a facility generating electricity from a qualified energy resource or a person that leases such a facility from a county or municipality pursuant to an industrial revenue bond may request certification of eligibility for the renewable

energy production tax credit from the energy, minerals and natural resources department, which shall determine if the facility is a qualified energy generator. The energy, minerals and natural resources department may certify the eligibility of an energy generator only if the total amount of electricity that may be produced annually by all qualified energy generators that are certified pursuant to this section and pursuant to Section 7-2A-19 NMSA 1978 will not exceed a total of two million megawatt-hours plus an additional five hundred thousand megawatt-hours produced by qualified energy generators using a solar-light-derived or solar-heat-derived qualified energy resource. Applications shall be considered in the order received. The energy, minerals and natural resources department may estimate the annual power-generating potential of a generating facility for the purposes of this section. The energy, minerals and natural resources department shall issue a certificate to the applicant stating whether the facility is an eligible qualified energy generator and the estimated annual production potential of the generating facility, which shall be the limit of that facility's energy production eligible for the tax credit for the taxable year. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection and shall report annually to the appropriate interim legislative committee information that will allow the legislative committee to analyze the effectiveness of the renewable energy production tax credit, including the identity of qualified energy generators, the energy production means used, the amount of energy produced by those qualified energy generators and whether any applications could not be approved due to program limits.

H. A taxpayer may be allocated all or a portion of the right to claim a renewable energy production tax credit without regard to proportional ownership interest if:

(1) the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership;

(2) the business entity:

(a) would qualify for the renewable energy production tax credit pursuant to Paragraph (1) or (2) of Subsection B of this section;

(b) owns an interest in a business entity that is also taxed for federal income tax purposes as a partnership and that would qualify for the renewable energy production tax credit pursuant to Paragraph (1) or (2) of Subsection B of this section; or

(c) owns, through one or more intermediate business entities that are each taxed for federal income tax purposes as a partnership, an interest in the business entity described in Subparagraph (b) of this paragraph;

(3) the taxpayer and all other taxpayers allocated a right to claim the renewable energy production tax credit pursuant to this subsection own collectively at least a five percent interest in a qualified energy generator;

(4) the business entity provides notice of the allocation and the taxpayer's interest to the energy, minerals and natural resources department on forms prescribed by that department; and

(5) the energy, minerals and natural resources department certifies the allocation in writing to the taxpayer.

I. Upon receipt of notice of an allocation of the right to claim all or a portion of the renewable energy production tax credit, the energy, minerals and natural resources department shall promptly certify the allocation in writing to the recipient of the allocation.

J. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

K. A taxpayer may claim the renewable energy production tax credit by submitting to the taxation and revenue department the certificate issued by the energy, minerals and natural resources department, pursuant to Subsection G or H of this section, documentation showing the taxpayer's interest in the facility, documentation of the amount of electricity produced by the facility in the taxable year and any other information the taxation and revenue department may require to determine the amount of the tax credit due the taxpayer.

L. If the requirements of this section have been complied with, the department shall approve the renewable energy production tax credit. The credit may be deducted from a taxpayer's New Mexico income tax liability for the taxable year for which the credit is claimed. If the amount of tax credit exceeds the taxpayer's income tax liability for the taxable year:

(1) the excess may be carried forward for a period of five taxable years; or

(2) if the tax credit was issued with respect to a qualified energy generator that first produced electricity using a qualified energy resource on or after October 1, 2007, the excess shall be refunded to the taxpayer.

M. Once a taxpayer has been granted a renewable energy production tax credit for a given facility, that taxpayer shall be allowed to retain the facility's original date of application for tax credits for that facility until either the facility goes out of production for more than six consecutive months in a year or until the facility's ten-year eligibility has expired.

History: Laws 2007, ch. 204, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 204, contained no effective date provision for Laws 2007, ch. 204, § 2, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2007, ch. 204, § 21 provided that Laws 2007, ch. 204, § 2 apply to taxable years beginning on or after January 1, 2008.

## 7-2-18.19. Sustainable building tax credit.

A. The tax credit provided by this section may be referred to as the "sustainable building tax credit". The sustainable building tax credit shall be available for the construction in New Mexico of a sustainable building, the renovation of an existing building in New Mexico into a sustainable building or the permanent installation of manufactured housing, regardless of where the housing is manufactured, that is a sustainable building. The tax credit provided in this section may not be claimed with respect to the same sustainable building for which the sustainable building tax credit provided in the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] has been claimed.

B. The purpose of the sustainable building tax credit is to encourage the construction of sustainable buildings and the renovation of existing buildings into sustainable buildings.

C. A taxpayer who files an income tax return is eligible to be granted a sustainable building tax credit by the department if the taxpayer submits a document issued pursuant to Subsection J of this section with the taxpayer's income tax return.

D. For taxable years ending on or before December 31, 2016, the sustainable building tax credit may be claimed with respect to a sustainable commercial building. The credit shall be calculated based on the certification level the building has achieved in the LEED green building rating system and the amount of qualified occupied square footage in the building, as indicated on the following chart:

| LEED Rating Level | Qualified Occupied Square Footage | Tax Credit per Square Foot |
|---|---|---|
| LEED-NC Silver | First 10,000 | $3.50 |
| | Next 40,000 | $1.75 |
| | Over 50,000 up to 500,000 | $.70 |
| LEED-NC Gold | First 10,000 | $4.75 |
| | Next 40,000 | $2.00 |
| | Over 50,000 | |

| | | |
|---|---|---|
| | up to 500,000 | $1.00 |
| LEED-NC Platinum | First 10,000 | $6.25 |
| | Next 40,000 | $3.25 |
| | Over 50,000 up to 500,000 | $2.00 |
| LEED-EB or CS Silver | First 10,000 | $2.50 |
| | Next 40,000 | $1.25 |
| | Over 50,000 up to 500,000 | $.50 |
| LEED-EB or CS Gold | First 10,000 | $3.35 |
| | Next 40,000 | $1.40 |
| | Over 50,000 up to 500,000 | $.70 |
| LEED-EB or CS Platinum | First 10,000 | $4.40 |
| | Next 40,000 | $2.30 |
| | Over 50,000 up to 500,000 | $1.40 |
| LEED-CI Silver | First 10,000 | $1.40 |
| | Next 40,000 | $.70 |
| | Over 50,000 up to 500,000 | $.30 |
| LEED-CI Gold | First 10,000 | $1.90 |
| | Next 40,000 | $.80 |
| | Over 50,000 up to 500,000 | $.40 |
| LEED-CI Platinum | First 10,000 | $2.50 |
| | Next 40,000 | $1.30 |
| | Over 50,000 up to 500,000 | $.80 |

E. For taxable years ending on or before December 31, 2016, the sustainable building tax credit may be claimed with respect to a sustainable residential building. The credit shall be calculated based on the amount of qualified occupied square footage, as indicated on the following chart:

| | Qualified | Tax Credit |
|---|---|---|

| | Occupied Square Footage | per Square Foot |
|---|---|---|
| LEED-H Silver or Build Green NM Silver | First 2,000<br>Next 1,000 | $5.00<br>$2.50 |
| LEED-H Gold or Build Green NM Gold | First 2,000<br>Next 1,000 | $6.85<br>$3.40 |
| LEED-H Platinum or Build Green NM Emerald | First 2,000<br>Next 1,000 | $9.00<br>$4.45 |
| EPA ENERGY STAR Manufactured Housing | Up to 3,000 | $3.00. |

F. A person that is a building owner may apply for 1a certificate of eligibility for the sustainable building tax credit from the energy, minerals and natural resources department after the construction, installation or renovation of the sustainable building is complete. Applications shall be considered in the order received. If the energy, minerals and natural resources department determines that the building owner meets the requirements of this subsection and that the building with respect to which the tax credit application is made meets the requirements of this section as a sustainable residential building or a sustainable commercial building, the energy, minerals and natural resources department may issue a certificate of eligibility to the building owner, subject to the limitation in Subsection G of this section. The certificate shall include the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building and a calculation of the maximum amount of sustainable building tax credit for which the building owner would be eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection. If the certification level for the sustainable residential building is awarded on or after January 1, 2007, the energy, minerals and natural resources department may issue a certificate of eligibility to a building owner who is:

(1) the owner of the sustainable residential building at the time the certification level for the building is awarded; or

(2) the subsequent purchaser of a sustainable residential building with respect to which no tax credit has been previously claimed.

G. The energy, minerals and natural resources department may issue a certificate of eligibility only if the total amount of sustainable building tax credits represented by certificates of eligibility issued by the energy, minerals and natural resources department pursuant to this section and pursuant to the Corporate Income and Franchise Tax Act shall not exceed in any calendar year an aggregate amount of one million dollars ($1,000,000) with respect to sustainable commercial buildings and an aggregate amount of four million dollars ($4,000,000) with respect to sustainable residential buildings; provided that no more than one million two hundred fifty thousand dollars ($1,250,000) of the aggregate amount with respect to sustainable residential

buildings shall be for manufactured housing. If for any taxable year the energy, minerals and natural resources department determines that the applications for sustainable building tax credits with respect to sustainable residential buildings for that taxable year exceed the aggregate limit set in this section, the energy, minerals and natural resources department may issue certificates of eligibility under the aggregate annual limit for sustainable commercial buildings to owners of sustainable residential buildings that meet the requirements of the energy, minerals and natural resources department and of this section; provided that applications for sustainable building credits for other sustainable commercial buildings total less than the full amount allocated for tax credits for sustainable commercial buildings.

H. Installation of a solar thermal system or a photovoltaic system eligible for the solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 may not be used as a component of qualification for the rating system certification level used in determining eligibility for the sustainable building tax credit, unless a solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 has not been claimed with respect to that system and the building owner and the taxpayer claiming the sustainable building tax credit certify that such a tax credit will not be claimed with respect to that system.

I. To be eligible for the sustainable building tax credit, the building owner shall provide to the taxation and revenue department a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to the requirements of Subsection F of this section and any other information the taxation and revenue department may require to determine the amount of the tax credit for which the building owner is eligible.

J. If the requirements of this section have been complied with, the department shall issue to the building owner a document granting a sustainable building tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the building owner with that taxpayer's income tax return, if applicable, or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

K. If the total approved amount of all sustainable building tax credits for a taxpayer in a taxable year represented by the documents issued pursuant to Subsection J of this section is:

(1) less than one hundred thousand dollars ($100,000), a maximum of twenty-five thousand dollars ($25,000) shall be applied against the taxpayer's income tax liability for the taxable year for which the credit is approved and the next three subsequent taxable years as needed depending on the amount of credit; or

(2) one hundred thousand dollars ($100,000) or more, increments of twenty-five percent of the total credit amount in each of the four taxable years, including the taxable year for which the credit is approved and the three subsequent taxable years, shall be applied against the taxpayer's income tax liability.

L. If the sum of all sustainable building tax credits that can be applied to a taxable year for a taxpayer, calculated according to Paragraph (1) or (2) of Subsection K of this section, exceeds the taxpayer's income tax liability for that taxable year, the excess may be carried forward for a period of up to seven years.

M. A taxpayer who otherwise qualifies and claims a sustainable building tax credit with respect to a sustainable building owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to that taxpayer's interest in the partnership or association. The total credit claimed in the aggregate by all members of the partnership or association with respect to the sustainable building shall not exceed the amount of the credit that could have been claimed by a sole owner of the property.

N. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the sustainable building tax credit that would have been allowed on a joint return.

O. The department shall compile an annual report on the sustainable building tax credit created pursuant to this section that shall include the number of taxpayers approved by the department to receive the tax credit, the aggregate amount of tax credits approved and any other information necessary to evaluate the effectiveness of the tax credit. Beginning in 2015 and every five years thereafter, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the tax credit and whether the tax credit is performing the purpose for which it was created.

P. For the purposes of this section:

(1) "build green New Mexico rating system" means the certification standards adopted by the homebuilders association of central New Mexico;

(2) "LEED-CI" means the LEED rating system for commercial interiors;

(3) "LEED-CS" means the LEED rating system for the core and shell of buildings;

(4) "LEED-EB" means the LEED rating system for existing buildings;

(5) "LEED gold" means the rating in compliance with, or exceeding, the second-highest rating awarded by the LEED certification process;

(6) "LEED" means the most current leadership in energy and environmental design green building rating system guidelines developed and adopted by the United States green building council;

(7) "LEED-H" means the LEED rating system for homes;

(8) "LEED-NC" means the LEED rating system for new buildings and major renovations;

(9) "LEED platinum" means the rating in compliance with, or exceeding, the highest rating awarded by the LEED certification process;

(10) "LEED silver" means the rating in compliance with, or exceeding, the third-highest rating awarded by the LEED certification process;

(11) "manufactured housing" means a multisectioned home that is:

(a) a manufactured home or modular home;

(b) a single-family dwelling with a heated area of at least thirty-six feet by twenty-four feet and a total area of at least eight hundred sixty-four square feet;

(c) constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or New Mexico construction codes up to the date of the unit's construction; and

(d) installed consistent with the Manufactured Housing Act [Chapter 60, Article 14 NMSA 1978] and rules adopted pursuant to that act relating to permanent foundations;

(12) "qualified occupied square footage" means the occupied spaces of the building as determined by:

(a) the United States green building council for those buildings obtaining LEED certification;

(b) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; and

(c) the United States environmental protection agency for ENERGY STAR-certified manufactured homes;

(13) "person" does not include state, local government, public school district or tribal agencies;

(14) "sustainable building" means either a sustainable commercial building or a sustainable residential building;

(15) "sustainable commercial building" means a multifamily dwelling unit, as registered and certified under the LEED-H or build green New Mexico rating system, that is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher and has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network or a building that has been registered and certified under the LEED-NC, LEED-EB, LEED-CS or LEED-CI rating system and that:

(a) is certified by the United States green building council at LEED silver or higher;

(b) achieves any prerequisite for and at least one point related to commissioning under LEED "energy and atmosphere", if included in the applicable rating system; and

(c) has reduced energy consumption, as follows: 1) through 2011, a fifty percent energy reduction will be required based on the national average for that building type as published by the United States department of energy; and beginning January 1, 2012, a sixty percent energy reduction will be required based on the national average for that building type as published by the United States department of energy; and 2) is substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development;

(16) "sustainable residential building" means:

(a) a building used as a single-family residence as registered and certified under the build green New Mexico or LEED-H rating system that: 1) is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher; and 2) has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network; or

(b) manufactured housing that is ENERGY STAR-qualified by the United States environmental protection agency; and

(17) "tribal" means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo.

History: Laws 2007, ch. 204, § 3; 2009, ch. 59, § 1; 2013, ch. 92, § 1.

**ANNOTATIONS**

**The 2013 amendment,** effective January 1, 2014, extended the sustainable building tax credit for three years; decreased the maximum aggregate calendar year amount of sustainable building tax credit for which a certificate of eligibility may be issued; changed provisions for application of the tax credit; added Subsection B; in Subsection D, in the first sentence, at the beginning of the sentence, deleted "The amount of" and added "For taxable years ending on or before December 31, 2016"; in Subsection E, in the first sentence, deleted "The amount of" and added "For taxable years ending on or before December 31, 2016"; in Subsection G, in the first sentence, after "any calendar year an aggregate amount of", deleted "five million dollars ($5,000,000)" and added "one million dollars ($1,000,000)" and after "commercial buildings and an aggregate amount of", deleted "five million dollars ($5,000,000)" and added "four million dollars ($4,000,000)" and in the second sentence, after "sustainable commercial buildings to", deleted "building" and after "commercial buildings to owners of", deleted "multifamily dwelling units" and added "sustainable residential buildings"; deleted former Subsection J, which provided for the application of the sustainable building tax credit over a period of four to seven years; deleted former Subsection K, which provided for the application of the sustainable building tax credit of less than twenty five in a single taxable year; added Subsections K, L and O; in Paragraph (15) of Subsection P, added the language between "means" and "a building that has been registered"; and deleted former Subparagraph (b) of Paragraph 16 of Subsection P, which was the same language that was added to the definition of "sustainable commercial building" in Paragraph (15) of Subsection P.

**Applicability.** — Laws 2013, ch. 92, § 3 amended Laws 2007, ch. 204, § 21 providing that Laws 2007, ch. 204, § 3 applies to taxable years beginning on or after January 1, 2008.

**The 2009 amendment,** effective June 19, 2009, in Subsection A, at the end of the second sentence, added the provision concerning manufactured housing; in Subsection B, deleted former Paragraphs (1) and (2), which required the taxpayer to be owner of the building at the time the building was certified or the subsequent purchaser of a sustainable building with respect to which no tax credit had been claimed and adds the provision requiring the taxpayer to submit a document pursuant to Subsection I with the taxpayer’s income tax return; in Subsection D, deleted the provision which required the tax credit to be calculated based on the certification level the building had achieved in the LEED rating system or the New Mexico rating system and in the chart, added the Build Green NM Silver, Gold and Emerald levels; in Subsection E, added the last sentence, together with Paragraphs (1) and (2); in Subsection F, added the last sentence; in Subsection I, permits the document to be submitted with the taxpayer’s income tax return; added Paragraphs (11), (13) and (17) of Subsection N; in Subparagraph (b) of Paragraph (16) of Subsection N, added the build green New Mexico rating system; and in Subparagraph (c) of Paragraph (16) of Subsection N, deleted the requirement that manufactured housing be as defined by the United States department of housing and urban development.

## 7-2-18.20. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 204, § 20 repealed 7-2-18.20 NMSA 1978, as enacted by Laws 2007, ch. 204, § 5, relating to a tax credit for agricultural water conservation expenses, effective January 1, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com.*

## 7-2-18.21. Credit; blended biodiesel fuel.

A. A taxpayer who is liable for payment of the special fuel excise tax pursuant to Subsections A through D of Section 7-16A-2.1 NMSA 1978 and who files a New Mexico income tax return is eligible to claim a credit against income tax liability for each gallon of blended biodiesel fuel on which that person paid the special fuel excise tax in the taxable year, or would have paid the special fuel excise tax in the taxable year but for the deductions allowed pursuant to Subsections B through F of Section 7-16A-10 NMSA 1978 or the treaty exemption for north Atlantic treaty organization use. The credit shall be in the following amounts for the following periods:

(1) from January 1, 2007 until December 31, 2010, at a rate of three cents ($.03) per gallon;

(2) from January 1, 2011 until December 31, 2011, at a rate of two cents ($.02) per gallon; and

(3) from January 1, 2012 until December 31, 2012, at a rate of one cent ($.01) per gallon.

B. The tax credit provided by this section may not be claimed with respect to the same blended biodiesel fuel for which a credit has been claimed pursuant to the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] or for which a credit or refund has been claimed pursuant to Section 7-16A-13 NMSA 1978.

C. A taxpayer who otherwise qualifies for and claims a credit pursuant to this section for blended biodiesel fuel on which special fuel excise tax has been paid by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to the taxpayer's interest in the partnership or business association. The total credit claimed in the aggregate by all members of the partnership or business association shall not exceed the amount of credit allowed pursuant to Subsection A of this section.

D. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

E. The tax credit provided by this section may only be applied against the income tax liability of the person who paid the special fuel excise tax on the blended biodiesel

fuel with respect to which the credit is provided, or who would have paid the special fuel excise tax but for the deductions allowed pursuant to Subsections B through F of Section 7-16A-10 NMSA 1978 or the treaty exemption for north Atlantic treaty organization use. If the credit exceeds the person's income tax liability for the taxable year in which the credit is granted, the credit may be carried forward for five years.

F. A taxpayer claiming a credit pursuant to this section shall provide documentation of eligibility in form and content as determined by the department.

G. For the purposes of this section:

(1) "biodiesel" means renewable, biodegradable, monoalkyl ester combustible liquid fuel that is derived from agricultural plant oils or animal fats and that meets American society for testing and materials D 6751 standard specification for biodiesel B100 blend stock for distillate fuels;

(2) "blended biodiesel fuel" means a diesel fuel that contains at least two percent biodiesel; and

(3) "diesel fuel" means any diesel-engine fuel used for the generation of power to propel a motor vehicle.

History: Laws 2007, ch. 204, § 7.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 204, contained no effective date provision for Laws 2007, ch. 204, § 7, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 7-2-18.22. Tax credit; rural health care practitioner tax credit.

A. A taxpayer who files an individual New Mexico tax return, who is not a dependent of another individual, who is an eligible health care practitioner and who has provided health care services in New Mexico in a rural health care underserved area in a taxable year, may claim a credit against the tax liability imposed by the Income Tax Act. The credit provided in this section may be referred to as the "rural health care practitioner tax credit".

B. The rural health care practitioner tax credit may be claimed and allowed in an amount that shall not exceed five thousand dollars ($5,000) for all eligible physicians, osteopathic physicians, dentists, clinical psychologists, podiatrists and optometrists who qualify pursuant to the provisions of this section, except the credit shall not exceed three thousand dollars ($3,000) for all eligible dental hygienists, physician assistants, certified nurse-midwives, certified registered nurse anesthetists, certified nurse practitioners and clinical nurse specialists.

C. To qualify for the rural health care practitioner tax credit, an eligible health care practitioner shall have provided health care during a taxable year for at least two thousand eighty hours at a practice site located in an approved, rural health care underserved area. An eligible rural health care practitioner who provided health care services for at least one thousand forty hours but less than two thousand eighty hours at a practice site located in an approved rural health care underserved area during a taxable year is eligible for one-half of the credit amount.

D. Before an eligible health care practitioner may claim the rural health care practitioner tax credit, the practitioner shall submit an application to the department of health that describes the practitioner's clinical practice and contains additional information that the department of health may require. The department of health shall determine whether an eligible health care practitioner qualifies for the rural health care practitioner tax credit, and shall issue a certificate to each qualifying eligible health care practitioner. The department of health shall provide the taxation and revenue department appropriate information for all eligible health care practitioners to whom certificates are issued.

E. A taxpayer claiming the credit provided by this section shall submit a copy of the certificate issued by the department of health with the taxpayer's New Mexico income tax return for the taxable year. If the amount of the credit claimed exceeds a taxpayer's tax liability for the taxable year in which the credit is being claimed, the excess may be carried forward for three consecutive taxable years.

F. As used in this section:

(1) "eligible health care practitioner" means:

(a) a certified nurse-midwife licensed by the board of nursing as a registered nurse and licensed by the public health division of the department of health to practice nurse-midwifery as a certified nurse-midwife;

(b) a dentist or dental hygienist licensed pursuant to the Dental Health Care Act [Chapter 61, Article 5A NMSA 1978];

(c) an optometrist licensed pursuant to the provisions of the Optometry Act [Chapter 61, Article 2 NMSA 1978];

(d) an osteopathic physician licensed pursuant to the provisions of Chapter 61, Article 10 NMSA 1978 or an osteopathic physician assistant licensed pursuant to the provisions of the Osteopathic Physicians' Assistants Act [Chapter 61, Article 10A NMSA 1978];

(e) a physician or physician assistant licensed pursuant to the provisions of Chapter 61, Article 6 NMSA 1978;

(f) a podiatrist licensed pursuant to the provisions of the Podiatry Act [Chapter 61, Article 8 NMSA 1978];

(g) a clinical psychologist licensed pursuant to the provisions of the Professional Psychologist Act [Chapter 61, Article 9 NMSA 1978]; and

(h) a registered nurse in advanced practice who has been prepared through additional formal education as provided in Sections 61-3-23.2 through 61-3-23.4 NMSA 1978 to function beyond the scope of practice of professional registered nursing, including certified nurse practitioners, certified registered nurse anesthetists and clinical nurse specialists;

(2) "health care underserved area" means a geographic area or practice location in which it has been determined by the department of health, through the use of indices and other standards set by the department of health, that sufficient health care services are not being provided;

(3) "practice site" means a private practice, public health clinic, hospital, public or private nonprofit primary care clinic or other health care service location in a health care underserved area; and

(4) "rural" means an area or location identified by the department of health as falling outside of an urban area.

History: Laws 2007, ch. 361, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 361 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2007, ch. 361, § 10 provided that Laws 2007, ch. 361, § 2 apply to taxable years beginning on or after January 1, 2007.

## 7-2-18.23. Refundable credit; 2007 taxable year.

A. Except as otherwise provided in Subsection B of this section, a taxpayer who for the 2007 taxable year files a New Mexico income tax return, is a full-year or first-year resident of New Mexico and is not a trust, estate or a dependent of another taxpayer is allowed a credit in the amount determined under Subsection C of this section. The credit may be allowed even though the taxpayer has no income taxable under the Income Tax Act for the 2007 taxable year.

B. A claim for the refundable tax credit provided in this section is not allowed for a resident who was an inmate of a public institution for more than six months during the 2007 taxable year.

C. The tax credit allowed in this section shall be in the amount determined from the following tables for:

(1) married taxpayers filing jointly:

| Adjusted Gross Income | | Credit Amount for Taxpayer and Spouse | Additional Credit Amount for Each Dependent |
|---|---|---|---|
| Over | Not Over | | |
| 0 | $30,000 | $100 | $50.00 |
| $30,000 | $50,000 | $ 80.00 | $40.00 |
| $50,000 | $70,000 | $ 50.00 | $25.00 |
| $70,000 | | $ 0.00 | $ 0.00; or |

(2) taxpayers filing as single, head of household, married filing separately or as a surviving spouse:

| Adjusted Gross Income | | Credit Amount for Taxpayer | Additional Credit Amount for Each Dependent |
|---|---|---|---|
| Over | Not Over | | |
| 0 | $30,000 | $50.00 | $50.00 |
| $30,000 | $50,000 | $40.00 | $40.00 |
| $50,000 | $70,000 | $25.00 | $25.00 |
| $70,000 | | $ 0.00 | $ 0.00. |

D. The tax credit allowed in this section may be credited by the department against the taxpayer's New Mexico income tax liability. If the taxpayer is liable for interest and penalties on the taxpayer's income tax liability for the 2007 taxable year prior to the effective date of this section, the amount of interest and penalties shall not be recomputed due to the credit provided by this section but may be satisfied by applying the credit to the penalty or interest due. Notwithstanding the provisions of Section 7-1-68 NMSA 1978, interest in the amount established by Subsection B of Section 7-1-68 NMSA 1978 shall only be allowed and paid on the amount to be refunded under Subsection E of this section if not refunded or credited within one hundred twenty days after the effective date of this section or the applicable period established in Subsection D of Section 7-1-68 NMSA 1978, whichever is later.

E. If the tax credit exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

F. For purposes of this section, "dependent" means "dependent" as defined by Section 152 of the Internal Revenue Code.

History: Laws 2008 (2nd S.S.), ch. 3, § 1.

**ANNOTATIONS**

**Cross references.** — For Section 152 of the Internal Revenue Code, *see* 26 U.S.C. § 152.

**Emergency clause.** — Laws 2008, ch. 3, § 4 contained an emergency clause and was approved on August 25, 2008.

**Applicability.** — Laws 2008, ch. 3, § 3 provided that the provisions of Laws 2008, ch. 3, § 1 apply to taxable years beginning between January 1, 2007 and December 31, 2007.

## 7-2-18.24. Geothermal ground-coupled heat pump tax credit.

A. A taxpayer who files an individual New Mexico income tax return for a taxable year beginning on or after January 1, 2010 and who purchases and installs after January 1, 2010 but before December 31, 2020 a geothermal ground-coupled heat pump in a residence, business or agricultural enterprise in New Mexico owned by that taxpayer may apply for, and the department may allow, a tax credit of up to thirty percent of the purchase and installation costs of the system. The credit provided in this section may be referred to as the "geothermal ground-coupled heat pump tax credit". The total geothermal ground-coupled heat pump tax credit allowed to a taxpayer shall not exceed nine thousand dollars ($9,000). The department shall allow a geothermal ground-coupled heat pump tax credit only for geothermal ground-coupled heat pumps certified by the energy, minerals and natural resources department.

B. A portion of the geothermal ground-coupled heat pump tax credit that remains unused in a taxable year may be carried forward for a maximum of ten consecutive taxable years following the taxable year in which the credit originates until the credit is fully expended.

C. Prior to July 1, 2010, the energy, minerals and natural resources department shall adopt rules establishing procedures to provide certification of geothermal ground-coupled heat pumps for purposes of obtaining a geothermal ground-coupled heat pump tax credit. The rules shall address technical specifications and requirements relating to safety, building code and standards compliance, minimum system sizes, system applications and lists of eligible components. The energy, minerals and natural

resources department may modify the specifications and requirements as necessary to maintain a high level of system quality and performance.

D. The department may allow a maximum annual aggregate of two million dollars ($2,000,000) in geothermal ground-coupled heat pump tax credits. Applications for the credit shall be considered in the order received by the department.

E. A taxpayer who otherwise qualifies and claims a geothermal ground-coupled heat pump tax credit with respect to property owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to that taxpayer's interest in the partnership or association. The total credit claimed in the aggregate by all members of the partnership or association with respect to the property shall not exceed the amount of the credit that could have been claimed by a sole owner of the property.

F. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

G. As used in this section, "geothermal ground-coupled heat pump" means a system that uses energy from the ground, water or, ultimately, the sun for distribution of heating, cooling or domestic hot water; that has either a minimum coefficient of performance of three and four-tenths or an efficiency ratio of sixteen or greater; and that is installed by an accredited installer certified by the international ground source heat pump association.

History: Laws 2009, ch. 271, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 271 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## 7-2-18.25. Advanced energy income tax credit.

A. The tax credit that may be claimed pursuant to this section may be referred to as the "advanced energy income tax credit".

B. A taxpayer who holds an interest in a qualified generating facility located in New Mexico and who files an individual New Mexico income tax return may claim an advanced energy income tax credit in an amount equal to six percent of the eligible generation plant costs of a qualified generating facility, subject to the limitations imposed in this section. The tax credit claimed shall be verified and approved by the department.

C. An entity that holds an interest in a qualified generating facility may request a certificate of eligibility from the department of environment to enable the requester to apply for an advanced energy income tax credit. The department of environment:

(1) shall determine if the facility is a qualified generating facility;

(2) shall require that the requester provide the department of environment with the information necessary to assess whether the requester's facility meets the criteria to be a qualified generating facility;

(3) shall issue a certificate to the requester stating that the facility is or is not a qualified generating facility within one hundred eighty days after receiving all information necessary to make a determination;

(4) shall:

(a) issue a schedule of fees in which no fee exceeds one hundred fifty thousand dollars ($150,000); and

(b) deposit fees collected pursuant to this paragraph in the state air quality permit fund created pursuant to Section 74-2-15 NMSA 1978; and

(5) shall report annually to the appropriate interim legislative committee information that will allow the legislative committee to analyze the effectiveness of the advanced energy tax credits, including the identity of qualified generating facilities, the energy production means used, the amount of emissions identified in this section reduced and removed by those qualified generating facilities and whether any requests for certificates of eligibility could not be approved due to program limits.

D. A taxpayer who holds an interest in a qualified generating facility may be allocated the right to claim the advanced energy income tax credit without regard to the taxpayer's relative interest in the qualified generating facility if:

(1) the business entity making the allocation provides notice of the allocation and the taxpayer's interest in the qualified generating facility to the department on forms prescribed by the department;

(2) allocations to the taxpayer and all other taxpayers allocated a right to claim the advanced energy tax credit shall not exceed one hundred percent of the advanced energy tax credit allowed for the qualified generating facility; and

(3) the taxpayer and all other taxpayers allocated a right to claim the advanced energy tax credits collectively own at least a five percent interest in the qualified generating facility.

E. To claim the advanced energy income tax credit, a taxpayer shall submit with the taxpayer's New Mexico income tax return a certificate of eligibility from the department of environment stating that the taxpayer may be eligible for advanced energy tax credits. The taxation and revenue department shall provide credit claims forms. A credit claim form shall accompany any return in which the taxpayer wishes to apply for an approved credit, and the claim shall specify the amount of credit intended to apply to each return. The taxation and revenue department shall determine the amount of advanced energy income tax credit for which the taxpayer may apply.

F. Upon receipt of the notice of an allocation of the right to claim all or a portion of the advanced energy income tax credit, the department shall verify the allocation due to the recipient.

G. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the advanced energy income tax credit that would have been allowed on a joint return.

H. The total amount of all advanced energy tax credits claimed shall not exceed the total amount determined by the department to be allowable pursuant to this section, the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] and Section 7-9G-2 NMSA 1978.

I. Any balance of the advanced energy income tax credit that the taxpayer is approved to claim may be claimed by the taxpayer as an advanced energy combined reporting tax credit allowed pursuant to Section 7-9G-2 NMSA 1978. If the advanced energy income tax credit exceeds the amount of the taxpayer's tax liabilities pursuant to the Income Tax Act and Section 7-9G-2 NMSA 1978 in the taxable year in which it is claimed, the balance of the unpaid credit may be carried forward for ten years and claimed as an advanced energy income tax credit or an advanced energy combined reporting tax credit. The advanced energy income tax credit is not refundable.

J. A taxpayer claiming the advanced energy income tax credit pursuant to this section is ineligible for credits pursuant to the Investment Credit Act [Chapter 7, Article 9A NMSA 1978] or any other credit that may be taken pursuant to the Income Tax Act or credits that may be taken against the gross receipts tax, compensating tax or withholding tax for the same expenditures.

K. The aggregate amount of all advanced energy tax credits that may be claimed with respect to a qualified generating facility shall not exceed sixty million dollars ($60,000,000).

L. As used in this section:

(1) "advanced energy tax credit" means the advanced energy income tax credit, the advanced energy corporate income tax credit and the advanced energy combined reporting tax credit;

(2) "coal-based electric generating facility" means a new or repowered generating facility and an associated coal gasification facility, if any, that uses coal to generate electricity and that meets the following specifications:

(a) emits the lesser of: 1) what is achievable with the best available control technology; or 2) thirty-five thousandths pound per million British thermal units of sulfur dioxide, twenty-five thousandths pound per million British thermal units of oxides of nitrogen and one hundredth pound per million British thermal units of total particulates in the flue gas;

(b) removes the greater of: 1) what is achievable with the best available control technology; or 2) ninety percent of the mercury from the input fuel;

(c) captures and sequesters or controls carbon dioxide emissions so that by the later of January 1, 2017 or eighteen months after the commercial operation date of the coal-based electric generating facility, no more than one thousand one hundred pounds per megawatt-hour of carbon dioxide is emitted into the atmosphere;

(d) all infrastructure required for sequestration is in place by the later of January 1, 2017 or eighteen months after the commercial operation date of the coal-based electric generating facility;

(e) includes methods and procedures to monitor the disposition of the carbon dioxide captured and sequestered from the coal-based electric generating facility; and

(f) does not exceed a name-plate capacity of seven hundred net megawatts;

(3) "eligible generation plant costs" means expenditures for the development and construction of a qualified generating facility, including permitting; site characterization and assessment; engineering; design; carbon dioxide capture, treatment, compression, transportation and sequestration; site and equipment acquisition; and fuel supply development used directly and exclusively in a qualified generating facility;

(4) "entity" means an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other association or a gas, water or electric utility owned or operated by a county or municipality;

(5) "geothermal electric generating facility" means a facility with a name-plate capacity of one megawatt or more that uses geothermal energy to generate electricity, including a facility that captures and provides geothermal energy to a preexisting electric generating facility using other fuels in part;

(6) "interest in a qualified generating facility" means title to a qualified generating facility; a leasehold interest in a qualified generating facility; an ownership

interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in a qualified generating facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in a qualified generating facility;

(7) "name-plate capacity" means the maximum rated output of the facility measured as alternating current or the equivalent direct current measurement;

(8) "qualified generating facility" means a facility that begins construction not later than December 31, 2015 and is:

(a) a solar thermal electric generating facility that begins construction on or after July 1, 2007 and that may include an associated renewable energy storage facility;

(b) a solar photovoltaic electric generating facility that begins construction on or after July 1, 2009 and that may include an associated renewable energy storage facility;

(c) a geothermal electric generating facility that begins construction on or after July 1, 2009;

(d) a recycled energy project if that facility begins construction on or after July 1, 2007; or

(e) a new or repowered coal-based electric generating facility and an associated coal gasification facility;

(9) "recycled energy" means energy produced by a generation unit with a name-plate capacity of not more than fifteen megawatts that converts the otherwise lost energy from the exhaust stacks or pipes to electricity without combustion of additional fossil fuel;

(10) "sequester" means to store, or chemically convert, carbon dioxide in a manner that prevents its release into the atmosphere and may include the use of geologic formations and enhanced oil, coalbed methane or natural gas recovery techniques;

(11) "solar photovoltaic electric generating facility" means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar photovoltaic energy to generate electricity; and

(12) "solar thermal generating facility" means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar thermal energy to generate electricity, including a facility that captures and provides solar energy to a preexisting electric generating facility using other fuels in part.

History: Laws 2009, ch. 279, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 279 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## 7-2-18.26. Agricultural biomass income tax credit.

A. A taxpayer who owns a dairy or feedlot and who files an individual New Mexico income tax return for a taxable year beginning on or after January 1, 2011 and ending prior to January 1, 2020 may apply for, and the department may allow, a tax credit equal to five dollars ($5.00) per wet ton of agricultural biomass transported from the taxpayer's dairy or feedlot to a facility that uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use. The tax credit created in this section may be referred to as the "agricultural biomass income tax credit".

B. If the requirements of this section have been complied with, the department shall issue to the taxpayer a document granting an agricultural biomass income tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the taxpayer with that taxpayer's income tax return or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

C. Any portion of the agricultural biomass income tax credit that remains unused in a taxable year may be carried forward for a maximum of four consecutive taxable years following the taxable year in which the credit originates until fully expended.

D. A taxpayer who otherwise qualifies and claims an agricultural biomass income tax credit with respect to a dairy or feedlot owned by a partnership or other business association of which the taxpayer is a member may claim the credit only in proportion to that taxpayer's interest in the partnership or business association. The total agricultural biomass income tax credits claimed in the aggregate with respect to the same dairy or feedlot by all members of the partnership or business association shall not exceed the amount of the credit that could have been claimed by a single owner of the dairy or feedlot.

E. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

F. Prior to July 1, 2011, the energy, minerals and natural resources department shall adopt rules establishing procedures to provide certification of transportation of

agricultural biomass to a qualified facility that uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use for purposes of obtaining an agricultural biomass income tax credit. The rules may be modified as determined necessary by the energy, minerals and natural resources department to determine accurate recording of the quantity of agricultural biomass transported and used for the purpose allowable in this section.

G. A taxpayer who claims an agricultural biomass income tax credit shall not also claim an agricultural biomass corporate income tax credit for transportation of the same agricultural biomass on which the claim for that agricultural biomass income tax credit is based.

H. The department shall limit the annual combined total of all agricultural biomass income tax credits and all agricultural biomass corporate income tax credits allowed to a maximum of five million dollars ($5,000,000). Applications for the credit shall be considered in the order received by the department.

I. As used in this section:

(1) "agricultural biomass" means wet manure meeting specifications established by the energy, minerals and natural resources department from either a dairy or feedlot commercial operation;

(2) "biocrude" means a nonfossil form of energy that can be transported and refined using existing petroleum refining facilities and that is made from biologically derived feedstocks and other agricultural biomass;

(3) "feedlot" means an operation that fattens livestock for market; and

(4) "dairy" means a facility that raises livestock for milk production.

History: Laws 2010, ch. 84, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2010, ch. 84 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2010, ch. 84, § 3 provided that the provisions of Laws 2010, ch. 84, § 1 apply to taxable years beginning on or after January 1, 2011 and ending prior to January 1, 2020.

## 7-2-18.27. Credit; physician participation in cancer treatment clinical trials.

A. A taxpayer who files an individual New Mexico income tax return, who is not a dependent of another taxpayer, who is an oncologist who is a physician licensed pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978] and whose practice is located in rural New Mexico may claim, and the department may allow, a tax credit of one thousand dollars ($1,000) for each patient participating in a cancer clinical trial under the taxpayer's supervision for a maximum credit allowed for all cancer clinical trials conducted by that taxpayer during the taxable year of four thousand dollars ($4,000). The tax credit provided in this section may be referred to as the "cancer clinical trial tax credit".

B. The purpose of the cancer clinical trial tax credit is to encourage physicians in New Mexico to participate as clinical trial investigators by performing cancer clinical trials of new cancer treatments in New Mexico and making cancer clinical trials more readily available to cancer patients in the state.

C. The cancer clinical trial tax credit may only be claimed for the taxable year in which the physician participates as an investigator in a clinical trial.

D. A partnership or business association in which one or more members qualifies for a cancer clinical trial tax credit may claim only one cancer clinical trial tax credit. The total cancer clinical trial tax credit allowed by the department for all the members of a partnership or business association shall not exceed the amount of cancer clinical trial tax credit that could have been claimed by one physician conducting, supervising or participating in the cancer clinical trial for which the credit is allowed.

E. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the cancer clinical trial tax credit that would have been allowed on a joint return.

F. The department shall compile an annual report that includes the number of taxpayers approved by the department to receive a cancer clinical trial tax credit in the taxable year, the amount of cancer clinical trial tax credits allowed in the taxable year, the number of patients who participated in the taxable year in cancer clinical trials and the locations of the cancer clinical trials for which cancer clinical trial tax credits were claimed.

G. As used in this section:

(1) "cancer clinical trial" means a clinical trial:

(a) conducted for the purposes of the prevention of or the prevention of reoccurrence of cancer or the early detection or treatment of cancer for which no equally or more effective standard cancer treatment exists;

(b) that is not designed exclusively to test toxicity or disease pathophysiology and has a therapeutic intent;

(c) provided in this state as part of a scientific study of a new therapy or intervention and is for the prevention, prevention of reoccurrence, early detection, treatment or palliation of cancer in humans and in which the scientific study includes all of the following: 1) specific goals; 2) a rationale and background for the study; 3) criteria for patient selection; 4) specific direction for administering the therapy or intervention and for monitoring patients; 5) a definition of quantitative measures for determining treatment response; 6) methods for documenting and treating adverse reactions; and 7) a reasonable expectation that the treatment will be at least as efficacious as standard cancer treatment;

(d) that is being conducted with approval of at least one of the following: 1) one of the federal national institutes of health; 2) a federal national institutes of health cooperative group or center; 3) the United States department of defense; 4) the federal food and drug administration in the form of an investigational new drug application; 5) the United States department of veterans affairs; or 6) a qualified research entity that meets the criteria established by the federal national institutes of health for grant eligibility;

(e) that is considered part of a cancer clinical trial;

(f) that has been reviewed and approved by an institutional review board that has an active federal-wide assurance of protection for human subjects; and

(g) in which the personnel conducting the clinical trial are working within their scope of practice, experience and training and are capable of providing the clinical trial because of their experience, training and volume of patients treated to maintain their expertise; and

(2) "rural New Mexico" means a class B county in which no municipality has a population of sixty thousand or more according to the most recent federal decennial census and includes the municipalities within that county.

History: Laws 2011, ch. 89, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 89, § 3 made Laws 2011, ch. § 1 effective January 1, 2012.

**Applicability.** — Laws 2011, ch. 89, § 2 provided that the provisions of this act apply to taxable years beginning on or after January 1, 2012, but before January 1, 2015.

## 7-2-18.28. Veteran employment tax credit.

A. A taxpayer who is not a dependent of another individual and who employs a qualified military veteran in New Mexico is eligible for a credit against the taxpayer's tax

liability imposed pursuant to the Income Tax Act in an amount up to one thousand dollars ($1,000) of the gross wages paid to each qualified military veteran by the taxpayer during the taxable year for which the return is filed. A taxpayer who employs a qualified military veteran for less than the full taxable year is eligible for a credit amount equal to one thousand dollars ($1,000) multiplied by the fraction of a full year for which the qualified military veteran was employed. The tax credit provided by this section may be referred to as the "veteran employment tax credit".

B. The purpose of the veteran employment tax credit is to encourage the full-time employment of qualified military veterans within two years of discharge from the armed forces of the United States.

C. A taxpayer may claim the veteran employment tax credit provided in this section for each taxable year in which the taxpayer employs one or more qualified military veterans; provided that the taxpayer may not claim the veteran employment tax credit for any individual qualified military veteran for more than one calendar year from the date of hire.

D. That portion of a veteran employment tax credit approved by the department that exceeds a taxpayer's income tax liability in the taxable year in which the veteran employment tax credit is claimed shall not be refunded to the taxpayer but may be carried forward for up to three years. The veteran employment tax credit shall not be transferred to another taxpayer.

E. A husband and wife filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the veteran employment tax credit that would have been claimed on a joint return.

F. A taxpayer may be allocated the right to claim a veteran employment tax credit in proportion to its ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership and that business entity has met all of the requirements to be eligible for the credit. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit pursuant to Subsection A of this section.

G. The taxpayer shall submit to the department with respect to each employee for whom the veteran employment tax credit is claimed information required by the department with respect to the veteran's employment by the taxpayer during the taxable year for which the veteran employment tax credit is claimed, including information establishing that the employee is a qualified military veteran that can be used to determine that the employee was not also employed in the same taxable year by another taxpayer claiming a veteran employment tax credit for that employee pursuant to this section or the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978].

H. The department shall adopt rules establishing procedures to certify qualified military veterans for purposes of obtaining a veteran employment tax credit. The rules shall ensure that not more than one veteran employment tax credit per qualified military veteran shall be allowed in a taxable year and that the credits allowed per qualified military veteran are limited to a maximum of one year's employment.

I. As used in this section, "qualified military veteran" means an individual who is hired within two years of receipt of an honorable discharge from a branch of the United States military, who works at least forty hours per week during the taxable year for which the veteran employment tax credit is claimed and who was not previously employed by the taxpayer prior to the individual's deployment.

History: Laws 2012, ch. 55, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2012, ch. 55 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 16, 2012, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2012, ch. 55, § 3 provided that the provisions of Laws 2012, ch. 55, § 1 applies to taxable years beginning on or after January 1, 2012 and ending on or before January 1, 2017.

## 7-2-18.29. New sustainable building tax credit.

A. The tax credit provided by this section may be referred to as the "new sustainable building tax credit". The new sustainable building tax credit shall be available for the construction in New Mexico of a sustainable building, the renovation of an existing building in New Mexico into a sustainable building or the permanent installation of manufactured housing, regardless of where the housing is manufactured, that is a sustainable building. The tax credit provided in this section may not be claimed with respect to the same sustainable building for which the new sustainable building tax credit provided in the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] has been claimed.

B. The purpose of the new sustainable building tax credit is to encourage the construction of sustainable buildings and the renovation of existing buildings into sustainable buildings.

C. A taxpayer who files an income tax return is eligible to be granted a new sustainable building tax credit by the department if the taxpayer submits a document issued pursuant to Subsection K of this section with the taxpayer's income tax return.

D. For taxable years ending on or before December 31, 2026, the new sustainable building tax credit may be claimed with respect to a sustainable commercial building.

The credit shall be calculated based on the certification level the building has achieved in the LEED green building rating system and the amount of qualified occupied square footage in the building, as indicated on the following chart:

| LEED Rating Level | Qualified Occupied Square Footage | Tax Credit per Square Foot |
|---|---|---|
| LEED-NC Silver | First 10,000 | $3.50 |
| | Next 40,000 | $1.75 |
| | Over 50,000 up to 500,000 | $ .70 |
| LEED-NC Gold | First 10,000 | $4.75 |
| | Next 40,000 | $2.00 |
| | Over 50,000 up to 500,000 | $1.00 |
| LEED-NC Platinum | First 10,000 | $6.25 |
| | Next 40,000 | $3.25 |
| | Over 50,000 up to 500,000 | $2.00 |
| LEED-EB or CS Silver | First 10,000 | $2.50 |
| | Next 40,000 | $1.25 |
| | Over 50,000 up to 500,000 | $ .50 |
| LEED-EB or CS Gold | First 10,000 | $3.35 |
| | Next 40,000 | $1.40 |
| | Over 50,000 up to 500,000 | $ .70 |
| LEED-EB or CS Platinum | First 10,000 | $4.40 |
| | Next 40,000 | $2.30 |
| | Over 50,000 up to 500,000 | $1.40 |
| LEED-CI Silver | First 10,000 | $1.40 |
| | Next 40,000 | $ .70 |
| | Over 50,000 up to 500,000 | $ .30 |
| LEED-CI Gold | First 10,000 | $1.90 |
| | Next 40,000 | $ .80 |
| | Over 50,000 up to 500,000 | $ .40 |
| LEED-CI Platinum | First 10,000 | $2.50 |
| | Next 40,000 | $1.30 |
| | Over 50,000 up to 500,000 | $ .80. |

E. For taxable years ending on or before December 31, 2026, the new sustainable building tax credit may be claimed with respect to a sustainable residential building. The credit shall be calculated based on the amount of qualified occupied square footage, as indicated on the following chart:

| Rating System/Level | Qualified Occupied Square Footage | Tax Credit per Square Foot |
|---|---|---|
| LEED-H Silver or Build Green NM Silver | Up to 2,000 | $3.00 |
| LEED-H Gold or Build Green NM Gold | Up to 2,000 | $4.50 |
| LEED-H Platinum or Build Green NM Emerald | Up to 2,000 | $6.50 |
| Manufactured Housing | Up to 2,000 | $3.00. |

F. A person that is a building owner may apply for a certificate of eligibility for the new sustainable building tax credit from the energy, minerals and natural resources department after the construction, installation or renovation of the sustainable building is complete. Applications shall be considered in the order received. If the energy, minerals and natural resources department determines that the building owner meets the requirements of this subsection and that the building with respect to which the tax credit application is made meets the requirements of this section as a sustainable residential building or a sustainable commercial building, the energy, minerals and natural resources department may issue a certificate of eligibility to the building owner, subject to the limitations in Subsection G of this section. The certificate shall include the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building and a calculation of the maximum amount of new sustainable building tax credit for which the building owner would be eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection. If the certification level for the sustainable residential building is awarded on or after January 1, 2017, the energy, minerals and natural resources department may issue a certificate of eligibility to a building owner who is:

(1) the owner of the sustainable residential building at the time the certification level for the building is awarded; or

(2) the subsequent purchaser of a sustainable residential building with respect to which no tax credit has been previously claimed.

G. Except as provided in Subsection H of this section, the energy, minerals and natural resources department may issue a certificate of eligibility only if the total amount of new sustainable building tax credits represented by certificates of eligibility issued by the energy, minerals and natural resources department pursuant to this section and

pursuant to the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] shall not exceed in any calendar year an aggregate amount of:

(1) one million two hundred fifty thousand dollars ($1,250,000) with respect to sustainable commercial buildings;

(2) three million three hundred seventy-five thousand dollars ($3,375,000) with respect to sustainable residential buildings that are not manufactured housing; and

(3) three hundred seventy-five thousand dollars ($375,000) with respect to sustainable residential buildings that are manufactured housing.

H. For any taxable year that the energy, minerals and natural resources department determines that applications for sustainable building tax credits for any type of sustainable building pursuant to Paragraph (1), (2) or (3) of Subsection G of this section are less than the aggregate limit for that type of sustainable building for that taxable year, the energy, minerals and natural resources department shall allow the difference between the aggregate limit and the applications to be added to the aggregate limit of another type of sustainable building for which applications exceeded the aggregate limit for that taxable year. Any excess not used in a taxable year shall not be carried forward to subsequent taxable years.

I. Installation of a solar thermal system or a photovoltaic system eligible for the solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 may not be used as a component of qualification for the rating system certification level used in determining eligibility for the new sustainable building tax credit, unless a solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 has not been claimed with respect to that system and the building owner and the taxpayer claiming the new sustainable building tax credit certify that such a tax credit will not be claimed with respect to that system.

J. To be eligible for the new sustainable building tax credit, the building owner shall provide to the taxation and revenue department a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to the requirements of Subsection F of this section and any other information the taxation and revenue department may require to determine the amount of the tax credit for which the building owner is eligible.

K. If the requirements of this section have been complied with, the department shall issue to the building owner a document granting a new sustainable building tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the building owner with that taxpayer's income tax return, if applicable, or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

L. If the approved amount of a new sustainable building tax credit for a taxpayer in a taxable year represented by a document issued pursuant to Subsection K of this section is:

(1) less than one hundred thousand dollars ($100,000), a maximum of twenty-five thousand dollars ($25,000) shall be applied against the taxpayer's income tax liability for the taxable year for which the credit is approved and the next three subsequent taxable years as needed depending on the amount of credit; or

(2) one hundred thousand dollars ($100,000) or more, increments of twenty-five percent of the total credit amount in each of the four taxable years, including the taxable year for which the credit is approved and the three subsequent taxable years, shall be applied against the taxpayer's income tax liability.

M. If the sum of all new sustainable building tax credits that can be applied to a taxable year for a taxpayer, calculated according to Paragraph (1) or (2) of Subsection L of this section, exceeds the taxpayer's income tax liability for that taxable year, the excess may be carried forward for a period of up to seven years.

N. A taxpayer who otherwise qualifies and claims a new sustainable building tax credit with respect to a sustainable building owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to that taxpayer's interest in the partnership or association. The total credit claimed in the aggregate by all members of the partnership or association with respect to the sustainable building shall not exceed the amount of the credit that could have been claimed by a sole owner of the property.

O. Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the new sustainable building tax credit that would have been allowed on a joint return.

P. The department shall compile an annual report on the new sustainable building tax credit created pursuant to this section that shall include the number of taxpayers approved by the department to receive the tax credit, the aggregate amount of tax credits approved and any other information necessary to evaluate the effectiveness of the tax credit. Beginning in 2019 and every three years thereafter that the credit is in effect, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the tax credit and whether the tax credit is performing the purpose for which it was created.

Q. For the purposes of this section:

(1) "build green New Mexico rating system" means the certification standards adopted by build green New Mexico in November 2014, which include water conservation standards;

(2) "LEED-CI" means the LEED rating system for commercial interiors;

(3) "LEED-CS" means the LEED rating system for the core and shell of buildings;

(4) "LEED-EB" means the LEED rating system for existing buildings;

(5) "LEED gold" means the rating in compliance with, or exceeding, the second-highest rating awarded by the LEED certification process;

(6) "LEED" means the most current leadership in energy and environmental design green building rating system guidelines developed and adopted by the United States green building council;

(7) "LEED-H" means the LEED rating system for homes;

(8) "LEED-NC" means the LEED rating system for new buildings and major renovations;

(9) "LEED platinum" means the rating in compliance with, or exceeding, the highest rating awarded by the LEED certification process;

(10) "LEED silver" means the rating in compliance with, or exceeding, the third-highest rating awarded by the LEED certification process;

(11) "manufactured housing" means a multisectioned home that is:

(a) a manufactured home or modular home;

(b) a single-family dwelling with a heated area of at least thirty-six feet by twenty-four feet and a total area of at least eight hundred sixty-four square feet;

(c) constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or New Mexico construction codes up to the date of the unit's construction; and

(d) installed consistent with the Manufactured Housing Act [Chapter 60, Article 14 NMSA 1978] and rules adopted pursuant to that act relating to permanent foundations;

(12) "qualified occupied square footage" means the occupied spaces of the building as determined by:

(a) the United States green building council for those buildings obtaining LEED certification;

(b) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; and

(c) the United States environmental protection agency for ENERGY STAR-certified manufactured homes;

(13) "person" does not include state, local government, public school district or tribal agencies;

(14) "sustainable building" means either a sustainable commercial building or a sustainable residential building;

(15) "sustainable commercial building" means a multifamily dwelling unit, as registered and certified under the LEED-H or build green New Mexico rating system, that is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher and has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network or a building that has been registered and certified under the LEED-NC, LEED-EB, LEED-CS or LEED-CI rating system and that:

(a) is certified by the United States green building council at LEED silver or higher;

(b) achieves any prerequisite for and at least one point related to commissioning under LEED "energy and atmosphere", if included in the applicable rating system; and

(c) has reduced energy consumption beginning January 1, 2012, by sixty percent based on the national average for that building type as published by the United States department of energy as substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development;

(16) "sustainable residential building" means:

(a) a building used as a single-family residence as registered and certified under the build green New Mexico or LEED-H rating system that: 1) is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher; 2) has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network; 3) has indoor plumbing fixtures and water-using appliances that, on average, have flow rates equal to or lower than the flow rates required for certification by WaterSense; 4) if landscape area is available at the front of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; and 5) if landscape area is available at the rear of the property, has at least one water line

outside the building below the frost line that may be connected to a drip irrigation system; or

(b) manufactured housing that is ENERGY STAR-qualified by the United States environmental protection agency;

(17) "tribal" means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo; and

(18) "WaterSense" means a program created by the federal environmental protection agency that certifies water-using products that meet the environmental protection agency's criteria for efficiency and performance.

History: Laws 2015, ch. 130, § 1.

**ANNOTATIONS**

**Cross references.** — For the federal National Manufactured Housing Construction and Safety Standards Act of 1974, *see* 42 U.S.C. § 5403.

**Effective dates.** — Laws 2015, ch. 130 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2015, ch. 130, § 3 provided that the provisions of Laws 2015, ch. 130, § 1 apply to taxable years beginning on or after January 1, 2017.

## 7-2-19. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 49, § 19 repealed 7-2-19 NMSA 1978, as amended by Laws 1981, ch. 37, § 29, relating to credit for taxes paid other states by nonresident individuals, effective May 16, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

## 7-2-20. Information returns.

A. Pursuant to regulation, the secretary may require any person doing business in this state and making payments in the course of business to another person to file information returns with the department.

B. The provisions of this section also apply to payments made by the state of New Mexico, by the governing bodies of any political subdivision of the state of New Mexico, by any agency, department or instrumentality of the state or of any political subdivision thereof and, to the extent permitted by law or pursuant to any agreement entered into by

the secretary, to payments made by any other governmental body or by an agency, department or instrumentality thereof.

**History:** 1953 Comp., § 72-15A-13, enacted by Laws 1965, ch. 202, § 13; 1981, ch. 37, § 30; 1983, ch. 213, § 6; 1990, ch. 49, § 11.

**ANNOTATIONS**

**The 1990 amendment,** effective May 16, 1990, substituted "secretary" for "director" in Subsections A and B and "department" for "division" at the end of Subsection A.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation § 589.

85 C.J.S. Taxation § 1699.

## 7-2-21. Fiscal years permitted.

Any individual who files income tax returns under the Internal Revenue Code on the basis of a fiscal year shall report income under the Income Tax Act on the same basis.

**History:** 1953 Comp., § 72-15A-14, enacted by Laws 1965, ch. 202, § 14; 1981, ch. 37, § 31.

**ANNOTATIONS**

**Cross references.** — For returns and payment generally, *see* 7-2-12 NMSA 1978.

For the Internal Revenue Code, *see* 26 U.S.C. § 1 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Section 52(a) of the Internal Revenue Code requiring receivers, trustees in bankruptcy or assignees operating business or property of corporations to make income tax returns and the like, 31 A.L.R.2d 877.

## 7-2-21.1. Accounting methods.

A taxpayer shall use the same accounting methods for reporting income for New Mexico income tax purposes as are used in reporting income for federal income tax purposes.

**History:** 1978 Comp., § 7-2-21.1, enacted by Laws 1981, ch. 37, § 32.

**ANNOTATIONS**

**Cross references.** — For accounting methods used by corporations, *see* 7-2A-11 NMSA 1978.

For deduction of accounting services from gross receipts by corporation, *see* 7-9-69 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 578, 579.

85 C.J.S. Taxation § 1759.

## 7-2-22. Administration.

The Income Tax Act shall be administered pursuant to the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

**History:** 1953 Comp., § 72-15A-15, enacted by Laws 1965, ch. 202, § 18; 1981, ch. 37, § 33.

**ANNOTATIONS**

**Cross references.** — For provisions applicable to administration and enforcement, *see* 7-1-2 NMSA 1978.

## 7-2-23. Finding [; wildlife funds].

The legislature finds that it is in the public interest to provide additional wildlife funds to perpetuate the renewable wildlife resource of New Mexico that gives so much pleasure and recreation to all New Mexicans. This act [7-2-23 to 7-2-25 NMSA 1978] provides a means by which additional wildlife funds may be provided from a voluntary check-off designation of tax refunds due the taxpayer on the state income tax form. It is the intent of the legislature that this program of income tax refund check-off is supplemental to any other funding and is in no way intended to take the place of the funding that would otherwise be appropriated for this purpose.

**History:** Laws 1981, ch. 343, § 1.

## 7-2-24. Optional designation of tax refund contribution [; game protection fund].

A. Except as otherwise provided in Subsection C of this section, any individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate any portion of the income tax refund due him to be paid into the game protection fund. In the case of a joint return, both individuals must make such designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in substantially the following form:

"New Mexico Game Protection Fund - Check [ ]

if you wish to contribute a part or all

of your tax refund to the Game Protection

Fund. Enter here $ _____ the amount of your contribution."

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978] and any designation made under the provisions of this section to such refunds is void.

**History:** Laws 1981, ch. 343, § 2; 1987, ch. 277, § 4.

**ANNOTATIONS**

## 7-2-24.1. Optional designation of tax refund contribution for tree plantings.

A. Except as otherwise provided in Subsection C of this section, any individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate any portion of the income tax refund due him to be paid into the conservation planting revolving fund. In the case of a joint return, both individuals must make such designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in substantially the following form:

"Conservation Planting Revolving Fund - Check if you wish to [ ]

contribute a part or all of your tax refund to the Conservation Planting Revolving Fund to pay for the planting of trees in New Mexico. Enter here $ _____ the amount of your contribution."

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978] and any designation made under the provisions of this section to such refunds is void.

**History:** 1978 Comp., § 7-2-24.1, enacted by Laws 1992, ch. 108, § 4.

**ANNOTATIONS**

## 7-2-25, 7-2-26. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 277, § 7 and Laws 1985, ch. 154, § 6 repealed 7-2-25 and 7-2-26 NMSA 1978, as enacted by Laws, 1981, ch. 343, § 3 and Laws 1985, ch. 154, § 3, relating to the optional designation of tax refund for contribution to the statue of liberty fund, effective June 19, 1987, and December 31, 1986, respectively.

## 7-2-27. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 7, § 4 repealed 7-2-27 NMSA 1978, as enacted by Laws 1987, ch. 257, § 2, relating to legislative findings and intent, effective May 18, 2016. For provisions of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

## 7-2-28. Optional designation of tax refund contribution.

A. Any individual whose state income tax liability in any year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate any portion of the income tax refund due to be paid into the veterans' state cemetery fund. In the case of a joint return, both individuals must make such designation.

B. The secretary shall revise the state income tax form to allow the designation by individual taxpayers of such contributions in substantially the following form:

"New Mexico Veterans' State Cemetery Fund – Check [ ] if you wish to contribute a part or all of your tax refund to the Veterans' State Cemetery Fund. Enter here $_____ the amount of your contribution.".

C. The provisions of this section do not apply to refund amounts intercepted under the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and any designation under the provisions of this section with respect to such intercepted refunds is void.

History: 1978 Comp., § 7-2-28, enacted by Laws 1987, ch. 257, § 3; 2011, ch. 42, § 3; 2016, ch. 7, § 2.

**ANNOTATIONS**

**Delayed repeals.** — Laws 1987, ch. 257, § 6 repealed 7-2-28 NMSA 1978, as enacted by Laws 1987, ch. 257, § 3, relating to legislative findings and intent as to additional

funds to increase the size of the Santa Fe national cemetery, effective on the January 1 of the year following the year on which the sum of contributions received on or after January 1, 1988, pursuant to 7-2-28 NMSA 1978, equals or exceeds $1,070,000.

**The 2016 amendment,** effective May 18, 2016, changed the name of the veterans' national cemetery fund to the veterans' state cemetery fund; in Subsection A, after "veterans'", deleted "national" and added "state"; in Subsection B, after each occurrence of "Veterans'", deleted "National" and added "State".

**The 2011 amendment,** effective June 17, 2011, made stylistic changes.

## 7-2-28.1. Veterans' state cemetery fund; created.

The "veterans' state cemetery fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants, donations and amounts designated pursuant to Section 7-2-28 NMSA 1978. Money in the fund at the end of a fiscal year shall not revert to any other fund. The veterans' services department shall administer the fund, and money in the fund is appropriated to the veterans' services department.

History: Laws 2011, ch. 42, § 1; 2016, ch. 7, § 3.

**ANNOTATIONS**

**The 2016 amendment,** effective May 18, 2016, changed the name of the veterans' national cemetery fund to the veterans' state cemetery fund, and removed a reference to a repealed section of the NMSA 1978; in the heading, after "veterans'", deleted "national" and added "state", in the first sentence, after ""veterans'", deleted "national" and added "state", and in the last sentence, after "services department", deleted "to carry out the intent of Section 7-2-27 NMSA 1978".

## 7-2-29. Finding.

The legislature finds that it is in the public interest to provide additional funds to ensure that substance abuse educational programs are provided in New Mexico schools. This act provides a means by which additional substance abuse education funds may be provided from a voluntary check-off designation of tax refunds due the taxpayer on the state income tax form. It is the intent of the legislature that this program of income tax refund check-off is supplemental to any other funding and is in no way intended to take the place of the funding that would otherwise be appropriated for this purpose.

**History:** Laws 1987, ch. 265, § 1.

**ANNOTATIONS**

**Compiler's notes.** — The term "this act", referred to in this section, means Laws 1987, Chapter 265, which appears as §§ 7-1-6.18, 7-2-29, 7-2-30, 26-2-4, and 26-2-4.1 NMSA 1978.

## 7-2-30. Optional designation of tax refund contribution [; substance abuse education fund].

A. Any individual whose state income tax liability in any year is lower than the amount of money held by the taxation and revenue department to the credit of such individual for that tax year may designate any portion of the income tax refund due him to be paid into the substance abuse education fund. In the case of a joint return, both individuals must make such designation.

B. The secretary of the department shall revise the state income tax form to allow the designation by individual taxpayers of such contributions in substantially the following form:

"New Mexico Substance Abuse Education Fund - Check [ ]

if you wish to contribute a part or all

of your tax refund to the Substance Abuse

Education Fund. Enter here $ _____ the amount of your contribution.".

C. The provisions of this section do not apply to refund amounts intercepted under the tax refund intercept program and any designation under the provisions of this section with respect to such intercepted refunds is void.

**History:** Laws 1987, ch. 265, § 2.

**ANNOTATIONS**

## 7-2-30.1. Optional designation of tax refund contribution; amyotrophic lateral sclerosis research fund.

A. Except as otherwise provided in Subsection C of this section, any individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate any portion of the income tax refund due to the individual to be paid to the amyotrophic lateral sclerosis research fund. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"Amyotrophic Lateral Sclerosis Research Fund -

Check [ ] if you wish to contribute a part or all of your tax refund to the amyotrophic lateral sclerosis research fund for amyotrophic lateral sclerosis (Lou Gehrig's disease) research. Enter here $_____ the amount of your contribution.".

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 2005, ch. 56, § 2.

**ANNOTATIONS**

**ANNOTATIONS**

**Cross references.** — For the amyotrophic lateral sclerosis research fund, *see* 24-20-4 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 56, § 2 applies to taxable years beginning on or after January 1, 2005.

## 7-2-30.2. Optional designation of tax refund contribution; energy, minerals and natural resources department; state parks division.

A. Except as otherwise provided in Subsection C of this section, an individual whose state income tax liability after application of allowable credits and tax rebates in a year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate a portion of the income tax refund due to the individual to be paid to the state parks division of the energy, minerals and natural resources department for the kids in parks education program. In the case of a joint return, both individuals must make such designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"State Parks Division – Check if you wish to contribute a part or all [ ]

of your tax refund to the state parks division of the energy, minerals and

natural resources department for the kids in parks education program.

Enter here $_____ the amount of your contribution."

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 2005, ch. 87, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 87 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

**ANNOTATIONS**

**Applicability.** — Laws 2005, ch. 87, § 3 provided that Laws 2005, ch. 87, § 2 apply to taxable years beginning on or after January 1, 2005.

## 7-2-30.3. Optional designation of tax refund contribution; national guard member and family assistance.

A. Except as otherwise provided in Subsection C of this section, an individual whose state income tax liability after application of allowable credits and tax rebates in a year is lower than the amount of money held by the department to the credit of the individual for that tax year may designate a portion of the income tax refund due to the individual to be contributed for assistance to members of the New Mexico national guard activated for overseas service and to their families. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"National Guard Member and Family Assistance - Check [ ]
if you wish to contribute a part or all of your tax refund for assistance to members of the New Mexico national guard activated for overseas service and to their families. Enter here $_____ the amount of your contribution.".

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 2005, ch. 220, § 2; 2015, ch. 150, § 2.

**ANNOTATIONS**

**The 2015 amendment,** effective April 10, 2015, authorized a designation of tax refund contribution for assistance to members of the New Mexico national guard activated for overseas service; and in Subsections A and B, after "activated for", added "overseas", and after "service", deleted "in the global war on terrorism".

## 7-2-30.4. Optional designation of tax refund contribution; Vietnam veterans memorial.

A. Except as otherwise provided in Subsection C of this section, any individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the taxation and revenue department to the credit of such individual for that tax year may designate any portion of the income tax refund due to the individual to be paid to the veterans' services department for the operation, maintenance and improvement of the Vietnam veterans memorial near Angel Fire, New Mexico. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"Vietnam Veterans Memorial - Check [ ] if you wish to contribute a part or all of your tax refund to the veterans' services department for the operation, maintenance and improvement of the Vietnam Veterans Memorial near Angel Fire, New Mexico. Enter here $_____ the amount of your contribution.".

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

**History**: Laws 2009, ch. 175, § 2; 2017, ch. 115, § 2.

**ANNOTATIONS**

**The 2017 amendment,** effective June 16, 2017, redesignated tax contributions from the state parks division of the energy, minerals and natural resources department to the veterans’ services department for the operation, maintenance and improvement of the Vietnam veterans memorial near Angel Fire, New Mexico; in the catchline, after "memorial", deleted "state park"; in Subsection A, after "money held by the", added "taxation and revenue", after "individual to be paid to the", deleted "state parks division of the energy, minerals and natural resources" and added "veterans’ services", and after "Vietnam veterans memorial", deleted "state park"; in Subsection B, after each occurrence of "Vietnam Veterans Memorial", deleted "State Park", and after "refund to the", deleted "state parks division of the energy, minerals and natural resources" and added "veterans’ services".

**Temporary provisions.** — Laws 2017, ch. 90, § 1, effective June 16, 2017, provided:

A. Upon ratification of the transfer of the real property of Vietnam Veterans Memorial state park in Colfax county from the energy, minerals and natural resources department to the general services department, all programs, functions, personnel, appropriations, money, records, furniture, equipment, supplies and other property belonging to the energy, minerals and natural resources department pertaining to Vietnam Veterans Memorial state park in Colfax county shall be transferred to the veterans' services department.

B. Upon ratification of the transfer of the real property of Vietnam Veterans Memorial state park in Colfax county from the energy, minerals and natural resources department to the general services department, all contractual obligations of the energy, minerals and natural resources department pertaining to any of the function delineated in Subsection A of this section shall be transferred to the veterans' services department.

C. Upon ratification of the transfer of the real property of Vietnam Veterans Memorial state park in Colfax county from the energy, minerals and natural resources department to the general services department, all references in law to the energy, minerals and natural resources department pertaining to any of the functions delineated in Subsection A of this section shall be transferred to the veterans' services department.

## 7-2-30.5. Optional designation of tax refund contribution; veterans' enterprise fund.

A. Except as otherwise provided in Subsection C of this section, any individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate any portion of the income tax refund due to the individual to be paid to the veterans' enterprise fund. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"Veterans' Enterprise Fund - Check [ ] if you wish to contribute a part or all of your tax refund to the veterans' enterprise fund to carry out the programs, duties or services of the veterans' services department. Enter here $_____ the amount of your contribution.".

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 2012, ch. 7, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2012, ch. 7 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 16, 2012, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2012, ch. 7, § 2 provided that the provisions of Laws 2012, ch. 7, § 1 apply to taxable years beginning on or after January 1, 2013.

## 7-2-30.6. Optional designation of tax refund contribution; lottery tuition fund.

A. Except as otherwise provided in Subsection C of this section, any individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate any portion of the income tax refund due to the individual to be paid to the lottery tuition fund. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"Lottery Tuition Fund - Check [ ] if you wish to contribute a part or all of your tax refund to the lottery tuition fund to provide tuition assistance for New Mexico resident undergraduates. Enter here $_____ the amount of your contribution.".

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 2012, ch. 57, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2012, ch. 57 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 16, 2012, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2012, ch. 57, § 2 provided that the provisions of Laws 2012, ch. 57, § 1 apply to taxable years beginning on or after January 1, 2013.

## 7-2-30.7. Optional designation of tax refund contribution; horse shelter rescue fund.

A. Any individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate any portion of the income tax refund due to the individual to be paid to the horse shelter rescue fund. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"Horse Shelter Rescue Fund - Check [ ] if you wish to contribute a part or all of your tax refund to the horse shelter rescue fund. Enter here $_____ the amount of your contribution.".

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 2013, ch. 49, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 49 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2013, ch. 49, § 3 provided that the provisions of Laws 2013, ch. 49, § 2 apply to taxable years beginning on or after January 1, 2013.

## 7-2-30.8. Finding; optional designation of tax refund contribution; senior services.

A. The legislature finds that it is in the public interest to provide additional money to enhance or expand vital services to New Mexico's elderly population. This section provides a means by which individuals may donate all or a portion of their income tax refund, through a voluntary check-off designation, to provide supplemental funding through the non-metro area agency on aging to senior service providers throughout the state. It is the intent of the legislature that this program of income tax refund check-off is supplemental to any other funding and is in no way intended to take the place of the funding that would otherwise be appropriated for this purpose.

B. Except as otherwise provided in Subsection D of this section, an individual whose state income tax liability after application of allowable credits and tax rebates in a year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate a portion of the income tax refund due to the individual to be paid to the aging and long-term services department for distribution

statewide through the area agencies on aging for the provision of supplemental senior services throughout the state, including senior services provided through the north central New Mexico economic development district as the non-metro area agency on aging, the city of Albuquerque/Bernalillo county area agency on aging, the Indian area agency on aging and the Navajo area agency on aging. In the case of a joint return, both individuals must make the designation.

C. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"Supplemental Senior Services – Check[ ]
if you wish to contribute a part or all of your tax
refund to provide supplemental funding to enhance or
expand senior services throughout the state.
Enter here $_____ the amount of your contribution.".

D. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act, and any designation made under the provisions of this section to such refunds is void.

E. The department shall distribute one hundred percent of the tax refund contributions pursuant to this section to the aging and long-term services department for distribution statewide through the area agencies on aging. The agencies on aging shall cooperatively establish a grant program based on need that is available to all senior service providers in the state that meet the requirements of the program. The agencies shall seek input from senior service providers in developing the grant program.

History: Laws 2015, ch. 50, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 50 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2015, ch. 50, § 2 provided that the provisions of Laws 2015, ch. 50, § 1 apply to taxable years beginning on or after January 1, 2015.

## 7-2-30.9. Optional designation of tax refund contribution; animal care and facility fund.

A. An individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the department to the credit of that individual for that tax year may designate a portion of the income tax refund due to the individual to be paid to the animal care and facility fund to carry out

the statewide dog and cat spay and neuter program. In the case of a joint return, both individuals must make that designation.

B. The department shall revise the state income tax form to allow the designation of a contribution in the following form:

"Statewide Dog and Cat Spay and Neuter Program - Check [ ] if you wish to contribute a part or all of your tax refund to the Animal Care and Facility Fund to carry out the statewide dog and cat spay and neuter program. Enter here $_____ the amount of your contribution.".

C. The provisions of this section do not apply to an income tax refund subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and a designation made pursuant to the provisions of this section to that refund is void.

History: Laws 2015, ch. 82, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 82, § 6 made Laws 2015, ch. 82, § 1 effective July 1, 2015.

**Applicability.** — Laws 2015, ch. 82, § 5 provided that the provisions of Laws 2015, ch. 82, § 1 apply to taxable years beginning on or after January 1, 2015.

The provisions of Laws 2015, ch. 82, § 3 that require money collected pursuant to 66-3-424.3 NMSA 1978 to be deposited in the statewide spay and neuter subaccount apply to collections made on and after July 1, 2015.

## 7-2-30.10. Optional designation of tax refund contribution; sexual assault examination kit processing grant fund; sexual assault services. (Repealed effective January 1, 2023.)

A. An individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the department to the credit of that individual for that tax year may designate a portion of the income tax refund due to the individual to be paid to the sexual assault examination kit processing grant fund for the department of public safety to award grants to law enforcement agencies for the processing of sexual assault examination kits and to the department of health to fund sexual assault services provided by sexual assault service providers. In the case of a joint return, both individuals must make that designation.

B. The department shall revise the state income tax form to allow the designation of a contribution in the following form:

"Sexual Assault Examination Kit Processing Grant Fund and Sexual Assault Services - Check [ ] if you wish to contribute a part or all of your tax refund to the Sexual Assault Examination Kit Processing Grant Fund for the processing of sexual assault examination kits and to the Department of Health for the provision of sexual assault services by sexual assault service providers. Enter here $_____ the amount of your contribution.".

C. Instructional materials shall provide that contributions to the sexual assault examination kit processing grant fund may be made directly to the department of public safety and contributions to fund sexual assault services by sexual assault service providers may be made directly to the department of health.

D. The provisions of this section do not apply to an income tax refund subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and a designation made pursuant to the provisions of this section to that refund is void.

E. The department shall distribute the tax refund contributions pursuant to this section as follows:

(1) fifty percent to the state treasury for credit to the sexual assault examination kit processing grant fund for distribution by the department of public safety to law enforcement agencies pursuant to the sexual assault examination kit processing grant program; and

(2) fifty percent to the department of health to fund sexual assault services provided by sexual assault service providers.

History: Laws 2017, ch. 116, § 1.

**ANNOTATIONS**

**Delayed repeals.** — Laws 2017, ch. 116, § 3 provided that Laws 2017, ch. 116, § 1 is repealed effective January 1, 2023.

**Effective dates.** — Laws 2017, ch. 116 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2017, ch. 116, § 4 provided that the provisions of Laws 2017, ch. 116, § 1 apply to taxable years beginning on or after January 1, 2017.

## 7-2-31. Optional designation of tax refund contribution.

A. Any individual whose state income tax liability in any year is lower than the amount of money held by the taxation and revenue department to the credit of that

individual for that tax year may designate two dollars ($2.00) of the income tax refund due the individual to be paid to a state political party. "State political party", for the purposes of this section, means those parties that on January 1 of the taxable year for which the return is filed meet the requirements of Section 1-7-2(A) NMSA 1978. In the case of a joint return, each individual may make a designation.

B. The secretary of taxation and revenue shall revise the state income tax form to allow on the face of the form the designation by individual taxpayers of contributions to state political parties in substantially the following form:

"New Mexico Political Party Income Tax Refund Check-Off - Check if you wish to contribute two dollars ($2.00) of your income tax refund to a state political party that qualifies as such under Section 1-7-2 NMSA 1978. My contribution should be made to the _____ party."

(name of state political party)

C. The secretary of taxation and revenue shall provide a list on the state income tax form of the qualified state political parties to which the taxpayer may make a contribution.

D. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

**History:** Laws 1992, ch. 108, § 1.

**ANNOTATIONS**

**Cross references.** — For contributions to conservation planting revolving fund, *see* 7-1-6.34 NMSA 1978.

For contributions to proper state political party, *see* 7-1-6.35 NMSA 1978.

## 7-2-31.1. Optional refund contribution provisions; conditional repeal.

A. By August 31, 2000, and by August 31 of every succeeding year, the secretary shall determine the total amount contributed through the preceding July 31 on returns filed for taxable years ending in the preceding calendar year pursuant to each provision of the Income Tax Act that allows a taxpayer the option of directing the department to contribute all or any part of an income tax refund due the taxpayer to a specified account, fund or entity.

B. If the secretary's determination pursuant to Subsection A of this section regarding an optional refund contribution provision is that the total amount contributed is less than

five thousand dollars ($5,000), exclusive of directions for contributions disregarded under Subsection C of this section, the secretary shall certify that fact to the secretary of state. Any optional refund contribution provision for which a certification is made for three consecutive years is repealed, effective on the January 1 following the third certification.

C. The department shall disregard a direction on a return to make an optional refund contribution if the amount of refund due on the return is determined by the department to be less than the sum of the amounts directed to be contributed.

D. Notwithstanding the provisions of Section 7-1-26 NMSA 1978, a taxpayer may not claim and the department may not allow a refund with respect to any optional refund contribution that was made by the department at the direction of the taxpayer.

**History:** Laws 1999, ch. 47, § 5.

## 7-2-32. Deduction-payments into education trust fund.

A taxpayer may claim a deduction from net income in an amount equal to the payments made by the taxpayer into the education trust fund pursuant to a college investment agreement or prepaid tuition contract under the Education Trust Act [Chapter 21, Article 21K NMSA 1978] in the taxable year for which the deduction is being claimed. The amount of payments made on behalf of any one beneficiary that may be deducted shall not exceed in the aggregate the cost of attendance at the applicable institution of higher education, as determined by the education trust board. A husband and wife who file separate returns for the taxable year in which they could have filed a joint return may each claim only one-half of the deduction that would have been allowed on the joint return. Individuals having income both within and without this state shall apportion this deduction in accordance with regulations of the secretary.

**History:** Laws 1997, ch. 259, § 8.

## 7-2-33. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 275, § 6 repealed 7-2-33 NMSA 1978, as enacted by Laws 1997, ch. 259, § 9, relating to education trust fund; earnings tax exempt; withdrawals are taxable income; authority to withhold tax, effective June 20, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 7-2-34. Deduction; net capital gain income.

A. Except as provided in Subsection C of this section, a taxpayer may claim a deduction from net income in an amount equal to the greater of:

(1) the taxpayer's net capital gain income for the taxable year for which the deduction is being claimed, but not to exceed one thousand dollars ($1,000); or

(2) the following percentage of the taxpayer's net capital gain income for the taxable year for which the deduction is being claimed:

(a) for a taxable year beginning in 2003, ten percent;

(b) for a taxable year beginning in 2004, twenty percent;

(c) for a taxable year beginning in 2005, thirty percent;

(d) for a taxable year beginning in 2006, forty percent; and

(e) for taxable years beginning on or after January 1, 2007, fifty percent.

B. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the deduction provided by this section that would have been allowed on the joint return.

C. A taxpayer may not claim the deduction provided in Subsection A of this section if the taxpayer has claimed the credit provided in Section 7-2D-8.1 NMSA 1978.

D. As used in this section, "net capital gain" means "net capital gain" as defined in Section 1222 (11) of the Internal Revenue Code.

**History:** Laws 1999, ch. 205, § 1; 2003, ch. 2, § 7.

**ANNOTATIONS**

**Cross references.** — For Section 1222(11) of the Internal Revenue Code, *see* 26 U.S.C. § 1222.

**The 2003 amendment,** effective June 20, 2003, in Subsection A, inserted "the greater of:" and the end, added the Paragraph A(1) designation, added Paragraph A(2); added the Subsection B designation and redesignated the remaining subsections accordingly.

## 7-2-35. Deleted.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2000 (2nd S.S.), ch. 7, § 3 provided that the provisions of Laws 2000 (2nd S.S.), ch. 7, § 1 "shall not become effective unless Senate Bill 33 or similar bill of the second special session of the forty-fourth legislature is enacted into law and the General Appropriation Act of 2000 passed by the second special session of the forty-fourth legislature and enacted into law includes an appropriation of four million nine

hundred seventy-five thousand dollars ($4,975,000) for the sole purpose of implementing an amendment to the state medicaid plan making eligible an individual who is the parent of a child under nineteen years of age who resides with that parent and whose family income does not exceed sixty percent of the federal poverty guidelines."

Senate Bill 33, referred to above, was vetoed by the governor. The appropriation of $4,975,000, referred to above, was in Laws 2000 (2nd S.S.), ch. 5, but was line item vetoed by the governor. Therefore, Section 7-2-35 NMSA 1978 failed to become effective and was deleted by the compiler.

## 7-2-36. Deduction; expenses related to organ donation.

A. A taxpayer may claim a deduction from net income in an amount not to exceed ten thousand dollars ($10,000) of organ donation-related expenses, including lost wages, lodging expenses and travel expenses, incurred during the taxable year by the taxpayer or the taxpayer's dependent as a result of the taxpayer's or dependent's donation of a human organ to another person for transfer of that human organ to the body of another person.

B. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the deduction provided by this section that would have been allowed on a joint return.

C. For the purposes of this section:

(1) "dependent" means "dependent" as defined by Section 152 of the Internal Revenue Code, as that section may be amended or renumbered; and

(2) "human organ" means all or part of a heart, liver, pancreas, kidney, intestine, lung or bone marrow.

History: Laws 2005, ch. 113, § 1.

**ANNOTATIONS**

**Cross references.** — For the Internal Revenue Code, *see* 26 U.S.C. Sections 1 *et seq.*

**Effective dates.** — Laws 2005, ch. 113 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

**ANNOTATIONS**

**Applicability.** — Laws 2005, ch. 113, § 2 provided that Laws 2005, ch. 113 , § 1 apply to taxable years beginning on or after January 1, 2005.

## 7-2-37. Deduction; unreimbursed or uncompensated medical care expenses.

A. Prior to January 1, 2025, a taxpayer may claim a deduction from net income in an amount determined pursuant to Subsection B of this section for medical care expenses paid during the taxable year for medical care of the taxpayer, the taxpayer's spouse or a dependent if the expenses are not reimbursed or compensated for by insurance or otherwise and have not been included in the taxpayer's itemized deductions, as defined in Section 63 of the Internal Revenue Code, for the taxable year.

B. The deduction provided in Subsection A of this section may be claimed in an amount equal to the following percentage of medical care expenses paid during the taxable year based on the taxpayer's filing status and adjusted gross income as follows:

(1) for surviving spouses and married individuals filing joint returns:

| If adjusted gross income is: | The following percent of medical care expenses paid may be deducted: |
|---|---|
| Not over $30,000 | 25 percent |
| More than $30,000 but not more than $70,000 | 15 percent |
| Over $70,000 | 10 percent; |

(2) for single individuals and married individuals filing separate returns:

| If adjusted gross income is: | The following percent of medical care expenses paid may be deducted: |
|---|---|
| Not over $15,000 | 25 percent |
| More than $15,000 but not more than $35,000 | 15 percent |
| Over $35,000 | 10 percent; and |

(3) for heads of household:

| If adjusted gross income is: | The following percent of medical care expenses paid may be deducted: |
|---|---|
| Not over $20,000 | 25 percent |
| More than $20,000 but not more than $50,000 | 15 percent |
| Over $50,000 | 10 percent. |

C. As used in this section:

(1) "dependent" means "dependent" as defined in Section 152 of the Internal Revenue Code;

(2) "health care facility" means a hospital, outpatient facility, diagnostic and treatment center, rehabilitation center, free-standing hospice or other similar facility at which medical care is provided;

(3) "medical care" means the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body;

(4) "medical care expenses" means amounts paid for:

(a) the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body, excluding cosmetic surgery, if provided by a physician or in a health care facility;

(b) prescribed drugs or insulin;

(c) qualified long-term care services as defined in Section 7702B(c) of the Internal Revenue Code;

(d) insurance covering medical care, including amounts paid as premiums under Part B of Title 18 of the Social Security Act or for a qualified long-term care insurance contract defined in Section 7702B(b) of the Internal Revenue Code, if the insurance or other amount is paid from income included in the taxpayer's adjusted gross income for the taxable year;

(e) nursing services, regardless of where the services are rendered, if provided by a practical nurse or a professional nurse licensed to practice in the state pursuant to the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978];

(f) specialized treatment or the use of special therapeutic devices if the treatment or device is prescribed by a physician and the patient can show that the expense was incurred primarily for the prevention or alleviation of a physical or mental defect or illness; and

(g) care in an institution other than a hospital, such as a sanitarium or rest home, if the principal reason for the presence of the person in the institution is to receive the medical care available; provided that if the meals and lodging are furnished as a necessary part of such care, the cost of the meals and lodging are "medical care expenses";

(5) "physician" means a medical doctor, osteopathic physician, dentist, podiatrist, chiropractic physician or psychologist licensed or certified to practice in New Mexico; and

(6) "prescribed drug" means a drug or biological that requires a prescription of a physician for its use by an individual.

History: Laws 2015 (1st S.S.), ch. 2, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2015 (1st S.S.), ch. 2, § 3 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective September 6, 2015, 90 days after the adjournment of the legislature.

**Cross references.** — For Internal Revenue Code, *see* 26 U.S.C. § 1 et seq.

**Applicability.** — Laws 2015 (1st S.S.), ch. 2, § 25 provided that the provisions of Laws 2015 (1st S.S.), ch. 2, §§ 2 through 7 and 17 apply to taxable years beginning on or after January 1, 2015.

# ARTICLE 2A
# Corporate Income and Franchise Tax

## 7-2A-1. Short title.

Chapter 7, Article 2A NMSA 1978 may be cited as the "Corporate Income and Franchise Tax Act".

**History:** 1978 Comp., § 7-2A-1, enacted by Laws 1981, ch. 37, § 34; 1986, ch. 20, § 32.

**ANNOTATIONS**

**Law reviews.** — For article, "New Mexico Taxes: Taking Another Look," see 32 N.M.L. Rev. 351 (2002).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Decision to take foreign income taxes as federal credit under § 901 of the Internal Revenue Code (26 USCS § 901) as precluding their deduction for state income tax purposes, 77 A.L.R.4th 823.

## 7-2A-2. Definitions.

For the purpose of the Corporate Income and Franchise Tax Act and unless the context requires otherwise:

A. "affiliated group" means that term as it is used in the Internal Revenue Code;

B. "bank" means any national bank, national banking association, state bank or bank holding company;

C. "base income" means that part of the taxpayer's income defined as taxable income and upon which the federal income tax is calculated in the Internal Revenue Code for income tax purposes plus:

(1) for taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and claimed by the taxpayer for that year;

(2) interest received on a state or local bond; and

(3) the amount of any deduction claimed in calculating taxable income for all expenses and costs directly or indirectly paid, accrued or incurred to a captive real estate investment trust;

D. "captive real estate investment trust" means a corporation, trust or association taxed as a real estate investment trust pursuant to Section 857 of the Internal Revenue Code, the shares or beneficial interests of which are not regularly traded on an established securities market; provided that more than fifty percent of any class of beneficial interests or shares of the real estate investment trust are owned directly, indirectly or constructively by the taxpayer during all or a part of the taxpayer's taxable year;

E. "corporation" means corporations, joint stock companies, real estate trusts organized and operated under the Real Estate Trust Act [47-2-1 through 47-2-6 NMSA 1978], financial corporations and banks, other business associations and, for corporate income tax purposes, partnerships and limited liability companies taxed as corporations under the Internal Revenue Code;

F. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

G. "fiscal year" means any accounting period of twelve months ending on the last day of any month other than December;

H. "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended;

I. "net income" means base income adjusted to exclude:

(1) income from obligations of the United States less expenses incurred to earn that income;

(2) other amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States;

(3) for taxable years that began prior to January 1, 1991, an amount equal to the sum of:

(a) net operating loss carryback deductions to that year from taxable years beginning prior to January 1, 1991 claimed and allowed, as provided by the Internal Revenue Code; and

(b) net operating loss carryover deductions to that year claimed and allowed;

(4) for taxable years beginning on or after January 1, 1991 and prior to January 1, 2013, an amount equal to the sum of any net operating loss carryover deductions to that year claimed and allowed; provided that the amount of any net operating loss carryover from a taxable year beginning on or after January 1, 1991 and prior to January 1, 2013 may be excluded only as follows:

(a) in the case of a timely filed return, in the taxable year immediately following the taxable year for which the return is filed; or

(b) in the case of amended returns or original returns not timely filed, in the first taxable year beginning after the date on which the return or amended return establishing the net operating loss is filed; and

(c) in either case, if the net operating loss carryover exceeds the amount of net income exclusive of the net operating loss carryover for the taxable year to which the exclusion first applies, in the next four succeeding taxable years in turn until the net operating loss carryover is exhausted for any net operating loss carryover from a taxable year prior to January 1, 2013; in no event may a net operating loss carryover from a taxable year beginning prior to January 1, 2013 be excluded in any taxable year after the fourth taxable year beginning after the taxable year to which the exclusion first applies; and

(5) for taxable years beginning on or after January 1, 2013, an amount equal to the sum of any net operating loss carryover deductions to that year claimed and allowed; provided that the amount of any net operating loss carryover may be excluded only as follows:

(a) in the case of a timely filed return, in the taxable year immediately following the taxable year for which the return is filed; or

(b) in the case of amended returns or original returns not timely filed, in the first taxable year beginning after the date on which the return or amended return establishing the net operating loss is filed; and

(c) in either case, if the net operating loss carryover exceeds the amount of net income exclusive of the net operating loss carryover for the taxable year to which the exclusion first applies, in the next nineteen succeeding taxable years in turn until the net operating loss carryover is exhausted for any net operating loss carryover from a taxable year beginning on or after January 1, 2013; in no event shall a net operating loss carryover from a taxable year beginning: 1) prior to January 1, 2013 be excluded in any taxable year after the fourth taxable year beginning after the taxable year to which the exclusion first applies; and 2) on or after January 1, 2013 be excluded in any taxable year after the nineteenth taxable year beginning after the taxable year to which the exclusion first applies;

J. "net operating loss" means any net operating loss, as defined by Section 172(c) of the Internal Revenue Code, as that section may be amended or renumbered, for a taxable year as further increased by the income, if any, from obligations of the United States for that year less related expenses;

K. "net operating loss carryover" means the amount, or any portion of the amount, of a net operating loss for any taxable year that, pursuant to Paragraph (3), (4) or (5) of Subsection I of this section, may be excluded from base income;

L. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, joint venture, syndicate or other association; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or agency, department or instrumentality thereof;

M. "real estate investment trust" has the meaning ascribed to the term in Section 856 of the Internal Revenue Code, as that section may be amended or renumbered;

N. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

O. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of the United States or political subdivision thereof or any political subdivision of a foreign country;

P. "state or local bond" means a bond issued by a state other than New Mexico or by a local government other than one of New Mexico's political subdivisions, the interest from which is excluded from income for federal income tax purposes under Section 103 of the Internal Revenue Code, as that section may be amended or renumbered;

Q. "taxable year" means the calendar year or fiscal year upon the basis of which the net income is computed under the Corporate Income and Franchise Tax Act and includes, in the case of the return made for a fractional part of a year under the provisions of that act, the period for which the return is made;

R. "taxpayer" means any corporation subject to the taxes imposed by the Corporate Income and Franchise Tax Act; and

S. "unitary corporations" means two or more integrated corporations, other than any foreign corporation incorporated in a foreign country and not engaged in trade or business in the United States during the taxable year, that are owned in the amount of more than fifty percent and controlled by the same person and for which at least one of the following conditions exists:

(1) there is a unity of operations evidenced by central purchasing, advertising, accounting or other centralized services;

(2) there is a centralized management or executive force and centralized system of operation; or

(3) the operations of the corporations are dependent upon or contribute property or services to one another individually or as a group.

**History:** 1978 Comp., § 7-2A-2, enacted by Laws 1986, ch. 20, § 33; 1991, ch. 9, § 25; 1993, ch. 307, § 3; 1993, ch. 309, § 1; 1995, ch. 11, § 5; 1999, ch. 47, § 6; 2014, ch. 53, § 2; 2017, ch. 95, § 1.

## ANNOTATIONS

**Cross references.** — For Sections 103 and 172 of the Internal Revenue Code, *see* 26 U.S.C. §§ 103 and 172, respectively.

**The 2017 amendment,** effective June 16, 2017, defined "captive real estate investment trust" and "real estate investment trust", and revised the definition of "base income", for purposes of the Corporate Income and Franchise Tax Act; in Subsection C, after "for income tax purposes plus", added paragraph designation "(1)", in Paragraph C(1), after "for that year", deleted "'base income' also includes", added paragraph designation "(2)", and added Paragraph C(3); added a new Subsection D and redesignated former Subsections D through K as Subsections E through L, respectively; in Subsection K, after "Subsection", changed "H" to "I"; and added a new Subsection M and redesignated former Subsections L through Q as Subsections N through S.

**Applicability.** — Laws 2017, ch. 95, § 2 provided that the provisions of Laws 2017, ch. 95, § 1 apply to taxable years beginning on or after January 1, 2017.

**The 2014 amendment,** effective May 21, 2014, excluded net operating loss carryover from net income for twenty years; in Subsection H, in Paragraph (4), after the first and second instances of "January 1, 1991", added "and prior to January 1, 2013"; in Subsection H, in Paragraph (4), in Subparagraph (c), after "carryover is exhausted", added "for any net operating loss carryover from a taxable year prior to January 1, 2013", after "operating loss carryover", added "from a taxable year beginning prior to January 1, 2013"; in Subsection H, added Paragraph (5), including Subparagraphs (a) through (c); and in Subsection J, after "Paragraph (3), (4)", added "or (5)".

**The 1999 amendment,** effective June 18, 1999, deleted former Subsection F, which defined "financial corporation" and redesignated subsequent subsections accordingly; in Subsection H deleted former Paragraph (1), which read "amounts that have been taxed as income under the Banking and Financial Corporations Tax Act" and redesignated subsequent paragraphs accordingly; and updated statutory references.

**The 1995 amendment,** effective June 16, 1995, inserted "and limited liability companies" near the end of Subsection D and "of 1986" in Subsection H.

**The 1993 amendment,** added the language beginning "in no event" at the end of Subparagraph (5)(c) of Subsection I; inserted "limited liability company" in Subsection L; and inserted "other than any foreign corporation incorporated in a foreign country and not engaged in trade or business in the United States during the taxable year" in Subsection R. Identical amendments to this section were enacted by Laws 1993, ch. 307, § 3 and Laws 1993, ch. 309, § 1, both effective June 18, 1993. The section was set out as amended by Laws 1993, ch. 309, § 1. *See* 12-1-8 NMSA 1978. —

**The 1991 amendment,** effective June 14, 1991, added the language beginning "plus, for taxable years" at the end of Subsection C; deleted "or 'director' " following " 'department' " in Subsection E; deleted former Subsection F which read " 'director' means the secretary of taxation and revenue or the secretary's delegate"; redesignated former Subsections G to J as present Subsections F to I; in present Subsection I, added present Paragraph (2) and Paragraphs (4) and (5), added "other" at the beginning of Paragraph (3) and made a related stylistic change; added present Subsections J, K and O; and redesignated former Subsections K to M and N to P as present Subsections L to N and P to R, respectively.

**Law reviews.** — For note, "The Entry and Regulation of Foreign Corporations Under New Mexico Law and Under the Model Business Corporation Act," see 6 Nat. Resources J. 617 (1966).

For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 103 to 107, 255, 266 to 270, 272 to 276, 304, 451, 452.

Building and loan association as within provisions as to franchise taxes, 86 A.L.R. 826, 143 A.L.R. 1026.

Holding companies, 98 A.L.R. 1511.

Association or joint stock company, meaning of, within statutes taxing associations or joint stock companies as corporations, 108 A.L.R. 340, 144 A.L.R. 1050, 166 A.L.R. 1461.

Foreign corporation, validity, under Federal Constitution, of state tax on, or measured by, income of, 67 A.L.R.2d 1322.

Construction and application of state corporate income tax statutes allowing net operating loss deductions, 33 A.L.R.5th 509.

## 7-2A-3. Imposition and levy of taxes.

A. A tax to be known as the "corporate income tax" is imposed at the rate specified in the Corporate Income and Franchise Tax Act upon the net income of every domestic corporation and upon the net income of every foreign corporation employed or engaged in the transaction of business in, into or from this state or deriving any income from any property or employment within this state.

B. A tax to be known as the "corporate franchise tax" is imposed in the amount specified in the Corporate Income and Franchise Tax Act upon every domestic corporation and upon every foreign corporation employed or engaged in the transaction of business in, into or from this state or deriving any income from any property or employment within this state and upon every domestic or foreign corporation, whether engaged in active business or not, but having or exercising its corporate franchise in this state.

**History:** 1978 Comp., § 7-2A-3, enacted by Laws 1981, ch. 37, § 36; 1986, ch. 20, § 34.

**ANNOTATIONS**

**Constitutionality.** — The United States supreme court has held that similar state franchise tax laws do not violate the federal constitution. Southern Pac. Co. v. State Corp.Comm'n, 1937-NMSC-059, 41 N.M. 556, 72 P.2d 15.

**More business interstate than intrastate.** — A franchise tax upon a foreign corporation is not invalid because its interstate business exceeds its intrastate business. Southern Pac. Co. v. State Corp. Comm'n, 1937-NMSC-059, 41 N.M. 556, 72 P.2d 15.

**"Property and business" in the state** as used in the former section was construed by the commission to mean all property of the corporation not used exclusively in interstate

business, plus the total gross receipts from intrastate business therein. It did not refer to business across state lines. Southern Pac. Co. v. State Corp. Comm'n, 1937-NMSC-059, 41 N.M. 556, 72 P.2d 15.

**Constitutionality of formula applied to taxation of dividends received from foreign subsidiaries.** — Taxation of dividends from foreign subsidiaries under the separate corporate entity method violates the commerce clause of the United States Constitution, and application of the *Detroit* formula is an insufficient remedy. Conoco, Inc. v. Taxation & Revenue Dep't, 1997-NMSC-005, 122 N.M. 736, 931 P.2d 730, cert. denied, 521 U.S. 1112, 117 S. Ct. 2497, 138 L. Ed. 2d 1003 (1997).

**Law reviews.** — For note, "The Entry and Regulation of Foreign Corporations Under New Mexico Law and Under the Model Business Corporation Act," see 6 Nat. Resources J. 617 (1966).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Corporations §§ 70 to 72; 71 Am. Jur. 2d State and Local Taxation §§ 254 to 276, 285 to 288, 294 to 296, 569, 571, 572, 574, 575.

Rights in navigable waters as franchise, 36 A.L.R. 1523.

Property tax distinguished from franchise tax, 103 A.L.R. 61.

Carriers by water, tax on, 105 A.L.R. 11, 139 A.L.R. 950.

Affiliated corporation, franchise tax of corporation as affected by creation of, 117 A.L.R. 508.

Nature of tax on foreign corporation as franchise or property tax, 131 A.L.R. 927.

Doing business, business done, or the like, outside the state, for purposes of allocating income under franchise tax law, what constitutes, 167 A.L.R. 943.

Validity under export-import clause of federal constitution of state tax on corporations, 20 A.L.R.2d 152, 46 L. Ed. 2d 955.

84 C.J.S. Taxation §§ 169 to 170, 177 to 180, 227 to 230; 85 C.J.S. Taxation §§ 1694 et seq.

## 7-2A-4. Exemptions.

No corporate income or franchise tax shall be imposed upon:

A. insurance companies, reciprocal or inter-insurance exchanges which pay a premium tax to the state;

B. a trust organized or created in the United States and forming part of a stock bonus, pension or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries, which trust is exempt from taxation under the provisions of the Internal Revenue Code; or

C. religious, educational, benevolent or other organizations not organized for profit which are exempt from income taxation under the Internal Revenue Code unless the organization receives income which is subject to federal income taxation as "unrelated business income" under the Internal Revenue Code, in which case the organization is subject to the corporate franchise tax, and the corporate income tax applies to the unrelated business income.

**History:** 1978 Comp., § 7-2A-4, enacted by Laws 1981, ch. 37, § 37; 1986, ch. 20, § 35; 1989, ch. 111, § 1.

## ANNOTATIONS

**Cross references.** — For exemption of nonprofit corporations, *see* 53-8-28B NMSA 1978.

For the Internal Revenue Code, *see* 26 U.S.C. § 1 et seq.

**The 1989 amendment,** effective June 16, 1989, substituted the present provisions of Subsection C for "religious, educational, benevolent or other organizations not organized for profit which are exempt from income taxation under the Internal Revenue Code except to the extent that such income is subject to federal income taxation as "unrelated business income under the Internal Revenue Code".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 19 Am. Jur. 2d Corporations, § 2524; 71 Am. Jur. 2d State and Local Taxation §§ 309, 318, 326 to 331, 362 to 391, 428 to 435, 475, 477 to 482.

Exemption from taxation of property which religious or charitable body has no right to hold, 27 A.L.R. 1047.

Exemption of charitable organization from taxation or special assessment, 34 A.L.R. 634, 62 A.L.R. 328, 108 A.L.R. 284.

Gift or trust for benefit of employees of corporation or business as within exemption or deduction provisions of succession tax or income tax law, 71 A.L.R. 870.

Permissible classification of insurance companies which will justify discrimination among them by taxing statutes, 83 A.L.R. 464.

Business trust, franchise tax on, as denial of equal protection of the laws, 108 A.L.R. 333.

Annuities, consideration paid for, as "premium" within contemplation of statute imposing franchise tax on insurance company, 109 A.L.R. 1060, 135 A.L.R. 1248.

What constitutes a trust, for income tax purposes, 113 A.L.R. 457.

Extent of area within tax exemption extended to property used for educational, religious, or charitable purposes, 134 A.L.R. 1176.

Hospitals as within tax exemption provision not specifically naming hospital, 144 A.L.R. 1483.

Tax exemption of property of religious, educational, or charitable body as extending to property or income thereof used in publication or sale of literature, 154 A.L.R. 895.

What amounts to trust for benefit of employees within exemption from income tax, 161 A.L.R. 774.

When is corporation, community chest, fund, foundation, or club "organized and operated exclusively" for charitable or other exempt purposes under Internal Revenue Code, 69 A.L.R.2d 871.

Receipt of payment from beneficiaries as affecting tax exemption of charitable institutions, 37 A.L.R.3d 1191.

Tax exemption of property of educational body as extending to property used by personnel as living quarters, 55 A.L.R.3d 485.

Qualification of health care entities for federal tax exemption as charitable organization under 26 USCS § 501(c)(3), 134 A.L.R. Fed. 395.

84 C.J.S. Taxation §§ 208 to 218, 261 to 262, 310 to 312, 321 et seq.; 85 C.J.S. Taxation §§ 1736 to 1737.

## 7-2A-5. Corporate income tax rates.

The corporate income tax imposed on corporations by Section 7-2A-3 NMSA 1978 shall be at the rates specified in the following tables:

A. For taxable years beginning prior to January 1, 2014:

| If the net income is: | The tax shall be: |
|---|---|
| Not over $500,000 | 4.8% of net income |
| Over $500,000 but not over $1,000,000 | $24,000 plus 6.4% of excess over $500,000 |
| Over $1,000,000 | $56,000 plus 7.6% of excess over |

$1,000,000.

B. For taxable years beginning on or after January 1, 2014 and prior to January 1, 2015:

| If the net income is: | The tax shall be: |
|---|---|
| Not over $500,000 | 4.8% of net income |
| Over $500,000 but not over $1,000,000 | $24,000 plus 6.4% of excess over $500,000 |
| Over $1,000,000 | $56,000 plus 7.3% of excess over $1,000,000. |

C. For taxable years beginning on or after January 1, 2015 and prior to January 1, 2016:

| If the net income is: | The tax shall be: |
|---|---|
| Not over $500,000 | 4.8% of net income |
| Over $500,000 but not over $1,000,000 | $24,000 plus 6.4% of excess over $500,000 |
| Over $1,000,000 | $56,000 plus 6.9% of excess over $1,000,000. |

D. For taxable years beginning on or after January 1, 2016 and prior to January 1, 2017:

| If the net income is: | The tax shall be: |
|---|---|
| Not over $500,000 | 4.8% of net income |
| Over $500,000 but not over $1,000,000 | $24,000 plus 6.4% of excess over $500,000 |
| Over $1,000,000 | $56,000 plus 6.6% of excess over $1,000,000. |

E. For taxable years beginning on or after January 1, 2017 and prior to January 1, 2018:

| If the net income is: | The tax shall be: |
|---|---|
| Not over $500,000 | 4.8% of net income |
| Over $500,000 | $24,000 plus 6.2% of excess over $500,000. |

F. For taxable years beginning on or after January 1, 2018:

| If the net income is: | The tax shall be: |
| --- | --- |
| Not over $500,000 | 4.8% of net income |
| Over $500,000 | $24,000 plus 5.9% of excess over $500,000. |

History: 1978 Comp., § 7-2A-5, enacted by Laws 1981, ch. 37, § 38; 1981, ch. 176, § 1; 1983, ch. 213, § 8; 1986, ch. 20, § 36; 1987, ch. 277, § 5; 2013, ch. 160, § 3.

**ANNOTATIONS**

**The 2013 amendment,** effective January 1, 2014, decreased certain corporate income tax rates over five years; in Subsection A, added the introductory sentence; and added Subsections B through F.

**Applicability.** — Laws 2013, ch. 160, § 14 provided that Laws 2013, ch. 160, § 3 applies to taxable years beginning on or after January 1, 2014.

**Use of federal tax code and regulations.** — New Mexico income taxation law does not adopt directly the Internal Revenue Code and Treasury Regulations, but does permit New Mexico taxpayers to enjoy the benefits of their election to use accelerated depreciation methodologies in calculating federal taxable income. In re Rates and Charges of Mountain States Tel. & Tel. Co. v. N.M. State Corp. Comm'n, 1986-NMSC-019, 104 N.M. 36, 715 P.2d 1332.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation § 469.

85 C.J.S. Taxation § 1698.

## 7-2A-5.1. Corporate franchise tax amount.

The corporate franchise tax amount imposed on a corporation by Section 7-2A-3 NMSA 1978 shall be fifty dollars ($50.00) per taxable year or any fraction thereof.

**History:** Laws 1986, ch. 20, § 37; 1992, ch. 78, § 3.

**ANNOTATIONS**

**The 1992 amendment,** effective May 20, 1992, added "or any fraction thereof" at the end of the section.

**Computation.** — The tax provided by the former section was a franchise tax, since neither the property nor the capital stock of the corporation is taxed. Values of property and gross receipts are used as factors to determine the number of shares of the

corporate stock that measures the tax. Southern Pac. Co. v. State Corp. Comm'n, 1937-NMSC-059, 41 N.M. 556, 72 P.2d 15.

## 7-2A-6. Tax computation; alternative method.

For those taxpayers who do not compute an amount upon which the federal income tax is calculated or who do not compute their federal income tax payable for the taxable year, the secretary shall prescribe such regulations or instructions as he may deem necessary to enable them to compute their corporate income tax due.

**History:** 1978 Comp., § 7-2A-6, enacted by Laws 1981, ch. 37, § 39; 1986, ch. 20, § 38.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 85 C.J.S. Taxation § 1756 to 1759.

## 7-2A-7. Taxes applied to corporations on federal areas.

To the extent permitted by law, no corporation shall be relieved from liability for corporate income tax or corporate franchise tax by reason of receiving income from transactions occurring or work or services performed within a federal area.

**History:** 1978 Comp., § 7-2A-7, enacted by Laws 1981, ch. 37, § 40; 1986, ch. 20, § 39.

**ANNOTATIONS**

**Cross references.** — For other taxes applicable in federal areas, *see* 19-2-5 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation § 228.

84 C.J.S. Taxation § 292.

## 7-2A-8. Credit; income allocation and apportionment.

A. Net income of any taxpayer having income that is taxable both within and without this state shall be apportioned and allocated as follows:

(1) except as otherwise provided in Paragraphs (2) through (4) of this subsection, income shall be allocated and apportioned as provided in the Uniform Division of Income for Tax Purposes Act [Chapter 7, Article 4 NMSA 1978];

(2) except for gambling winnings, nonbusiness income as defined in the Uniform Division of Income for Tax Purposes Act not otherwise allocated or apportioned under the Uniform Division of Income for Tax Purposes Act shall be equitably allocated or apportioned in accordance with instructions, rulings or regulations of the secretary;

(3) other deductions and exemptions allowable in computing federal taxable income and not specifically allocated in the Uniform Division of Income for Tax Purposes Act shall be equitably allocated or apportioned in accordance with instructions, rulings or regulations of the secretary; and

(4) gambling winnings that are nonbusiness income and arise from sources within this state shall be allocated to this state.

B. For the purposes of this section, "non-New Mexico percentage" means the percentage determined by dividing the difference between the taxpayer's net income and the sum of the amounts allocated or apportioned to New Mexico by that net income.

C. A taxpayer may claim a credit in an amount equal to the amount of tax determined to be due under Section 7-2A-5 NMSA 1978 multiplied by the non-New Mexico percentage.

**History:** 1978 Comp., § 7-2A-8, enacted by Laws 1981, ch. 37, § 41; 1983, ch. 213, § 9; 1986, ch. 20, § 40; 1990, ch. 49, § 12; 1995, ch. 11, § 6; 1996, ch. 16, § 2.

## ANNOTATIONS

**The 1996 amendment,** effective April 1, 1996, in Subsection A, substituted "through (4)" for "and (3)" in Paragraph (1), inserted "allocated or" and "instruction, rulings or" in Paragraphs (2) and (3), added the exception at the beginning of Paragraph (2), and added Paragraph (4).

**The 1995 amendment,** effective June 16, 1995, added "credit" at the beginning of the section heading; substituted "Paragraphs (2) and (3)" for "Paragraphs (2) through (4) in Paragraph A(1)"; deleted former Paragraph A(4) relating to accounting by a taxpayer having income both within and without this state and who began business in this state after July 1, 1981, but prior to January 1, 1991; and made stylistic changes throughout the section.

**The 1990 amendment,** effective May 16, 1990, designated the former undesignated introductory language as present Subsection A and redesignated former Subsections A to D as Paragraphs (1) to (4) of present Subsection A; and in present Subsection A, rewrote the introductory paragraph which read "Net income of any taxpayer having income which is taxable both within and without this state shall be, prior to the application of the tax rate provided in Section 7-2A-5 NMSA 1978 of the Corporate Income and Franchise Tax Act, apportioned and allocated as follows", substituted "Paragraphs (2) through (4) of this subsection" for "Subsections B, C, D and E of this

section" in Paragraph (1), and inserted "but prior to January 1, 1991" and made stylistic changes in Paragraph (4); and added present Subsections B and C.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 287, 294 to 296, 470 to 473, 570, 572 to 577.

State income tax on resident in respect of income earned outside the state, 87 A.L.R. 380.

State income tax in respect of business that extends into other states, 130 A.L.R. 1183.

What constitutes doing business, business done, or the like, outside the state for purposes of allocation of income under tax laws, 167 A.L.R. 943.

Foreign corporation, validity, under Federal Constitution, of state tax on, or measured by, income of, 67 A.L.R.2d 1322.

84 C.J.S. Taxation §§ 41, 158, 171 to 173, 404 to 420, 432 to 433; 85 C.J.S. Taxation §§ 1715 to 1735, 1756 to 1761.

## 7-2A-8.1, 7-2A-8.2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 49, § 22 repealed 7-2A-8.1 NMSA 1978, as amended by Laws 1986, ch. 110, § 2, relating to credit for solar or wind energy equipment installation, effective January 1, 1993. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

Laws 1990, ch. 49, § 21 repealed 7-2A-8.2 NMSA 1978, as amended by Laws 1986, ch. 20, § 42, relating to tax credits for solar capital investments, effective January 1, 1991. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

## 7-2A-8.3. Combined returns.

A. A unitary corporation that is subject to taxation under the Corporate Income and Franchise Tax Act and that has not previously filed a combined return pursuant to this section or a consolidated return pursuant to Section 7-2A-8.4 NMSA 1978 may elect to file a combined return with other unitary corporations as though the entire combined net income were that of one corporation; provided, however, that for taxable years beginning on or after January 1, 2014, a unitary corporation that provides retail sales of goods in a facility of more than thirty thousand square feet under one roof in New Mexico shall file a combined return with other unitary corporations as though the entire combined net income were that of one corporation. The return filed under this method of reporting shall include the net income of all the unitary corporations. Transactions among the unitary corporations may be eliminated by applying the appropriate rules for

reporting income for a consolidated federal income tax return. Any corporation that has filed an income tax return with New Mexico pursuant to Section 7-2A-8.4 NMSA 1978 shall not file pursuant to this section unless the secretary gives prior permission to file on a combined return basis.

B. Once corporations have reported net income through a combined return for any taxable year, they shall file combined returns for subsequent taxable years, so long as they remain unitary corporations, unless the corporations elect to file pursuant to Section 7-2A-8.4 NMSA 1978 or unless the secretary grants prior permission for one or more of the corporations to file individually.

C. For taxable years beginning on or after January 1, 1993, no unitary corporation once included in a combined return may elect, or be granted permission by the secretary, for any subsequent taxable year to separately account pursuant to Paragraph (4) of Subsection A of Section 7-2A-8 NMSA 1978.

D. Notwithstanding Subsection A of this section, a unitary corporation shall not be required to file a combined return pursuant to this section if that unitary corporation:

(1) has operations in New Mexico at facilities that do not provide retail sales of goods; and

(2) employs at least seven hundred fifty employees in New Mexico at such facilities.

**History:** 1978 Comp., § 7-2A-8.3, enacted by Laws 1983, ch. 213, § 12; 1986, ch. 20, § 43; 1993, ch. 307, § 4; 1993, ch. 309, § 2; 2013, ch. 160, § 4.

**ANNOTATIONS**

**The 2013 amendment,** effective July 1, 2013, required combined reporting for certain unitary corporations with a retail facility of more than thirty thousand square feet but that do not have nonretail facilities that employ at least seven hundred fifty employees; in the first sentence, after "combined net income were that of one corporation", added the remainder of the sentence; and added Subsection D.

**Applicability.** — Laws 2013, ch. 160, § 14 provided that Laws 2013, ch. 160, § 4 applies to taxable years beginning on or after January 1, 2014.

**The 1993 amendment.** effective June 18, 1993, rewrote this section to the extent that a detailed comparison was impracticable.

## 7-2A-8.4. Consolidated returns.

A. Any corporation that is subject to taxation under the Corporate Income and Franchise Tax Act and that reports to the internal revenue service for federal income tax

purposes its net income consolidated with the net income of one or more other corporations may elect to report to New Mexico on the same basis.

B. Once a corporation has been included in a consolidated return to New Mexico, the corporation shall not elect to file a New Mexico return under any other method without prior permission of the secretary, unless the change in reporting method is required or allowed under the Internal Revenue Code. Furthermore, such a corporation shall not elect nor shall the secretary grant it permission to separately account for income in New Mexico pursuant to Paragraph (4) of Subsection A of Section 7-2A-8 NMSA 1978.

**History:** 1978 Comp., § 7-2A-8.4, enacted by Laws 1983, ch. 213, § 13; 1986, ch. 20, § 44; 1993, ch. 307, § 5; 1993, ch. 309, § 3.

**ANNOTATIONS**

**Cross references.** — For the Internal Revenue Code, *see* 26 U.S.C. § 1 et seq.

**1993 amendments.** — Identical amendments to this section were enacted by Laws 1993, ch. 307, § 5 and Laws 1993, ch. 309, § 3, both effective June 18, 1993, which, in Subsection A, deleted "The secretary shall permit" at the beginning, inserted "may elect" near the end, made a minor stylistic change and rewrote Subsection B. The section is set out above as amended by Laws 1993, ch. 309, § 3. *See* 12-1-8 NMSA 1978.

**Compiler's notes.** — The reference to Paragraph A(4) of 7-2A-8 NMSA 1978 in Subsection B is no longer current, since the 1995 amendment to 7-2A-8 NMSA 1978.

## 7-2A-8.5. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 49, § 23 repealed 7-2A-8.5 NMSA 1978, as amended by Laws 1986, ch. 20, relating to corporate income tax credit for geothermal capital investment, § 45, effective January 1, 1996.

## 7-2A-8.6. Credit for preservation of cultural property; corporate income tax credit.

A. Tax credits for the preservation of cultural property may be claimed as follows:

(1) to encourage the restoration, rehabilitation and preservation of cultural properties, a taxpayer that files a corporate income tax return and that is the owner of a cultural property listed on the official New Mexico register of cultural properties, with its consent, may claim a credit not to exceed twenty-five thousand dollars ($25,000) in an amount equal to one-half of the cost of restoration, rehabilitation or preservation of the cultural property; or

(2) if a cultural property, whose owner may otherwise claim the credit set forth in Paragraph (1) of this subsection is also located within an arts and cultural district designated by the state or a municipality pursuant to the Arts and Cultural District Act [15-5A-1 through 15-5A-7 NMSA 1978], the owner of that cultural property may claim a credit not to exceed fifty thousand dollars ($50,000), including any credit claimed pursuant to Paragraph (1) of this subsection, in an amount equal to one-half of the cost of restoration, rehabilitation or preservation of the cultural property.

B. The taxpayer may claim the credit if:

(1) it submitted a plan and specifications for restoration, rehabilitation or preservation to the committee and received approval from the committee for the plan and specifications prior to commencement of the restoration, rehabilitation or preservation;

(2) it received certification from the committee after completing the restoration, rehabilitation or preservation, or committee-approved phase, that it conformed to the plan and specifications and preserved and maintained those qualities of the property that made it eligible for inclusion in the official register; and

(3) the project is completed within twenty-four months of the date the project is approved by the committee in accordance with Paragraph (1) of this subsection.

C. A taxpayer may claim the credit provided in this section for each taxable year in which preservation, restoration or rehabilitation is carried out. Claims for the credit provided in this section shall be limited to three consecutive years, and the maximum aggregate credit allowable shall not exceed twenty-five thousand dollars ($25,000) if governed by Paragraph (1) of Subsection A of this section, or fifty thousand dollars ($50,000) if governed by Paragraph (2) of Subsection A of this section, for any single restoration, rehabilitation or preservation project certified by the committee for any cultural property listed on the official New Mexico register. No single project may extend beyond a period of more than two years.

D. A taxpayer who otherwise qualifies and claims a credit on a restoration, rehabilitation or preservation project on property owned by a partnership of which the taxpayer is a member may claim a credit only in proportion to the taxpayer's interest in the partnership. The total credit claimed by all members of the partnership shall not exceed twenty-five thousand dollars ($25,000) if governed by Paragraph (1) of Subsection A of this section, or fifty thousand dollars ($50,000) if governed by Paragraph (2) of Subsection A of this section, in the aggregate for any single restoration, preservation or rehabilitation project for any cultural property listed on the official New Mexico register approved by the committee.

E. The credit provided in this section may only be deducted from the taxpayer's corporate income tax liability. Any portion of the maximum tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried

forward for four consecutive years; provided, however, the total tax credits claimed under this section shall not exceed twenty-five thousand dollars ($25,000) if governed by Paragraph (1) of Subsection A of this section, or fifty thousand dollars ($50,000) if governed by Paragraph (2) of Subsection A of this section, for any single restoration, rehabilitation or preservation project for any cultural property listed on the official New Mexico register.

F. The historic preservation division shall promulgate regulations for the implementation of this section.

G. As used in this section:

(1) "committee" means the cultural properties review committee created in Section 18-6-4 NMSA 1978; and

(2) "historic preservation division" means the historic preservation division of the cultural affairs department created in Section 18-6-8 NMSA 1978.

History: 1978 Comp., § 7-2A-8.6, enacted by Laws 1984, ch. 34, § 2; 1986, ch. 20, § 46; 2007, ch. 160, § 15.

**ANNOTATIONS**

**Cross references.** — For credit for preservation of cultural property against income tax, *see* 7-2-18.2 NMSA 1978.

**The 2007 amendment,** effective June 15, 2007, added Paragraph (2) of Subsection A and set limitations on the amount of the tax credit.

**Applicability.** — Laws 2007, ch. 160, § 16 provided that Laws 2007, ch. 160 apply to taxable years beginning on or after January 1, 2009.

## 7-2A-8.7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1994, ch. 10, § 1, repealed 7-2A-8.7 NMSA 1978, as enacted by Laws 1993, ch. 309, § 4, relating to a temporary surcharge on certain returns, effective February 15, 1994. For provisions of former section, *see* the 1993 NMSA 1978 on *NMOneSource.com.*

## 7-2A-8.8. Welfare-to-work tax credit.

A. Any taxpayer who files a New Mexico corporate income tax return and who is entitled to claim the federal welfare-to-work credit provided by 26 U.S.C. Section 51A with respect to a state-qualified employee in a state-qualified job may take against the

taxpayer's corporate income tax liability a tax credit equal to fifty percent of the amount of the welfare-to-work credit claimed and allowed under 26 U.S.C. Section 51A with respect to that employee in that job.

B. To be eligible for the credit provided by this section, a taxpayer must be in compliance with the following provisions:

(1) the hiring of any state-qualified employee shall not result in the displacement of any currently employed worker or position, including partial displacement such as a reduction in the hours of nonovertime work, wages or employment benefits, or in any infringement of the promotional opportunities of any currently employed individual;

(2) the hiring of any state-qualified employee shall not impair existing contracts for services or collective bargaining agreements, and no employment under the terms of this act [7-2A-1 to 7-2A-16 NMSA 1978] shall be inconsistent with the terms of a collective bargaining agreement or involve the performance of duties covered under a collective bargaining agreement unless the employer and the labor organization concur in writing;

(3) a state-qualified employee may fill or perform the duties of an employment position only in a manner that is consistent with existing laws, personnel procedures and collective bargaining contracts;

(4) no state-qualified employee shall be employed or assigned:

(a) when any other individual is on layoff from the same or any substantially equivalent job;

(b) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its work force with the effect of filling the vacancy so created with a state-qualified employee; or

(c) to any position at a particular work site when there is an ongoing strike or lockout at that particular work site;

(5) state-qualified employees shall be paid a wage that is substantially like the wage paid for similar jobs with the employer with appropriate adjustments for experience and training but not less than the federal minimum hourly wage; and

(6) employers shall:

(a) maintain health, safety and working conditions not less than those of comparable jobs offered by the employer; and

(b) maintain standard and customary entry-level wages and benefits and apply historical and normal increases in wages and benefits appropriate for experience and training of the state-qualified employee.

C. For the purposes of this section:

(1) "high-unemployment county" means a county in which the unemployment rate as reported by the labor department exceeds ten percent in six or more months of the calendar year preceding the year for which the tax credit provided by this section is claimed;

(2) "state-qualified employee" means a "long-term family assistance recipient", as that term is defined in 26 U.S.C. Section 51A(c), who resides in a high-unemployment county during the period of employment for which the welfare-to-work credit provided by 26 U.S.C. Section 51A applies with respect to that employee; and

(3) "state-qualified job" means a job established by the taxpayer that:

(a) when first occupied by a state-qualified employee results in the total number of the taxpayer's employees exceeding the average number of the taxpayer's employees during the taxpayer's preceding tax year; or

(b) was a position previously filled by a state-qualified employee and was vacant prior to the hiring of the new state-qualified employee in that position.

D. The labor department shall determine whether the employee is a state-qualified employee and whether the job is a state-qualified job and, if the employee is a state-qualified employee and the job is a state-qualified job, certify that fact to the employer. The taxpayer claiming the tax credit provided by this section shall provide a copy of the certification with respect to each employee for which the tax credit is claimed.

E. By July 1, 1998 and by January 31 of each subsequent year, the labor department shall certify to the taxation and revenue department the high-unemployment counties for the preceding calendar year.

F. The tax credit provided in this section may only be deducted from the taxpayer's corporate income tax liability. Any portion of the tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for three consecutive taxable years.

**History:** Laws 1998, ch. 97, § 3.

## 7-2A-8.9. Tax credit; certain conveyances of real property.

A. There shall be allowed as a credit against the tax liability imposed by the Corporate Income and Franchise Tax Act an amount equal to fifty percent of the fair

market value of land or interest in land that is conveyed for the purpose of open space, natural resource or biodiversity conservation, agricultural preservation or watershed or historic preservation as an unconditional donation in perpetuity by the landowner or taxpayer to a public or private conservation agency eligible to hold the land and interests therein for conservation or preservation purposes. The fair market value of qualified donations made pursuant to this section shall be substantiated by a "qualified appraisal" prepared by a "qualified appraiser", as those terms are defined under applicable federal laws and regulations governing charitable contributions.

B. The amount of the credit that may be claimed by a taxpayer shall not exceed one hundred thousand dollars ($100,000) for a conveyance made prior to January 1, 2008 and shall not exceed two hundred fifty thousand dollars ($250,000) for a conveyance made on or after that date. In addition, in a taxable year the credit used may not exceed the amount of corporate income tax otherwise due. A portion of the credit that is unused in a taxable year may be carried over for a maximum of twenty consecutive taxable years following the taxable year in which the credit originated until fully expended. A taxpayer may claim only one tax credit per taxable year.

C. Qualified donations shall include the conveyance in perpetuity of a fee interest in real property or a less-than-fee interest in real property, such as a conservation restriction, preservation restriction, agricultural preservation restriction or watershed preservation restriction, pursuant to the Land Use Easement Act [47-12-1 through 47-12-6 NMSA 1978]; provided that the less-than-fee interest qualifies as a charitable contribution deduction under Section 170(h) of the Internal Revenue Code. Dedications of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits shall not be considered as qualified donations pursuant to the Land Conservation Incentives Act [75-9-1 through 75-9-6 NMSA 1978].

D. Qualified donations shall be eligible for the tax credit if the donations are made to the state of New Mexico, a political subdivision thereof or a charitable organization described in Section 501(c)(3) of the Internal Revenue Code and that meets the requirements of Section 170(h)(3) of that code.

E. To be eligible for treatment as qualified donations under this section, land or interests in lands must be certified by the secretary of energy, minerals and natural resources as fulfilling the purposes as set forth in Section 5-9-2 NMSA 1978. The use and protection of the lands, or interests therein, for open space, natural area protection, biodiversity habitat conservation, land preservation, agricultural preservation, historic preservation or similar use or purpose of the property shall be assured in perpetuity.

F. A taxpayer may apply for certification of eligibility for the tax credit provided by this section from the energy, minerals and natural resources department. If the energy, minerals and natural resources department determines that the application meets the requirements of this section and that the property conveyed will not adversely affect the property rights of contiguous landowners, it shall issue a certificate of eligibility to the taxpayer, which shall include a calculation of the maximum amount of tax credit for

which the taxpayer would be eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection.

G. To receive a credit pursuant to this section, a person shall apply to the taxation and revenue department on forms and in the manner prescribed by the department. The application shall include a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to Subsection F of this section. If all of the requirements of this section have been complied with, the taxation and revenue department shall issue to the applicant a document granting the tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed for the qualified donation made pursuant to this section.

H. The tax credit represented by a document issued pursuant to Subsection G of this section for a conveyance made on or after January 1, 2008, or an increment of that tax credit, may be sold, exchanged or otherwise transferred, and may be carried forward for a period of twenty taxable years following the taxable year in which the credit originated until fully expended. A tax credit or increment of a tax credit may only be transferred once. The credit may be transferred to any taxpayer. A taxpayer to whom a credit has been transferred may use the credit for the taxable year in which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but in no event may the transferred credit be used more than twenty years after it was originally issued.

I. A tax credit issued pursuant to this section shall be transferred through a qualified intermediary. The qualified intermediary shall, by means of a sworn notarized statement, notify the taxation and revenue department of the transfer and of the date of the transfer within ten days of the transfer. Credits shall only be transferred in increments of ten thousand dollars ($10,000) or more. The qualified intermediary shall keep an account of the credits and have the authority to issue sub-numbers registered with the taxation and revenue department and traceable to the original credit.

J. If a charitable deduction is claimed on the taxpayer's federal income tax for any contribution for which the credit provided by this section is claimed, the taxpayer's itemized deductions for New Mexico income tax shall be reduced by the amount of the deduction for the contribution in order to determine the New Mexico taxable income of the taxpayer.

K. For the purposes of this section:

(1) "qualified intermediary" does not include a person who has been previously convicted of a felony, who has had a professional license revoked, who is engaged in the practice defined in Section 61-28B-3 NMSA 1978 and who is identified in Section 61-29-2 NMSA 1978, and does not include any entity owned wholly or in part or employing any of the foregoing persons; and

(2) "taxpayer" means a citizen or resident of the United States, a domestic partnership, a limited liability company, a domestic corporation, an estate, including a foreign estate, or a trust.

History: 1978 Comp., § 7-2A-8.9, enacted by Laws 2003, ch. 331, § 8; 2007, ch. 335, § 2.

**ANNOTATIONS**

**Cross references.** — For §§ 501 (c)(3) and 170(h) of the Internal Revenue Code , *see* 26 U.S.C. § 501 (c)(3) and 26 U.S.C. § 170(h).

**The 2007 amendment,** effective June 15, 2007, provided that the credit shall not exceed $100,000 for a conveyance prior to January 1, 2008 and $250,000 for a conveyance on or after January 1, 2008; and added Subsections F through K.

## 7-2A-9. Taxpayer returns; payment of tax.

A. Every corporation deriving income from any business transaction, property or employment within this state, that is not exempt from tax under the Corporate Income and Franchise Tax Act and that is required by the laws of the United States to file a federal income tax return shall file a complete tax return with the department in form and content as prescribed by the secretary. Except as provided in Subsection C of this section, a corporation that is required by the provisions of the Corporate Income and Franchise Tax Act to file a return or pay a tax shall, on or before the due date of the corporation's federal corporate income tax return for the taxable year, file the return and pay the tax imposed for that year.

B. Every domestic or foreign corporation that is not exempt from tax under the Corporate Income and Franchise Tax Act, that is employed or engaged in the transaction of business in, into or from this state or that derives any income from property or employment within this state and every domestic or foreign corporation, regardless of whether it is engaged in active business, that has or exercises its corporate franchise in this state and that is not exempt from tax under the Corporate Income and Franchise Tax Act shall file a return in the form and content as prescribed by the secretary and pay the tax levied pursuant to Subsection B of Section 7-2A-3 NMSA 1978 in the amount for each corporation as specified in Section 7-2A-5.1 NMSA 1978. Returns and payment of tax for corporate franchise tax for a taxable year shall be filed and paid on the date specified in Subsection A or C of this section for payment of corporate income tax for the preceding taxable year.

C. A corporation that is required by the provisions of the Corporate Income and Franchise Tax Act to file a return or pay a tax and that is approved by the department to use electronic media for filing and paying taxes shall, if using electronic media for filing and paying taxes, file the return and pay the tax levied for that taxable year on or before the last day of the month in which the corporation's federal corporate income tax return

is originally due for the taxable year. The due date provided by this subsection does not apply to corporations that have received a filing extension from New Mexico or an extension from the federal internal revenue service for the same taxable year.

History: 1978 Comp., § 7-2A-9, enacted by Laws 1981, ch. 37, § 42; 1986, ch. 20, § 47; 1989, ch. 111, § 2; 2015 (1st S.S.), ch. 2, § 4; 2016, ch. 15, § 2.

## ANNOTATIONS

**The 2016 amendment,** effective May 18, 2016, changed the due dates of income taxes to conform with due dates pursuant to federal law, and provided certain exceptions; in Subsection A, in the second sentence, after "on or before the", deleted "fifteenth day of the third month following the end of each taxable year" and added "due date of the corporation's federal corporate income tax return for the taxable year", and after "pay the tax", deleted "levied" and added "imposed"; and in Subsection C, after "taxable year on or before the", deleted "thirtieth" and added "last", after "day of the", deleted "third", and after "month", deleted "following the end of that year" and added the remainder of the subsection.

**Applicability.** — Laws 2016, ch. 15, § 3 provided that the provisions of Laws 2016, ch. 15, §§ 1 and 2 apply to taxable years beginning on or after January 1, 2016.

**The 2015 (1st S.S.) amendment,** effective September 6, 2015, provided for corporations that are required to file a return or pay a tax pursuant to the Corporate Income and Franchise Tax Act to use electronic media for filing and paying the tax, and set a deadline for filing the tax return and paying the tax; in Subsection A, after "within this state", deleted "and" and added "that is", after "Corporate Income and Franchise Tax Act", deleted "which" and added "and that", and after "prescribed by the secretary.", deleted "Corporations shall file such returns with the department on or before the fifteenth day of the third month following the end of each taxable year. The corporate income tax imposed on corporations under Subsection A of Section 7-2A-3 NMSA 1978 is due and payment is required on or before the fifteenth day of the third month following the end of the taxable year." and added the last sentence; in Subsection B, after the first occurrence of "foreign corporation", added "that is", after the first occurrence of "Corporate Income and Franchise Tax Act", added "that is", after "from this state or", deleted "deriving" and added "that derives", after the second occurrence of "foreign corporation", added "regardless of", after "whether", added "it is", after "active business", deleted "or not, but having or exercising" and added "that has or exercises", after "in this state and", added "that is", after the second occurrence of "Corporate Income and Franchise Tax Act", deleted "is required to" and added "shall", and after "Subsection A", added "or C"; and added Subsection C.

**The 1989 amendment,** effective June 16, 1989, in Subsection A substituted all of the language of the last sentence preceding "is due" for "The tax imposed on corporations under the Corporate Income and Franchise Tax Act", and in Subsection B substituted "is required" for "shall be required" near the middle of the first sentence, and inserted

"for a taxable year" near the beginning of the second sentence while adding all of the language of that sentence following "this section".

**Trustees in bankruptcy** who have been appointed to conduct the business of a foreign railroad corporation are liable for the tax, since otherwise the franchise would be dissolved and could not be returned to the corporation when rehabilitation was complete. Lowden v. State Corp. Comm'n, 1938-NMSC-016, 42 N.M. 254, 76 P.2d 1139 (decided predecessor of 53-3-3 NMSA 1978, now repealed).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 266, 589 to 596.

Corporation in hands of receiver, 18 A.L.R. 700, 26 A.L.R. 426.

Forfeiture of charter for nonpayment of franchise taxes, 47 A.L.R. 1288, 97 A.L.R. 477.

Penalty for nonpayment of franchise taxes when due as affected by lack of notice to the taxpayer, 102 A.L.R. 406.

Amount in controversy in case involving franchise taxes, 109 A.L.R. 314.

85 C.J.S. Taxation §§ 1699, 1777 to 1778.

## 7-2A-9.1. Estimated tax due; payment of estimated tax; penalty; exemption.

A. Every taxpayer shall pay estimated corporate income tax to the state of New Mexico during its taxable year if its tax after applicable credits is five thousand dollars ($5,000) or more in the current taxable year. A taxpayer to which this section applies shall calculate estimated tax by one of the following methods:

(1) estimating the amount of tax due, net of any credits, for the current taxable year, provided that the estimated amount is at least eighty percent of the amount determined to be due for the taxable year;

(2) using as the estimate an amount equal to one hundred percent of the tax due for the previous taxable year, if the previous taxable year was a full twelve-month year;

(3) using as the estimate an amount equal to one hundred ten percent of the tax due for the taxable year immediately preceding the previous taxable year, if the taxable year immediately preceding the previous taxable year was a full twelve-month year and the return for the previous taxable year has not been filed and the extended due date for filing that return has not occurred at the time the first installment is due for the taxable year; or

(4) estimating the amount of tax due, net of any credits, for each fiscal quarter of the current taxable year, provided that the estimated amount is at least eighty percent of the amount determined to be due for that quarter.

B. If Subsection A of this section applies, the amount of estimated tax shall be paid in installments as provided in this subsection. Twenty-five percent of the estimated tax calculated under Paragraph (1), (2) or (3) of Subsection A of this section or one hundred percent of the estimated tax calculated under Paragraph (4) of Subsection A of this section is due on or before the following dates: the fifteenth day of the fourth month of the taxable year, the fifteenth day of the sixth month of the taxable year, the fifteenth day of the ninth month of the taxable year and the fifteenth day of the twelfth month of the taxable year. Application of this subsection to a taxable year that is a fractional part of a year shall be determined by regulation of the secretary.

C. Every taxpayer to which Subsection A of this section applies that fails to pay the estimated tax when due or that makes estimated tax payments during the taxable year that are less than the lesser of eighty percent of the income tax imposed on the taxpayer under the Corporate Income and Franchise Tax Act or the amount required by Paragraph (2), (3) or (4) of Subsection A of this section shall be subject to the interest and penalty provisions of Sections 7-1-67 and 7-1-69 NMSA 1978 on the underpayment.

D. For purposes of this section, the amount of underpayment shall be the excess of the amount of the installment that would be required to be paid if the estimated tax were equal to eighty percent of the tax shown on the return for the taxable year or the amount required by Paragraph (2), (3) or (4) of Subsection A of this section or, if no return was filed, eighty percent of the tax for the taxable year for which the estimated tax is due less the amount, if any, of the installment paid on or before the last date prescribed for payment.

E. For purposes of this section, the period of underpayment shall run from the date the installment was required to be paid to whichever of the following dates is earlier:

(1) the fifteenth day of the third month following the end of the taxable year; or

(2) with respect to any portion of the underpayment, the date on which such portion is paid. For the purposes of this paragraph, a payment of estimated tax on any installment date shall be applied as a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under Subsection D of this section due on such installment date.

F. For the purposes of this section, the amount of tax deducted and withheld with respect to a taxpayer under the Withholding Tax Act [Chapter 7, Article 3 NMSA 1978] or the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act [Chapter 7, Article 3A NMSA 1978] shall be deemed a payment of estimated tax. An equal amount of the amount of withheld tax shall be deemed paid on each due date for the applicable

taxable year unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts withheld shall be deemed payments of estimated tax on the dates on which the amounts were actually withheld. The taxpayer may apply the provisions of this subsection separately to amounts withheld under the Withholding Tax Act or the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. Amounts of tax paid by taxpayers pursuant to Section 7-3A-3 NMSA 1978 shall not be deemed a payment of estimated tax.

History: 1978 Comp., § 7-2A-9.1, enacted by Laws 1986, ch. 5, § 1; 1990, ch. 49, § 13; 1992, ch. 78, § 4; 1995, ch. 11, § 7; 1997, ch. 60, § 1; 2003, ch. 86, § 2; 2003, ch. 295, § 1; 2009, ch. 4, § 1; 2010, ch. 53, § 2.

## ANNOTATIONS

**The 2010 amendment,** effective May 19, 2010, in Subsection F, in the first and third sentences, after "Oil and Gas Proceeds", added "and Pass-Through Entity"; and added the last sentence.

**Applicability.** — Laws 2010, ch. 53, § 19 provided that the provisions of this act are applicable to taxable years beginning on or after January 1, 2011.

**The 2009 amendment,** effective February 6, 2009, in Subsection B, provided that the payment date for the first quarterly payment of estimated corporate income tax is the fifteenth day of the fourth month of the taxable year; and in Subsection F, provided that the amount of the tax deducted and withheld under the Withholding Tax Act is a payment of estimated tax and added the last sentence.

**Temporary provisions.** — Laws 2009, ch. 4, § 2, provided that for estimated payments due on or before April 15, 2009, pursuant to Section 7-2A-9.1 NMSA 1978, a taxpayer shall remit at least one-eighth of the annual estimated taxes due for the taxable year in lieu of the one-fourth that is required in that section. The remainder of the annual estimated taxes due in the first quarter shall be remitted in addition to the taxpayer's second-quarter payment by June 15, 2009.

**The 2003 amendment,** effective June 20, 2003, in Subsection A substituted "is" for "for such taxable year can reasonably be expected to be" following "applicable credits" near the middle of the first sentence and added "in the current taxable year" at the end of the first sentence; deleted "and if the amount due for that previous taxable year was at least five thousand dollars ($5,000); or" at the end of Paragraph A(2); deleted "the amount due for the taxable year immediately preceding the previous taxable year was at least five thousand dollars ($5,000)" following "a full twelve-month year" in Paragraph A(3); added Paragraph A(4); in Subsection B, substituted "provided in this subsection. Twenty-five percent of the estimated tax calculated under Paragraph (1), (2), or (3) of Subsection A of this section or one hundred percent of the estimated tax calculated under Paragraph (4) of Subsection A of this section is due on or before the following dates" for "follows: twenty-five percent of the estimated tax is due on or before the

fifteenth day of the fourth month of the taxable year, another twenty-five percent is due on or before", deleted "another twenty-five percent is due on or before" following "sixth month of the taxable year,", and deleted "the final twenty-five percent is due on or before" following "ninth month of the taxable year and"; inserted "or (4)" following "(3)" near the middle of Subsections C and D.

This section was also amended by Laws 2003, ch. 86, § 2, effective October 1, 2003. The section was set out as amended by Laws 2003, ch. 295, § 1. *See* 12-1-8 NMSA 1978.

**The 1997 amendment,** effective June 20, 1997, rewrote Paragraph A(2), and added Paragraph A(3) and made related stylistic changes.

**The 1995 amendment,** effective June 16, 1995, inserted "the greater of five thousand dollars ($5,000)" in Subsection A(2), substituted "the amount required by Paragraph (2) of Subsection A of this section" for "one hundred percent of the tax liability for the previous taxable year" in Subsections C and D, and made a stylistic change.

**The 1992 amendment,** effective May 20, 1992, added the second sentence of Subsection A; and, in Subsection C, substituted "the lesser of eighty percent of the income tax" for "eighty percent of the tax", substituted "Corporate Income and Franchise Tax Act" for "Corporate Income Tax Act", and inserted "or one hundred percent of the tax liability for the previous taxable year".

**The 1990 amendment,** effective May 16, 1990, inserted "after applicable credits" in Subsection A, substituted "secretary" for "director" at the end of Subsection B, redesignated former Paragraphs (1) and (2) of Subsection C as present Subsections D and E, designated former Subparagraphs (a) and (b) of Paragraph (C)(2) as present Paragraphs (1) and (2) of Subsection E; in Paragraph (2) of Subsection E, substituted "this paragraph" for "this subparagraph" and "Subsection D of this section" for "Paragraph (1) of this subsection"; and made a minor stylistic change in Subsection D.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation § 596.

85 C.J.S. Taxation §§ 1777 et seq.

## 7-2A-9.2. Limitation on claiming of credits and tax rebates.

A credit or tax rebate provided in the Corporate Income and Franchise Tax Act that is claimed shall be disallowed if the claim for the credit or tax rebate was first made after the end of the third calendar year following the calendar year in which the return upon which the credit or rebate was first claimable was initially due.

**History:** 1978 Comp., § 7-2A-9.2, enacted by Laws 1990, ch. 23, § 2.

## 7-2A-10. Information returns.

A. Pursuant to regulation, the secretary may require any person doing business in this state and making payments in the course of business to another person to file information returns with the department.

B. The provisions of this section also apply to payments made by the state of New Mexico, by the governing bodies of any political subdivision of the state of New Mexico, by any agency, department or instrumentality of the state or of any political subdivision thereof and, to the extent permitted by law or pursuant to any agreement entered into by the secretary, to payments made by any other governmental body or by an agency, department or instrumentality thereof.

**History:** 1978 Comp., § 7-2A-10, enacted by Laws 1981, ch. 37, § 43; 1983, ch. 213, § 14; 1986, ch. 20, § 48.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation § 589.

85 C.J.S. Taxation §§ 1699, 1777 et seq.

## 7-2A-11. Accounting methods.

A taxpayer shall use the same accounting methods for reporting income for corporate income tax purposes as are used in reporting income for federal income tax purposes.

**History:** 1978 Comp., § 7-2A-11, enacted by Laws 1981, ch. 37, § 44; 1986, ch. 20, § 49.

**ANNOTATIONS**

**Cross references.** — For deduction of accounting services from gross receipts by corporations, *see* 7-9-69 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 578, 579.

85 C.J.S. Taxation § 1699.

## 7-2A-12. Fiscal years permitted.

Any corporation which files income tax returns under the Internal Revenue Code on the basis of a fiscal year shall report income under the Corporate Income and Franchise Tax Act on the same basis.

**History:** 1978 Comp., § 7-2A-12, enacted by Laws 1981, ch. 37, § 45; 1986, ch. 20, § 50.

**ANNOTATIONS**

**Cross references.** For the Internal Revenue Code, *see* 26 U.S.C. § 1 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 578 to 586.

85 C.J.S. Taxation § 1697.

## 7-2A-13. Administration.

The Corporate Income and Franchise Tax Act shall be administered pursuant to the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

**History:** 1978 Comp., § 7-2A-13, enacted by Laws 1981, ch. 37, § 46; 1986, ch. 20, § 51.

## 7-2A-14. Corporate-supported child care; credits allowed.

A. A taxpayer that pays for child care services in New Mexico for dependent children of an employee of the taxpayer during the employee's hours of employment may claim a credit against the corporate income tax imposed pursuant to the Corporate Income and Franchise Tax Act in an amount equal to thirty percent of the total expenses, net of any reimbursements, for child care services incurred and paid by the taxpayer in the taxable year.

B. A taxpayer that operates a child care facility in New Mexico used primarily by the dependent children of the taxpayer's employees may also claim a credit against the corporate income tax imposed pursuant to the Corporate Income and Franchise Tax Act in an amount equal to thirty percent of the net cost of operating the child care facility for the taxable year. If two or more taxpayers share in the cost of operating a child care facility primarily for the dependent children of the taxpayers' employees, each taxpayer shall be allowed a credit in relation to the taxpayer's share of the cost of operating the child care facility. Each taxpayer's share of the tax credit shall be determined by dividing the employer's share of the net cost of operating the child care facility by the number of children served and multiplying the result by the number of the taxpayer's employees' children served. The credit allowed pursuant to this subsection may be taken only if the child care facility is operated under the authority of a license issued pursuant to the Public Health Act [Chapter 24, Article 1 NMSA 1978] and is operated without profit by

the taxpayer. For the purposes of this section, the term "net cost" means the cost of operating a child care facility less any amounts collected as fees for use of the facility, any federal tax credits with respect to the facility or its operation and any other payment or reimbursement from any other source other than the credit provided by this section.

C. For the purposes of this section, "dependent children" means children under twelve years of age.

D. The credits provided for by Subsections A and B of this section may only be deducted from the taxpayer's corporate income tax liability for the taxable year in which the expenditures occurred. The credit may not exceed thirty thousand dollars ($30,000) in any taxable year. If the credit amount exceeds the corporate income tax liability, the excess may be carried forward for three consecutive years; provided that in no event shall the annual credit amount exceed thirty thousand dollars ($30,000).

**History:** Laws 1983, ch. 218, § 1; 1986, ch. 20, § 52; 1995, ch. 11, § 8.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, inserted "net of any reimbursement" near the end of Subsection A; and, in Subsection B, rewrote the third sentence which read "The tax credit shall be determined by dividing the net operating cost paid by the employer by the number of children served and multiplying the result by the number of employees' children served", added the final sentence, and made stylistic changes.

**Payments made under salary reduction payroll program.** — Under an employer's salary reduction payroll program by which employees could shelter from income tax a portion of their salary and then use the tax sheltered salary to pay for dependent care expenses, the expenses were "incurred and paid" by the employer, rather than the employees, within the meaning of this section. Intel Corp. v. Taxation & Revenue Dep't, 1997-NMCA-005, 122 N.M. 760, 931 P.2d 754.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation § 549.

85 C.J.S. Taxation §§ 1719, 1756 to 1759, 1777 to 1778.

## 7-2A-15. Qualified business facility rehabilitation credit; corporate income tax credit.

A. To stimulate the creation of new jobs and revitalize economically distressed areas within New Mexico enterprise zones, any taxpayer who files a corporate income tax return and who is the owner of a qualified business facility may claim a credit in an amount equal to one-half of the cost, not to exceed fifty thousand dollars ($50,000), incurred to restore, rehabilitate or renovate a qualified business facility.

B. A taxpayer may claim the credit provided in this section for each taxable year in which restoration, rehabilitation or renovation is carried out. Except as provided in Subsection D of this section, claims for the credit provided in this section shall be limited to three consecutive years, and the maximum aggregate credit allowable shall not exceed fifty thousand dollars ($50,000) for any single restoration, rehabilitation or renovation project for any qualified business facility. Each claim for a qualified business facility rehabilitation credit shall be accompanied by documentation and certification as the department may require by regulation or instruction.

C. No credit may be claimed or allowed pursuant to the provisions of this section for any costs incurred for a restoration, rehabilitation or renovation project for which a credit may be claimed pursuant to the provisions of Section 7-2A-8.6 or Section 7-9A-1 NMSA 1978.

D. A taxpayer who otherwise qualifies and claims a credit on a restoration, rehabilitation or renovation project on a building owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to his interest in the partnership or association. The total credit claimed by all members of the partnership or association shall not exceed fifty thousand dollars ($50,000) in the aggregate for any single restoration, rehabilitation or renovation project for a qualified business facility.

E. The credit provided in this section may only be deducted from the taxpayer's corporate income tax liability. Any portion of the maximum tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for four consecutive taxable years; provided, the total tax credits claimed under this section shall not exceed fifty thousand dollars ($50,000) for any single restoration, rehabilitation or renovation project for a qualified business facility.

F. As used in this section:

(1) "qualified business facility" means a building located in a New Mexico enterprise zone that is suitable for use and is put into service by a person in the manufacturing, distribution or service industry immediately following the restoration, rehabilitation or renovation project; provided, the building must have been vacant for the twenty-four month period immediately preceding the commencement of the restoration, rehabilitation or renovation project; and

(2) "restoration, rehabilitation or renovation" includes:

(a) the construction services necessary to ensure that a building is in compliance with applicable zoning codes, is safe for occupancy and meets the operating needs of a person in the manufacturing, distribution or service industry; and

(b) expansion of or additions to a building if the expansion or addition does not increase the usable square footage of the building by more than ten percent of the

usable square footage of the building prior to the restoration, rehabilitation or renovation.

**History:** Laws 1994, ch. 115, § 2.

## 7-2A-16. Intergovernmental business tax credit.

A. With respect to the net income of a taxpayer engaged in the transaction of business occurring after July 1, 1997 from a new business on Indian land, the person who is liable for the payment of the corporate income tax may claim a credit as provided in Subsection D of this section against the corporate income tax for the aggregate amount of tax paid to an Indian nation, tribe or pueblo located in whole or in part within New Mexico.

B. The credit provided by this section may be referred to as the "intergovernmental business tax credit".

C. As used in this section:

(1) "aggregate amount of tax" means the total of all taxes imposed by an Indian nation, tribe or pueblo located in whole or in part in New Mexico on income derived from the new business's activity on Indian land, except a tax shall not be included in that total if the tax is eligible for a credit pursuant to the provisions of Section 7-29C-1 NMSA 1978 or any other intergovernmental tax credit that provides a similar tax credit;

(2) "Indian land" means all land in New Mexico that on March 1, 1997 was:

(a) within the exterior boundaries of an Indian reservation or pueblo grant; or

(b) lands held in trust by the United States for an individual Indian nation, tribe or pueblo;

(3) "new business" means a manufacturer or processor that occupies a new business facility or a grower that commences operation in New Mexico on or after July 1, 1997; and

(4) "new business facility" means a facility on Indian land that satisfies the following requirements:

(a) the facility is employed by the taxpayer in the operation of a revenue-producing enterprise. The facility shall not be considered a "new business facility" in the hands of the taxpayer if the taxpayer's only activity with respect to the facility is to lease it to another person;

(b) the facility is acquired by or leased to the taxpayer on or after January 1, 1997. The facility shall be deemed to have been acquired by or leased to the taxpayer on or after the specified date if the transfer of title to the taxpayer, the transfer of possession pursuant to a binding contract to transfer title to the taxpayer or the commencement of the term of the lease to the taxpayer occurs on or after that date or if the facility is constructed, erected or installed by or on behalf of the taxpayer, the construction, erection or installation is completed on or after that date;

(c) the facility is a newly acquired facility in which the taxpayer is not continuing the operation of the same or a substantially identical revenue-producing enterprise that previously was in operation on the Indian land of the Indian nation, tribe or pueblo where the facility is now located; a facility is a "newly acquired facility" if the facility was acquired or leased by the taxpayer from another person even if the facility was employed in a revenue-producing enterprise on the Indian land of the same Indian nation, tribe or pueblo immediately prior to the transfer of the title to the facility to the taxpayer or immediately prior to the commencement of the term of the lease of the facility to the taxpayer by another person provided that the revenue-producing enterprise of the previous occupant was not the same or substantially identical to the taxpayer's revenue-producing enterprise; and

(d) the facility is not a replacement business facility for a business facility that existed on the Indian land of the Indian nation, tribe or pueblo where the business is now located.

D. The intergovernmental business tax credit shall be determined separately for each reporting period and shall be equal to fifty percent of the lesser of:

(1) the aggregate amount of tax paid by a taxpayer; or

(2) the amount of the taxpayer's corporate income tax due for the reporting period from the new business's activity conducted on Indian land.

E. The department shall administer and interpret the provisions of this section in accordance with the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

F. The burden of showing entitlement to a credit authorized by this section is on the taxpayer claiming it, and the taxpayer shall furnish to the appropriate tax collecting agency, in the manner determined by the department, proof of payment of the aggregate amount of tax on which the credit is based.

G. For a taxpayer qualifying for the credit provided by this section that conducts business in New Mexico both on and off Indian land, the taxpayer's corporate income tax liability derived from the new business activity conducted on Indian land shall be equal to the sum of the products of one-half of the taxpayer's New Mexico corporate income tax liability before application of the credit provided by this section multiplied by

the payroll factor and one-half of the taxpayer's New Mexico corporate income tax liability before application of the credit provided by this section multiplied by the property factor. The factors shall be determined as follows:

(1) the payroll factor is a fraction, the numerator of which is the amount of compensation paid to employees employed during the tax period by the taxpayer in his new business on Indian land, and the denominator of which is the total amount of compensation paid to employees employed during the tax period by the taxpayer in all of New Mexico, including Indian land; and

(2) the property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the new business on Indian land in New Mexico during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible property owned or rented and used in New Mexico, including on Indian land, during the tax period.

**History:** Laws 1997, ch. 58, § 1.

**ANNOTATIONS**

## 7-2A-17. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 217, § 4 repealed 7-2A-17 NMSA 1978, as enacted by Laws 1999, ch. 217, § 2, relating to the job mentorship tax credit, effective January 1, 2002. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com.*

**Compiler's notes.** — For possible carry forward of credit after repeal of section, *see* temporary provisions note under this section on the 1998 NMSA 1978 on *NMOneSource.com.*

## 7-2A-17.1. Job mentorship tax credit.

A. To encourage New Mexico businesses to hire youth participating in career preparation education programs, a taxpayer that is a New Mexico business and that files a corporate income tax return may claim a credit in an amount equal to fifty percent of gross wages paid to qualified students who are employed by the taxpayer during the taxable year for which the return is filed. The tax credit provided by this section may be referred to as the "job mentorship tax credit".

B. A taxpayer may claim the job mentorship tax credit provided in this section for each taxable year in which the taxpayer employs one or more qualified students. The maximum aggregate credit allowable shall not exceed fifty percent of the gross wages

paid to not more than ten qualified students employed by the taxpayer for up to three hundred twenty hours of employment of each qualified student in each taxable year for a maximum of three taxable years for each qualified student. In no event shall a taxpayer claim a credit in excess of twelve thousand dollars ($12,000) in any taxable year. The employer shall certify that hiring the qualified student does not displace or replace a current employee.

C. The department shall issue job mentorship tax credit certificates upon request to any accredited New Mexico secondary school that has a school-sanctioned career preparation education program. The maximum number of certificates that may be issued in a school year to any one school is equal to the number of qualified students in the school-sanctioned career preparation education program on October 15 of that school year, as certified by the school principal.

D. A job mentorship tax credit certificate may be executed by a school principal with respect to a qualified student, and the executed certificate may be transferred to a New Mexico business that employs that student. By executing the certificate with respect to a student, the school principal certifies that the school has a school-sanctioned career preparation education program and the student is a qualified student.

E. To claim the job mentorship tax credit, the taxpayer must submit with respect to each employee for whom the credit is claimed:

(1) a properly executed job mentorship tax credit certificate;

(2) information required by the secretary with respect to the employee's employment by the taxpayer during the taxable year for which the credit is claimed; and

(3) information required by the secretary that the employee was not also employed in the same taxable year by another New Mexico business qualifying for and claiming a job mentorship tax credit for that employee pursuant to this section or the Income Tax Act [Chapter 7, Article 2 NMSA 1978].

F. The job mentorship tax credit may only be deducted from the taxpayer's corporate income tax liability for the taxable year. Any portion of the maximum credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for three consecutive taxable years; provided the total credits claimed pursuant to this section shall not exceed the maximum allowable under Subsection B of this section.

G. As used in this section:

(1) "career preparation education program" means a work-based learning or school-to-career program designed for secondary school students to create academic and career goals and objectives and find employment in a job meeting those goals and objectives;

(2) "New Mexico business" means a corporation that carries on a trade or business in New Mexico and that employs in New Mexico fewer than three hundred full-time employees during the taxable year; and

(3) "qualified student" means an individual who is at least fourteen years of age but not more than twenty-one years of age who is attending full time an accredited New Mexico secondary school and who is a participant in a career preparation education program sanctioned by the secondary school.

**History:** Laws 2003, ch. 400, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 400 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

## 7-2A-18. Credit; certain electronic equipment.

A. A taxpayer who files a New Mexico corporate income tax return, is licensed by the state to sell cigarettes, other tobacco products or alcoholic beverages and has purchased and has in use equipment that electronically reads identification cards to verify age, may claim a one-time credit in an amount equal to three hundred dollars ($300) for each business location the taxpayer has such equipment in use.

B. The credit provided in this section may only be deducted from the taxpayer's New Mexico income tax liability for the taxable year.

C. A taxpayer who otherwise qualifies and claims a credit pursuant to this section for equipment owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to his interest in the partnership or association. The total credit claimed by all members of the partnership or association shall not exceed three hundred dollars ($300) in the aggregate for each business location the partnership or association has purchased equipment and has it in use.

**History:** Laws 2001, ch. 73, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2001, ch. 73 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

## 7-2A-19. Renewable energy production tax credit; limitations; definitions; claiming the credit.

A. The tax credit provided in this section may be referred to as the "renewable energy production tax credit". The tax credit provided in this section may not be claimed with respect to the same electricity production for which the renewable energy production tax credit provided in the Income Tax Act [Chapter 7, Article 2 NMSA 1978] has been claimed.

B. A person is eligible for the renewable energy production tax credit if the person:

(1) holds title to a qualified energy generator that first produced electricity on or before January 1, 2018; or

(2) leases property upon which a qualified energy generator operates from a county or municipality under authority of an industrial revenue bond and if the qualified energy generator first produced electricity on or before January 1, 2018.

C. The amount of the tax credit shall equal one cent ($.01) per kilowatt-hour of the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator in the taxable year using a wind-or biomass-derived qualified energy resource, provided that the total amount of tax credits claimed by all taxpayers for a single qualified energy generator in a taxable year using a wind- or biomass-derived qualified energy resource shall not exceed one cent ($.01) per kilowatt-hour of the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator.

D. The amount of the tax credit for electricity produced by a qualified energy generator in the taxable year using a solar-light-derived or solar-heat-derived qualified energy resource shall be at the amounts specified in Paragraphs (1) through (10) of this subsection; provided that the total amount of tax credits claimed for a taxable year by all taxpayers for a single qualified energy generator using a solar-light-derived or solar-heat-derived qualified energy resource shall be limited to the first two hundred thousand megawatt-hours of electricity produced by the qualified energy generator in the taxable year:

(1) one and one-half cents ($.015) per kilowatt-hour in the first taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(2) two cents ($.02) per kilowatt-hour in the second taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(3) two and one-half cents ($.025) per kilowatt-hour in the third taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(4) three cents ($.03) per kilowatt-hour in the fourth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(5) three and one-half cents ($.035) per kilowatt-hour in the fifth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(6) four cents ($.04) per kilowatt-hour in the sixth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(7) three and one-half cents ($.035) per kilowatt-hour in the seventh taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(8) three cents ($.03) per kilowatt-hour in the eighth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(9) two and one-half cents ($.025) per kilowatt-hour in the ninth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource; and

(10) two cents ($.02) per kilowatt-hour in the tenth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource.

E. A taxpayer eligible for a renewable energy production tax credit pursuant to Subsection B of this section shall be eligible for the renewable energy production tax credit for ten consecutive years, beginning on the date the qualified energy generator begins producing electricity.

F. As used in this section:

(1) "biomass" means organic material that is available on a renewable or recurring basis, including:

(a) forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low-commercial value materials or undesirable species, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;

(b) agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws and stover, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey and lactose;

(c) animal waste, including manure and slaughterhouse and other processing waste;

(d) solid woody waste materials, including landscape or right-of-way tree trimmings, rangeland maintenance residues, waste pallets, crates and manufacturing, construction and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;

(e) crops and trees planted for the purpose of being used to produce energy;

(f) landfill gas, wastewater treatment gas and biosolids, including organic waste byproducts generated during the wastewater treatment process; and

(g) segregated municipal solid waste, excluding tires and medical and hazardous waste;

(2) "qualified energy generator" means a facility with at least one megawatt generating capacity located in New Mexico that produces electricity using a qualified energy resource and that sells that electricity to an unrelated person; and

(3) "qualified energy resource" means a resource that generates electrical energy by means of a fluidized bed technology or similar low-emissions technology or a zero-emissions generation technology that has substantial long-term production potential and that uses only the following energy sources:

(a) solar light;

(b) solar heat;

(c) wind; or

(d) biomass.

G. A person that holds title to a facility generating electricity from a qualified energy resource or a person that leases such a facility from a county or municipality pursuant to an industrial revenue bond may request certification of eligibility for the renewable energy production tax credit from the energy, minerals and natural resources department, which shall determine if the facility is a qualified energy generator. The energy, minerals and natural resources department may certify the eligibility of an energy generator only if the total amount of electricity that may be produced annually by all qualified energy generators that are certified pursuant to this section and pursuant to the Income Tax Act will not exceed a total of two million megawatt-hours plus an

additional five hundred thousand megawatt-hours produced by qualified energy generators using a solar-light-derived or solar-heat-derived qualified energy resource. Applications shall be considered in the order received. The energy, minerals and natural resources department may estimate the annual power-generating potential of a generating facility for the purposes of this section. The energy, minerals and natural resources department shall issue a certificate to the applicant stating whether the facility is an eligible qualified energy generator and the estimated annual production potential of the generating facility, which shall be the limit of that facility's energy production eligible for the tax credit for the taxable year. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection and shall report annually to the appropriate interim legislative committee information that will allow the legislative committee to analyze the effectiveness of the renewable energy production tax credit, including the identity of qualified energy generators, the energy production means used, the amount of energy produced by those qualified energy generators and whether any applications could not be approved due to program limits.

H. A taxpayer may be allocated all or a portion of the right to claim a renewable energy production tax credit without regard to proportional ownership interest if:

(1) the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership;

(2) the business entity:

(a) would qualify for the renewable energy production tax credit pursuant to Paragraph (1) or (2) of Subsection B of this section;

(b) owns an interest in a business entity that is also taxed for federal income tax purposes as a partnership and that would qualify for the renewable energy production tax credit pursuant to Paragraph (1) or (2) of Subsection B of this section; or

(c) owns, through one or more intermediate business entities that are each taxed for federal income tax purposes as a partnership, an interest in the business entity described in Subparagraph (b) of this paragraph;

(3) the taxpayer and all other taxpayers allocated a right to claim the renewable energy production tax credit pursuant to this subsection own collectively at least a five percent interest in a qualified energy generator;

(4) the business entity provides notice of the allocation and the taxpayer's interest to the energy, minerals and natural resources department on forms prescribed by that department; and

(5) the energy, minerals and natural resources department certifies the allocation in writing to the taxpayer.

I. Upon receipt of notice of an allocation of the right to claim all or a portion of the renewable energy production tax credit, the energy, minerals and natural resources department shall promptly certify the allocation in writing to the recipient of the allocation.

J. A taxpayer may claim the renewable energy production tax credit by submitting to the taxation and revenue department the certificate issued by the energy, minerals and natural resources department, pursuant to Subsection G or H of this section, documentation showing the taxpayer's interest in the facility, documentation of the amount of electricity produced by the facility in the taxable year and any other information the taxation and revenue department may require to determine the amount of the tax credit due the taxpayer.

K. If the requirements of this section have been complied with, the department shall approve the renewable energy production tax credit. The credit may be deducted from a taxpayer's New Mexico corporate income tax liability for the taxable year for which the credit is claimed. If the amount of tax credit exceeds the taxpayer's corporate income tax liability for the taxable year:

(1) the excess may be carried forward for a period of five taxable years; or

(2) if the tax credit was issued with respect to a qualified energy generator that first produced electricity using a qualified energy resource on or after October 1, 2007, the excess shall be refunded to the taxpayer.

L. Once a taxpayer has been granted a renewable energy production tax credit for a given facility, that taxpayer shall be allowed to retain the facility's original date of application for tax credits for that facility until either the facility goes out of production for more than six consecutive months in a year or until the facility's ten-year eligibility has expired.

History: Laws 2002, ch. 59, § 1; 2003, ch. 419, § 1; 2005, ch. 104, § 7; 2005, ch. 181, § 1; 2007, ch. 204, § 1.

## ANNOTATIONS

**The 2007 amendment,** effective June 15, 2007, provided that the credit may not be claimed with respect to the same electricity production for which the renewable energy production tax credit provided in the Income Tax Act is claimed; provided that a person is eligible for the credit if the qualified energy generator first produces electricity on or before January 1, 2018; added Subsection D and Subparagraphs (a) through (g) of Paragraph (1) of Subsection F; changed the definition of "qualified energy generator" to mean a facility with at least one megawatt generating capacity; provided that an eligible energy generator will not exceed two million megawatt-hours plus an additional five hundred thousand megawatt-hours by solar-light-derived or solar-heat-derived qualified

energy resource; required the department to report information to the legislature that will allow the legislature to analyze the effectiveness of the credit; and added Subsection K.

**Applicability.** — Laws 2007, ch. 204, § 21 provided that Laws 2007, ch. 204, § 1 apply to taxable years beginning on or after January 1, 2008.

**The 2005 amendment,** effective June 17, 2005, in Subsection A, provided that a tax credit provided in this section is the "renewal energy production tax credit"; deleted the former provision of Subsection A, which provide a credit to a taxpayer who owns a qualified energy generator; added Subsection B to provide that a person is eligible for the credit if the person has title to a qualified energy generator or leases property upon which a qualified energy generator operates under authority of a industrial revenue bond; added Subsection C, which provided the amount of the credit; provided in Subsection D that a taxpayer eligible for the credit shall be eligible for the credit for ten years; added Subsection F, which provided that a person who has title to a facility generating electricity from a qualified energy source or that leases a facility pursuant to an industrial revenue bond may request certification of eligibility for the credit; added Subsection G, which provided the criteria by which a taxpayer may be allocated all or a portion of the credit without regard to proportional ownership; added Subsection H, which provided that upon receipt of notice of an allocation of the right to claim all or a portion of the credit, the department shall certify the allocation to the recipient; and in Subsection I, provided that a taxpayer may claim the credit by submitting the certificate issued by the energy, minerals and natural resources department, documentation showing the taxpayer's interest in the facility and the amount of electricity produced to the taxation and revenue department. This section was also amended by Laws 2005, ch. 104, § 7. The section was set out as amended by Laws 2005, ch. 181, § 1. *See* 12-1-8 NMSA 1978.

**The 2003 amendment,** effective June 20, 2003, added Paragraph B(1); redesignated former Paragraphs B(1) and (2) as Paragraphs B(2) and (3); substituted "ten" for "twenty" following "with at least" in present Paragraph B(2); inserted "a fluidized bed technology or similar low-emissions technology or" following "by means of" in Paragraph B(3); added Subparagraph B(3)(d); and substituted "two million" for "eight hundred thousand" following "will not exceed" in Subsection C.

**Compiler's note.** — Laws 2007, ch. 204, § 19 repealed Laws 2005, ch. 104, § 7, effective June 15, 2007.

## 7-2A-20. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 2002, ch. 91, § 3, effective January 1, 2006, repealed 7-2A-20 NMSA 1978, as enacted by Laws 2002, ch. 91, § 2, relating to a credit for produced water. For provisions of former section, *see* the 2001 NMSA 1978 on the *NMOneSource.com.*

## 7-2A-21. Sustainable building tax credit.

A. The tax credit provided by this section may be referred to as the "sustainable building tax credit". The sustainable building tax credit shall be available for the construction in New Mexico of a sustainable building, the renovation of an existing building in New Mexico into a sustainable building or the permanent installation of manufactured housing, regardless of where the housing is manufactured, that is a sustainable building. The tax credit provided in this section may not be claimed with respect to the same sustainable building for which the sustainable building tax credit provided in the Income Tax Act [Chapter 7, Article 2 NMSA 1978] has been claimed.

B. The purpose of the sustainable building tax credit is to encourage the construction of sustainable buildings and the renovation of existing buildings into sustainable buildings.

C. A taxpayer that files a corporate income tax return is eligible to be granted a sustainable building tax credit by the department if the taxpayer submits a document issued pursuant to Subsection J of this section with the taxpayer's corporate income tax return.

D. For taxable years ending on or before December 31, 2016, the sustainable building tax credit may be claimed with respect to a sustainable commercial building. The credit shall be calculated based on the certification level the building has achieved in the LEED green building rating system and the amount of qualified occupied square footage in the building, as indicated on the following chart:

| LEED Rating Level | Qualified Occupied Square Footage | Tax Credit per Square Foot |
|---|---|---|
| LEED-NC Silver | First 10,000 | $3.50 |
| | Next 40,000 | $1.75 |
| | Over 50,000 up to 500,000 | $.70 |
| LEED-NC Gold | First 10,000 | $4.75 |
| | Next 40,000 | $2.00 |
| | Over 50,000 up to 500,000 | $1.00 |
| LEED-NC Platinum | First 10,000 | $6.25 |
| | Next 40,000 | $3.25 |
| | Over 50,000 up to 500,000 | $2.00 |

| | | |
|---|---|---|
| LEED-EB or CS Silver | First 10,000<br>Next 40,000<br>Over 50,000<br>up to 500,000 | $2.50<br>$1.25<br><br>$.50 |
| LEED-EB or CS Gold | First 10,000<br>Next 40,000<br>Over 50,000<br>up to 500,000 | $3.35<br>$1.40<br><br>$.70 |
| LEED-EB or CS Platinum | First 10,000<br>Next 40,000<br>Over 50,000<br>up to 500,000 | $4.40<br>$2.30<br><br>$1.40 |
| LEED-CI Silver | First 10,000<br>Next 40,000<br>Over 50,000<br>up to 500,000 | $1.40<br>$.70<br><br>$.30 |
| LEED-CI Gold | First 10,000<br>Next 40,000<br>Over 50,000<br>up to 500,000 | $1.90<br>$.80<br><br>$.40 |
| LEED-CI Platinum | First 10,000<br>Next 40,000<br>Over 50,000<br>up to 500,000 | $2.50<br>$1.30<br><br>$.80 |

E. For taxable years ending on or before December 31, 2016, the sustainable building tax credit may be claimed with respect to a sustainable residential building. The credit shall be calculated based on the amount of qualified occupied square footage, as indicated on the following chart:

| | Qualified Occupied Square Footage | Tax Credit per Square Foot |
|---|---|---|
| LEED-H Silver or Build Green NM Silver | First 2,000<br>Next 1,000 | $5.00<br>$2.50 |
| LEED-H Gold or Build | First 2,000 | $6.85 |

| | | |
|---|---|---|
| Green NM Gold | Next 1,000 | $3.40 |
| LEED-H Platinum or Build | First 2,000 | $9.00 |
| Green NM Emerald | Next 1,000 | $4.45 |
| EPA ENERGY STAR Manufactured Housing | Up to 3,000 | $3.00. |

F. A person that is a building owner may apply for a certificate of eligibility for the sustainable building tax credit from the energy, minerals and natural resources department after the construction, installation or renovation of the sustainable building is complete. Applications shall be considered in the order received. If the energy, minerals and natural resources department determines that the building owner meets the requirements of this subsection and that the building with respect to which the tax credit application is made meets the requirements of this section as a sustainable residential building or a sustainable commercial building, the energy, minerals and natural resources department may issue a certificate of eligibility to the building owner, subject to the limitation in Subsection G of this section. The certificate shall include the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building and a calculation of the maximum amount of sustainable building tax credit for which the building owner would be eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection. If the certification level for the sustainable residential building is awarded on or after January 1, 2007, the energy, minerals and natural resources department may issue a certificate of eligibility to a building owner who is:

(1) the owner of the sustainable residential building at the time the certification level for the building is awarded; or

(2) the subsequent purchaser of a sustainable residential building with respect to which no tax credit has been previously claimed.

G. The energy, minerals and natural resources department may issue a certificate of eligibility only if the total amount of sustainable building tax credits represented by certificates of eligibility issued by the energy, minerals and natural resources department pursuant to this section and pursuant to the Income Tax Act shall not exceed in any calendar year an aggregate amount of one million dollars ($1,000,000) with respect to sustainable commercial buildings and an aggregate amount of four million dollars ($4,000,000) with respect to sustainable residential buildings; provided that no more than one million two hundred fifty thousand dollars ($1,250,000) of the aggregate amount with respect to sustainable residential buildings shall be for manufactured housing. If for any taxable year the energy, minerals and natural resources department determines that the applications for sustainable building tax credits with respect to sustainable residential buildings for that taxable year exceed the aggregate limit set in this section, the energy, minerals and natural resources department may issue certificates of eligibility under the aggregate annual limit for sustainable commercial buildings to owners of sustainable residential buildings that

meet the requirements of the energy, minerals and natural resources department and of this section; provided that applications for sustainable building credits for other sustainable commercial buildings total less than the full amount allocated for tax credits for sustainable commercial buildings.

H. Installation of a solar thermal system or a photovoltaic system eligible for the solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 may not be used as a component of qualification for the rating system certification level used in determining eligibility for the sustainable building tax credit, unless a solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 has not been claimed with respect to that system and the building owner and the taxpayer claiming the sustainable building tax credit certify that such a tax credit will not be claimed with respect to that system.

I. To be eligible for the sustainable building tax credit, the building owner shall provide to the taxation and revenue department a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to the requirements of Subsection F of this section and any other information the taxation and revenue department may require to determine the amount of the tax credit for which the building owner is eligible.

J. If the requirements of this section have been complied with, the department shall issue to the building owner a document granting a sustainable building tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the building owner with that taxpayer's income tax return, if applicable, or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

K. If the total approved amount of all sustainable building tax credits for a taxpayer in a taxable year represented by the documents issued pursuant to Subsection J of this section is:

(1) less than one hundred thousand dollars ($100,000), a maximum of twenty-five thousand dollars ($25,000) shall be applied against the taxpayer's corporate income tax liability for the taxable year for which the credit is approved and the next three subsequent taxable years as needed depending on the amount of credit; or

(2) one hundred thousand dollars ($100,000) or more, increments of twenty-five percent of the total credit amount in each of the four taxable years, including the taxable year for which the credit is approved and the three subsequent taxable years, shall be applied against the taxpayer's corporate income tax liability.

L. If the sum of all sustainable building tax credits that can be applied to a taxable year for a taxpayer, calculated according to Paragraph (1) or (2) of Subsection K of this

section, exceeds the taxpayer's corporate income tax liability for that taxable year, the excess may be carried forward for a period of up to seven years.

M. A taxpayer that otherwise qualifies and claims a sustainable building tax credit with respect to a sustainable building owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to that taxpayer's interest in the partnership or association. The total credit claimed in the aggregate by all members of the partnership or association with respect to the sustainable building shall not exceed the amount of the credit that could have been claimed by a sole owner of the property.

N. The department shall compile an annual report on the sustainable building tax credit created pursuant to this section that shall include the number of taxpayers approved by the department to receive the tax credit, the aggregate amount of tax credits approved and any other information necessary to evaluate the effectiveness of the tax credit. Beginning in 2015 and every five years thereafter, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the tax credit and whether the tax credit is performing the purpose for which it was created.

O. For the purposes of this section:

(1) "build green New Mexico rating system" means the certification standards adopted by the homebuilders association of central New Mexico;

(2) "LEED-CI" means the LEED rating system for commercial interiors;

(3) "LEED-CS" means the LEED rating system for the core and shell of buildings;

(4) "LEED-EB" means the LEED rating system for existing buildings;

(5) "LEED gold" means the rating in compliance with, or exceeding, the second-highest rating awarded by the LEED certification process;

(6) "LEED" means the most current leadership in energy and environmental design green building rating system guidelines developed and adopted by the United States green building council;

(7) "LEED-H" means the LEED rating system for homes;

(8) "LEED-NC" means the LEED rating system for new buildings and major renovations;

(9) "LEED platinum" means the rating in compliance with, or exceeding, the highest rating awarded by the LEED certification process;

(10) "LEED silver" means the rating in compliance with, or exceeding, the third-highest rating awarded by the LEED certification process;

(11) "manufactured housing" means a multisectioned home that is:

(a) a manufactured home or modular home;

(b) a single-family dwelling with a heated area of at least thirty-six feet by twenty-four feet and a total area of at least eight hundred sixty-four square feet;

(c) constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or New Mexico construction codes up to the date of the unit's construction; and

(d) installed consistent with the Manufactured Housing Act [Chapter 60, Article 14 NMSA 1978] and rules adopted pursuant to that act relating to permanent foundations;

(12) "qualified occupied square footage" means the occupied spaces of the building as determined by:

(a) the United States green building council for those buildings obtaining LEED certification;

(b) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; and

(c) the United States environmental protection agency for ENERGY STAR-certified manufactured homes;

(13) "person" does not include state, local government, public school district or tribal agencies;

(14) "sustainable building" means either a sustainable commercial building or a sustainable residential building;

(15) "sustainable commercial building" means a multifamily dwelling unit, as registered and certified under the LEED-H or build green New Mexico rating system, that is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher and has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network

or a building that has been registered and certified under the LEED-NC, LEED-EB, LEED-CS or LEED-CI rating system and that:

(a) is certified by the United States green building council at LEED silver or higher;

(b) achieves any prerequisite for and at least one point related to commissioning under LEED "energy and atmosphere", if included in the applicable rating system; and

(c) has reduced energy consumption, as follows: 1) through 2011, a fifty percent energy reduction will be required based on the national average for that building type as published by the United States department of energy; and beginning January 1, 2012, a sixty percent energy reduction will be required based on the national average for that building type as published by the United States department of energy; and 2) is substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development;

(16) "sustainable residential building" means:

(a) a building used as a single-family residence as registered and certified under the build green New Mexico or LEED-H rating systems that: 1) is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher; and 2) has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network; or

(b) manufactured housing that is ENERGY STAR-qualified by the United States environmental protection agency; and

(17) "tribal" means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo.

History: Laws 2007, ch. 204, § 4; 2009, ch. 59, § 2; 2013, ch. 92, § 2.

## ANNOTATIONS

**The 2013 amendment,** effective January 1, 2014, extended the sustainable building tax credit for three years; decreased the maximum aggregate calendar year amount of sustainable building tax credit for which a certificate of eligibility may be issued; changed provisions for application of the tax credit; added Subsection B; in Subsection D, in the first sentence, deleted "The amount of" and added "For taxable years ending on or before December 31, 2016"; in Subsection E, in the first sentence, deleted "The amount of" and added "For taxable years ending on or before December 31, 2016"; in Subsection G, in the first sentence, after "any calendar year an aggregate amount of", deleted "five million dollars ($5,000,000)" and added "one million dollars ($1,000,000)"

and after "commercial buildings and an aggregate amount of", deleted "five million dollars ($5,000,000)" and added "four million dollars ($4,000,000)" and in the second sentence, after "sustainable commercial buildings to", deleted "building" and after "commercial buildings to owners of", deleted "multifamily dwelling units" and added "sustainable residential buildings"; deleted former Subsection J which provided for the application of the sustainable building tax credit over a period of four to seven years; deleted former Subsection K which provides for the application of the sustainable building tax credit of less than twenty five in a single taxable year; added Subsections K, L and N; in Paragraph (15) of Subsection O, added the language between "means" and "a building that has been registered"; and deleted former Subparagraph (b) of Paragraph 16 of Subsection O, which was the same language that was added to the definition of "sustainable commercial building" in Paragraph (15) of Subsection O.

**The 2009 amendment,** effective June 19, 2009, in Subsection A, at the end of the second sentence, added the provision concerning manufactured housing; in Subsection B, deleted former Paragraphs (1) and (2) which required the taxpayer to be owner of the building at the time the building was certified or the subsequent purchaser of a sustainable building with respect to which no tax credit had been claimed and added the provision requiring the taxpayer to submit a document pursuant to Subsection I with the taxpayer's income tax return; in Subsection D, deleted the provision which required the tax credit to be calculated based on the certification level the building had achieved in the LED rating system or the New Mexico rating system and in the chart, added the Build Green NM Silver, Gold and Emerald levels; in Subsection E, added the last sentence, together with Paragraphs (1) and (2); in Subsection F, added the last sentence; in Paragraph I, permitted the document to be submitted with the taxpayer's income tax return; added Paragraphs (11), (13) and (17) of Subsection N; in Subparagraph (b) of Paragraph (16) of Subsection N, added the build green New Mexico rating system; and in Subparagraph (c) of Paragraph (16) of Subsection N, deleted the requirement that manufactured housing be as defined by the United States department of housing and urban development.

**Applicability.** — Laws 2007, ch. 204, § 21 provided that Laws 2007, ch. 204, § 4 apply to taxable years beginning on or after January 1, 2007 through December 31, 2013.

## 7-2A-22. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 204, § 20 repealed 7-2A-22 NMSA 1978, as enacted by Laws 2007, ch. 204, § 6, relating to a tax credit for agricultural water conservation expenses, effective January 1, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com.*

## 7-2A-23. Credit; blended biodiesel fuel.

A. A taxpayer that is liable for payment of the special fuel excise tax pursuant to Subsections A through D of Section 7-16A-2.1 NMSA 1978 and that files a New Mexico corporate income tax return is eligible to claim a credit against corporate income tax liability for each gallon of blended biodiesel fuel on which that person paid the special fuel excise tax in the taxable year or who would have paid the special fuel excise tax in the taxable year but for the deductions allowed pursuant to Subsections B through F of Section 7-16A-10 NMSA 1978 or the treaty exemption for north Atlantic treaty organization use. The credit shall be in the following amounts for the following periods:

(1) from January 1, 2007 until December 31, 2010, at a rate of three cents ($.03) per gallon;

(2) from January 1, 2011 until December 31, 2011, at a rate of two cents ($.02) per gallon; and

(3) from January 1, 2012 until December 31, 2012, at a rate of one cent ($.01) per gallon.

B. The tax credit provided by this section may not be claimed with respect to the same blended biodiesel fuel for which a credit has been claimed pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] or for which a credit or refund has been claimed pursuant to Section 7-16A-13 NMSA 1978.

C. A taxpayer that otherwise qualifies for and claims a credit pursuant to this section for blended biodiesel fuel on which special fuel excise tax has been paid by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to the taxpayer's interest in the partnership or business association. The total credit claimed in the aggregate by all members of the partnership or business association shall not exceed the amount of credit allowed pursuant to Subsection A of this section.

D. The tax credit provided by this section may only be applied against the corporate income tax liability of the person that paid the special fuel excise tax on the blended biodiesel fuel with respect to which the credit is provided or that would have paid the special fuel excise tax but for the deductions allowed pursuant to Subsections B through F of Section 7-16A-10 NMSA 1978 or the treaty exemption for north Atlantic treaty organization use. If the credit exceeds the person's corporate income tax liability for the taxable year in which the credit is granted, the credit may be carried forward for five years.

E. A taxpayer claiming a credit pursuant to this section shall provide documentation of eligibility in form and content as determined by the department.

F. For the purposes of this section:

(1) "biodiesel" means renewable, biodegradable, monoalkyl ester combustible liquid fuel that is derived from agricultural plant oils or animal fats and that meets American society for testing and materials D 6751 standard specification for biodiesel B100 blend stock for distillate fuels;

(2) "blended biodiesel fuel" means a diesel fuel that contains at least two percent biodiesel; and

(3) "diesel fuel" means any diesel-engine fuel used for the generation of power to propel a motor vehicle.

History: Laws 2007, ch. 204, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 204, contained no effective date provision for Laws 2007, ch. 204, § 7, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 7-2A-24. Geothermal ground-coupled heat pump tax credit.

A. A taxpayer that files a New Mexico corporate income tax return for a taxable year beginning on or after January 1, 2010 and that purchases and installs after January 1, 2010 but before December 31, 2020 a geothermal ground-coupled heat pump in a property owned by the taxpayer may claim against the taxpayer's corporate income tax liability, and the department may allow, a tax credit of up to thirty percent of the purchase and installation costs of the system. The credit provided in this section may be referred to as the "geothermal ground-coupled heat pump tax credit". The total geothermal ground-coupled heat pump tax credit allowed to a taxpayer shall not exceed nine thousand dollars ($9,000). The department shall allow a geothermal ground-coupled heat pump tax credit only for geothermal ground-coupled heat pumps certified by the energy, minerals and natural resources department.

B. A portion of the geothermal ground-coupled heat pump tax credit that remains unused in a taxable year may be carried forward for a maximum of ten consecutive taxable years following the taxable year in which the credit originates until the credit is fully expended.

C. Prior to July 1, 2010, the energy, minerals and natural resources department shall adopt rules establishing procedures to provide certification of geothermal ground-coupled heat pumps for purposes of obtaining a geothermal ground-coupled heat pump tax credit. The rules shall address technical specifications and requirements relating to safety, building code and standards compliance, minimum system sizes, system applications and lists of eligible components. The energy, minerals and natural resources department may modify the specifications and requirements as necessary to maintain a high level of system quality and performance.

D. The department may allow a maximum annual aggregate of two million dollars ($2,000,000) in geothermal ground-coupled heat pump tax credits. Applications for the credit shall be considered in the order received by the department.

E. As used in this section, "geothermal ground-coupled heat pump" means a reversible refrigerator device that provides space heating, space cooling, domestic hot water, processed hot water, processed chilled water or any other application where hot air, cool air, hot water or chilled water is required and that utilizes ground water or water circulating through pipes buried in the ground as a condenser in the cooling mode and an evaporator in the heating mode.

History: Laws 2009, ch. 271, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 271 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## 7-2A-25. Advanced energy corporate income tax credit.

A. The tax credit that may be claimed pursuant to this section may be referred to as the "advanced energy corporate income tax credit".

B. A taxpayer that holds an interest in a qualified generating facility located in New Mexico and that files a New Mexico corporate income tax return may claim an advanced energy corporate income tax credit in an amount equal to six percent of the eligible generation plant costs of a qualified generating facility, subject to the limitations imposed in this section. The tax credit claimed shall be verified and approved by the department.

C. An entity that holds an interest in a qualified generating facility may request a certificate of eligibility from the department of environment to enable the requester to apply for an advanced energy corporate income tax credit. The department of environment:

(1) shall determine if the facility is a qualified generating facility;

(2) shall require that the requester provide the department of environment with the information necessary to assess whether the requester's facility meets the criteria to be a qualified generating facility;

(3) shall issue a certificate to the requester stating that the facility is or is not a qualified generating facility within one hundred eighty days after receiving all information necessary to make a determination;

(4) shall:

(a) issue a schedule of fees in which no fee exceeds one hundred fifty thousand dollars ($150,000); and

(b) deposit fees collected pursuant to this paragraph in the state air quality permit fund created pursuant to Section 74-2-15 NMSA 1978; and

(5) shall report annually to the appropriate interim legislative committee information that will allow the legislative committee to analyze the effectiveness of the advanced energy tax credits, including the identity of qualified generating facilities, the energy production means used, the amount of emissions identified in this section reduced and removed by those qualified generating facilities and whether any requests for certificates of eligibility could not be approved due to program limits.

D. A taxpayer that holds an interest in a qualified generating facility may be allocated the right to claim the advanced energy corporate income tax credit without regard to the taxpayer's relative interest in the qualified generating facility if:

(1) the business entity making the allocation provides notice of the allocation and the taxpayer's interest in the qualified generating facility to the department on forms prescribed by the department;

(2) allocations to the taxpayer and all other taxpayers allocated a right to claim the advanced energy tax credit shall not exceed one hundred percent of the advanced energy tax credit allowed for the qualified generating facility; and

(3) the taxpayer and all other taxpayers allocated a right to claim the advanced energy tax credits collectively own at least a five percent interest in the qualified generating facility.

E. Upon receipt of the notice of an allocation of the right to claim all or a portion of the advanced energy corporate income tax credit, the department shall verify the allocation due to the recipient.

F. To claim the advanced energy corporate income tax credit, a taxpayer shall submit with the taxpayer's New Mexico corporate income tax return a certificate of eligibility from the department of environment stating that the taxpayer may be eligible for advanced energy tax credits. The taxation and revenue department shall provide credit claim forms. A credit claim form shall accompany any return in which the taxpayer wishes to apply for an approved credit, and the claim shall specify the amount of credit intended to apply to each return. The taxation and revenue department shall determine the amount of advanced energy corporate income tax credit for which the taxpayer may apply.

G. The total amount of all advanced energy tax credits claimed shall not exceed the total amount determined by the department to be allowable pursuant to this section, the Income Tax Act [Chapter 7, Article 2 NMSA 1978] and Section 7-9G-2 NMSA 1978.

H. Any balance of the advanced energy corporate income tax credit that the taxpayer is approved to claim may be claimed by the taxpayer as an advanced energy combined reporting tax credit allowed pursuant to Section 7-9G-2 NMSA 1978. If the advanced energy corporate income tax credit exceeds the amount of the taxpayer's tax liabilities pursuant to the Corporate Income and Franchise Tax Act and Section 7-9G-2 NMSA 1978 in the taxable year in which it is claimed, the balance of the unpaid credit may be carried forward for ten years and claimed as an advanced energy corporate income tax credit or an advanced energy combined reporting tax credit. The advanced energy corporate income tax credit is not refundable.

I. A taxpayer claiming the advanced energy corporate income tax credit pursuant to this section is ineligible for credits pursuant to the Investment Credit Act [Chapter 7, Article 9A NMSA 1978] or any other credit that may be taken pursuant to the Corporate Income and Franchise Tax Act or credits that may be taken against the gross receipts tax, compensating tax or withholding tax for the same expenditures.

J. The aggregate amount of all advanced energy tax credits that may be claimed with respect to a qualified generating facility shall not exceed sixty million dollars ($60,000,000).

K. As used in this section:

(1) "advanced energy tax credit" means the advanced energy income tax credit, the advanced energy corporate income tax credit and the advanced energy combined reporting tax credit;

(2) "coal-based electric generating facility" means a new or repowered generating facility and an associated coal gasification facility, if any, that uses coal to generate electricity and that meets the following specifications:

(a) emits the lesser of: 1) what is achievable with the best available control technology; or 2) thirty-five thousandths pound per million British thermal units of sulfur dioxide, twenty-five thousandths pound per million British thermal units of oxides of nitrogen and one hundredth pound per million British thermal units of total particulates in the flue gas;

(b) removes the greater of: 1) what is achievable with the best available control technology; or 2) ninety percent of the mercury from the input fuel;

(c) captures and sequesters or controls carbon dioxide emissions so that by the later of January 1, 2017 or eighteen months after the commercial operation date of

the coal-based electric generating facility, no more than one thousand one hundred pounds per megawatt-hour of carbon dioxide is emitted into the atmosphere;

(d) all infrastructure required for sequestration is in place by the later of January 1, 2017 or eighteen months after the commercial operation date of the coal-based electric generating facility;

(e) includes methods and procedures to monitor the disposition of the carbon dioxide captured and sequestered from the coal-based electric generating facility; and

(f) does not exceed a name-plate capacity of seven hundred net megawatts;

(3) "eligible generation plant costs" means expenditures for the development and construction of a qualified generating facility, including permitting; site characterization and assessment; engineering; design; carbon dioxide capture, treatment, compression, transportation and sequestration; site and equipment acquisition; and fuel supply development used directly and exclusively in a qualified generating facility;

(4) "entity" means an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other association or a gas, water or electric utility owned or operated by a county or municipality;

(5) "geothermal electric generating facility" means a facility with a name-plate capacity of one megawatt or more that uses geothermal energy to generate electricity, including a facility that captures and provides geothermal energy to a preexisting electric generating facility using other fuels in part;

(6) "interest in a qualified generating facility" means title to a qualified generating facility; a leasehold interest in a qualified generating facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in a qualified generating facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in a qualified generating facility;

(7) "name-plate capacity" means the maximum rated output of the facility measured as alternating current or the equivalent direct current measurement;

(8) "qualified generating facility" means a facility that begins construction not later than December 31, 2015 and is:

(a) a solar thermal electric generating facility that begins construction on or after July 1, 2007 and that may include an associated renewable energy storage facility;

(b) a solar photovoltaic electric generating facility that begins construction on or after July 1, 2009 and that may include an associated renewable energy storage facility;

(c) a geothermal electric generating facility that begins construction on or after July 1, 2009;

(d) a recycled energy project if that facility begins construction on or after July 1, 2007; or

(e) a new or repowered coal-based electric generating facility and an associated coal gasification facility;

(9) "recycled energy" means energy produced by a generation unit with a name-plate capacity of not more than fifteen megawatts that converts the otherwise lost energy from the exhaust stacks or pipes to electricity without combustion of additional fossil fuel;

(10) "sequester" means to store, or chemically convert, carbon dioxide in a manner that prevents its release into the atmosphere and may include the use of geologic formations and enhanced oil, coalbed methane or natural gas recovery techniques;

(11) "solar photovoltaic electric generating facility" means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar photovoltaic energy to generate electricity; and

(12) "solar thermal electric generating facility" means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar thermal energy to generate electricity, including a facility that captures and provides solar energy to a preexisting electric generating facility using other fuels in part.

History: Laws 2009, ch. 279, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 279 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## 7-2A-26. Agricultural biomass corporate income tax credit.

A. A taxpayer that files a New Mexico corporate income tax return for a taxable year beginning on or after January 1, 2011 and ending prior to January 1, 2020 for a dairy or feedlot owned by the taxpayer may claim against the taxpayer's corporate income and franchise tax liability, and the department may allow, a tax credit equal to five dollars

($5.00) per wet ton of agricultural biomass transported from the taxpayer's dairy or feedlot to a facility that uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use. The credit provided in this section may be referred to as the "agricultural biomass corporate income tax credit".

B. If the requirements of this section have been complied with, the department shall issue to the taxpayer a document granting an agricultural biomass corporate income tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the taxpayer with that taxpayer's corporate income tax return or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

C. A portion of the agricultural biomass corporate income tax credit that remains unused in a taxable year may be carried forward for a maximum of four consecutive taxable years following the taxable year in which the credit originates until the credit is fully expended.

D. Prior to July 1, 2011, the energy, minerals and natural resources department shall adopt rules establishing procedures to provide certification of transportation of agricultural biomass to a qualified facility that uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use for purposes of obtaining an agricultural biomass corporate income tax credit. The rules may be modified as determined necessary by the energy, minerals and natural resources department to determine accurate recording of the quantity of agricultural biomass transported and used for the purpose allowable in this section.

E. A taxpayer that claims an agricultural biomass corporate income tax credit shall not also claim an agricultural biomass income tax credit for transportation of the same agricultural biomass on which the claim for that agricultural biomass income tax credit is based.

F. The department shall limit the annual combined total of all agricultural biomass income tax credits and all agricultural biomass corporate income tax credits allowed to a maximum of five million dollars ($5,000,000). Applications for the credit shall be considered in the order received by the department.

G. As used in this section:

(1) "agricultural biomass" means wet manure meeting specifications established by the energy, minerals and natural resources department from either a dairy or feedlot commercial operation;

(2) "biocrude" means a nonfossil form of energy that can be transported and refined using existing petroleum refining facilities and that is made from biologically derived feedstocks and other agricultural biomass;

(3) "feedlot" means an operation that fattens livestock for market; and

(4) "dairy" means a facility that raises livestock for milk production.

History: Laws 2010, ch. 84, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2010, ch. 84 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2010, ch. 84, § 3 provided that the provisions of Laws 2010, ch. 84, § 2 apply to taxable years beginning on or after January 1, 2011 and ending prior to January 1, 2020.

## 7-2A-27. Veteran employment tax credit.

A. A taxpayer that employs a qualified military veteran in New Mexico is eligible for a credit against the taxpayer's tax liability imposed pursuant to the Corporate Income and Franchise Tax Act in an amount up to one thousand dollars ($1,000) of the gross wages paid to each qualified military veteran by the taxpayer during the taxable year for which the return is filed. A taxpayer that employs a qualified military veteran for less than the full taxable year is eligible for a credit amount equal to one thousand dollars ($1,000) multiplied by the fraction of a full year for which the qualified military veteran was employed. The tax credit provided by this section may be referred to as the "veteran employment tax credit".

B. The purpose of the veteran employment tax credit is to encourage the full-time employment of qualified military veterans within two years of discharge from the armed forces of the United States.

C. A taxpayer may claim the veteran employment tax credit provided in this section for each taxable year in which the taxpayer employs one or more qualified military veterans; provided that the taxpayer may not claim the veteran employment tax credit for any individual qualified military veteran for more than one calendar year from the date of hire.

D. That portion of a veteran employment tax credit approved by the department that exceeds a taxpayer's corporate income tax liability in the taxable year in which the credit is claimed shall not be refunded to the taxpayer but may be carried forward for up to

three years. The veteran employment tax credit shall not be transferred to another taxpayer.

E. The taxpayer shall submit to the department with respect to each employee for whom the veteran employment tax credit is claimed information required by the department with respect to the veteran's employment by the taxpayer during the taxable year for which the veteran employment tax credit is claimed, including information establishing that the employee is a qualified military veteran that can be used to determine that the employee was not also employed in the same taxable year by another taxpayer claiming a veteran employment tax credit for that employee pursuant to this section or the Income Tax Act [Chapter 7, Article 2 NMSA 1978].

F. The department shall adopt rules establishing procedures to certify qualified military veterans for purposes of obtaining a veteran employment tax credit. The rules shall ensure that not more than one veteran employment tax credit per qualified military veteran shall be allowed in a taxable year and that the credits allowed per qualified military veteran are limited to a maximum of one year's employment.

G. The department shall compile an annual report for the revenue stabilization and tax policy committee and the legislative finance committee that sets forth the number of taxpayers approved to receive the veteran employment tax credit, the aggregate amount of credits approved and the average and median amounts of credits approved. The department shall advise those committees in 2015 whether the veteran employment tax credit is performing the purpose for which it was enacted.

H. Acceptance of the veteran employment tax credit is authorization to the department to reveal the amount of the tax credit claimed by the taxpayer and other information from the taxpayer's tax reports as needed to report fully as required by this section to the revenue stabilization and tax policy committee and the legislative finance committee.

I. As used in this section, "qualified military veteran" means an individual who is hired within two years of receipt of an honorable discharge from a branch of the United States military, who works at least forty hours per week during the taxable year for which the veteran employment tax credit is claimed and who was not previously employed by the taxpayer prior to the individual's deployment.

History: Laws 2012, ch. 55, § 2.

## ANNOTATIONS

**Effective dates.** — Laws 2012, ch. 55 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 16, 2012, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2012, ch. 55, § 3 provided that the provisions of Laws 2012, ch. 55, § 2 applies to taxable years beginning on or after January 1, 2012 and ending on or before January 1, 2017.

## 7-2A-28. New sustainable building tax credit.

A. The tax credit provided by this section may be referred to as the "new sustainable building tax credit". The new sustainable building tax credit shall be available for the construction in New Mexico of a sustainable building, the renovation of an existing building in New Mexico into a sustainable building or the permanent installation of manufactured housing, regardless of where the housing is manufactured, that is a sustainable building. The tax credit provided in this section may not be claimed with respect to the same sustainable building for which the new sustainable building tax credit provided in the Income Tax Act [Chapter 7, Article 2 NMSA 1978] has been claimed.

B. The purpose of the new sustainable building tax credit is to encourage the construction of sustainable buildings and the renovation of existing buildings into sustainable buildings.

C. A taxpayer that files a corporate income tax return is eligible to be granted a new sustainable building tax credit by the department if the taxpayer submits a document issued pursuant to Subsection K of this section with the taxpayer's corporate income tax return.

D. For taxable years ending on or before December 31, 2026, the new sustainable building tax credit may be claimed with respect to a sustainable commercial building. The credit shall be calculated based on the certification level the building has achieved in the LEED green building rating system and the amount of qualified occupied square footage in the building, as indicated on the following chart:

| LEED Rating Level | Qualified Occupied Square Footage | Tax Credit per Square Foot |
|---|---|---|
| LEED-NC Silver | First 10,000 | $3.50 |
| | Next 40,000 | $1.75 |
| | Over 50,000 up to 500,000 | $ .70 |
| LEED-NC Gold | First 10,000 | $4.75 |
| | Next 40,000 | $2.00 |
| | Over 50,000 up to 500,000 | $1.00 |
| LEED-NC Platinum | First 10,000 | $6.25 |
| | Next 40,000 | $3.25 |
| | Over 50,000 | |

| | | |
|---|---|---|
| | up to 500,000 | $2.00 |
| LEED-EB or CS Silver | First 10,000 | $2.50 |
| | Next 40,000 | $1.25 |
| | Over 50,000 up to 500,000 | $ .50 |
| LEED-EB or CS Gold | First 10,000 | $3.35 |
| | Next 40,000 | $1.40 |
| | Over 50,000 up to 500,000 | $ .70 |
| LEED-EB or CS Platinum | First 10,000 | $4.40 |
| | Next 40,000 | $2.30 |
| | Over 50,000 up to 500,000 | $1.40 |
| LEED-CI Silver | First 10,000 | $1.40 |
| | Next 40,000 | $ .70 |
| | Over 50,000 up to 500,000 | $ .30 |
| LEED-CI Gold | First 10,000 | $1.90 |
| | Next 40,000 | $ .80 |
| | Over 50,000 up to 500,000 | $ .40 |
| LEED-CI Platinum | First 10,000 | $2.50 |
| | Next 40,000 | $1.30 |
| | Over 50,000 up to 500,000 | $ .80. |

E. For taxable years ending on or before December 31, 2026, the new sustainable building tax credit may be claimed with respect to a sustainable residential building. The credit shall be calculated based on the amount of qualified occupied square footage, as indicated on the following chart:

| Rating System/Level | Qualified Occupied Square Footage | Tax Credit per Square Foot |
|---|---|---|
| LEED-H Silver or Build Green NM Silver | Up to 2,000 | $3.00 |
| LEED-H Gold or Build Green NM Gold | Up to 2,000 | $4.50 |
| LEED-H Platinum or Build Green NM Emerald | Up to 2,000 | $6.50 |
| Manufactured Housing | Up to 2,000 | $3.00. |

F. A person that is a building owner may apply for a certificate of eligibility for the new sustainable building tax credit from the energy, minerals and natural resources

department after the construction, installation or renovation of the sustainable building is complete. Applications shall be considered in the order received. If the energy, minerals and natural resources department determines that the building owner meets the requirements of this subsection and that the building with respect to which the tax credit application is made meets the requirements of this section as a sustainable residential building or a sustainable commercial building, the energy, minerals and natural resources department may issue a certificate of eligibility to the building owner, subject to the limitations in Subsection G of this section. The certificate shall include the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building and a calculation of the maximum amount of new sustainable building tax credit for which the building owner would be eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection. If the certification level for the sustainable residential building is awarded on or after January 1, 2017, the energy, minerals and natural resources department may issue a certificate of eligibility to a building owner who is:

(1) the owner of the sustainable residential building at the time the certification level for the building is awarded; or

(2) the subsequent purchaser of a sustainable residential building with respect to which no tax credit has been previously claimed.

G. Except as provided in Subsection H of this section, the energy, minerals and natural resources department may issue a certificate of eligibility only if the total amount of new sustainable building tax credits represented by certificates of eligibility issued by the energy, minerals and natural resources department pursuant to this section and pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] shall not exceed in any calendar year an aggregate amount of:

(1) one million two hundred fifty thousand dollars ($1,250,000) with respect to sustainable commercial buildings;

(2) three million three hundred seventy-five thousand dollars ($3,375,000) with respect to sustainable residential buildings that are not manufactured housing; and

(3) three hundred seventy-five thousand dollars ($375,000) with respect to sustainable residential buildings that are manufactured housing.

H. For any taxable year that the energy, minerals and natural resources department determines that applications for sustainable building tax credits for any type of sustainable building pursuant to Paragraph (1), (2) or (3) of Subsection G of this section are less than the aggregate limit for that type of sustainable building for that taxable year, the energy, minerals and natural resources department shall allow the difference between the aggregate limit and the applications to be added to the aggregate limit of another type of sustainable building for which applications exceeded the aggregate limit

for that taxable year. Any excess not used in a taxable year shall not be carried forward to subsequent taxable years.

I. Installation of a solar thermal system or a photovoltaic system eligible for the solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 may not be used as a component of qualification for the rating system certification level used in determining eligibility for the new sustainable building tax credit, unless a solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 has not been claimed with respect to that system and the building owner and the taxpayer claiming the new sustainable building tax credit certify that such a tax credit will not be claimed with respect to that system.

J. To be eligible for the new sustainable building tax credit, the building owner shall provide to the taxation and revenue department a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to the requirements of Subsection F of this section and any other information the taxation and revenue department may require to determine the amount of the tax credit for which the building owner is eligible.

K. If the requirements of this section have been complied with, the department shall issue to the building owner a document granting a new sustainable building tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the building owner with that taxpayer's income tax return, if applicable, or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

L. If the approved amount of a new sustainable building tax credit for a taxpayer in a taxable year represented by a document issued pursuant to Subsection K of this section is:

(1) less than one hundred thousand dollars ($100,000), a maximum of twenty-five thousand dollars ($25,000) shall be applied against the taxpayer's corporate income tax liability for the taxable year for which the credit is approved and the next three subsequent taxable years as needed depending on the amount of credit; or

(2) one hundred thousand dollars ($100,000) or more, increments of twenty-five percent of the total credit amount in each of the four taxable years, including the taxable year for which the credit is approved and the three subsequent taxable years, shall be applied against the taxpayer's corporate income tax liability.

M. If the sum of all new sustainable building tax credits that can be applied to a taxable year for a taxpayer, calculated according to Paragraph (1) or (2) of Subsection L of this section, exceeds the taxpayer's corporate income tax liability for that taxable year, the excess may be carried forward for a period of up to seven years.

N. A taxpayer that otherwise qualifies and claims a new sustainable building tax credit with respect to a sustainable building owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to that taxpayer's interest in the partnership or association. The total credit claimed in the aggregate by all members of the partnership or association with respect to the sustainable building shall not exceed the amount of the credit that could have been claimed by a sole owner of the property.

O. The department shall compile an annual report on the new sustainable building tax credit created pursuant to this section that shall include the number of taxpayers approved by the department to receive the tax credit, the aggregate amount of tax credits approved and any other information necessary to evaluate the effectiveness of the tax credit. Beginning in 2019 and every three years thereafter that the credit is in effect, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the tax credit and whether the tax credit is performing the purpose for which it was created.

P. For the purposes of this section:

(1) "build green New Mexico rating system" means the certification standards adopted by build green New Mexico in November 2014, which include water conservation standards;

(2) "LEED-CI" means the LEED rating system for commercial interiors;

(3) "LEED-CS" means the LEED rating system for the core and shell of buildings;

(4) "LEED-EB" means the LEED rating system for existing buildings;

(5) "LEED gold" means the rating in compliance with, or exceeding, the second-highest rating awarded by the LEED certification process;

(6) "LEED" means the most current leadership in energy and environmental design green building rating system guidelines developed and adopted by the United States green building council;

(7) "LEED-H" means the LEED rating system for homes;

(8) "LEED-NC" means the LEED rating system for new buildings and major renovations;

(9) "LEED platinum" means the rating in compliance with, or exceeding, the highest rating awarded by the LEED certification process;

(10) "LEED silver" means the rating in compliance with, or exceeding, the third-highest rating awarded by the LEED certification process;

(11) "manufactured housing" means a multisectioned home that is:

(a) a manufactured home or modular home;

(b) a single-family dwelling with a heated area of at least thirty-six feet by twenty-four feet and a total area of at least eight hundred sixty-four square feet;

(c) constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or New Mexico construction codes up to the date of the unit's construction; and

(d) installed consistent with the Manufactured Housing Act [Chapter 60, Article 14 NMSA 1978] and rules adopted pursuant to that act relating to permanent foundations;

(12) "qualified occupied square footage" means the occupied spaces of the building as determined by:

(a) the United States green building council for those buildings obtaining LEED certification;

(b) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; and

(c) the United States environmental protection agency for ENERGY STAR-certified manufactured homes;

(13) "person" does not include state, local government, public school district or tribal agencies;

(14) "sustainable building" means either a sustainable commercial building or a sustainable residential building;

(15) "sustainable commercial building" means a multifamily dwelling unit, as registered and certified under the LEED-H or build green New Mexico rating system, that is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher and has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network or a building that has been registered and certified under the LEED-NC, LEED-EB, LEED-CS or LEED-CI rating system and that:

(a) is certified by the United States green building council at LEED silver or higher;

(b) achieves any prerequisite for and at least one point related to commissioning under LEED "energy and atmosphere", if included in the applicable rating system; and

(c) has reduced energy consumption beginning January 1, 2012, by sixty percent based on the national average for that building type as published by the United States department of energy as substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development;

(16) "sustainable residential building" means:

(a) a building used as a single-family residence as registered and certified under the build green New Mexico or LEED-H rating systems that: 1) is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher; 2) has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network; 3) has indoor plumbing fixtures and water-using appliances that, on average, have flow rates equal to or lower than the flow rates required for certification by WaterSense; 4) if landscape area is available at the front of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; and 5) if landscape area is available at the rear of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; or

(b) manufactured housing that is ENERGY STAR-qualified by the United States environmental protection agency;

(17) "tribal" means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo; and

(18) "WaterSense" means a program created by the federal environmental protection agency that certifies water-using products that meet the environmental protection agency's criteria for efficiency and performance.

History: Laws 2015, ch. 130, § 2.

## ANNOTATIONS

**Cross references. —** For the federal National Manufactured Housing Construction and Safety Standards Act of 1974, *see* 42 U.S.C. § 5403.

**Effective dates.** — Laws 2015, ch. 130 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2015, ch. 130, § 3 provided that the provisions of Laws 2015, ch. 130, § 2 apply to taxable years beginning on or after January 1, 2017.

# ARTICLE 2B
# Solar Capital Investments

## 7-2B-1. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 1983, ch. 213, § 4, recompiled 7-2B-1 NMSA 1978, relating to tax credit for solar investments, as 7-2-16.1 NMSA 1978.

# ARTICLE 2C
# Tax Refund Intercept Program

## 7-2C-1. Short title.

Chapter 7, Article 2C NMSA 1978 may be cited as the "Tax Refund Intercept Program Act".

**History:** Laws 1985, ch. 106, § 1; 1993, ch. 30, § 12.

**ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, substituted "Chapter 7, Article 2C NMSA 1978" for "This act".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 608, 610.

85 C.J.S. Taxation § 1763 to 1764.

## 7-2C-2. Purpose.

A. The purpose of the Tax Refund Intercept Program Act is to comply with state and federal law:

(1) by enhancing the enforcement of child support and medical support obligations;

(2) to aid collection of outstanding debts owed for:

(a) overpayment of public assistance and overissuance of food stamps;

(b) overpayment of unemployment compensation benefits and nonpayment of contributions or payments in lieu of contributions or other amounts due under the Unemployment Compensation Law [Chapter 51 NMSA 1978];

(c) nonpayment of reimbursements owed to the uninsured employers' fund under the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978]; and

(d) nonpayment of the workers' compensation fee due under the Workers' Compensation Administration Act [Chapter 52, Article 5 NMSA 1978];

(3) to promote repayment of educational loans;

(4) to aid collection of fines, fees and costs owed to the district, magistrate and municipal courts;

(5) to aid collection of fines, fees and costs owed to the Bernalillo county metropolitan court; and

(6) to aid in the payment to the state investment officer of film production tax credit amounts owed to the state investment officer due to loans made against the credit pursuant to Subsection D of Section 7-27-5.26 NMSA 1978.

B. Efforts to accomplish the purpose of the Tax Refund Intercept Program Act may be enhanced by establishing a system to collect debts, in particular, outstanding child support obligations, educational loans, amounts due under the Unemployment Compensation Law, the Workers' Compensation Act and the Workers' Compensation Administration Act, fines, fees and costs owed to the district, magistrate and municipal courts, film production tax credit amounts owed to the state investment officer and fines, fees and costs owed to the Bernalillo county metropolitan court, by setting off the amount of such debts against the state income tax refunds or film production tax credit amounts due the debtors.

**History:** Laws 1985, ch. 106, § 2; 1987, ch. 125, § 1; 1988, ch. 49, § 1; 1991, ch. 184, § 1; 1993, ch. 261, § 2; 1994, ch. 76, § 1; 1997, ch. 210, § 1; 2005, ch. 101, § 1; 2006, ch. 52, § 1; 2006, ch. 53, § 1.

## ANNOTATIONS

**The 2006 amendment,** effective May 17, 2006, added Subparagraphs (c) and (d) of Paragraph (2) of Subsection A, which provided that the act is to aid collection of outstanding debts owed for nonpayment of reimbursements owed to the uninsured employers’ fund under the Workers’ Compensation Act and workers’ compensation fees

due under the Workers' Compensation Administration Act; and in Subsection B, added amounts due under the Workers' Compensation Act and the Workers' Compensation Administration Act.

**Duplicate laws.** — Laws 2006, ch. 52, § 1 and Laws 2006, ch. 53, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 2006, ch. 53, § 1. *See* 12-1-8 NMSA 1978.

**Applicability.** — Laws 2006, ch. 53, § 5, effective May 17, 2006, provided that Laws 2006, ch. 53, § 1 apply to tax refunds issued on or after January 1, 2007.

**The 2005 amendment,** effective June 17, 2005, added Subsection A(6), which provided that a purpose of the Tax Refund Intercept Program Act is to comply with state and federal law to aid in the payment to the state investment officer of film production tax credit amounts owed to the state investment officer due to a loan made against the credit; and in Subsection B, added that the purpose may be enhanced by establishing a system to collect film production tax credit amounts owed to the state investment officer and amounts owed to Bernalillo County metropolitan court by setting off the amount of such debts against the film production tax credit amounts.

**The 1997 amendment,** effective June 20, 1997, substituted "district, magistrate and municipal courts" for "magistrate courts" in Paragraph A(4) and near the middle of Subsection B.

**The 1994 amendment,** effective March 4, 1994, inserted "and medical support" in Paragraph A(1).

**The 1993 amendment,** effective July 1, 1993, rewrote the section, adding subsection and paragraph designations and adding Paragraphs (4) and (5) to Subsection A.

**The 1991 amendment,** effective January 1, 1992, inserted the provisions relating to collection of amounts due under the Unemployment Compensation Law.

## 7-2C-3. Definitions.

As used in the Tax Refund Intercept Program Act:

A. "claimant agency" means the taxation and revenue department or any of its divisions, the human services department, the workforce transition services division of the workforce solutions department, the higher education department, the workers' compensation administration, any corporation authorized to be formed under the Educational Assistance Act [Chapter 21, Article 21A NMSA 1978], a district, magistrate or municipal court or the Bernalillo county metropolitan court;

B. "debt" means a legally enforceable obligation of an employer subject to the Unemployment Compensation Law [Chapter 51 NMSA 1978], the Workers'

Compensation Act [Chapter 52, Article 1 NMSA 1978] and the Workers' Compensation Administration Act [Chapter 52, Article 5 NMSA 1978], or an individual to pay a liquidated amount of money that:

(1) is equal to or more than one hundred dollars ($100);

(2) is due and owing a claimant agency, which a claimant agency is obligated by law to collect or which, in the case of an educational loan, a claimant agency has lawfully contracted to collect;

(3) has accrued through contract, tort, subrogation or operation of law; and

(4) either:

(a) has been secured by a warrant of levy and lien for amounts due under the Unemployment Compensation Law or workers' compensation fees due under the Workers' Compensation Administration Act; or

(b) has been reduced to judgment for all other cases;

C. "debtor" means any employer subject to the Unemployment Compensation Law, the Workers' Compensation Act and the Workers' Compensation Administration Act, or any individual owing a debt;

D. "department" or "division" means, unless the context indicates otherwise, the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "educational loan" means any loan for educational purposes owned by a public post-secondary educational institution, originated and owned by the higher education department or owned or guaranteed by any corporation authorized to be formed under the Educational Assistance Act;

F. "medical support" means amounts owed to the human services department pursuant to the provisions of Subsection B of Section 40-4C-12 NMSA 1978;

G. "public post-secondary educational institution" means a publicly owned or operated institution of higher education or other publicly owned or operated post-secondary educational facility located within New Mexico;

H. "spouse" means an individual who is or was a spouse of the debtor and who has joined with the debtor in filing a joint return of income tax pursuant to the provisions of the Income Tax Act [Chapter 7, Article 2 NMSA 1978], which joint return has given rise to a refund that may be subject to the provisions of the Tax Refund Intercept Program Act; and

I. "refund" means a refund, including any amount of tax rebates or credits, under the Income Tax Act or the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] that the department has determined to be due to an individual or corporation.

**History:** Laws 1985, ch. 106, § 3; 1986, ch. 20, § 53; 1987, ch. 125, § 2; 1988, ch. 49, § 2; 1991, ch. 141, § 1; 1991, ch. 184, § 2; 1993, ch. 261, § 3; 1994, ch. 56, § 1; 1994, ch. 76, § 2; 1997, ch. 210, § 2; 2006, ch. 52, § 2; 2006, ch. 53, § 2; 2017, ch. 82, § 1.

## ANNOTATIONS

**The 2017 amendment,** effective June 16, 2017, authorized the higher education department to be a claimant under the Tax Refund Intercept Program Act, and revised the definition of "educational loan" to include any loan originated and owned by the higher education department; in Subsection A, after "human services department, the", deleted "employment security division of the labor" and added "workforce transition services division of the workforce solutions", and after the next occurrence of "department,", added "the higher education department"; and in Subsection E, after "educational institution", added "originated and owned by the higher education department".

**The 2006 amendment,** effective May 17, 2006, added the workers' compensation administration to the definition of "claimant agency" in Subsection A; added obligations of employers subject to the Workers' Compensation Act and the Workers' Compensation Administration Act as a "debt" in Subsection B; deleted former Paragraph (4) of Subsection B, which provided that a "debt" included obligations due under the unemployment compensation law that has been secured by a warrant of levy or lien or has been reduced to judgment; added Subparagraphs (a) and (b) of Paragraph (4) of Subsection B, which provided that "debt" includes obligations that have either been secured by a warrant of levy and lien for amounts due under the unemployment compensation law or workers' compensation fees due under the Workers' Compensation Administration Act or reduced to judgment for other cases; included within the definition of "debtor" in Subsection C, employers subject to the Workers' Compensation Act and the Workers' Compensation Administration Act; and included rebates or credits under the Corporate Income and Franchise Tax Act due to a corporation as a "refund" in Subsection I.

**The 1997 amendment,** effective June 20, 1997, substituted "district, magistrate or municipal court" for "magistrate court" in Subsection A.

**The 1994 amendment,** effective March 4, 1994, inserted Subsection F, and redesignated former Subsections F to H as Subsections G to I This section was also amended by Laws 1994, ch. 56, § 1. The section was set out as amended by Laws 1994, ch. 76, § 2. *See* 12-1-8 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, deleted "or" before "any corporation" and added "a magistrate court or the Bernalillo county metropolitan court" to the end, in Subsection A; substituted "one hundred dollars ($100)" for "one hundred fifty dollars ($150)" in Paragraph (1) of Subsection B; and made a stylistic change in Subsection H.

**The 1991 amendment,** effective January 1, 1992, inserted "the employment security division of the labor department" in Subsection A; in Subsection B, inserted "an employer subject to the Unemployment Compensation Law or" in the introductory phrase, deleted "and has been reduced to judgment" following "law" in Paragraph (3), rewrote Paragraph (4), which read "which, in the case of an educational loan has been reduced to judgment," and made minor stylistic changes; and inserted "employer subject to the Unemployment Compensation Law or any" in Subsection C. This section was also amended by Laws 1991, ch. 141, § 1. The section was set out as amended by Laws 1991, ch. 184, § 2. *See* 12-1-8 NMSA 1978.

## 7-2C-4. Remedy additional.

The remedies of a claimant agency under the Tax Refund Intercept Program Act are in addition to and not in substitution for any other remedies available by law.

**History:** Laws 1985, ch. 106, § 4.

## 7-2C-5. Department to aid in collection of debts through setoff.

Subject to the limitations contained in the Tax Refund Intercept Program Act, the department, upon request, shall render assistance in the collection of any debt owed to a claimant agency or any debt that a claimant agency is obligated by law to collect. This assistance shall be provided by withholding from any refund due to the debtor pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] the amount of debt meeting the requirements of the Tax Refund Intercept Program Act and paying over to the claimant agency the amount withheld.

**History:** Laws 1985, ch. 106, § 5; 1994, ch. 56, § 2.

**ANNOTATIONS**

**The 1994 amendment,** effective May 18, 1994, substituted "Department" for "Division" in the section heading, and "department" for "division" and "that" for "which" in the first sentence.

## 7-2C-6. Procedures for setoff; notifications to debtor.

A. Each year a claimant agency seeking to collect a debt through setoff shall notify the department in the manner and by the date required by the department, which date shall be in the period from November 1 through December 15. The notice to the department shall include the amount of the debt, the name and identification number of

the debtor and such other information as the department may require. The notice shall also include certification that the debt is due and owing the claimant agency or that the claimant agency is obligated by law to collect the debt. This notice shall be effective only to initiate setoff against refunds that would be made in the calendar year subsequent to the year in which notification is made to the department.

B. The claimant agency shall inform the department within one week of any changes in the status of any debt submitted by the claimant agency for setoff.

C. Upon proper and timely notification from the claimant agency, the department shall determine whether the debtor is entitled to a refund of at least fifty dollars ($50.00). The department shall notify the claimant agency in writing, or in such other manner as the department and the claimant agency may agree, with respect to each debt accepted for setoff whether the debtor is due a refund of fifty dollars ($50.00) or more and, if so, the amount of refund, the address of the debtor entered upon the return and, if the refund arises from a joint return, the name and address of the spouse as entered upon the return.

D. Within ten days after receiving the notification from the department pursuant to Subsection C of this section, the claimant agency shall send a notice by first class mail to the debtor at the debtor's last known address. The notice required by this subsection shall include:

(1) a statement that a transfer of the refund will be made and that the claimant agency intends to set off the amount of the transfer against a claimed debt;

(2) the amount of the debt asserted and a description of how the debt asserted arose;

(3) the name, address and telephone number of the claimant agency;

(4) the amount of refund to be set off against the debt asserted;

(5) a statement that the debtor has thirty days from the date indicated on the notice to contest the setoff by applying to the claimant agency for a hearing with respect to the validity of the debt asserted by that agency; and

(6) a statement that failure of the debtor to apply for a hearing within thirty days will be deemed a waiver of the opportunity to contest the setoff and to a hearing.

E. If the refund against which a debt is intended to be set off results from a joint tax return, the claimant agency shall send a notice by first class mail to the spouse named on the return within ten days after receiving the notification from the department pursuant to Subsection C of this section. The notice to the spouse shall contain the following information:

(1) a statement that a transfer of the refund will be made and that the claimant agency intends to set off the amount of the transfer against a claimed debt;

(2) the total amount of the refund and the amount of each claimed debt;

(3) the name, address and telephone number of the claimant agency;

(4) a statement that no debt is claimed against the spouse and that the spouse may be entitled to receive all or part of the refund regardless of the claimed debt against the debtor spouse;

(5) a statement that to assert a claim to all or part of the refund, the spouse shall apply to the claimant agency for a hearing within thirty days from the date indicated on the notice with respect to the entitlement of the spouse to all or part of the refund from which a transfer will be made at the request of the claimant agency; and

(6) a statement that failure of the spouse to apply for a hearing within thirty days may be deemed a waiver of any claim of the spouse with respect to the refund.

F. A debtor may contest the setoff of a debt by applying to the claimant agency for a hearing within thirty days of the date the notice required by Subsection D of this section is sent to the debtor. Failure of the debtor to apply for a hearing within the time required shall constitute a waiver of the right to contest the debt or the setoff of the debt.

G. A spouse may contest the setoff of a debt against a refund to which the spouse claims entitlement in whole or in part by applying to the claimant agency for a hearing within thirty days of the date the notice required by Subsection E of this section was sent to the spouse. Failure of the spouse to apply for a hearing within the time required shall constitute a waiver of the right to contest the setoff of the debt against a refund to which the spouse may claim entitlement.

H. The department shall apply against the refund the amount of the claimed debt, not to exceed the amount of the refund, and shall transfer that amount to the claimant agency with an accounting of the amount transferred. When the amount of refund due exceeds the amount of all applied debts, the department shall treat the excess as it does other refunds relating to income taxes.

I. Whether or not the refund due the debtor exceeds the amount of the applied debt, the department shall notify the debtor at the time of the transfer to the claimant agency of:

(1) the fact of the transfer and that the claimant agency intends to set off the amount of the transfer against the asserted debt;

(2) the total amount of the refund;

(3) the amount of debt asserted by the claimant agency; and

(4) the name, address and telephone number of the claimant agency.

J. Once the department has sent to the debtor the notice required by Subsection I of this section, together with any excess of the amount of refund over the amount of asserted debts, the department shall be deemed to have made the refund required by the Income Tax Act [Chapter 7, Article 2 NMSA 1978] or the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978].

**History:** Laws 1985, ch. 106, § 6; 1994, ch. 56, § 3; 2006, ch. 52, § 3; 2006, ch. 53, § 3.

**ANNOTATIONS**

**The 2006 amendment,** effective May 17, 2006, provided in Subsection J that when the department has sent to the debtor the notice and any excess amount of refund, the department shall be deemed to have made the refund required by the Corporate Income and Franchise Tax Act.

**Duplicate laws.** — Laws 2006, ch. 52, § 3 and Laws 2006, ch. 53, § 3 enacted identical amendments to this section. The section was set out as amended by Laws 2006, ch. 53, § 3. *See* 12-1-8 NMSA 1978.

**Applicability.** Laws 2006, ch. 53, § 5, effective May 17, 2006, provided that Laws 2006, ch. 53, § 3 apply to tax refunds issued on or after January 1, 2007.

**The 1994 amendment,** effective May 18, 1994, substituted "department" for "division" throughout the section; and, in Subsection H, deleted the former first two sentences, relating to confirmation that the claimant agency has met the requirements of Subsection D, and deleted "If the division receives timely confirmation from the claimant agency" at the beginning of the first sentence.

## 7-2C-7. Suspense account.

Upon receipt of money transferred from the department pursuant to Subsection H of Section 7-2C-6 NMSA 1978, the claimant agency shall deposit and hold the money in the suspense account until a final determination of the setoff is made.

**History:** Laws 1985, ch. 106, § 7; 1994, ch. 56, § 4.

**ANNOTATIONS**

**The 1994 amendment,** effective May 18, 1994, substituted "department" for "division" and "Section 7-2C-6 NMSA 1978" for "Section 6 of the Tax Refund Intercept Program Act".

## 7-2C-8. Interest becomes obligation of claimant agency.

Once a transfer is made by the department pursuant to Subsection H of Section 7-2C-6 NMSA 1978, notwithstanding any other provision of law to the contrary, the department, except in its capacity as a claimant agency, is not obligated in any manner for the payment of interest to the debtor or to the claimant agency with respect to that portion of the refund against which the asserted debt was applied for any period after the date of transfer. Any interest subsequently determined to be due the debtor with respect to any refund against which the asserted debt was applied for any period after the date of transfer is the responsibility of the claimant agency; provided, however, compliance by the department and claimant agency with the provisions of the Tax Refund Intercept Program Act bars accrual of interest, notwithstanding the provisions of Section 7-1-68 NMSA 1978.

**History:** Laws 1985, ch. 106, § 8; 1994, ch. 56, § 5.

**ANNOTATIONS**

**The 1994 amendment,** effective May 18, 1994, substituted "department" for "division" twice in the first sentence and once in the proviso clause in the second sentence, and "Section 7-2C-6 NMSA 1978" for "Section 6 of the Tax Refund Intercept Program Act" in the first sentence.

## 7-2C-9. Administrative hearing required of claimant agency; department exempted.

A. The claimant agency shall provide notice and opportunity for hearing, consistent with due process, as required by Subsections F and G of Section 7-2C-6 NMSA 1978.

B. Notwithstanding any other provision of law, the department, except in its capacity as a claimant agency, is not obligated to grant, and will not grant, a hearing to any debtor or spouse with respect to any action taken or any issue arising under the provisions of the Tax Refund Intercept Program Act.

**History:** Laws 1985, ch. 106, § 9; 1994, ch. 56, § 6.

**ANNOTATIONS**

**The 1994 amendment,** effective May 18, 1994, substituted "department" for "division" in the catchline and in Subsection B, and "Section 7-2C-6 NMSA 1978" for "Section 6 of the Tax Refund Intercept Program Act" in Subsection A.

## 7-2C-10. Final determination and notice of setoff.

A. The determination of the validity and the amount of the setoff asserted or the application of setoff to a refund to which a debtor or spouse asserts entitlement in whole or in part under the provisions of the Tax Refund Intercept Program Act shall be final upon the exhaustion of the administrative or appellate process as applicable.

B. If, during application of setoff procedures, any changes occur in the amount of the refund subject to setoff, including any changes resulting from the filing of amended returns or the filing of additional returns during the calendar year for which the claimant agency has requested setoff with respect to the debtor, the department shall notify the claimant agency of these changes. The department shall promulgate regulations or other appropriate administrative directives to set forth the procedures by which such notice shall be made and by which the amount held in suspense shall be adjusted when required.

C. Upon final determination of the entitlement of a debtor or spouse to any or all of that portion of a refund that has been transferred to the claimant agency, as the amount transferred may be adjusted in accordance with Subsection B of this section, the claimant agency shall remit to the debtor or spouse from the suspense fund the amount determined to be due, with an appropriate accounting. A copy of the accounting shall be sent to the department.

D. Upon final determination, the claimant agency shall remit to itself from the suspense account that amount determined to be due the claimant agency and shall credit that amount against the debt. In the case that the amount remitted is not sufficient to extinguish the debt, the claimant agency shall have the right to pursue collection of the remaining debt through any available remedy, including a proceeding under the Tax Refund Intercept Program Act for other calendar years.

E. Upon remittance from the suspense fund to the credit of the debtor's account pursuant to Subsection D of this section, the claimant agency shall notify the debtor in writing of the final determination of the setoff. A copy of the notice shall be sent to the department. The notice shall include:

(1) a final accounting of the refund against which the debt was set off, including the amount of the refund to which the debtor was entitled prior to setoff;

(2) the final determination of the amount of the debt that has been satisfied and the amount of debt, if any, still due and owing; and

(3) the amount of the refund in excess of the debt finally determined to be due and owing and the amount of any interest due.

F. Upon remittance from the suspense fund to the credit of the debtor's account pursuant to Subsection D of this section, any amount finally determined to be due to the debtor with respect to the refund amount shall be promptly paid by the claimant agency from the suspense account to the debtor with an appropriate accounting. Interest due

the debtor with respect to the amount of refund finally determined to be due the debtor for any period after the transfer to the suspense fund by the department pursuant to Subsection H of Section 7-2C-6 NMSA 1978 is authorized to be paid by the claimant agency from any funds available to it for this purpose.

**History:** Laws 1985, ch. 106, § 10; 1994, ch. 56, § 7.

**ANNOTATIONS**

**The 1994 amendment,** effective May 18, 1994, substituted "department" for "division" throughout the section, "that" for "which" in the first sentence in Subsection C and "Section 7-2C-6 NMSA 1978" for "Section 6 of the Tax Refund Intercept Program Act" in the second sentence in Subsection F.

## 7-2C-11. Priority of claims.

A. Claims of the department take precedence over the claim of any competing claimant agency, whether the department asserts a claim or sets off an asserted debt under the provisions of the Tax Refund Intercept Program Act or under the provisions of any other law that authorizes the department to apply amounts of tax owed against any refund due an individual pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978].

B. After claims of the department, claims shall take priority in the following order before claims of any competing claimant agency:

(1) claims of the human services department resulting from child support enforcement liabilities;

(2) claims of the human services department resulting from medical support liabilities;

(3) claims resulting from educational loans made under the Educational Assistance Act [Chapter 21, Article 21A NMSA 1978];

(4) claims of the human services department resulting from temporary assistance for needy families liabilities;

(5) claims of the human services department resulting from supplemental nutrition assistance program liabilities;

(6) claims of the workforce transition services division of the workforce solutions department arising under the Unemployment Compensation Law [Chapter 51 NMSA 1978];

(7) claims of a district court for fines, fees or costs owed to that court;

(8) claims of a magistrate court for fines, fees or costs owed to that court;

(9) claims of the Bernalillo county metropolitan court for fines, fees or costs owed to that court;

(10) claims of a municipal court for fines, fees or costs owed to that court;

(11) claims of the workers' compensation administration arising under the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] or the Workers' Compensation Administration Act [Chapter 52, Article 5 NMSA 1978]; and

(12) claims from educational loans made by the higher education department.

**History:** Laws 1985, ch. 106, § 11; 1988, ch. 49, § 3; 1991, ch. 184, § 3; 1993, ch. 261, § 4; 1994, ch. 76, § 3; 1997, ch. 210, § 3; 2006, ch. 52, § 4; 2006, ch. 53, § 4; 2017, ch. 82, § 2.

## ANNOTATIONS

**The 2017 amendment,** effective June 16, 2017, added claims from educational loans made by the higher education department to the priority of claims list under the provisions of the Tax Refund Intercept Program Act; in Subsection B, Paragraph B(4), after "resulting from", deleted "AFDC" and added "temporary assistance for needy families", in Paragraph B(5), after "resulting from", deleted "food stamp" and added "supplemental nutrition assistance program", in Paragraph B(6), after "claims of the", deleted "employment security division of the labor" and added "workforce transition services division of the workforce solutions", and added Paragraph B(12).

**The 2006 amendment,** effective May 17, 2006, added Paragraph (11) of Subsection B to provide for the priority of claims of the workers’ compensation administration arising under the Workers’ Compensation Act or the Workers’ Compensation Administration Act.

**The 1997 amendment,** effective June 20, 1997, made a minor stylistic change in Subsection A, and in Subsection B, added Paragraphs (7) and (10), redesignated former Paragraphs (7) and (8) as Paragraphs (8) and (9) and made stylistic changes accordingly.

**The 1994 amendment,** effective March 4, 1994, inserted Paragraph B(2) and redesignated former Paragraphs B(2) to B(7) as Paragraphs B(3) to B(8).

**The 1993 amendment,** effective July 1, 1993, added Paragraphs (6) and (7) to Subsection B, making a related grammatical change.

**The 1991 amendment,** effective January 1, 1992, in Subsection B, added Paragraph (5) and made a related stylistic change.

## 7-2C-12. Administrative costs; charges appropriated to department.

A. The department shall charge claimant agencies an administrative fee of three percent of the debts for the claimant agencies pursuant to the Tax Refund Intercept Program Act.

B. The administrative fee authorized pursuant to Subsection A of this section shall be withheld on all debts set off and collected by the department on or after July 1, 1997 and shall be distributed monthly to the New Mexico finance authority to be pledged irrevocably for the payment of the principal, interest and expenses or other obligations related to the bonds for the taxation and revenue information management systems project. That distribution shall continue until the earlier of December 31, 2005 or the date on which the New Mexico finance authority certifies to the department that all obligations for bonds issued pursuant to Section 12 of this 1997 act have been fully discharged or provision has been made for their discharge and directs the department to cease distributing the money from the fee pursuant to Subsection A of this section to the authority. Thereafter, the administrative fees are appropriated to the department for use in administering the Tax Refund Intercept Program Act.

**History:** Laws 1985, ch. 106, § 12; 1994, ch. 56, § 8; 1997, ch. 125, § 5.

**ANNOTATIONS**

**Compiler's notes.** — The phrase "Section 12 of this 1997 act" in Subsection B referred to Section 12 of Laws 1997, ch. 125, which was an uncompiled provision authorizing the issuance of revenue bonds.

**The 1997 amendment,** effective July 1, 1997, added the Subsection A designation, rewrote Subsection A, and added Subsection B.

**The 1994 amendment,** effective May 18, 1994, substituted "department" for "division" in the section heading and throughout the section.

## 7-2C-13. Confidentiality; exemption.

A. The information obtained by a claimant agency from the department in accordance with the provisions of the Tax Refund Intercept Program Act shall be confidential and shall be used by the claimant agency only in pursuit of the collection of a debt under the provisions of the Tax Refund Intercept Program Act. Any employee or former employee of a claimant agency who unlawfully discloses any information obtained from the department is guilty of a misdemeanor and shall, upon conviction, be fined not more than one thousand dollars ($1,000) or imprisoned not more than one year or both and shall not be employed by the state for a period of five years after the date of conviction.

B. Notwithstanding other provisions of law prohibiting disclosure by the department of information from a taxpayer's return, the department may provide to a claimant agency any information deemed necessary by the department to accomplish the purposes of the Tax Refund Intercept Program Act.

**History:** Laws 1985, ch. 106, § 13; 1994, ch. 56, § 9.

**ANNOTATIONS**

**The 1994 amendment,** effective May 18, 1994, substituted "department" for "division" throughout the section and deleted "thereof" following "upon conviction" in the second sentence in Subsection A.

## 7-2C-14. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 47, § 9 repealed 7-2C-14 NMSA 1978, as amended by Laws 1994, ch. 56, § 10, relating to administrative regulations, rulings, instructions and orders for purposes of the Tax Refund Intercept Program Act, effective June 18, 1999. For provisions of the former section, *see* the 1998 NMSA 1978 on *NMOneSource.com.*

# ARTICLE 2D
# Venture Capital Investments

## 7-2D-1. Short title.

Chapter 7, Article 2D NMSA 1978 may be cited as the "Venture Capital Investment Act".

**History:** Laws 1993, ch. 313, § 1; 1995, ch. 89, § 1.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, substituted "Chapter 7, Article 2D NMSA 1978" for "This act".

## 7-2D-2. Definitions.

As used in the Venture Capital Investment Act:

A. "capital gain tax differential" equals either:

(1) an amount equal to fifty percent of the federal income tax paid by the taxpayer on qualified diversifying business net capital gains; or

(2) in the event that the taxpayer makes an election pursuant to Section 7-2D-13 NMSA 1978, and the taxpayer has not previously paid federal income tax on the qualified diversifying business net capital gain that accrued prior to that election, then an amount equal to fifty percent of the federal income tax paid by the taxpayer on the gain on the sale of that qualified diversifying business stock times the percentage derived by dividing the gain on such stock accruing since the election by the total gain on the stock accruing since its original acquisition without regard to the election;

B. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "Internal Revenue Code" means the federal Internal Revenue Code of 1986, as amended or renumbered;

D. "manufacturing business" means the manufacture of, and the business activities related to the manufacture of, all nondurable and durable goods;

E. "New Mexico income tax" means the tax imposed pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978];

F. "qualified diversifying business net capital gain" means the net capital gain for the taxable year determined under the Internal Revenue Code by taking into account only gains or losses from sales or exchanges of qualified diversifying business stock with a holding period of more than five years at the time of the sale or exchange;

G. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

H. "taxpayer" means any individual subject to the tax imposed pursuant to the Income Tax Act; and

I. "testing period" means the five-year period a stock is held by a taxpayer, beginning with the first day of the taxpayer's holding period for the stock.

**History:** Laws 1993, ch. 313, § 2; 1995, ch. 89, § 2.

**ANNOTATIONS**

**Cross references.** — For the Internal Revenue Code, *see* 26 U.S.C. § 1.

**The 1995 amendment,** effective June 16, 1995, added Subsections A, D and F and redesignated the remaining subsections accordingly.

## 7-2D-3. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 89, § 11 repealed 7-2D-3 NMSA 1978, as enacted by Laws 1993, ch. 313, § 3, relating to the tax credit for federal income tax paid on a qualified diversifying business net capital gain, effective June 16, 1995. For provisions of the former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

## 7-2D-4. Additional definition; qualified diversifying business stock.

A. For purposes of the Venture Capital Investment Act, "qualified diversifying business stock" means, except as otherwise provided in Section 7-2D-13 NMSA 1978, any stock in a corporation that is originally issued after June 30, 1994 but before July 1, 2001, if:

(1) on the date of issuance the corporation is a qualified diversifying business;

(2) except as otherwise provided in Subsection B of this section and in Sections 7-2D-9 and 7-2D-10 NMSA 1978, the stock is acquired by the taxpayer at its original issue, either:

(a) in exchange for money or other property, not including stock; or

(b) as compensation for services, other than services performed as an underwriter of such stock; and

(3) the corporation throughout the testing period is an active manufacturing business and a New Mexico business and at the end of the testing period is a successful business.

B. For purposes of Paragraph (2) of Subsection A of this section, stock shall not be treated as acquired by the taxpayer at its original issue if:

(1) it is issued directly or indirectly in redemption of, or otherwise in exchange for, stock that is not qualified diversifying business stock; or

(2) it is issued in an exchange described in Section 35l of the Internal Revenue Code in exchange for property other than qualified diversifying business stock if, immediately after the exchange, both the issuer and transferee of the stock are members of the same controlled group of corporations as defined in Section 1563 of the Internal Revenue Code.

**History:** Laws 1993, ch. 313, § 4; 1995, ch. 89, § 3.

**ANNOTATIONS**

**Cross references.** — For Sections 351 and 1563 of the Internal Revenue Code, *see* 26 U.S.C. §§ 351 and 1563.

**The 1995 amendment,** effective June 16, 1995, in Subsection A, substituted "Section 7-2D-13 NMSA 1978" for "Section 13 of that act" in the introductory paragraph; substituted "Sections 7-2D-9 and 7-2D-10 NMSA 1978" for "Sections 9 and 10 of the Venture Capital Investment Act" in Paragraph (2); and rewrote former Paragraph (3) which formerly required that stock meet the requirements of Sections 6, 7 and 8 of the Venture Capital Investment Act throughout the testing period.

## 7-2D-5. Additional definition; qualified diversifying business.

A. For purposes of the Venture Capital Investment Act, "qualified diversifying business" means, except as otherwise provided in Section 7-2D-13 NMSA 1978, any domestic corporation that has its commercial domicile in New Mexico and with respect to which the aggregate amount of money, other property and services received by the corporation for stock, as a contribution to capital and as paid-in surplus, plus the accumulated earnings and profits of the corporation, does not exceed twenty-five million dollars ($25,000,000); provided:

(1) the aggregate amount shall be determined at the time of issuance and shall include amounts received in the issuance and all prior issuances; and

(2) in the case of stock issued in a calendar year after 1993, the aggregate amount shall not exceed an amount equal to twenty-five million dollars ($25,000,000) multiplied by the cost-of-living adjustment determined under Section 1 (f)(3) of the Internal Revenue Code for that calendar year by substituting "1992" for "1987" in Subparagraph (B) of that section.

B. For the purpose of determining the aggregate amount in Subsection A of this section:

(1) the amount taken into account with respect to any property other than money shall be an amount equal to the adjusted basis of that property for determining capital gain:

(a) reduced to not below zero by any liability to which the property was subject or that was assumed by the corporation; and

(b) determined at the time the property was received by the corporation; and

(2) the amount taken into account with respect to stock issued for services shall be the value of those services.

**History:** Laws 1993, ch. 313, § 5; 1995, ch. 89, § 4.

**ANNOTATIONS**

**Cross references.** — For Section 1(f)(3) of the Internal Revenue Code, *see* 26 U.S.C. § 1(f)(3).

**The 1995 amendment,** effective June 16, 1995, substituted "Section 7-2D-13 NMSA 1978" for "Section 13 of that act" in the introductory paragraph of Subsection A; substituted "aggregate amount shall be determined" for "determination made under this subsection shall be made" and "and" for "but" in Paragraph A(1); inserted "aggregate" near the beginning of Paragraph A(2); substituted "determining the aggregate amount" for "making the determination" in the introductory paragraph of Subsection B; and made minor stylistic changes throughout the section.

## 7-2D-6. Additional definition; active manufacturing business.

A. Except as otherwise provided in this section, for the purposes of the Venture Capital Investment Act, "active manufacturing business" means a corporation that throughout the testing period:

(1) either:

(a) is engaged in the active conduct of a manufacturing business; and

(b) uses substantially all of its assets in the active conduct of a manufacturing trade or business; provided, rights to computer software that produce income described in Section 543(d) of the Internal Revenue Code and any assets that are held for investment and are to be used to finance future research and experimentation or working capital needs of the corporation shall be treated as assets used in the active conduct of a manufacturing business; or

(2) is engaged in any of the following activities, whether or not the corporation has any gross income from such activities at the time of the determination:

(a) start-up activities described in Section 195(c)(l)(A) of the Internal Revenue Code;

(b) activities resulting in the payment or incurring of expenditures that may be treated as research and experimental expenditures under Section 174 of the Internal Revenue Code; or

(c) activities with respect to in-house research expenses described in Section 41(b)(4) of the Internal Revenue Code.

B. A corporation shall not be considered an active manufacturing business if at any time during the testing period:

(1) more than ten percent of the value of its assets in excess of liabilities consists of stock in other corporations that are not subsidiaries of that corporation; provided:

(a) for purposes of this section, stock and debt in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets and to conduct its ratable share of the subsidiary's activities; and

(b) a corporation shall be considered a subsidiary if the parent owns at least fifty percent of the combined voting power of all classes of stock entitled to vote or at least fifty percent in value of all outstanding stock of that corporation; or

(2) more than ten percent of the total value of its assets is real property that is not used in the active conduct of a manufacturing business. The ownership of, dealing in or renting of real property shall not be treated as the active conduct of a manufacturing business.

**History:** Laws 1993, ch. 313, § 6; 1995, ch. 89, § 5.

**ANNOTATIONS**

**Cross references.** — For Sections 41, 174, 195, and 543 of the Internal Revenue Code, *see* 26 U.S.C. §§ 41, 174, 195, and 543, respectively.

**The 1995 amendment,** effective June 16, 1995, rewrote the section heading which read "active manufacturing business requirement" and rewrote the section to such an extent that a detailed comparison would be impracticable.

## 7-2D-7. Additional definition; New Mexico business.

For the purposes of the Venture Capital Investment Act, "New Mexico business" means a corporation that throughout the testing period meets these conditions:

A. the corporation has its commercial domicile in New Mexico and all of its corporate directors who are also employees of the corporation are full-time residents of New Mexico;

B. at least two-thirds of all of the corporation's employees, at least two-thirds of its employees who perform research, development or design activities and at least two-thirds of its employees who perform manufacturing activities are full-time residents of New Mexico;

C. the corporation maintains an employee stock purchase plan, incentive stock option plan or similar plan pursuant to which employees of the corporation have the opportunity to acquire equity ownership in the corporation; and

D. the corporation employs on a full-time basis an average of at least fifty full-time New Mexico residents.

**History:** Laws 1993, ch. 313, § 7; 1995, ch. 89, § 6.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, rewrote the section heading which read "New Mexico business requirement" and rewrote the introductory paragraph which read "A corporation meets the requirements pursuant to Paragraph (3) of Subsection A of Section 4 of the Venture Capital Investment Act if throughout the testing period".

## 7-2D-8. Additional definition; successful business.

For the purposes of the Venture Capital Investment Act, "successful business" means a corporation that, at the end of the taxpayer's holding period, has experienced a net increase in valuation of at least fifteen million dollars ($15,000,000); provided:

A. the increase in valuation shall be calculated by subtracting the valuation of the corporation at the time it was determined to be a qualified diversifying business from the current valuation of the corporation at the time of the transfer giving rise to the qualified diversifying business net capital gain;

B. the current valuation of the corporation at the time of the transfer giving rise to the qualified diversifying business net capital gain equals the per-share value of the money and property received by the taxpayer on the transfer multiplied by the outstanding shares of the corporation, as calculated using the number of shares that would be outstanding if all outstanding convertible securities were fully converted and all outstanding options and warrants were fully exercised; and

C. in the case of any stock issued in a calendar year after 1994, the net increase in valuation required shall be an amount equal to fifteen million dollars ($15,000,000) multiplied by the cost-of-living adjustment determined under Section 1(f)(3) of the Internal Revenue Code for that calendar year by substituting "1992" for "1987" in Subparagraph (B) of that section.

**History:** Laws 1993, ch. 313, § 8; 1995, ch. 89, § 7.

**ANNOTATIONS**

**Cross references.** — For Section 1 of the Internal Revenue Code, *see* 26 U.S.C. § 1.

**The 1995 amendment,** effective June 16, 1995, rewrote the section heading which read "Business success requirement" and rewrote the section to such an extent that a detailed comparison would be impracticable.

## 7-2D-8.1. Tax credit.

A. Any taxpayer who pays federal income tax on a qualified diversifying business net capital gain may claim a credit against the taxpayer's New Mexico income tax liability equal to a capital gain tax differential, if the taxpayer allocates the qualified diversifying business net capital gain to New Mexico.

B. The tax credit provided in Subsection A of this section may only be deducted from the taxpayer's New Mexico income tax liability. Any portion of the credit that remains unused at the end of the taxpayer's taxable year may be carried forward and deducted from the taxpayer's New Mexico income tax liability in succeeding years.

**History:** 1978 Comp., § 7-2D-8.1, enacted by Laws 1995, ch. 89, § 8.

## 7-2D-9. Special rules for options, warrants and certain convertible investments.

A. In the case of stock that is acquired by the taxpayer through the exercise of a nontransferable option or warrant issued in exchange for the performance of services for the corporation issuing it, through the conversion of convertible debt or in exchange for securities of the corporation in a transaction described in Section 368 of the Internal Revenue Code:

(1) the stock shall be treated as acquired by the taxpayer at original issue; and

(2) the stock shall be treated as having been held during the period that the option, warrant or debt was held or that the security was outstanding.

B. For purposes of Subsection A of Section 7-2D-5 NMSA 1978 and notwithstanding Subsection B of that section, in the case of a debt instrument converted to stock or stock issued in exchange for securities in a transaction described in Section 368 of the Internal Revenue Code, such stock shall be treated as issued for an amount equal to the sum of:

(1) the principal amount of the debt or security at the time of the conversion or exchange; and

(2) accrued but unpaid interest on that loan or security.

**History:** Laws 1993, ch. 313, § 9; 1995, ch. 89, § 9.

**ANNOTATIONS**

**Cross references.** — For Section 368 of the Internal Revenue Code, *see* 26 U.S.C. § 368.

**The 1995 amendment,** effective June 16, 1995, substituted "a nontransferable option or warrant issued in exchange for the performance of services for the corporation issuing it" for "an applicable option or warrant" in the introductory paragraph of Subsection A; substituted "Section 7-2D-5 NMSA 1978" for "Section 5 of the Venture Capital Investment Act" near the beginning of Subsection B; and deleted former Subsection C which defined "applicable option or warrant".

## 7-2D-10. Certain tax-free and other transfers.

A. This section applies to the following transfers of stock:

(1) by gift;

(2) at death;

(3) to the extent that the basis of the property in the hands of the transferee is determined by reference to the basis of the property in the hands of the transferor by reason of Sections 334(b), 723 or 732 of the Internal Revenue Code; and

(4) of qualified diversifying business stock for other qualified diversifying business stock in a transaction described in Section 351 of the Internal Revenue Code or a reorganization described in Section 368 of the Internal Revenue Code.

B. In the case of a transfer of stock to which this section applies, the transferee shall be treated as having acquired the stock in the same manner as the transferor and as having held such stock during any continuous period immediately preceding the transfer during which it was held or treated as held under this section by the transferor.

C. In the case of a transaction described in Section 351 of the Internal Revenue Code or a reorganization described in Section 368 of the Internal Revenue Code, if a qualified diversifying business stock is transferred for other stock that is not qualified diversifying business stock, the transfer shall be treated as a transfer to which this section applies solely with respect to the person receiving such other stock.

D. This section applies to the sale or exchange of stock treated as qualified diversifying business stock by reason of Subsection C of this section only to the extent of the gain, if any, that would have been recognized at the time of the transfer described in Subsection C of this section if Section 351 or 368 of the Internal Revenue Code had not applied at that time.

E. For purposes of this subsection, stock treated as qualified diversifying business stock under Subsection C of this section shall be so treated for subsequent transactions or reorganizations, except that the limitation of Subsection D of this section shall be applied as of the time of the first transfer to which Subsection C of this section applied.

F. Except in the case of a transaction described in Section 368 of the Internal Revenue Code, this section applies only if, immediately after the transaction, the corporation issuing the stock owns, directly or indirectly, stock representing control, within the meaning of Section 368(c) of the Internal Revenue Code, of the corporation whose stock was transferred.

**History:** Laws 1993, ch. 313, § 10.

**ANNOTATIONS**

**Cross references.** — For Sections 334, 351, 368, 723, and 732 of the Internal Revenue Code, *see* 26 U.S.C. §§ 334, 351, 368, 723, and 732, respectively.

## 7-2D-11. Stock exchanged for property.

For purposes of the Venture Capital Investment Act, in the case where the taxpayer transfers property other than money or stock to a corporation in exchange for stock in that corporation:

A. the stock shall be treated as having been acquired by the taxpayer on the date of that exchange; and

B. the basis of the stock in the hands of the taxpayer shall be treated as equal to the fair market value of the property exchanged.

**History:** Laws 1993, ch. 313, § 11.

## 7-2D-12. Pass-thru entities.

For purposes of the Venture Capital Investment Act, any gain or loss of a pass-thru entity that is treated for purposes of that act as a gain or loss of any person holding an interest in that entity shall retain its character as qualified diversifying business capital gain or loss in the hands of that person.

**History:** Laws 1993, ch. 313, § 12.

## 7-2D-13. Election.

A. On any date after June 30, 1993, a taxpayer who holds any stock of a corporation that has its commercial domicile in New Mexico and meets the requirements of this section may elect to have the stock treated as a qualified diversifying business stock in accordance with the provisions of this section for purposes of claiming the tax credit pursuant to the Venture Capital Investment Act.

B. On any date after June 30, 1994, if a taxpayer holds any stock of a corporation that has its commercial domicile in New Mexico on that date and which stock, at the

time it was issued, would have been treated as qualified diversifying business stock pursuant to the Venture Capital Investment Act but for the facts that the stock was issued on or before June 30, 1994 and that the stock was issued by a corporation that at the time did not have its commercial domicile in New Mexico and the value of such stock on that date exceeds its adjusted basis, the taxpayer may elect to set that date as the election date and treat the stock as having been sold on that date for an amount equal to its value on that date and as having been reacquired on that date for an amount equal to such value.

C. For purposes of determining the tax credit pursuant to Section 7-2D-8.1 NMSA 1978 and whether or not the taxpayer actually incurs federal or New Mexico income tax liability, the gain from sales determined in Subsection B of this section shall be treated as received or accrued and the holding period of the reacquired stock shall be treated as beginning on that election date. Such stock shall be treated after such reacquisition as acquired in the same manner and at the same time as the original acquisition. Neither the requirement of Subsection A of Section 7-2D-4 NMSA 1978 that the stock must have been issued after June 30, 1994 nor the requirement of Subsection A of Section 7-2D-5 NMSA 1978 that the issuing corporation have its commercial domicile in New Mexico shall apply.

D. An election under this section with respect to any stock shall be made in the manner the secretary prescribes. Such an election, once made with respect to any stock, is irrevocable.

E. Notwithstanding the provisions of this section, no credit shall be allowed or claimed on any qualified diversifying business net capital gain arising from the sale of stock prior to July 1, 1998.

**History:** Laws 1993, ch. 313, § 13; 1995, ch. 89, § 10.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, in Subsection C, substituted "Section 7-2D-8.1 NMSA 1978" for "Section 3 of the Venture Capital Investment Act", "Section 7-2D-4 NMSA 1978" for "Section 4 of the Venture Capital Investment Act" and "Section 7-2D-5 NMSA 1978" for "Section 5 of the Venture Capital Investment Act".

## 7-2D-14. Administration of act.

The Venture Capital Investment Act shall be administered pursuant to the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

**History:** Laws 1993, ch. 313, § 14.

**ANNOTATIONS**

**Compiler's notes.** — Laws 1993, ch. 313, § 17 provided that if any part or application of the act is held invalid, the entire act shall be deemed invalid and shall cease to apply and the credit shall not be extended to any taxpayer.

# ARTICLE 2E
# Rural Job Tax Credits

## 7-2E-1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 183, § 3 repealed 7-2E-1 NMSA 1978, as enacted by Laws 1999, ch. 183, § 1, effective July 1, 2006.

## 7-2E-1.1. Tax credit; rural job tax credit.

A. The tax credit created by this section may be referred to as the "rural job tax credit". Every eligible employer may apply for, and the taxation and revenue department may allow, a tax credit for each qualifying job the employer creates. The maximum tax credit amount with respect to each qualifying job is equal to:

(1) twenty-five percent of the first sixteen thousand dollars ($16,000) in wages paid for the qualifying job if the job is performed or based at a location in a tier one area; or

(2) twelve and one-half percent of the first sixteen thousand dollars ($16,000) in wages paid if the qualifying job is performed or based at a location in a tier two area.

B. The purpose of the rural job tax credit is to encourage businesses to start new businesses in rural areas of the state.

C. The amount of the rural job tax credit shall be six and one-fourth percent of the first sixteen thousand dollars ($16,000) in wages paid for the qualifying job in a qualifying period. The rural job tax credit may be claimed for each qualifying job for a maximum of:

(1) four qualifying periods for each qualifying job performed or based at a location in a tier one area; and

(2) two qualifying periods for each qualifying job performed or based at a location in a tier two area.

D. With respect to each qualifying job for which an eligible employer seeks the rural job tax credit, the employer shall certify the amount of wages paid to each eligible employee during each qualifying period, the number of weeks during the qualifying

period the position was occupied and whether the qualifying job was in a tier one or tier two area.

E. The economic development department shall determine which employers are eligible employers and shall report the listing of eligible businesses to the taxation and revenue department in a manner and at times the departments shall agree upon.

F. To receive a rural job tax credit with respect to any qualifying period, an eligible employer must apply to the taxation and revenue department on forms and in the manner the department may prescribe. The application shall include a certification made pursuant to Subsection D of this section. If all the requirements of this section have been complied with, the taxation and revenue department may issue to the applicant a document granting a tax credit for the appropriate qualifying period. The tax credit document shall be numbered for identification and declare its date of issuance and the amount of rural job tax credit allowed for the respective jobs created. The tax credit documents may be sold, exchanged or otherwise transferred and may be carried forward for a period of three years from the date of issuance. The parties to such a transaction to sell, exchange or transfer a rural job tax credit document shall notify the department of the transaction within ten days of the sale, exchange or transfer.

G. The holder of the tax credit document may apply all or a portion of the rural job tax credit granted by the document against the holder's modified combined tax liability, personal income tax liability or corporate income tax liability. Any balance of rural job tax credit granted by the document may be carried forward for up to three years from the date of issuance of the tax credit document. No amount of rural job tax credit may be applied against a gross receipts tax imposed by a municipality or county.

H. Notwithstanding the provisions of Section 7-1-8 NMSA 1978, the taxation and revenue department may disclose to any person the balance of rural job tax credit remaining on any tax credit document and the balance of credit remaining on that document for any period.

I. The secretary of economic development, the secretary of taxation and revenue and the secretary of workforce solutions or their designees shall annually evaluate the effectiveness of the rural job tax credit in stimulating economic development in the rural areas of New Mexico and make a joint report of their findings to each session of the legislature so long as the rural job tax credit is in effect.

J. An eligible employer that creates a qualifying job in the period beginning on or after July 1, 2006 but before July 1, 2007 or creates a qualifying job, the qualifying period of which includes a part of the period between July 1, 2006 and July 1, 2007, for which the eligible employer has not received a rural job tax credit document pursuant to this section may submit an application for, and the taxation and revenue department may issue to the eligible employer applying, a document granting a tax credit for the appropriate qualifying period. Claims for a rural job tax credit submitted pursuant to the

provisions of this subsection shall be submitted within three years from the date of issuance of the rural job tax credit document.

K. A qualifying job shall not be eligible for a rural job credit pursuant to this section if:

(1) the job is created due to a business merger, acquisition or other change in organization;

(2) the eligible employee was terminated from employment in New Mexico by another employer involved in the merger, acquisition or other change in organization; and

(3) the job is performed by:

(a) the person who performed the job or its functional equivalent prior to the business merger, acquisition or other change in organization; or

(b) a person replacing the person who performed the job or its functional equivalent prior to the business merger, acquisition or other change in organization.

L. Notwithstanding Subsection K of this section, a qualifying job that was created by another employer and for which the rural job tax credit claim was received by the taxation and revenue department prior to July 1, 2013 and is under review or has been approved shall remain eligible for the rural job tax credit for the balance of the qualifying periods for which the job qualifies by the new employer that results from a business merger, acquisition or other change in the organization.

M. A job shall not be eligible for a rural job tax credit pursuant to this section if the job is created due to an eligible employer entering into a contract or becoming a subcontractor to a contract with a governmental entity that replaces one or more entities performing functionally equivalent services for the governmental entity in New Mexico unless the job is a qualifying job that was not being performed by an employee of the replaced entity.

N. As used in this section:

(1) "eligible employee" means any individual other than an individual who:

(a) bears any of the relationships described in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to the employer or, if the employer is a corporation, to an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, to any individual who owns, directly or indirectly, more than fifty percent of the capital and profits interests in the entity;

(b) if the employer is an estate or trust, is a grantor, beneficiary or fiduciary of the estate or trust or is an individual who bears any of the relationships described in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to a grantor, beneficiary or fiduciary of the estate or trust; or

(c) is a dependent, as that term is described in 26 U.S.C. Section 152(a)(9), of the employer or, if the taxpayer is a corporation, of an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, of any individual who owns, directly or indirectly, more than fifty percent of the capital and profits interests in the entity or, if the employer is an estate or trust, of a grantor, beneficiary or fiduciary of the estate or trust;

(2) "eligible employer" means an employer who is eligible for in-plant training assistance pursuant to Section 21-19-7 NMSA 1978;

(3) "metropolitan statistical area" means a metropolitan statistical area in New Mexico as determined by the United States bureau of the census;

(4) "modified combined tax liability" means the total liability for the reporting period for the gross receipts tax imposed by Section 7-9-4 NMSA 1978 together with any tax collected at the same time and in the same manner as that gross receipts tax, such as the compensating tax, the withholding tax, the interstate telecommunications gross receipts tax, the surcharges imposed by Section 63-9D-5 NMSA 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978, minus the amount of any credit other than the rural job tax credit applied against any or all of these taxes or surcharges; but "modified combined tax liability" excludes all amounts collected with respect to local option gross receipts taxes;

(5) "qualifying job" means a job established by the employer that is occupied by an eligible employee for at least forty-eight weeks of a qualifying period;

(6) "qualifying period" means the period of twelve months beginning on the day an eligible employee begins working in a qualifying job or the period of twelve months beginning on the anniversary of the day an eligible employee began working in a qualifying job;

(7) "rural area" means any part of the state other than:

(a) an H class county;

(b) the state fairgrounds;

(c) an incorporated municipality within a metropolitan statistical area if the municipality's population is thirty thousand or more according to the most recent federal decennial census; and

(d) any area within ten miles of the exterior boundaries of a municipality described in Subparagraph (c) of this paragraph;

(8) "tier one area" means:

(a) any municipality within the rural area if the municipality's population according to the most recent federal decennial census is fifteen thousand or less; or

(b) any part of the rural area that is not within the exterior boundaries of a municipality;

(9) "tier two area" means any municipality within the rural area if the municipality's population according to the most recent federal decennial census is more than fifteen thousand; and

(10) "wages" means all compensation paid by an eligible employer to an eligible employee through the employer's payroll system, including those wages the employee elects to defer or redirect, such as the employee's contribution to 401(k) or cafeteria plan programs, but not including benefits or the employer's share of payroll taxes.

History: Laws 2007, ch. 172, § 2; 2013, ch. 58, § 1.

## ANNOTATIONS

**The 2013 amendment,** effective July 1, 2013, provided the purpose for the rural job tax credit; clarified the eligibility of qualifying jobs for a rural job credit; defined "wages"; added Subsection B; in Subsection F, in the second sentence, after "Subsection", deleted "C" and added "D"; in Subsection I, after "secretary of", deleted "labor" and added "workforce solutions"; in Subsection J, in the first sentence, after "application for, and the", added "taxation and revenue"; added Subsections F, L and M; in Paragraph (2) of Subsection N, after "means an employer who", deleted "has been approved" and added "is eligible"; and in Paragraph (10) of Subsection N, after "means", deleted "wages as defined by Paragraphs (1), (2) and (3) of 26 U.S.C. Section 51(c)" and added the remainder of the sentence.

**Applicability.** — Laws 2007, ch. 172, § 26, effective April 2, 2007, provided that the balance of a rural job tax credit granted by and remaining on a tax credit document issued prior to July 1, 2006 may be applied after that date in the manner provided in this section against a holder’s modified combined income tax liability or personal tax or corporate income tax liability.

Laws 2007, ch. 172, § 27, effective April 2, 2007, provided that Laws 2007, ch. 172, § 2 apply to tax returns filed on or after April 2, 2007 (the effective date of Laws 2007, ch. 172, § 2) for rural job tax credit claims against a taxpayer’s modified combined tax liability, for qualified jobs created in the calendar quarters beginning on or after July 1,

2006 and for rural job tax credit claims against a taxpayer’s personal income tax liability or corporate income tax liability, for qualified jobs created in taxable years beginning on or after January 1, 2006.

## 7-2E-2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 104, § 27 repealed 7-2E-2 NMSA 1978, as enacted by Laws 1999, ch. 183, § 2, relating to continued applicability of rural job tax credit, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

# ARTICLE 2F
# Film Production Tax Credit

## 7-2F-1. Film production tax credit; film production companies that commence principal photography prior to January 1, 2016.

A. The tax credit created by this section may be referred to as the "film production tax credit".

B. Except as otherwise provided in this section, an eligible film production company may apply for, and the taxation and revenue department may allow, subject to the limitation in this section, a tax credit in an amount equal to twenty-five percent of:

(1) direct production expenditures made in New Mexico that:

(a) are directly attributable to the production in New Mexico of a film or commercial audiovisual product;

(b) are subject to taxation by the state of New Mexico;

(c) exclude direct production expenditures for which another taxpayer claims the film production tax credit; and

(d) do not exceed the usual and customary cost of the goods or services acquired when purchased by unrelated parties. The secretary of taxation and revenue may determine the value of the goods or services for purposes of this section when the buyer and seller are affiliated persons or the sale or purchase is not an arm's length transaction; and

(2) postproduction expenditures made in New Mexico that:

(a) are directly attributable to the production of a commercial film or audiovisual product;

(b) are for services performed in New Mexico;

(c) are subject to taxation by the state of New Mexico;

(d) exclude postproduction expenditures for which another taxpayer claims the film production tax credit; and

(e) do not exceed the usual and customary cost of the goods or services acquired when purchased by unrelated parties. The secretary of taxation and revenue may determine the value of the goods or services for purposes of this section when the buyer and seller are affiliated persons or the sale or purchase is not an arm's length transaction.

C. In addition to the percentage applied pursuant to Subsection B of this section, another five percent shall be applied in calculating the amount of the film production tax credit to direct production expenditures:

(1) on a standalone pilot intended for series television in New Mexico or on series television productions intended for commercial distribution with an order for at least six episodes in a single season; provided that the New Mexico budget for each of those six episodes is fifty thousand dollars ($50,000) or more; or

(2) on a production with a total New Mexico budget of the following amounts; provided that the expenditures are directly attributable and paid to a New Mexico resident who is hired as industry crew, or who is hired as a producer, writer or director working directly with the physical production and has filed a New Mexico income tax return as a resident in the two previous taxable years:

(a) not more than thirty million dollars ($30,000,000) that shoots at least ten principal photography days in New Mexico at a qualified production facility; provided that a film production company in principal photography on or after April 10, 2015 shall: 1) shoot at least seven of those days at a sound stage that is a qualified production facility and the remaining number of required days, if any, at a standing set that is a qualified production facility; and 2) for each of the ten days, include industry crew working on the premises of those facilities for a minimum of eight hours within a twenty-four-hour period; or

(b) thirty million dollars ($30,000,000) or more that shoots at least fifteen principal photography days in New Mexico at a qualified production facility; provided that a film production company in principal photography on or after April 10, 2015 shall: 1) shoot at least ten of those days at a sound stage that is a qualified production facility and the remaining number of required days, if any, at a standing set that is a qualified production facility; and 2) for each day of the fifteen days, include industry crew working

on the premises of the facility for a minimum of eight hours within a twenty-four-hour period.

D. With respect to expenditures attributable to a production for which the film production company receives a tax credit pursuant to the federal new markets tax credit program, the percentage to be applied in calculating the film production tax credit is twenty percent.

E. A claim for film production tax credits shall be filed as part of a return filed pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] or the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] or an information return filed by a pass-through entity. The date a credit claim is received by the department shall determine the order that a credit claim is authorized for payment by the department. Except as otherwise provided in this section, the aggregate amount of claims for a credit provided by the Film Production Tax Credit Act that may be authorized for payment in any fiscal year is fifty million dollars ($50,000,000) with respect to the direct production expenditures or postproduction expenditures made on film or commercial audiovisual products. A film production company that submits a claim for a film production tax credit that is unable to receive the tax credit because the claims for the fiscal year exceed the limitation in this subsection shall be placed for the subsequent fiscal year at the front of a queue of credit claimants submitting claims in the subsequent fiscal year in the order of the date on which the credit was authorized for payment.

F. If, in fiscal years 2013 through 2015, the aggregate amount in each fiscal year of the film production tax credit claims authorized for payment is less than fifty million dollars ($50,000,000), then the difference in that fiscal year or ten million dollars ($10,000,000), whichever is less, shall be added to the aggregate amount of the film production tax credit claims that may be authorized for payment pursuant to Subsection E of this section in the immediately following fiscal year.

G. Except as otherwise provided in this section, credit claims authorized for payment pursuant to the Film Production Tax Credit Act shall be paid pursuant to provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] to the taxpayer as follows:

(1) a credit claim amount of less than two million dollars ($2,000,000) per taxable year shall be paid immediately upon authorization for payment of the credit claim;

(2) a credit claim amount of two million dollars ($2,000,000) or more but less than five million dollars ($5,000,000) per taxable year shall be divided into two equal payments, with the first payment to be made immediately upon authorization of the payment of the credit claim and the second payment to be made twelve months following the date of the first payment; and

(3) a credit claim amount of five million dollars ($5,000,000) or more per taxable year shall be divided into three equal payments, with the first payment to be made immediately upon authorization of payment of the credit claim, the second payment to be made twelve months following the date of the first payment and the third payment to be made twenty-four months following the date of the first payment.

H. For a fiscal year in which the amount of total credit claims authorized for payment is less than the aggregate amount of credit claims that may be authorized for payment pursuant to this section, the next scheduled payments for credit claims authorized for payment pursuant to Subsection G of this section shall be accelerated for payment for that fiscal year and shall be paid to a taxpayer pursuant to the Tax Administration Act and in the order in which outstanding payments are scheduled in the queue established pursuant to Subsections E and G of this section; provided that the total credit claims authorized for payment shall not exceed the aggregate amount of credit claims that may be authorized for payment pursuant to this section. If a partial payment is made pursuant to this subsection, the difference owed shall retain its original position in the queue.

I. Any amount of a credit claim that is carried forward pursuant to Subsection G of this section shall be subject to the limit on the aggregate amount of credit claims that may be authorized for payment pursuant to Subsections E and F of this section in the fiscal year in which that amount is paid.

J. A credit claim shall only be considered received by the department if the credit claim is made on a complete return filed after the close of the taxable year. All direct production expenditures and postproduction expenditures incurred during the taxable year by a film production company shall be submitted as part of the same income tax return and paid pursuant to this section. A credit claim shall not be divided and submitted with multiple returns or in multiple years.

K. For purposes of determining the payment of credit claims pursuant to this section, the secretary of taxation and revenue may require that credit claims of affiliated persons be combined into one claim if necessary to accurately reflect closely integrated activities of affiliated persons.

L. The film production tax credit shall not be claimed with respect to direct production expenditures or postproduction expenditures for which the film production company has delivered a nontaxable transaction certificate pursuant to Section 7-9-86 NMSA 1978.

M. A production for which the film production tax credit is claimed pursuant to Paragraph (1) of Subsection B of this section shall contain an acknowledgment to the state of New Mexico in the end screen credits that the production was filmed in New Mexico, and a state logo provided by the division shall be included and embedded in the end screen credits of long-form narrative film productions and television episodes,

unless otherwise agreed upon in writing by the film production company and the division.

N. To be eligible for the film production tax credit, a film production company shall submit to the division information required by the division to demonstrate conformity with the requirements of the Film Production Tax Credit Act, including detailed information on each direct production expenditure and each postproduction expenditure. A film production company shall make reasonable efforts, as determined by the division, to contract with a specialized vendor that provides goods and services, inventory or services directly related to that vendor's ordinary course of business. A film production company shall provide to the division a projection of the film production tax credit claim the film production company plans to submit in the fiscal year. In addition, the film production company shall agree in writing:

(1) to pay all obligations the film production company has incurred in New Mexico;

(2) to post a notice at completion of principal photography on the web site of the division that:

(a) contains production company information, including the name of the production, the address of the production company and contact information that includes a working phone number, fax number and email address for both the local production office and the permanent production office to notify the public of the need to file creditor claims against the film production company; and

(b) remains posted on the web site until all financial obligations incurred in the state by the film production company have been paid;

(3) that outstanding obligations are not waived should a creditor fail to file;

(4) to delay filing of a claim for the film production tax credit until the division delivers written notification to the taxation and revenue department that the film production company has fulfilled all requirements for the credit; and

(5) to submit a completed application for the film production tax credit and supporting documentation to the division within one year of making the final expenditures in New Mexico that were incurred for the registered project and that are included in the credit claim.

O. The division shall determine the eligibility of the company and shall report this information to the taxation and revenue department in a manner and at times the economic development department and the taxation and revenue department shall agree upon. The division shall also post on its web site all information provided by the film production company that does not reveal revenue, income or other information that

may jeopardize the confidentiality of income tax returns, including that the division shall report quarterly the projected amount of credit claims for the fiscal year.

P. To provide guidance to film production companies regarding the amount of credit capacity remaining in the fiscal year, the taxation and revenue department shall post monthly on that department's web site the aggregate amount of credits claimed and processed for the fiscal year.

Q. To receive a film production tax credit, a film production company shall apply to the taxation and revenue department on forms and in the manner the department may prescribe. The application shall include a certification of the amount of direct production expenditures or postproduction expenditures made in New Mexico with respect to the film production for which the film production company is seeking the film production tax credit; provided that for the film production tax credit, the application shall be submitted within one year of the date of the last direct production expenditure in New Mexico or the last postproduction expenditure in New Mexico. If the amount of the requested tax credit exceeds five million dollars ($5,000,000), the application shall also include the results of an audit, conducted by a certified public accountant licensed to practice in New Mexico, verifying that the expenditures have been made in compliance with the requirements of this section. If the requirements of this section have been complied with, subject to the provisions of Subsection E of this section, the taxation and revenue department shall approve the film production tax credit and issue a document granting the tax credit.

R. The film production company may apply all or a portion of the film production tax credit granted against personal income tax liability or corporate income tax liability. If the amount of the film production tax credit claimed exceeds the film production company's tax liability for the taxable year in which the credit is being claimed, the excess shall be refunded.

S. That amount of a film production tax credit for total payments as applied to direct production expenditures for the services of performing artists shall not exceed five million dollars ($5,000,000) for services rendered by nonresident performing artists and featured resident principal performing artists in a production. This limitation shall not apply to the services of background artists and resident performing artists who are not cast in industry standard featured principal performer roles.

T. As used in this section, "direct production expenditure":

(1) except as provided in Paragraph (2) of this subsection, means a transaction that is subject to taxation in New Mexico, including:

(a) payment of wages, fringe benefits or fees for talent, management or labor to a person who is a New Mexico resident;

(b) payment for wages and per diem for a performing artist who is not a New Mexico resident and who is directly employed by the film production company; provided that the film production company deducts and remits, or causes to be deducted and remitted, income tax from the first day of services rendered in New Mexico at the maximum rate pursuant to the Withholding Tax Act [Chapter 7, Article 3 NMSA 1978];

(c) payment to a personal services business for the services of a performing artist if: 1) the personal services business pays gross receipts tax in New Mexico on the portion of those payments qualifying for the tax credit; and 2) the film production company deducts and remits, or causes to be deducted and remitted, income tax at the maximum rate in New Mexico pursuant to Subsection H of Section 7-3A-3 NMSA 1978 on the portion of those payments qualifying for the tax credit paid to a personal services business where the performing artist is a full or part owner of that business or subcontracts with a personal services business where the performing artist is a full or part owner of that business; and

(d) any of the following provided by a vendor: 1) the story and scenario to be used for a film; 2) set construction and operations, wardrobe, accessories and related services; 3) photography, sound synchronization, lighting and related services; 4) editing and related services; 5) rental of facilities and equipment; 6) leasing of vehicles, not including the chartering of aircraft for out-of-state transportation; however, New Mexico-based chartered aircraft for in-state transportation directly attributable to the production shall be considered a direct production expenditure; provided that only the first one hundred dollars ($100) of the daily expense of leasing a vehicle for passenger transportation on roadways in the state may be claimed as a direct production expenditure; 7) food or lodging; provided that only the first one hundred fifty dollars ($150) of lodging per individual per day is eligible to be claimed as a direct production expenditure; 8) commercial airfare if purchased through a New Mexico-based travel agency or travel company for travel to and from New Mexico or within New Mexico that is directly attributable to the production; 9) insurance coverage and bonding if purchased through a New Mexico-based insurance agent, broker or bonding agent; 10) services for an external audit upon submission of an application for a film production tax credit by an accounting firm that submits the application pursuant to this section; and 11) other direct costs of producing a film in accordance with generally accepted entertainment industry practice; and

(2) does not include an expenditure for:

(a) a gift with a value greater than twenty-five dollars ($25.00);

(b) artwork or jewelry, except that a work of art or a piece of jewelry may be a direct production expenditure if: 1) it is used in the film production; and 2) the expenditure is less than two thousand five hundred dollars ($2,500);

(c) entertainment, amusement or recreation;

(d) subcontracted goods or services provided by a vendor when subcontractors are not subject to state taxation, such as equipment and locations provided by the military, government and religious organizations; or

(e) a service provided by a person who is not a New Mexico resident and employed in an industry crew position, excluding a performing artist, where it is the standard entertainment industry practice for the film production company to employ a person for that industry crew position, except when the person who is not a New Mexico resident is hired or subcontracted by a vendor; and when the film production company, as determined by the division and when applicable in consultation with industry, provides: 1) reasonable efforts to hire resident crew; and 2) financial or promotional contributions toward education or work force development efforts in New Mexico, including at least one of the following: a payment to a New Mexico public education institution that administers at least one industry-recognized film or multimedia program, as determined by the division, in an amount equal to two and one-half percent of payments made to nonresidents in approved positions employed by the vendor; promotion of the New Mexico film industry by directors, actors or executive producers affiliated with the production company's project through social media that is managed by the state; radio interviews facilitated by the division; enhanced screen credit acknowledgments; or related events that are facilitated, conducted or sponsored by the division.

U. As used in this section, "film production company" means a person that produces one or more films or any part of a film and that commences principal photography prior to January 1, 2016.

V. As used in this section, "vendor" means a person who sells or leases goods or services that are related to standard industry craft inventory, who has a physical presence in New Mexico and is subject to gross receipts tax pursuant to the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] and income tax pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] or corporate income tax pursuant to the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] but excludes a personal services business and services provided by nonresidents hired or subcontracted if the tasks and responsibilities are associated with:

(1) the standard industry job position of:

(a) a director;

(b) a writer;

(c) a producer;

(d) an associate producer;

(e) a co-producer;

(f) an executive producer;

(g) a production supervisor;

(h) a director of photography;

(i) a motion picture driver whose sole responsibility is driving;

(j) a production or personal assistant;

(k) a designer;

(l) a still photographer; or

(m) a carpenter and utility technician at an entry level; and

(2) nonstandard industry job positions and personal support services.

History: Laws 2002, ch. 36, § 1; 2003, ch. 127, § 1; 2005, ch. 104, § 9; 2006, ch. 78, § 1; 2007, ch. 172, § 3; 2011, ch. 165, § 1; 2011, ch. 177, § 2; 2013, ch. 160, § 5; 2015, ch. 143, § 1.

## ANNOTATIONS

**The 2015 amendment,** effective June 19, 2015, provided that the film production tax credit only applies to film production companies that commence principal photography prior to January 1, 2016, amended the requirements for receiving the film production tax credit, and defined direct production expenditure, film production company and vendor; in the catchline, added "film production companies that commence principal photography prior to January 1, 2016"; in Subsection A, after "'film production tax credit'", designated the remainder of the subsection as Subsection B; in new Subsection B, added "Except as otherwise provided in this section", after "in an amount equal to", deleted "the percentage specified in Subsection B of this section" and added "twenty-five percent"; deleted former Subsection B; in Paragraph (1) of Subsection C, added "on a standalone pilot intended for series television in New Mexico or", after "provided that the", added "New Mexico", after "budget", deleted "per episode" and added "for each of those six episodes"; in Paragraph (2) of Subsection C, deleted "that" and added "on a production with a total New Mexico budget of the following amounts; provided that the expenditures", after "directly attributable", deleted "to the wages and fringe benefits" and added "and", after "New Mexico resident", deleted "directly employed in an industry crew position, excluding a performing artist, on a production with a total budget of" and added "who is hired as industry crew, or who is hired as a producer, writer or director working directly with the physical production and has filed a New Mexico income tax return as a resident in the two previous taxable years"; in Subparagraph C(2)(a), after "photography days", added "in New Mexico", after "production facility", deleted "in New Mexico", after the semicolon, added the remainder of the subparagraph up to the

semicolon; in Subparagraph C(2)(b), after "photography days", added "in New Mexico", after "production facility", deleted "in New Mexico", after the semicolon, added the remainder of the subparagraph; in Subsection E, after "aggregate amount of", deleted "the film production tax credit", after "claims", added "for a credit provided by the Film Production Tax Credit Act", and after "front of a queue of", deleted "film production tax"; in Subsection H, after the first occurrence of "aggregate amount of", deleted "the film production tax", after the second occurrence of "aggregate amount of", deleted "the film production tax"; in Subsection M, after "contain an acknowledgment", added "to the state of New Mexico", after "the division shall be included", added "and embedded", and after "narrative film productions", added "and television episodes"; in the introductory paragraph of Subsection N, after "to contract with a", added "specialized", and after "provides goods", added "and services"; in Paragraph (5) of Subsection N, after "New Mexico", added "that were incurred for the registered project and"; in Subsection O, after "division shall report", deleted "monthly" and added "quarterly"; in Subsection S, added "That amount of a film production tax credit for total payments", after "performing artists", deleted "the film production tax credit authorized by this section", after "services rendered by", deleted "all" and added "nonresident performing artists and featured resident principal", after "artists in production", deleted "for which the film production tax credit is claimed" and added the remainder of the section; and added new Subsections T, U and V.

**The 2013 amendment,** effective June 14, 2013, increased the film production tax credit for certain direct production expenditures; allowed a maximum of ten million dollars of unclaimed film production tax credits to be carried forward for three fiscal years; provided for accelerated payments of future scheduled payments of film production tax credits; in Subsection B, at the beginning of the sentence, after "Except as", added "otherwise", after "provided in", deleted "Subsections G and P of"; added Subsection C; in Subsection E, in the first sentence, after "Franchise Tax Act", added the remainder of the sentence and in the third sentence, at the beginning of the sentence, added "Except as otherwise provided in this section"; added Subsection F; in Subsection G, at the beginning of the sentence, added "Except as otherwise provided in this section"; added Subsection H; in Subsection I, after "forward pursuant to Subsection", deleted "E" and added "G" and after "payment pursuant to", deleted "Subsection D" and added "Subsections E and F"; in Subsection J, after "claim is made on a complete", deleted "tax" and after "complete return filed", deleted "timely"; in Subsection K, after "claims pursuant to", deleted "Subsection E of"; in Subsection M, at the beginning of the sentence, deletes "A long-form narrative film", after "contain an acknowledgment", added "in the end screen credits", and after "filmed in New Mexico", added the remainder of the sentence; and in Subsection N, added the second sentence.

**Applicability.** — Laws 2013, ch. 160, § 14 provided that Laws 2013, ch. 160, § 5 applies to direct production expenditures and postproduction expenditures made on or after April 15, 2013.

**The 2011 amendment,** effective July 1, 2011, in Subsection A, provided that direct production expenditures and postproduction expenditures may not exceed the cost of

goods and services in an arm's length transaction; added Subsections D through H to limit the amount of the film production tax credit that may be paid in a year and to provide for the filing and payment of credit claims; in Subsection K, required film production companies to provide information about expenditures and a projection of the credit the company plans to claim in the fiscal year; in Subsection L, required the film division to post non-confidential information provided by film production companies on the division's website; added Subsection M to require the department to post on its website the aggregate amount of credits claimed and processed for the fiscal year; and in Subsection N, imposed a one-year limitation on the filing of credit claims and required the filing of an audit for claims that exceed five million dollars.

**The 2007 amendment,** effective July 1, 2007, added Subparagraph (d) of Paragraph (2) of Subsection A; increased the tax credit percentage to twenty-five percent; provided that for expenditures for which a company receives a tax credit pursuant to the federal new markets tax credit program, the film production tax credit is twenty percent; and added Subsection J.

**The 2006 amendment,** effective May 17, 2006, in Subsection A deleted the provision that the tax credit shall be "fifteen percent" and provided that the tax credit shall equal the percentage specified in Subsection B; added a new Subsection B, which provided that except as provided in Subsection C, the percentage shall be 20% and for taxable years beginning prior to January 1, 2009, an additional 5%; and added a new Subsection C, which provided that the additional 5% shall not be available for productions which receive a tax credit pursuant to federal law.

**The 2005 amendment,** effective June 17, 2005, provided in Subsection A(1) and (2) that the tax credit may be based on direct production expenditures for commercial audiovisual production and postproduction expenditures made in New Mexico that are attributable to production on a commercial film or audiovisual product, for services performed in New Mexico and subject to taxation by the state; provided in Subsection B that the tax credit shall not be claimed for direct production expenses or postproduction expenses for which the film company has delivered a nontaxable transaction certificate; and provided in Subsection D that to be eligible for the tax credit, the film company must agree in writing to the conditions stated in Subsection D(1) through (4).

**The 2003 amendment,** effective June 20, 2003, in Subsection A, substituted "in an amount equal to" for "for" following "a tax credit", inserted "that are" following "of a film and"; deleted former Subsection D relating to the definitions of "direct production expenditure", "film" and "film production company"; redesignated Subsections E to G as Subsections D to F; and deleted "by the document" following "tax credit granted" in present Subsection F.

## 7-2F-1.1. Short title.

Chapter 7, Article 2F NMSA 1978 may be cited as the "Film Production Tax Credit Act".

History: Laws 2011, ch. 165, § 2 and Laws 2011, ch. 177, § 3.

**ANNOTATIONS**

**Duplicate laws.** — Laws 2011, ch. 165, § 2, effective June 17, 2011, and Laws 2011, ch. 177, § 3, effective July 1, 2011, enacted identical new sections. The section was set out as enacted by Laws 2011, ch. 177, § 3. *See* 12-1-8 NMSA 1978.

## 7-2F-2. Definitions.

As used in the Film Production Tax Credit Act:

A. "affiliated person" means a person who directly or indirectly owns or controls, is owned or controlled by or is under common ownership or control with another person through ownership of voting securities or other ownership interests representing a majority of the total voting power of the entity;

B. "background artist" means a person who is not a performing artist but is a person of atmospheric business whose work includes atmospheric noise, normal actions, gestures and facial expressions of that person's assignment; or a person of atmospheric business whose work includes special abilities that are not stunts; or a substitute for another actor, whether photographed as a double or acting as a stand-in;

C. "commercial audiovisual product" means a film or a videogame intended for commercial exploitation;

D. "division" means the New Mexico film division of the economic development department;

E. "federal new markets tax credit program" means the tax credit program codified as Section 45D of the United States Internal Revenue Code of 1986, as amended;

F. "film" means a single medium or multimedia program, excluding advertising messages other than national or regional advertising messages intended for exhibition, that:

(1) is fixed on film, a digital medium, videotape, computer disc, laser disc or other similar delivery medium;

(2) can be viewed or reproduced;

(3) is not intended to and does not violate a provision of Chapter 30, Article 37 NMSA 1978; and

(4) is intended for reasonable commercial exploitation for the delivery medium used;

G. "fiscal year" means the state fiscal year beginning on July 1;

H. "industry crew" means a person in a position that is off-camera and who provides technical services during the physical production of a film. "Industry crew" does not include a writer, director, producer, background artist or performing artist;

I. "New Mexico resident" means an individual who is domiciled in this state during any part of the taxable year or an individual who is physically present in this state for one hundred eighty-five days or more during the taxable year; but any individual, other than someone who was physically present in the state for one hundred eighty-five days or more during the taxable year and who, on or before the last day of the taxable year, changed the individual's place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently without this state is not a resident for the purposes of the Film Production Tax Credit Act for periods after that change of abode;

J. "performing artist" means an actor, on-camera stuntperson, puppeteer, pilot who is a stuntperson or actor, specialty foreground performer or narrator; and who speaks a line of dialogue, is identified with the product or reacts to narration as assigned. "Performing artist" does not include a background artist;

K. "personal services business" means a business organization, with or without physical presence, that receives payments pursuant to the Film Production Tax Credit Act for the services of a performing artist;

L. "physical presence" means a physical address in New Mexico from which a vendor conducts business, stores inventory or otherwise creates, assembles or offers for sale the product purchased or leased by a film production company and the business owner or an employee of the business is a resident;

M. "postproduction expenditure" means an expenditure for editing, Foley recording, automatic dialogue replacement, sound editing, special effects, including computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling or addition of sound or visual effects; but not including an expenditure for advertising, marketing, distribution or expense payments;

N. "principal photography" means the production of a film during which the main visual elements are created; and

O. "qualified production facility" means a building, or complex of buildings, building improvements and associated back-lot facilities in which films are or are intended to be regularly produced and that contain at least one:

(1) sound stage with contiguous, clear-span floor space of at least seven thousand square feet and a ceiling height of no less than twenty-one feet; or

(2) standing set that includes at least one interior, and at least five exteriors, built or re-purposed for film production use on a continual basis and is located on at least fifty acres of contiguous space designated for film production use.

History: 1978 Comp., § 7-2F-2, enacted by Laws 2003, ch. 127, § 2; 2005, ch. 104, § 10; 2006, ch. 78, § 2; 2007, ch. 172, § 4; 2011, ch. 177, § 4; 2013, ch. 160, § 6; 2015, ch. 143, § 2.

## ANNOTATIONS

**Repeals.** — Laws 2013, ch. 160, § 13 repealed Laws 2011, ch. 165, § 3, effective June 14, 2013.

**Cross references.** — For the federal Internal Revenue Code of 1986, *see* 26 U.S.C. § 1.

**The 2015 amendment,** effective June 19, 2015, amended certain definitions as used in the Film Production Tax Credit Act; added a new Subsection B, and redesignated former Subsection B as Subsection C; deleted former Subsection C, which defined "direct production expenditure"; deleted former Subsection G, which defined "film production company", and redesignated former Subsection H as Subsection G; added a new Subsection H; added a new Subsection J and redesignated former Subsections J, K and L as Subsections K, L and M, respectively; in Subsection K, after "business organization", added "with or without physical presence", after "receives payment", added "pursuant to the Film Production Tax Credit Act"; in Subsection L, after "film production company", added "and the business owner or an employee of the business is a resident"; added a new Subsection N and redesignated former Subsection M as Subsection O; in Subsection O, after "buildings", deleted "and their" and added "building", after "contain at least one", added a colon and designated the remainder of the former section up to "twenty-one feet" as Paragraph (1) of Subsection O and added "; or"; added new Paragraph (2) of Subsection O and deleted "and"; and deleted former Subsection N, which defined "vendor".

**The 2013 amendment,** effective June 14, 2013, defined terms to provide for additional eligibility requirements and to change the scope of direct production expenditures for which film production tax credits may be claimed; added Subparagraph (b) of Paragraph (1) of Subsection C; in Subparagraph (c) of Paragraph (1) of Subsection C, after "qualifying for the tax credit; and 2)", deleted "deducts and remits withheld income tax pursuant to Subsection I of Section 7-3A-3 NMSA 1978" and added the remainder of the sentence; added Subparagraphs (d) and (e) of Paragraph (2) of Subsection C; in Subsection K, after "New Mexico", deleted "but does not include a post office box or other mail drop enterprise unless the physical presence is for a business and the business is providing mail services to a film production company"; added Subsection M; and in Subsection N, in the introductory sentence, after "Franchise Tax Act", added the remainder of the sentence and added Paragraphs (1) and (2).

**Applicability.** — Laws 2013, ch. 160, § 14 provided that:

1. Subsections A, B and D through N, and Paragraph (1) and Subparagraphs (a) through (d) of Paragraph (2) of Subsection C of Laws 2013, ch. 160, § 6 apply to direct production expenditures and postproduction expenditures made on or after April 15, 2013; and

2. Subparagraph (e) of Paragraph (2) of Subsection C of Laws 2013, ch. 160, § 6 applies to productions starting principal photography on or after January 1, 2014.

**The 2011 amendment,** effective July 1, 2011, added definitions of "affiliated person", "division", "fiscal year", "New Mexico resident", "personal services business", "physical presence", and "vendor"; provided that payments to performing artists qualify as direct production expenditures only if income tax withholding is deducted from the payments; provided that only the first one hundred dollars of daily expenses for leasing a passenger vehicle and the first one hundred fifty dollars for lodging per person per day qualify as direct production expenditures; and excluded expenditures for certain gifts and entertainment as direct production expenditures.

**The 2007 amendment,** effective July 1, 2007, changed the payments that qualify as direct production expenditures.

**The 2006 amendment,** effective May 17, 2006, added a new Subsection C to define "federal new markets tax credit program".

**The 2005 amendment,** effective July 1, 2005, added the definition in Subsection A of "commercial audiovisual product" and the definition in Subsection E of "postproduction expenditure".

## 7-2F-2.1. Additional definitions.

As used in Sections 7-2F-6 through 7-2F-12 NMSA 1978:

A. "direct production expenditure":

(1) except as provided in Paragraph (2) of this subsection, means a transaction that is subject to taxation in New Mexico, including:

(a) payment of wages, fringe benefits or fees for talent, management or labor to a person who is a New Mexico resident;

(b) payment for standard industry craft inventory when provided by a resident industry crew in addition to its industry crew services;

(c) payment for wages and per diem for a performing artist who is not a New Mexico resident and who is directly employed by a film production company; provided

that the film production company deducts and remits, or causes to be deducted and remitted, income tax from the first day of services rendered in New Mexico at the maximum rate pursuant to the Withholding Tax Act [Chapter 7, Article 3 NMSA 1978];

(d) payment to a personal services business on the wages and per diem paid to a performing artist of the personal services business if: 1) the personal services business pays gross receipts tax in New Mexico on the portion of those payments qualifying for the tax credit; and 2) the film production company deducts and remits, or causes to be deducted and remitted, income tax at the maximum rate in New Mexico pursuant to Subsection H of Section 7-3A-3 NMSA 1978 on the portion of those payments qualifying for the tax credit paid to a personal services business where the performing artist is a full or part owner of that business or subcontracts with a personal services business where the performing artist is a full or part owner of that business; and

(e) any of the following provided by a vendor: 1) the story and scenario to be used for a film; 2) set construction and operations, wardrobe, accessories and related services; 3) photography, sound synchronization, lighting and related services; 4) editing and related services; 5) rental of facilities and equipment; 6) leasing of vehicles, not including the chartering of aircraft for out-of-state transportation; however, New Mexico-based chartered aircraft for in-state transportation directly attributable to the production shall be considered a direct production expenditure; provided that only the first one hundred dollars ($100) of the daily expense of leasing a vehicle for passenger transportation on roadways in the state may be claimed as a direct production expenditure; 7) food or lodging; provided that only the first one hundred fifty dollars ($150) of lodging per individual per day is eligible to be claimed as a direct production expenditure; 8) commercial airfare if purchased through a New Mexico-based travel agency or travel company for travel to and from New Mexico or within New Mexico that is directly attributable to the production; 9) insurance coverage and bonding if purchased through a New Mexico-based insurance agent, broker or bonding agent; 10) services for an external audit upon submission of an application for a film production tax credit by an accounting firm that submits the application pursuant to Subsection I of Section 7-2F-6 NMSA 1978; and 11) other direct costs of producing a film in accordance with generally accepted entertainment industry practice; and

(2) does not include an expenditure for:

(a) a gift with a value greater than twenty-five dollars ($25.00);

(b) artwork or jewelry, except that a work of art or a piece of jewelry may be a direct production expenditure if: 1) it is used in the film production; and 2) the expenditure is less than two thousand five hundred dollars ($2,500);

(c) entertainment, amusement or recreation; or

(d) subcontracted goods or services provided by a vendor when subcontractors are not subject to state taxation, such as equipment and locations provided by the military, government and religious organizations;

B. "film production company" means a person that produces one or more films or any part of a film and that commences principal photography on or after January 1, 2016; and

C. "vendor" means a person who sells or leases goods or services that are related to standard industry craft inventory, who has a physical presence in New Mexico and is subject to gross receipts tax pursuant to the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] and income tax pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] or corporate income tax pursuant to the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] but excludes a personal services business.

History: Laws 2015, ch. 143, § 4; 2016, ch. 77, § 2.

**ANNOTATIONS**

**The 2016 amendment,** effective May 18, 2016, clarified citations to the NMSA 1978 within the section; in the introductory sentence, after "Sections", deleted "5 through 11 of this 2015 act" and added "7-2F-6 through 7-2F-12 NMSA 1978"; in Subparagraph A(1)(e), after "Subsection I of Section", deleted "5 of this 2015 act" and added "7-2F-6 NMSA 1978".

## 7-2F-3. Purposes; goals.

The purposes and goals of the Film Production Tax Credit Act are to:

A. establish the film industry as a permanent component of the economic base of New Mexico;

B. develop a pool of trained professionals and businesses in New Mexico to supply and support the film industry in the state;

C. increase employment of New Mexico residents;

D. improve the economic success of existing businesses in New Mexico; and

E. develop the infrastructure in the state necessary for a thriving film industry.

History: Laws 2011, ch. 165, § 4; 2016, ch. 77, § 3.

**ANNOTATIONS**

**The 2016 amendment,** effective May 18, 2016, in the introductory sentence, after "Tax Credit", added "Act".

## 7-2F-4. Reporting; accountability.

A. The economic development department shall:

(1) collect data to be used in an econometric tool that objectively assesses the effectiveness of the credits provided by the Film Production Tax Credit Act;

(2) track the direct expenditures for the credits;

(3) with the support and assistance of the legislative finance committee staff and the taxation and revenue department, review and assess the analysis developed in Paragraph (1) of this subsection and create a report for presentation to the revenue stabilization and tax policy committee and the legislative finance committee that provides an objective assessment of the effectiveness of the credits; and

(4) report annually to the revenue stabilization and tax policy committee and the legislative finance committee on aggregate approved tax credits made pursuant to the Film Production Tax Credit Act.

B. The division shall develop a form on which the taxpayer claiming a credit pursuant to the Film Production Tax Credit Act shall submit a report to accompany the taxpayer's application for that credit.

C. With respect to the production on which the application for a credit is based, the film production company shall report to the division at a minimum the following information:

(1) the total aggregate wages of the members of the New Mexico resident crew;

(2) the number of New Mexico residents employed;

(3) the total amount of gross receipts taxes paid;

(4) the total number of hours worked by New Mexico residents;

(5) the total expenditures made in New Mexico that do not qualify for the credit;

(6) the aggregate wages paid to the members of the nonresident crew while working in New Mexico; and

(7) other information deemed necessary by the division and economic development department to determine the effectiveness of the credit.

D. For purposes of assessing the effectiveness of a credit, the inability of the economic development department to aggregate data due to sample size shall not relieve the department of the requirement to report all relevant data to the legislature. The division shall provide notice to a film production company applying for a credit that information provided to the division may be revealed by the department in reports to the legislature.

History: Laws 2011, ch. 165, § 5; 2015, ch. 143, § 3; 2016, ch. 77, § 4.

**ANNOTATIONS**

**The 2016 amendment,** effective May 18, 2016, in Subsection C, after "With respect to the", deleted "film" and added "production".

**The 2015 amendment,** effective June 19, 2015, made technical amendments to the reporting requirements in the Film Production Tax Credit Act; in Subsection A, Paragraph (1), after "effectiveness of the", deleted "film production tax credit" and added "credits provided by the film Production Tax Credit Act", in Paragraph (2), after "expenditures for the", deleted "film production tax credit" and added "credits", in Paragraph (3), after "effectiveness of the", deleted "film production tax credit" and added "credits"; in Subsection B, after "taxpayer claiming a", deleted "film production tax"; in the introductory sentence of Subsection C, after "application for a", deleted "film production tax"; in Subsection C, Paragraph (5), after "qualify for the", deleted "film production tax", in Paragraph (7), after "effectiveness of the", deleted "film production tax"; and in Subsection D, after "assessing the effectiveness of", deleted "the film production tax" and added "a", and after "company applying for", deleted "the film production tax".

## 7-2F-5. Assignment.

A. A film production company that is eligible to receive a credit pursuant to the Film Production Tax Credit Act may assign the payment of an authorized film production tax credit or a film and television tax credit to a third-party financial institution, or to an authorized third party, one time in a full or partial amount. If the parties to the assignment have complied with the procedures established by the taxation and revenue department for the assignment of a film production tax credit payment, the department shall remit to the institution that amount of tax credit approved by the department that would otherwise be remitted to the company.

B. For the purposes of this section:

(1) "authorized third party" means an entity that:

(a) holds the rights to a film for which a film production tax credit may be claimed; and

(b) initiates that film's production; and

(2) "financial institution" means:

(a) a fund purposely created to produce a film; or

(b) a bank, savings institution or credit union that is organized or chartered pursuant to the laws of New Mexico or the United States and that files a New Mexico income tax return.

History: Laws 2015, ch. 62, § 1; 2016, ch. 77, § 5.

**ANNOTATIONS**

**The 2016 amendment,** effective May 18, 2016, allowed a film production company to assign payment of a film and television tax credit to a third-party financial institution; in Subsection A, after "eligible to receive a", deleted "film production tax", after "credit", added "pursuant to the Film Production Tax Credit Act", and after "an authorized film production tax credit", added "or a film and television tax credit".

**Applicability. —** Laws 2015, ch. 62, § 2 provided that Laws 2015, ch. 62, § 1 apply to taxable years beginning on or after January 1, 2015.

## 7-2F-6. Film and television tax credit; film production companies that commence principal photography on or after January 1, 2016.

A. The tax credit created by this section may be referred to as the "film and television tax credit".

B. An eligible film production company may apply for, and the taxation and revenue department may allow, subject to the limitation in Section 7-2F-12 NMSA 1978, a tax credit in an amount equal to twenty-five percent of:

(1) direct production expenditures made in New Mexico that:

(a) are directly attributable to the production in New Mexico of a film or commercial audiovisual product;

(b) are subject to taxation by the state of New Mexico;

(c) exclude direct production expenditures for which another taxpayer claims the film and television tax credit; and

(d) do not exceed the usual and customary cost of the goods or services acquired when purchased by unrelated parties. The secretary of taxation and revenue may determine the value of the goods or services for purposes of this section when the buyer and seller are affiliated persons or the sale or purchase is not an arm's length transaction; and

(2) postproduction expenditures made in New Mexico that:

(a) are directly attributable to the production of a commercial film or audiovisual product;

(b) are for postproduction services performed in New Mexico;

(c) are subject to taxation by the state of New Mexico;

(d) exclude postproduction expenditures for which another taxpayer claims the film and television tax credit; and

(e) do not exceed the usual and customary cost of the goods or services acquired when purchased by unrelated parties. The secretary of taxation and revenue may determine the value of the goods or services for purposes of this section when the buyer and seller are affiliated persons or the sale or purchase is not an arm's length transaction.

C. With respect to expenditures attributable to a production for which the film production company receives a tax credit pursuant to the federal new markets tax credit program, the percentage to be applied in calculating the film and television tax credit is twenty percent.

D. The film and television tax credit shall not be claimed with respect to direct production expenditures or postproduction expenditures for which the film production company has delivered a nontaxable transaction certificate pursuant to Section 7-9-86 NMSA 1978.

E. A production for which the film and televison tax credit is claimed pursuant to Paragraph (1) of Subsection B of this section shall contain an acknowledgment to the state of New Mexico in the end screen credits that the production was filmed in New Mexico, and a state logo provided by the division shall be included and embedded in the end screen credits of long-form narrative film productions and television episodes, unless otherwise agreed upon in writing by the film production company and the division.

F. To be eligible for the film and television tax credit, a film production company shall submit to the division information required by the division to demonstrate conformity with the requirements of the Film Production Tax Credit Act, including detailed information on each direct production expenditure and each postproduction

expenditure. A film production company shall provide to the division a projection of the film and television tax credit claim the film production company plans to submit in the fiscal year. In addition, the film production company shall agree in writing:

(1) to pay all obligations the film production company has incurred in New Mexico;

(2) to post a notice at completion of principal photography on the website of the division that:

(a) contains production company information, including the name of the production, the address of the production company and contact information that includes a working phone number, fax number and email address for both the local production office and the permanent production office to notify the public of the need to file creditor claims against the film production company; and

(b) remains posted on the website until all financial obligations incurred in the state by the film production company have been paid;

(3) that outstanding obligations are not waived should a creditor fail to file;

(4) to delay filing of a claim for the film and television tax credit until the division delivers written notification to the taxation and revenue department that the film production company has fulfilled all requirements for the credit; and

(5) to submit a completed application for the film and television tax credit and supporting documentation to the division within one year of the close of the film production company's taxable year in which the expenditures in New Mexico were incurred for the registered project and that are included in the credit claim.

G. The division shall determine the eligibility of the company and shall report this information to the taxation and revenue department in a manner and at times the economic development department and the taxation and revenue department shall agree upon. The division shall also post on its website all information provided by the film production company that does not reveal revenue, income or other information that may jeopardize the confidentiality of income tax returns, including that the division shall report quarterly the projected amount of credit claims for the fiscal year.

H. To provide guidance to film production companies regarding the amount of credit capacity remaining in the fiscal year, the taxation and revenue department shall post monthly on that department's website the aggregate amount of credits claimed and processed for the fiscal year.

I. To receive a film and television tax credit, a film production company shall apply to the taxation and revenue department on forms and in the manner the department may prescribe. The application shall include a certification of the amount of direct

production expenditures or postproduction expenditures made in New Mexico with respect to the film production for which the film production company is seeking the film and television tax credit; provided that for the film and television tax credit, the application shall be submitted within one year of the date of the last direct production expenditure in New Mexico or the last postproduction expenditure in New Mexico incurred within the film production company's taxable year. If the amount of the requested tax credit exceeds five million dollars ($5,000,000), the application shall also include the results of an audit, conducted by a certified public accountant licensed to practice in New Mexico, verifying that the expenditures have been made in compliance with the requirements of this section. If the requirements of this section have been complied with, subject to the provisions of Section 7-2F-12 NMSA 1978, the taxation and revenue department shall approve the film and television tax credit and issue a document granting the tax credit.

J. The film production company may apply all or a portion of the film and television tax credit granted against personal income tax liability or corporate income tax liability. If the amount of the film and television tax credit claimed exceeds the film production company's tax liability for the taxable year in which the credit is being claimed, the excess shall be refunded.

History: Laws 2015, ch. 143, § 5; 2016, ch. 77, § 6.

**ANNOTATIONS**

**The 2016 amendment,** effective May 18, 2016, clarified citations to the NMSA 1978 within the section; throughout the section, changed "web site" to "website"; in Subsection B, deleted "11 of this 2015 act" and added "7-2F-12 NMSA 1978"; and in Subsection I, deleted "11 of this 2015 act" and added "7-2F-12 NMSA 1978".

## 7-2F-7. Additional credit; television pilots and series.

A. In addition to the credit provided by Section 7-2F-6 NMSA 1978, an additional five percent shall be applied in calculating the amount of the film and television tax credit to direct production expenditures, except as provided in Subsections C and D of this section, on:

(1) a standalone pilot intended for series television in New Mexico; and

(2) series television productions intended for commercial distribution with an order for at least six episodes in a single season; provided that the New Mexico budget for each of those six episodes is fifty thousand dollars ($50,000) or more.

B. A film production company applying for an additional credit pursuant to this section shall not be eligible for the additional credit pursuant to Section 7-2F-8 NMSA 1978.

C. Direct production expenditures that are payments to a nonresident performing artist in a standalone pilot shall not be eligible for the additional credit pursuant to this section.

D. Payments to a nonresident performing artist for a television series may be eligible for the additional credit pursuant to this section; provided that:

(1) a television series completes at least one season of the scheduled episodes for that series in New Mexico;

(2) the film production company certifies the intention to produce a subsequent season to the series described in Paragraph (1) of this subsection in New Mexico; and

(3) the film production company, or its parent company, produces or begins production of an additional eligible television series in New Mexico during the same film production company's taxable year as the television series. Payments to a nonresident performing artist for the additional television series may also be eligible for the additional credit pursuant to this section.

History: Laws 2015, ch. 143, § 6; 2016, ch. 77, § 7.

**ANNOTATIONS**

**The 2016 amendment,** effective May 18, 2016, clarified citations to the NMSA 1978 within the section; in Subsection A, in the introductory sentence, deleted "5 of this 2015 act" and added "7-2F-6 NMSA 1978"; and in Subsection B, deleted "7 of this 2015 act" and added "7-2F-8 NMSA 1978".

## 7-2F-8. Additional credit; qualified production facilities.

A. In addition to the credit provided by Section 7-2F-6 NMSA 1978, an additional five percent shall be applied in calculating the amount of the film and television tax credit to direct production expenditures that are directly attributable and paid to a New Mexico resident who is hired as industry crew, or who is hired as a producer, writer or director working directly with the physical production and has filed a New Mexico income tax return as a resident in the two previous taxable years. The direct production expenditures shall be on a production with a total new budget of:

(1) not more than thirty million dollars ($30,000,000) that shoots at least ten principal photography days in New Mexico at a qualified production facility; provided that a film production company shall:

(a) shoot at least seven of those days at a sound stage that is a qualified production facility and the remaining number of required days, if any, at a standing set that is a qualified production facility; and

(b) for each of the ten days, include industry crew working on the premises of those facilities for a minimum of eight hours within a twenty-four-hour period; or

(2) thirty million dollars ($30,000,000) or more that shoots at least fifteen principal photography days in New Mexico at a qualified production facility; provided that a film production company shall:

(a) shoot at least ten of those days at a sound stage that is a qualified production facility and the remaining number of required days, if any, at a standing set that is a qualified production facility; and

(b) for each day of the fifteen days, include industry crew working on the premises of the facility for a minimum of eight hours within a twenty-four-hour period.

B. A film production company that receives an additional credit pursuant to Section 7-2F-7 NMSA 1978 shall not be eligible for the additional credit pursuant to this section.

History: Laws 2015, ch. 143, § 7; 2016, ch. 77, § 8.

**ANNOTATIONS**

**The 2016 amendment,** effective May 18, 2016, clarified citations to the NMSA 1978 within the section; in Subsection A, in the introductory paragraph, deleted "5 of this 2015 act" and added "7-2F-6 NMSA 1978"; and in Subsection B, deleted "6 of this 2015 act" and added "7-2F-7 NMSA 1978".

## 7-2F-9. Additional credit; nonresident industry crew.

A film production company may apply for, and the taxation and revenue department may allow, subject to the limitation in this section, a tax credit in an amount equal to fifteen percent of the payment of wages, fringe benefits and per diem for nonresident industry crew; provided that:

A. the service for which payment is made is rendered in New Mexico;

B. payments for nonresident industry crew exclude payments for production designer, director of photography, line producer, costume designer, still unit photographer and driver whose sole responsibility is driving;

C. the number of nonresident industry crew shall be employed by the film production company in New Mexico, and shall be, as calculated by the division upon receipt of the first application for a film production tax credit and review of the project's New Mexico budget:

(1) four positions for up to two million dollars ($2,000,000) of the final New Mexico budget;

(2) one additional position for each additional one million dollars ($1,000,000) of the project's final New Mexico budget of at least two million dollars ($2,000,000) up to ten million dollars ($10,000,000);

(3) one additional position for each additional five million dollars ($5,000,000) of the project's final New Mexico budget of at least ten million dollars ($10,000,000) up to fifty million dollars ($50,000,000);

(4) one additional position for every additional ten million dollars ($10,000,000) of the project's final New Mexico budget of at least fifty million dollars ($50,000,000) and thereafter;

(5) eight additional positions, above the number of positions described in this subsection, for a television pilot episode that has not been ordered to series at the time of New Mexico production; provided that the film production company certifies to the division that the series is intended to be produced in New Mexico if the pilot is ordered to series; and

(6) no more than thirty positions; provided that, at the discretion of the division, up to and including ten additional positions may be permitted if five other films are being produced in New Mexico at the time of the film production company's production; and

D. the film production company makes financial or promotional contributions toward educational or work force development efforts in New Mexico as determined by the division, including:

(1) a payment to a New Mexico educational institution that administers at least one industry-recognized film or multimedia program, as determined by the division, equal to at least two and one-half percent of the direct production expenditures for the payment of wages, fringe benefits and per diem for nonresident industry crew made by the film production company to nonresident industry crew; or

(2) promotion of the New Mexico film industry by directors, actors or producers affiliated with the film production company's project through:

(a) social media that is managed by the state;

(b) radio interviews facilitated by the division;

(c) enhanced screen credit acknowledgments; or

(d) related events that are facilitated, conducted or sponsored by the division.

History: Laws 2015, ch. 143, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 143 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

## 7-2F-10. Payments for performing artists; credit limitation.

That amount of a film and television tax credit for the total payments of direct production expenditures for the services of performing artists shall not exceed five million dollars ($5,000,000) for services rendered by nonresident performing artists and featured resident principal performing artists in a production. This limitation shall not apply to the services of background artists and resident performing artists who are not cast in industry standard featured principal performer roles.

History: Laws 2015, ch. 143, § 9.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 143 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

## 7-2F-11. Requirements to contract with certain vendors.

A. A film production company shall make reasonable efforts, as determined by the division, to contract with a specialized vendor whose ordinary course of business directly relates to a standard industry craft inventory and that:

(1) provides services;

(2) provides inventory, for sale or lease, that is maintained in New Mexico and represented by the specialized vendor; or

(3) subcontracts similar standard industry craft inventory from other businesses with or without physical presence.

B. If a film production company does not contract with a specialized vendor, but contracts with a vendor that provides services, does not sell or lease standard industry craft inventory and outsources inventory from out-of-state businesses for a film production company, the film production company shall provide documentation of reasonable efforts made to find a specialized vendor.

History: Laws 2015, ch. 143, § 10.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 143 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

## 7-2F-12. Credit claims; aggregate amount of claims allowed.

A. A claim for a film and television tax credit shall be filed as part of a return filed pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] or the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] or an information return filed by a pass-through entity. The date a credit claim is received by the department shall determine the order that a credit claim is authorized for payment by the department. The aggregate amount of claims for a credit provided by the Film Production Tax Credit Act that may be authorized for payment in any fiscal year is fifty million dollars ($50,000,000) with respect to the direct production expenditures or postproduction expenditures made on film or commercial audiovisual products. A film production company that submits a claim for a film and television tax credit that is unable to receive the tax credit because the claims for the fiscal year exceed the limitation in this subsection shall be placed for the subsequent fiscal year at the front of a queue of credit claimants submitting claims in the subsequent fiscal year in the order of the date on which the credit was authorized for payment.

B. Except as otherwise provided in this section, credit claims authorized for payment pursuant to the Film Production Tax Credit Act shall be paid pursuant to provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] to the taxpayer as follows:

(1) a credit claim amount of less than two million dollars ($2,000,000) per taxable year shall be paid immediately upon authorization for payment of the credit claim;

(2) a credit claim amount of two million dollars ($2,000,000) or more but less than five million dollars ($5,000,000) per taxable year shall be divided into two equal payments, with the first payment to be made immediately upon authorization of the payment of the credit claim and the second payment to be made twelve months following the date of the first payment; and

(3) a credit claim amount of five million dollars ($5,000,000) or more per taxable year shall be divided into three equal payments, with the first payment to be made immediately upon authorization of payment of the credit claim, the second payment to be made twelve months following the date of the first payment and the third payment to be made twenty-four months following the date of the first payment.

C. For a fiscal year in which the amount of total credit claims authorized for payment is less than the aggregate amount of credit claims that may be authorized for payment pursuant to this section, the next scheduled payments for credit claims authorized for payment pursuant to Subsection B of this section shall be accelerated for payment for

that fiscal year and shall be paid to a taxpayer pursuant to the Tax Administration Act and in the order in which outstanding payments are scheduled in the queue established pursuant to Subsections A and B of this section; provided that the total credit claims authorized for payment shall not exceed the aggregate amount of credit claims that may be authorized for payment pursuant to this section. If a partial payment is made pursuant to this subsection, the difference owed shall retain its original position in the queue.

D. Any amount of a credit claim that is carried forward pursuant to Subsection B of this section shall be subject to the limit on the aggregate amount of credit claims that may be authorized for payment pursuant to Subsection A of this section in the fiscal year in which that amount is paid.

E. A credit claim shall only be considered received by the department if the credit claim is made on a complete return filed after the close of the taxable year. All direct production expenditures and postproduction expenditures incurred during the taxable year by a film production company shall be submitted as part of the same income tax return and paid pursuant to this section. A credit claim shall not be divided and submitted with multiple returns or in multiple years.

F. For purposes of determining the payment of credit claims pursuant to this section, the secretary of taxation and revenue may require that credit claims of affiliated persons be combined into one claim if necessary to accurately reflect closely integrated activities of affiliated persons.

History: Laws 2015, ch. 143, § 11.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 143 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

# ARTICLE 2G
# New Mexico Filmmaker Tax Credit

## 7-2G-1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2006, ch. 78, § 3 repealed 7-2G-1 NMSA 1978, as enacted by Laws 2005, ch. 337, § 1, relating to the New Mexico filmmaker tax credit, effective July 1, 2006. For provisions of former section, *see* the 2005 NMSA 1978 on the *NMOneSource.com.*

# ARTICLE 2H
# Native American Veterans' Income Tax Settlement Fund

## 7-2H-1. Legislative findings.

A. Native Americans have had a long history of serving their country through active duty in the armed forces of the United States during periods of both war and peace and have made great sacrifices in serving their country through active duty in the military during periods of war and peace.

B. Native American veterans domiciled within the boundaries of their tribal lands or their spouse's tribal lands during their periods of active military service may have been exempt from paying state personal income taxes on their military income, but may have had state personal income taxes withheld from their military income.

C. Native American veterans now are barred by the state statute of limitations from claiming refunds of state personal income taxes that may have been withheld from their military income when they were domiciled within the boundaries of their tribal lands or their spouse's tribal lands during the period of their active military duty, and even if not barred by the statute of limitations, the passage of time extending to decades will make it difficult for many Native American veterans to meet strict standards of proof that they are entitled to a refund of withheld state personal income taxes.

D. It is incumbent upon the state to ensure that it was not unjustly enriched by the withholding of state personal income taxes from Native American veterans who were domiciled within the boundaries of their tribal lands or their spouse's tribal lands during the period of their active military duty, and the state should implement a feasible means of refunding to Native American veterans any state personal income taxes that were withheld from military income while they were domiciled within the boundaries of their tribal lands or their spouse's tribal lands during the period of their active military duty.

History: Laws 2008, ch. 89, § 1; 2009, ch. 289, § 1.

**ANNOTATIONS**

**The 2009 amendment,** effective June 19, 2009, in Subsection B, after "veterans domiciled", deleted "on" and added "within the boundaries of their tribal lands or their spouse’s tribal lands" and after "personal income taxes", deleted "improperly"; in Subsection C, in two places, before "withheld", deleted "improperly"; and between "military income" and "and even if not barred", added new language; in Subsection D, in two places, before "withheld", deleted "improperly"; between "Native American veterans" and "and the state should implement", added new language; and after "withheld from military", added the remainder of the sentence.

## 7-2H-2. Definition.

As used in Chapter 7, Article 2H NMSA 1978, "fund" means the Native American veterans' income tax settlement fund.

History: Laws 2008, ch. 89, § 2; 2009, ch. 289, § 2.

**ANNOTATIONS**

**The 2009 amendment,** effective June 19, 2009, deleted Subsection A, which defined "department"; and deleted Subsection C, which defined "secretary".

## 7-2H-3. Native American veterans' income tax settlement fund; created; purpose; appropriations.

A. The "Native American veterans' income tax settlement fund" is created as a nonreverting fund in the state treasury and shall be administered by the taxation and revenue department. The fund shall consist of money that is appropriated or donated or that otherwise accrues to the fund.

B. The taxation and revenue department shall establish procedures and adopt rules as required to administer the fund and to make settlement payments from the fund as approved by the secretary of taxation and revenue.

C. Money in the fund is appropriated to the taxation and revenue department to make settlement payments to Native American veterans who were domiciled within the boundaries of their tribal lands or their spouse's tribal lands during the period of their active military duty and had state personal income taxes withheld from their military income, or to their heirs pursuant to applicable law. Settlement payments shall include the amount of state personal income taxes withheld from eligible Native American veterans that have not been previously refunded to the veterans and interest on the amount withheld from the date of withholding computed on a daily basis at the rate specified for individuals pursuant to Section 6621 of the Internal Revenue Code of 1986. No settlement payments shall be made for any taxable year for which a refund claim may be timely filed with the taxation and revenue department, or for which an application for settlement is received after December 31, 2012. Money shall be disbursed from the fund only on warrant of the secretary of finance and administration upon vouchers signed by the secretary of taxation and revenue or the secretary's authorized representative. Any unexpended or unencumbered balance remaining in the fund at the end of a fiscal year shall not revert to the general fund.

D. Beginning in fiscal year 2010 and in subsequent fiscal years, not more than five percent of the fund is appropriated from the fund to the taxation and revenue department for expenditure in the fiscal year in which it is appropriated to administer the fund. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall revert to the fund.

E. Beginning in fiscal year 2010 and in subsequent fiscal years, not more than five percent of the fund is appropriated from the fund to the veterans' services department for expenditure in the fiscal year in which it is appropriated to assist in outreach and public relations and in determining eligibility for settlement payments. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall revert to the fund.

History: Laws 2008, ch. 89, § 3; 2009, ch. 289, § 3.

**ANNOTATIONS**

**The 2009 amendment,** effective June 19, 2009, in Subsection A, deleted the last sentence, which provided for investment of money in the fund by the state investment council; in Subsection C, in the first sentence, between "Native American veterans who" and "and the state personal income tax", added new language; added the second and third sentences; and added Subsections D and E.

## 7-2H-4. Duties of the secretary.

A. The secretary of veterans' services shall conduct a study in cooperation with the taxation and revenue department to determine whether Native American veterans who were domiciled within the boundaries of their tribal lands or their spouse's tribal lands during the period of their active military duty had state personal income taxes withheld from their military income and if so, to determine the amount of such state personal income taxes withheld and the number and identity of Native American veterans or their survivors affected by the withholding of such state personal income taxes.

B. The secretary of taxation and revenue and the secretary of veterans' services shall promulgate rules for a state program to compensate Native American veterans or their survivors for state personal income taxes withheld from military income while on active military duty and domiciled within the boundaries of the veteran's or the veteran's spouse's tribal lands.

C. The secretary of taxation and revenue shall report to the appropriate interim legislative committee no later than October 1 of each year regarding estimates of the amount of state personal income taxes withheld from the military income of Native American veterans domiciled on their respective tribal lands, the number of Native American veterans or their survivors affected by such withholding of state personal income taxes, total expenditures from the fund for the previous fiscal year and the anticipated appropriations to the fund needed to pay for settlements to be entered into for the next fiscal year.

History: Laws 2008, ch. 89, § 4; 2009, ch. 289, § 4.

**ANNOTATIONS**

**The 2009 amendment,** effective June 19, 2009, in Subsection A, after "secretary", added "of veterans' services"; after "Native American veterans who are domiciled", deleted "on" and added "within the boundaries of their tribal lands or their spouse's"; after "withheld from their", deleted "pay" and added "military income"; before "withheld", deleted "improperly"; and before "withholding", deleted "improper"; in Subsection B, after "The secretary", added "of taxation and revenue and the secretary of veterans' affairs"; before "withheld", deleted "improperly"; and after "active military duty", added the remainder of the sentence; and in Subsection C, after "The secretary", added "of taxation and revenue"; before "withheld", deleted "improperly"; and after "Native American veterans", added "domiciled on their respective tribal lands".

# ARTICLE 3
# Income Tax Withholding

## 7-3-1. Short title.

Chapter 7, Article 3 NMSA 1978 may be cited as the "Withholding Tax Act".

**History:** 1953 Comp., § 72-15-49, enacted by Laws 1961, ch. 243, § 1; 1979, ch. 29, § 1.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation § 602.

85 C.J.S. Taxation §§ 1779 to 1780.

## 7-3-2. Definitions.

As used in the Withholding Tax Act:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "employee" means either an individual domiciled within the state who performs services either within or without the state for an employer or, to the extent permitted by law, an individual domiciled outside of the state who performs services within the state for an employer;

C. "employer" means a person or an officer, agent or employee of that person having control of the payment of wages, doing business in or deriving income from sources within the state for whom an individual performs or performed any service as the employee of that person, except that if the person for whom the individual performs

or performed the services does not have control over the payment of the wages for such services, "employer" means the person having control of the payment of wages;

D. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended;

E. "payee" means an individual to whom a payor is making a pension or annuity payment;

F. "payor" means a person making payment of a pension or annuity to an individual domiciled in New Mexico;

G. "payroll period" means a period for which a payment of wages is made to an employee by the employee's employer;

H. "person" means an individual, a club, a company, a cooperative association, a corporation, an estate, a firm, a joint venture, a partnership, a receiver, a syndicate, a trust or other association, a limited liability company, a limited liability partnership or a gas, water or electric utility owned or operated by a county or municipality and, to the extent permitted by law, a federal, state or other governmental unit or subdivision or an agency, a department or an instrumentality thereof;

I. "wagerer" means any person who receives winnings that are subject to withholding;

J. "wages" means remuneration in cash or other form for services performed by an employee for an employer;

K. "winnings that are subject to withholding" means "winnings which are subject to withholding" as that term is defined in Section 3402 of the Internal Revenue Code;

L. "withholdee" means:

(1) an individual domiciled in New Mexico receiving a pension or annuity from which an amount of tax is deducted and withheld pursuant to the Withholding Tax Act;

(2) an employee; and

(3) a wagerer; and

M. "withholder" means a payor, an employer or any person required to deduct and withhold from winnings that are subject to withholding.

History: 1978 Comp., § 7-3-2, enacted by Laws 1990, ch. 64, § 1; 1996, ch. 16, § 3; 1999, ch. 14, § 1; 2000, ch. 33, § 3; 2002, ch. 9, § 1; 2010, ch. 53, § 3.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1990, ch. 64, § 1 repealed former 7-3-2 NMSA 1978, as amended by Laws 1986, ch. 20, § 54, and enacted the above section, effective July 1, 1990.

**Cross references.** — For Section 3402 of the Internal Revenue Code, *see* 26 U.S.C.S. § 3402.

**The 2010 amendment,** effective May 19, 2010, deleted former Subsection E, which defined "owner"; deleted former Subsection F, which defined "pass-through entity"; added Subsection E; in Subsection H, after "trust or other association", added "a limited liability company, a limited liability partnership or a gas, water or electric utility owned or operated by a county or municipality"; and relettered subsections accordingly.

**Applicability.** — Laws 2010, ch. 53, § 19 provided that the provisions of this act are applicable to taxable years beginning on or after January 1, 2011.

**The 2002 amendment,** effective May 15, 2002, added Paragraph F(4).

**The 2000 amendment,** effective May 17, 2000, substituted "pass-through-entity" for "business association, other than a sole proprietorship, not taxed as a corporation for federal income tax purposes for the taxable year" at the end of Subsection E.

**The 1999 amendment,** effective June 18, 1999, added present Subsections E and F, and redesignated former Subsections E through L as Subsections G through N.

**The 1996 amendment,** effective April 1, 1996, added Subsections H and J and redesignated former Subsections H through J as Subsections I through L, and added Paragraph K(3).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 85 C.J.S. Taxation §§ 1701 to 1705, 1721 to 1735.

## 7-3-3. Tax withheld at source.

A. Every employer who deducts and withholds a portion of an employee's wages for payment of income tax under the provisions of the Internal Revenue Code shall deduct and withhold an amount for each payroll period computed from a state withholding tax table furnished by the department; provided:

(1) if the employee instructs the employer to withhold a greater amount, the employer shall deduct and withhold the greater amount;

(2) if the employee is not a resident of New Mexico and is to perform services in New Mexico for fifteen or fewer days cumulatively during the calendar year, the

employer is not required to deduct and withhold an amount from that employee's wages; and

(3) if the aggregate monthly amount withheld under this section would be less than one dollar ($1.00) for an employee, the employer shall not be required to deduct and withhold wages in regard to that employee.

B. The department shall devise and furnish a state withholding tax table based on statutes made and provided to employers required to withhold amounts under this section. This table shall be devised to provide for a yearly aggregate withholding that will approximate the state income tax liability of average taxpayers in each exemption category.

C. If an individual requests in writing that the payor deduct and withhold an amount from the amount of the pension or annuity due the individual, the payor making payment of a pension or annuity to an individual domiciled in New Mexico shall deduct and withhold the amount requested to be deducted and withheld, provided that the payor is not required to deduct and withhold any amount less than ten dollars ($10.00) per payment. The written request shall include the payee's name, current address, taxpayer identification number and, if applicable, the contract, policy or account number to which the request applies.

D. Every person in New Mexico who is required by the provisions of the Internal Revenue Code to deduct and withhold federal tax from payment of winnings that are subject to withholding shall deduct and withhold from such payment a tax in an amount equal to six percent of the winnings, except that an Indian nation, tribe or pueblo or an agency, department, subdivision or instrumentality thereof is not required to deduct or withhold from payments made to members or spouses of members of that Indian nation, tribe or pueblo.

**History:** 1953 Comp., § 72-15-51, enacted by Laws 1961, ch. 243, § 3; 1990, ch. 64, § 2; 1995, ch. 11, § 9; 1996, ch. 16, § 4.

## ANNOTATIONS

**Cross references.** — For the Internal Revenue Code, *see* 26 U.S.C. § 1 et seq.

**The 1996 amendment,** effective April 1, 1996, added Subsection D.

**The 1995 amendment,** effective July 1, 1995, designated the first sentence of Subsection A as Paragraph A(1) and added Paragraphs A(2) and A(3); designated the former second sentence of Subsection A as Subsection B and deleted a proviso at the end thereof which read "Provided that if that aggregate monthly amount withheld under this section would be less one dollar ($1.00) for an employee, the employer shall not be required to deduct and withhold wages in regard to that employee"; and redesignated former Subsection B as Subsection C and made a stylistic change therein.

**The 1990 amendment,** effective July 1, 1990, designated the former section as Subsection A; added Subsection B; and, in present Subsection A, substituted "department, provided that, if the employee instructs the employer to withhold a greater amount, the employer shall deduct and withhold the greater amount" for "bureau of revenue" at the end of the first sentence, substituted "department" for "bureau" in the second sentence, and substituted "one dollar ($1.00)" for "fifty cents ($.50)" in the fourth sentence.

**New Mexico may not tax income and gross receipts of Indians residing on reservation** when the income and gross receipts involved are derived solely from activities within the reservation. Hunt v. O'Cheskey, 1973-NMCA-026, 85 N.M. 381, 512 P.2d 954, cert. quashed, 85 N.M. 388, 512 P.2d 961. See also case notes to 7-2-3 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation § 602.

85 C.J.S. Taxation §§ 1701 to 1705, 1721 to 1735.

## 7-3-4. Deductions considered taxes.

Amounts deducted under the provisions of the Withholding Tax Act shall be a collected tax. No employee shall have a right of action against the employer for any amount deducted and withheld from the employee's wages. No individual who has instructed a payor to deduct and withhold an amount from the pension or annuity due that individual shall have a right of action against a payor for any amount deducted and withheld pursuant to the instruction. No wagerer who receives winnings that are subject to withholding shall have a right of action against the person who deducted and withheld an amount from the wagerer's winnings for the amount deducted and withheld.

**History:** 1953 Comp., § 72-15-52, enacted by Laws 1961, ch. 243, § 4; 1971, ch. 27, § 1; 1990, ch. 64, § 3; 1996, ch. 16, § 5.

**ANNOTATIONS**

**Cross references.** — For right of action for gambling losses, *see* 44-5-1 NMSA 1978.

**The 1996 amendment,** effective April 1, 1996, added the last sentence.

**The 1990 amendment,** effective July 1, 1990, added the second sentence and made minor stylistic changes in the first sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 530, 531, 596 to 607.

Construction, application and effect, with respect to withholding, social security and unemployment compensation taxes, of statutes imposing penalties for tax evasion or default, 22 A.L.R.3d 8.

85 C.J.S. Taxation §§ 1756 to 1759, 1779 to 1780, 1763 to 1764.

## 7-3-5. Withholder liable for amounts deducted and withheld; exceptions.

Every withholder shall be liable for amounts required to be deducted and withheld by the Withholding Tax Act regardless of whether the amounts were in fact deducted and withheld, except that:

A. if the withholder fails to deduct and withhold the required amounts and if the tax against which the required amounts would have been credited is paid, the withholder shall not be liable for those amounts not deducted and withheld; or

B. if the withholder's failure to deduct and withhold the required amounts was due to reasonable cause, the withholder shall not be liable for amounts not deducted and withheld.

History: 1953 Comp., § 72-15-53, enacted by Laws 1961, ch. 243, § 5; 1990, ch. 64, § 4; 1999, ch. 14, § 2; 2010, ch. 53, § 4.

**ANNOTATIONS**

**The 2010 amendment,** effective May 19, 2010, in the introductory sentence, after "Every withholder", deleted "or pass-through entity"; in Subsection A, after "if the withholder", deleted "or pass-through entity"; and in Subsection B, after "if the withholder's", deleted "or pass-through entity", and after "reasonable cause, the withholder", deleted "or pass-through entity".

**Applicability.** — Laws 2010, ch. 53, § 19 provided that the provisions of this act are applicable to taxable years beginning on or after January 1, 2011.

**The 1999 amendment,** effective June 18, 1999, inserted "or pass-through entity" and "or pass-through entity's" throughout the section, and deleted "or not" following "of whether" in the introductory language.

**The 1990 amendment,** effective July 1, 1990, substituted "Withholder" for "Employer" in the section heading and throughout the section and made a minor stylistic change in Subsection B.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 530, 531, 596 to 607.

Application of payments, made in satisfaction of employer's withholding tax liability, to employer's liability for penalties, 59 A.L.R. Fed. 484.

85 C.J.S. Taxation §§ 1719 to 1756.

## 7-3-6. Date payment due.

Taxes withheld under the provisions of the Withholding Tax Act must be paid on or before the twenty-fifth day of the month following the month when the taxes were required to be withheld.

History: 1978 Comp., § 7-3-6, enacted by Laws 1969, ch. 25, § 1; 2000, ch. 33, § 4; 2010, ch. 53, § 5.

**ANNOTATIONS**

**The 2010 amendment,** effective May 19, 2010, in the first sentence, deleted "Except for amounts withheld pursuant to the provisions of Section 7-3-12 NMSA 1978" and deleted the former last sentence, which provided that amounts withheld pursuant to Section 7-3-12 NMSA 1978 must be paid on or before the due date of the return for the pass-through entity.

**Applicability.** — Laws 2010, ch. 53, § 19 provided that the provisions of this act are applicable to taxable years beginning on or after January 1, 2011.

**The 2000 amendment,** effective May 17, 2000, added the exception for amounts withheld pursuant to the provisions of 7-3-12 NMSA 1978 from the time period that taxes must be paid, and added the stipulation that such amounts must be paid on or before the due date of the return for the pass-through entity.

## 7-3-7. Statements of withholding.

A. Except for employers required to file quarterly withholding information returns pursuant to the Withholding Tax Act or required to file a wage and contribution report to the workforce solutions department pursuant to Section 51-1-12 NMSA 1978, every employer shall file an annual statement of withholding for each employee. This statement shall be in a form prescribed by the department and shall be filed with the department on or before the last day of February of the year following that for which the statement is made. It shall include the total compensation paid the employee and the total amount of tax withheld for the calendar year or portion of a calendar year if the employee has worked less than a full calendar year.

B. Except for payors who file the quarterly withholding information returns pursuant to the Withholding Tax Act, every payor shall file an annual statement of withholding for each individual from whom some portion of a pension or an annuity has been deducted and withheld by that payor. This statement shall be in a form prescribed by the

department and shall be filed with the department on or before the last day of February of the year following that for which the statement is made. It shall include the total amount of pension or annuity paid to the individual and the amount of tax withheld for the calendar year.

C. Every person required to deduct and withhold tax from a payment of winnings that are subject to withholding shall file an annual statement of withholding for each wagerer from whom some portion of a payment of winnings has been deducted and withheld by that person. The statement shall be in a form prescribed by the department and shall be filed with the department on or before the last day of February of the year following that for which the statement is made. It shall include the total amount of winnings paid to the individual and the amount of tax withheld for the calendar year. The department may also require any person who is required to submit an information return to the internal revenue service regarding the winnings of another person to submit copies of the return to the department.

History: 1953 Comp., § 72-15-56, enacted by Laws 1961, ch. 243, § 8; 1990, ch. 64, § 5; 1996, ch. 16, § 6; 2010, ch. 53, § 6.

**ANNOTATIONS**

**The 2010 amendment,** effective May 19, 2010, in Subsection A, in the first sentence, added the language preceding "every employer shall file an annual statement"; and in Subsection B, in the first sentence, added the language preceding "every payor shall file an annual statement".

**Applicability.** — Laws 2010, ch. 53, § 19 provided that the provisions of this act are applicable to taxable years beginning on or after January 1, 2011.

**The 1996 amendment,** effective April 1, 1996, added Subsection C.

**The 1990 amendment,** effective July 1, 1990, designated the former section as Subsection A, substituting therein "department" for "bureau" in two places and "the last day of February" for "February 15" in the second sentence, and added Subsection B.

## 7-3-8. Copy of the statement of withholding to be furnished the withholdee.

A copy of the annual statement of withholding shall be furnished to the withholdee by the withholder on or before January 31 of the year following that for which the statement is made.

**History:** 1953 Comp., § 72-15-57, enacted by Laws 1961, ch. 243, § 9; 1990, ch. 64, § 6.

**ANNOTATIONS**

**The 1990 amendment,** effective July 1, 1990, substituted "withholdee" for "employee" in the section heading and in the text, and substituted "to the withholdee by the withholder" for "the employee" and "January 31" for "February 15".

## 7-3-9. Withheld amounts credited against tax.

The entire amount of income upon which tax was deducted and withheld shall be included in the gross income of the withholdee for state income tax purposes. The amount of tax deducted and withheld under the provisions of the Withholding Tax Act during the taxable year shall be credited against any state income tax liability for that taxable year.

**History:** 1953 Comp., § 72-15-59, enacted by Laws 1961, ch. 243, § 11; 1990, ch. 64, § 7.

### ANNOTATIONS

**The 1990 amendment,** effective July 1, 1990, deleted "from wages" following "amount of income" and substituted "withholdee" for "employee" in the first sentence and "tax deducted" for "wages deducted" in the second sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 258, 602.

85 C.J.S. Taxation §§ 1700, 1779 to 1780, 1782.

## 7-3-10. Voluntary submission to act.

Any employee whose participation under the Withholding Tax Act is not mandatory may subject himself or herself to its provisions with the consent of the employer.

**History:** 1953 Comp., § 72-15-66, enacted by Laws 1961, ch. 243, § 18; 1990, ch. 64, § 8.

### ANNOTATIONS

**The 1990 amendment,** effective July 1, 1990, inserted "or herself" following "himself" and substituted "the employer" for "his employer".

## 7-3-11. Acts to be performed by agents; liability of third parties.

A. When a fiduciary, agent or other person has the control, receipt, custody or disposal of or pays the wages of an employee or group of employees employed by one or more employers and the fiduciary, agent or other person has been designated by the United States secretary of the treasury to perform such acts as are required of employers for federal withholding purposes under the Internal Revenue Code, the

fiduciary, agent or other person shall perform the acts required of employers by the provisions of the Withholding Tax Act. All provisions of Chapter 7 NMSA 1978 applicable in respect to an employer shall be applicable to a fiduciary, agent or other person so designated, but the employer, unless provided otherwise by law, for whom the fiduciary, agent or other person acts shall remain subject to the provisions of Chapter 7 NMSA 1978 applicable in respect to employers.

B. For purposes of the Withholding Tax Act, if a lender, surety or other person who is not an employer under the Withholding Tax Act with respect to an employee or group of employees, pays wages directly to the employee or group of employees employed by one or more employers or to an agent on behalf of the employee or employees, the lender, surety or other person shall be liable in its own person and estate to the state of New Mexico in a sum equal to the taxes required to be deducted and withheld from those wages by the employer. Any amount paid pursuant to this subsection shall be credited against the liability of the employer.

**History:** 1978 Comp., § 7-3-11, enacted by Laws 1990, ch. 64, § 9.

**ANNOTATIONS**

**Cross references. —** For the Internal Revenue Code, *see* Title 26 of the United States Code.

## 7-3-12. Repealed.

**ANNOTATIONS**

**Repeals. —** Laws 2010, ch. 53, § 18 repealed 7-3-12 NMSA 1978, as enacted by Laws 1999, ch. 14, § 3, relating to information returns required from pass-through entities, effective May 19, 2010. For provisions of former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.*

## 7-3-13. Withholding information return required; penalty.

A. An employer that has more than fifty employees and is not required to file an unemployment insurance tax form with the workforce solutions department or a payor shall file quarterly a withholding information return with the department on or before the last day of the month following the close of the calendar quarter.

B. The quarterly withholding information return required by this section shall contain all information required by the department, including:

(1) each employee's or payee's social security number;

(2) each employee's or payee's name;

(3) each employee's or payee's gross wages, pensions or annuity payments;

(4) each employee's or payee's state income tax withheld; and

(5) the workers' compensation fees due on behalf of each employee or payee.

C. Each quarterly withholding information return shall be filed with the department using a department-approved electronic medium.

D. Any employer or payor required to file the quarterly withholding information return who fails to do so by the due date or to file the return in accordance with Subsection C of this section is subject to a penalty in the amount of fifty dollars ($50.00).

History: Laws 2010, ch. 53, § 7.

**ANNOTATIONS**

**Effective dates.** — Laws 2010, ch. 53 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2010, ch. 53, § 19 provided that the provisions of this act are applicable to taxable years beginning on or after January 1, 2011.

# ARTICLE 3A
# Oil and Gas Proceeds and Pass-Through Entity Withholding Tax

## 7-3A-1. Short title.

Chapter 7, Article 3A NMSA 1978 may be referred to as the "Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act".

History: 1978 Comp., § 7-3A-1, enacted by Laws 2003, ch. 86, § 4; 2010, ch. 53, § 8.

**ANNOTATIONS**

**The 2010 amendment,** effective May 19, 2010, added "and Pass-Through Entity".

**Applicability.** — Laws 2010, ch. 53, § 19 provided that the provisions of this act are applicable to taxable years beginning on or after January 1, 2011.

## 7-3A-2. Definitions.

As used in the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended;

C. "net income" means, for any pass-through entity:

(1) in the case of an owner that is taxed as a corporation for federal income tax purposes, "net income" as defined in the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978]; and

(2) for all other owners, "net income" as defined in the Income Tax Act;

D. "oil and gas" means crude oil, natural gas, liquid hydrocarbons or any combination thereof, or carbon dioxide;

E. "oil and gas proceeds" means any amount derived from oil and gas production from any well located in New Mexico and payable as royalty interest, overriding royalty interest, production payment interest, working interest or any other obligation expressed as a right to a specified interest in the cash proceeds received from the sale of oil and gas production or in the cash value of that production, subject to all taxes withheld therefrom pursuant to law; "oil and gas proceeds" excludes "net profits interest" and other types of interest the extent of which cannot be determined with reference to a specified share of the oil and gas production and excludes any amounts deducted by the remitter from payments to interest owners or paid by interest owners to the remitter that are for expenses related to the production from the well or cessation of production from the well for which the interest owner is liable;

F. "owner" means a partner in a partnership not taxed as a corporation for federal income tax purposes for the taxable year, a shareholder of an S corporation or of a corporation other than an S corporation that is not taxed as a corporation for federal income tax purposes for the taxable year, a member of a limited liability company or any similar person holding an ownership interest in any pass-through entity. "Owner" also means a performing artist to whom payments are due from a personal services business;

G. "partnership" means a combination of persons, including a partnership, joint venture, common trust fund, association, pool or working agreement, or any other combination of persons that is treated as a partnership for federal income tax purposes;

H. "pass-through entity" means a personal services business or any other business association other than:

(1) a sole proprietorship;

(2) an estate or trust that does not distribute income to beneficiaries;

(3) a corporation, limited liability company, partnership or other entity not a sole proprietorship taxed as a corporation for federal income tax purposes for the taxable year;

(4) a partnership that is organized as an investment partnership in which the partners' income is derived solely from interest, dividends and sales of securities;

(5) a single member limited liability company that is treated as a disregarded entity for federal income tax purposes; or

(6) a publicly traded partnership as defined in Subsection (b) of Section 7704 of the Internal Revenue Code;

I. "person" means an individual, club, company, cooperative association, corporation, estate, firm, joint venture, partnership, receiver, syndicate, trust or other association, limited liability company, limited liability partnership or gas, water or electric utility owned or operated by a county or municipality and, to the extent permitted by law, a federal, state or other governmental unit or subdivision or an agency, a department or an instrumentality thereof;

J. "personal services business" means a business organization that receives payments for the services of a performing artist for purposes of the film production tax credit;

K. "remittee" means a person that is entitled to payment of oil and gas proceeds by a remitter; and

L. "remitter" means a person that pays oil and gas proceeds to any remittee.

History: 1978 Comp., § 7-3A-2, enacted by Laws 2003, ch. 86, § 5; 2010, ch. 53, § 9; 2011, ch. 177, § 5; 2012, ch. 40, § 1.

## ANNOTATIONS

**Cross references.** — For Section 7704 of the Internal Revenue Code of 1986, *see* 26 U.S.C. § 7704.

**The 2012 amendment,** effective May 16, 2012, redefined "net income" as defined in New Mexico income tax acts rather than as "net income" for federal income tax purposes; and in Subsection C, deleted former language that defined "net income" as income reported for federal income tax purposes, and added Paragraphs (1) and (2).

**Applicability.** — Laws 2012, ch. 40, § 8 provided that the provisions of Laws 2012, ch. 40, §§ 1 through 7 are applicable to taxable years beginning on or after January 1, 2012.

**The 2011 amendment,** effective July 1, 2011, defined "owner" to include performing artists who are paid by a personal services business; defined "pass-through entity" to include personal services businesses; and added a definition of "personal services business".

**The 2010 amendment,** effective May 19, 2010, in the introductory sentence, added "and Pass-Through Entity"; added Subsections B and C; in Subsection E, after "a specified share of the oil and gas production", added the remainder of the sentence; added Subsections F, G and H; in Subsection I, after "trust or other association", added "limited liability company, limited liability partnership or gas, water, or electric utility owned or operated by a county or municipality"; and relettered subsections accordingly.

**Temporary provisions.** — Laws 2010, ch. 53, § 17 provided that for a taxable year beginning on or after January 1, 2011, but before January 1, 2012, no remitter or pass-through entity shall be subject to the penalty imposed pursuant to Section 7-1-69 NMSA 1978 for failure to comply with the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

## 7-3A-3. Withholding from oil and gas proceeds and net income.

A. Except as otherwise provided in this section, a remitter shall deduct and withhold from each payment of oil and gas proceeds being made to a remittee for each quarter an amount equal to the rate specified in Subsection D of this section multiplied by the amount prior to withholding that otherwise would have been payable to the remittee.

B. Except as otherwise provided in this section, a pass-through entity shall deduct and withhold from each owner's allocable share of net income for that calendar year an amount equal to the rate specified in Subsection D of this section multiplied by the owner's allocable share of that net income, reduced, but not below zero, by the amount required to be withheld from the owner's allocable share of net income under Subsection A of this section.

C. The obligation to deduct and withhold from payments or allocable net income as provided in Subsections A and B of this section does not apply to payments that are made to:

(1) a corporation whose principal place of business is in New Mexico or an individual who is a resident of New Mexico;

(2) remittees with a New Mexico address as shown on internal revenue service form 1099-Misc or a successor form or on a *pro forma* 1099-Misc or a

successor form for those entities that do not receive an internal revenue service form 1099-Misc;

(3) the United States, this state or any agency, instrumentality or political subdivision of either;

(4) any federally recognized Indian nation, tribe or pueblo or any agency, instrumentality or political subdivision thereof; or

(5) organizations that have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the Internal Revenue Code. However, the obligation to deduct and withhold from payments of allocable net income to organizations identified in this paragraph applies if that income constitutes unrelated business income.

D. Except as provided in Subsection H of this section, the rate of withholding shall be set by a department directive; provided that the rate may not exceed the higher of the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the taxable year or the maximum bracket rate set by Section 7-2A-5 NMSA 1978 for the taxable year; and provided further that remitters shall be given ninety days' notice of a change in the rate.

E. If a remitter receives oil and gas proceeds from which an amount has been deducted and withheld pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act or a pass-through entity has deducted and withheld an amount pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act from the allocable share of net income of an owner that is also a pass-through entity, the remitter or payee pass-through entity may take credit for that amount in determining the amount the remitter or payee pass-through entity must withhold and deduct pursuant to this section.

F. If the amount to be withheld from all payments to a remittee in a calendar quarter has not exceeded thirty dollars ($30.00) and a payment to a remittee is less than ten dollars ($10.00), no withholding is required. If the amount to be withheld from an owner's allocable share of net income in any calendar year is less than one hundred dollars ($100), no withholding is required.

G. Except as provided in Subsection H of this section, at the option of a remitter or pass-through entity, a remitter or pass-through entity may agree with a remittee or an owner that the remittee or owner pay the amount that the remitter or pass-through entity would have been required to withhold and remit to the department on behalf of the remittee or owner pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. The payments by the remittee or owner shall be remitted on the dates set forth in Section 7-3A-6 NMSA 1978 on forms and in the manner required by the department.

H. Excluding wages, a personal services business shall deduct and withhold an amount equal to the owner's allocable share of net income multiplied by the highest rate for single individuals provided in Section 7-2-7 NMSA 1978.

I. If the remittee or owner is an insurance company and falls under the provisions of Section 59A-6-6 NMSA 1978, no withholding is required pursuant to this section.

History: 1978 Comp., § 7-3A-3, enacted by Laws 2003, ch. 86, § 6; 2010, ch. 53, § 10; 2011, ch. 177, § 6; 2012, ch. 40, § 2.

## ANNOTATIONS

**The 2012 amendment,** effective May 16, 2012, required quarterly withholding; exempted payment to remittees with a New Mexico address from whichholding; required withholding if payments to charitable organizations constitute unrelated business income; increased the minimum annual amount that required withholding; exempted payments to insurance companies from withholding; in Subsection A, after "being made to a remittee", added "for each quarter"; in Subsection B, after "and withhold from each owner's" added "allocable"; after "income for that", deleted "quarter" and added "calendar", after "multiplied by the owner's" added "allocable", and after "to be withheld from the owner's" added "allocable share of"; in Subsection C, in the introductory sentence, after "payments or", added "allocable", added Paragraph (2), and in Paragraph (5), added the last sentence; deleted former Subsection E, which required a pass-through entity that had been in existence for one full taxable year to compute withholding based on the net income of the entity for the preceding year; in Subsection E, after "Tax Act from the", added "allocable share of"; in Subsection F, in the second sentence, after "from an owner's", added "allocable", after "in any calendar", deleted "quarter" and added "year", and after "is less than", deleted "thirty dollars ($30.00)" and added "one hundred dollars ($100.00)"; in Subsection H, after "equal to the owner's", added "allocable"; and added Subsection I.

**Applicability.** — Laws 2012, ch. 40, § 8 provided that the provisions of Laws 2012, ch. 40, §§ 1 through 7 are applicable to taxable years beginning on or after January 1, 2012.

**The 2011 amendment,** effective July 1, 2011, required personal services businesses to deduct and withhold income tax from payments to performing artists.

**The 2010 amendment,** effective May 19, 2010, in Subsection A, after "Subsection", changed "C" to "D"; after "multiplied by the", deleted "gross"; and after "multiplied by the amount", added "prior to withholding"; added Subsection B; in Subsection C, after "withhold from payments", added "or net income" and after "as provided in", changed "Subsection A of this section" to "Subsections A and B of this section"; in Paragraph (1) of Subsection C, deleted "remittees with a New Mexico address as shown on internal revenue service form 1099-MISC or successor form" and added "a corporation whose principal place of business is in New Mexico or an individual who is a resident of New

Mexico"; in Subsection D, after "The rate of withholding", deleted "is six and three-fourths percent for the period October 1, 2003 through December 31, 2004. Thereafter the rate shall be set by department regulation." and added "shall be set by a department directive"; added Subsections E and F; in Subsection G, in the first sentence, added "all payments to a remittee in a calendar quarter has not exceeded thirty dollars ($30.00) and" and added the last sentence; and added Subsection H.

**Temporary provisions.** — Laws 2010, ch. 53, § 17 provided that for a taxable year beginning on or after January 1, 2011, but before January 1, 2012, no remitter or pass-through entity shall be subject to the penalty imposed pursuant to Section 7-1-69 NMSA 1978 for failure to comply with the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

## 7-3A-4. Deductions considered taxes.

Amounts deducted under the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act are a collected tax. A remittee who receives payment of oil and gas proceeds or an owner with an allocable share of net income does not have a right of action against the remitter or pass-through entity for the amount deducted and withheld from the oil and gas proceeds or an allocable share of net income.

History: 1978 Comp., § 7-3A-4, enacted by Laws 2003, ch. 86, § 7; 2010, ch. 53, § 11; 2012, ch. 40, § 3.

**ANNOTATIONS**

**The 2012 amendment,** effective May 16, 2012, measured net income by allocable shares and in the second sentence, after "or an owner with", deleted "a" and added "an allocable" and after the "gas proceeds or", added "an allocable share of".

**Applicability.** — Laws 2012, ch. 40, § 8 provided that the provisions of Laws 2012, ch. 40, §§ 1 through 7 are applicable to taxable years beginning on or after January 1, 2012.

**The 2010 amendment,** effective May 19, 2010, in the first sentence, added "and Pass-Through Entity" and in the second sentence , after "payment of oil and gas proceeds", added "or an owner with a share of net income"; after "against the remitter", added "or pass-through entity"; and after "withheld from oil and gas proceeds", added "or net income".

**Temporary provisions.** — Laws 2010, ch. 53, § 17 provided that for a taxable year beginning on or after January 1, 2011, but before January 1, 2012, no remitter or pass-through entity shall be subject to the penalty imposed pursuant to Section 7-1-69 NMSA 1978 for failure to comply with the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

## 7-3A-5. Remitters and pass-through entities liable for amounts deducted and withheld; exceptions.

A. Every remitter or pass-through entity is liable for:

(1) amounts required to be deducted and withheld by the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act regardless of whether the amounts were in fact deducted and withheld; and

(2) for the amounts that a remittee or an owner has agreed to remit pursuant to Subsection G of Section 7-3A-3 NMSA 1978, once the department has notified the remitter or pass-through entity that the remittee or owner has failed to remit.

B. A remitter or pass-through entity is not liable for amounts required to be deducted and withheld by the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act but not deducted or withheld if:

(1) the remitter or pass-through entity fails to deduct and withhold the required amounts and if the tax against which the required amounts would have been credited is paid; or

(2) the remitter's or pass-through entity's failure to deduct and withhold the required amounts is due to reasonable cause.

History: 1978 Comp., § 7-3A-5, enacted by Laws 2003, ch. 86, § 8; 2010, ch. 53, § 12; 2012, ch. 40, § 4.

**ANNOTATIONS**

**The 2012 amendment,** effective May 16, 2012, eliminated changes in net income for federal income tax purposes as an exception to liability for withholding and deleted former Subsection C, which provided that changes in net income due to a timely election for federal income tax purposes was reasonable cause for failing to withhold.

**Applicability.** — Laws 2012, ch. 40, § 8 provided that the provisions of Laws 2012, ch. 40, §§ 1 through 7 are applicable to taxable years beginning on or after January 1, 2012.

**The 2010 amendment,** effective May 19, 2010, in the catchline, changed "Remitter" to "Remitters and pass-through entities"; in Subsection A, in the introductory sentence, added "or pass-through entity"; in Subsection A(1), after "Oil and Gas Proceeds", added "and Pass-Through Entity" and after "deducted and withheld", deleted "except that" and added "and"; added Paragraph (2) of Subsection A; added the introductory sentence of Subsection B; in Subsection B(1), after "the remitter", added "or pass-through entity" and after "have been credited is paid", deleted "the remitter shall not be liable for those amounts not deducted and withheld"; in Subsection B(2), after "the remitter's", added

"or pass-through entity's" and after "reasonable cause", deleted "such as reliance on addresses supplied by remittees, the remitter shall not be liable for amounts not deducted and withheld"; and added Subsection C.

**Temporary provisions.** — Laws 2010, ch. 53, § 17 provided that for a taxable year beginning on or after January 1, 2011, but before January 1, 2012, no remitter or pass-through entity shall be subject to the penalty imposed pursuant to Section 7-1-69 NMSA 1978 for failure to comply with the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

## 7-3A-6. Date payment due; form.

A. Amounts withheld under the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act by a remitter are due on or before the twenty-fifth day of the month following the end of the calendar quarter when the taxes were required to be withheld.

B. Amounts withheld under the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act by a pass-through entity are due on or before the due date of the federal tax return required for the pass-through entity.

C. The amount withheld shall be remitted on a form and in a manner required by the department, provided that amounts withheld and remitted from oil and gas proceeds are kept distinct from every other tax or withheld amount.

History: 1978 Comp., § 7-3A-6, enacted by Laws 2003, ch. 86, § 9; 2010, ch. 53, § 13; 2012, ch. 40, § 5.

**ANNOTATIONS**

**The 2012 amendment,** effective May 16, 2012, established a payment due date and added a new Subsection B and relettered former Subsection B as Subsection C.

**Applicability.** — Laws 2012, ch. 40, § 8 provided that the provisions of Laws 2012, ch. 40, §§ 1 through 7 are applicable to taxable years beginning on or after January 1, 2012.

**The 2010 amendment,** effective May 19, 2010, in Subsection A, after the phrase “Oil and Gas Proceeds”, adds the phrase “and Pass-Through Entity”.

**Temporary provisions.** — Laws 2010, ch. 53, § 17 provided that for a taxable year beginning on or after January 1, 2011, but before January 1, 2012, no remitter or pass-through entity shall be subject to the penalty imposed pursuant to Section 7-1-69 NMSA 1978 for failure to comply with the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

## 7-3A-7. Statements of withholding.

A. Every remitter shall:

(1) file an annual statement of withholding for each remittee that:

(a) is in electronic format and includes a form 1099-Misc or a successor form or on a pro forma 1099-Misc or a successor form for those entities that do not receive an internal revenue service form 1099-Misc;

(b) is filed with the department on or before the last day of February of the year following that for which the statement is made; and

(c) includes the total oil and gas proceeds paid to the remittee and the total amount of tax withheld for the calendar year; and

(2) provide a copy of the annual statement of withholding to the remittee on or before February 15 of the year following the year for which the statement is made.

B. The department shall develop and adopt rules regarding the filing of a report pursuant to this section and the attachment of form 1099-Misc or a successor form or a pro forma 1099-Misc or a successor form, if the remitter is not able to file those forms in an electronic format.

C. Every remitter shall file an electronic report of the remittees who have certified that the remittee is responsible for filing the remittee's own oil and gas proceeds tax report and for paying the remittee's oil and gas proceeds tax liability due.

D. Every pass-through entity doing business in New Mexico shall:

(1) file an annual information return with the department that:

(a) is filed on or before: 1) the due date of the entity's federal return for the taxable year; or 2) if the entity's taxable year is a calendar year, if the entity is approved by the department to use electronic media for filing and if the entity uses electronic media to file the annual information return, the end of the month in which the entity's federal return is due;

(b) is signed by the business manager or one of the owners of the pass-through entity; and

(c) contains all information required by the department, including the pass-through entity's gross income; the pass-through entity's net income; the amount of each owner's allocable share of the pass-through entity's net income; and the name, address and tax identification number of each owner entitled to an allocable share of net income; and

(2) provide to each of its owners sufficient information to enable the owner to comply with the provisions of the Income Tax Act [Chapter 7, Article 2 NMSA 1978] and the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] with respect to the owner's allocable share of net income.

E. The department shall compile each year the annual statements of withholding received from the remitters and the annual information returns received from pass-through entities and compare the compilations with the records of corporations, individuals, estates or trusts filing income tax returns.

History: 1978 Comp., § 7-3A-7, enacted by Laws 2003, ch. 86, § 10; 2010, ch. 53, § 14; 2012, ch. 40, § 6; 2015 (1st S.S.), ch. 2, § 5.

## ANNOTATIONS

**The 2015 (1st S.S.) amendment,** effective September 6, 2015, amended the deadline for filing an annual information return by a pass-through entity doing business in New Mexico; in Subparagraph D(1)(a), after "on or before", added "1)", and after "the taxable year;", added "or 2) if the entity's taxable year is a calendar year, if the entity is approved by the department to use electronic media for filing and if the entity uses electronic media to file the annual information return, the end of the month in which the entity's federal return is due".

**Applicability.** — Laws 2015 (1st S.S.), ch. 2, § 25 provided that the provisions of Laws 2015 (1st S.S.), ch. 2, § 5 apply to taxable years beginning on or after January 1, 2015.

**The 2012 amendment,** effective May 16, 2012, required electronic filing of statements of withholding; provides for filing of reports if a remitter cannot file electronically; provided for filing by a remitter of reports if a remittee is responsible for filing a report and paying the tax due; in Subsection A, in Paragraph (1), in Subparagraph (a), after "is in", deleted "a form prescribed by the department" and added the remainder of the sentence; added new Subsections B and C and relettered the succeeding subsections; and in Subsection D, in Paragraph (1), in Subparagraph (c), after "each owner's", added "allocable" and after "owner entitled to", added "an allocable"; and in Paragraph (2), after "to the owner's", added "allocable".

**Applicability.** — Laws 2012, ch. 40, § 8 provided that the provisions of Laws 2012, ch. 40, §§ 1 through 7 are applicable to taxable years beginning on or after January 1, 2012.

**The 2010 amendment,** effective May 19, 2010, in Subsection A(1), after "each remittee", deleted "This statement shall be" and added "that"; in Subsection A(1)(a), at the beginning of the sentence, added "is" and after "department", deleted "and shall be"; in Subsection A(1)(b), at the beginning of the sentence, added "is" and after "statement is made", deleted "It shall include" and added "and"; in Subsection A(1)(c), at the beginning of the sentence, added "includes" and after "calendar year", deleted the

former last sentence, which provided that the department shall compile each year the annual statements received from remitters and compare the compilation with records of individuals, estates or trusts filing income tax returns; in Subsection A(2), at the beginning of the sentence, added "provide a", after "statement of withholding", deleted "shall be furnished"; and after "to the remittee", deleted "by the remitter"; and added Subsections B and C.

**Temporary provisions.** — Laws 2010, ch. 53, § 17 provided that for a taxable year beginning on or after January 1, 2011, but before January 1, 2012, no remitter or pass-through entity shall be subject to the penalty imposed pursuant to Section 7-1-69 NMSA 1978 for failure to comply with the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

## 7-3A-8. Withheld amounts credited against income tax.

The entire amount of oil and gas proceeds and an allocable share of net income upon which the tax was deducted and withheld or upon which payments were made by owners in lieu of withholding shall be included in the base income of the remittee for purposes of the Income Tax Act [Chapter 7, Article 2 NMSA 1978] and the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978]. The amount of tax deducted and withheld or payments made by owners in lieu of withholding pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act during the taxable year shall be credited against any income tax or corporate income tax due from the remittee or owner.

History: 1978 Comp., § 7-3A-8, enacted by Laws 2003, ch. 86, § 11; 2010, ch. 53, § 15; 2012, ch. 40, § 7.

**ANNOTATIONS**

**The 2012 amendment,** effective May 16, 2012, measured net income by allocable shares and in the first sentence, after "gas proceeds and", added "an allocable share of".

**Applicability.** — Laws 2012, ch. 40, § 8 provided that the provisions of Laws 2012, ch. 40, §§ 1 through 7 are applicable to taxable years beginning on or after January 1, 2012.

**The 2010 amendment,** effective May 19, 2010, in the first sentence, after "oil and gas proceeds", added "and net income" and after "deducted and withheld", added "or upon which payments were made by owners in lieu of withholding"; and in the second sentence, after "deducted and withheld", added "or payments made by owners in lieu of withholding"; after "Oil and Gas Proceeds", added "and Pass-Through Entity; and after "tax due from the remittee", added "or owner".

**Temporary provisions.** — Laws 2010, ch. 53, § 17 provided that for a taxable year beginning on or after January 1, 2011, but before January 1, 2012, no remitter or pass-through entity shall be subject to the penalty imposed pursuant to Section 7-1-69 NMSA 1978 for failure to comply with the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

## 7-3A-9. Interpretation of act; administration and enforcement of act; report to legislature.

A. The department shall interpret the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

B. The department shall administer and enforce the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act, and the Tax Administration Act applies to the administration and enforcement of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

C. No later than December 1 of each year, the department shall submit a report to the legislature showing:

(1) the total amount of taxes withheld by remitters and paid to the department during the previous calendar year pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act; and

(2) the amount of taxes withheld by remitters pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act that were credited against income taxes or corporate income taxes by remittees during the previous calendar year.

History: 1978 Comp., § 7-3A-9, enacted by Laws 2003, ch. 86, § 12; 2010, ch. 53, § 16; 2011, ch. 139, § 1.

**ANNOTATIONS**

**The 2011 amendment,** effective June 17, 2011, added Subsection C to require the department to submit a report to the legislature relating to the amount of taxes withheld from oil and gas proceeds.

**The 2010 amendment,** effective May 19, 2010, in Subsection A, added "and Pass-Through Entity"; and in Subsection B, after "enforce the Oil and Gas Proceeds", added "and Pass-Through Entity" and after "enforcement of the Oil and Gas Proceeds", added "and Pass-Through Entity".

**Temporary provisions.** — Laws 2010, ch. 53, § 17 provided that for a taxable year beginning on or after January 1, 2011, but before January 1, 2012, no remitter or pass-through entity shall be subject to the penalty imposed pursuant to Section 7-1-69 NMSA

1978 for failure to comply with the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

**Applicability.** — Laws 2010, ch. 53, § 19 provided that the provisions of this act are applicable to taxable years beginning on or after January 1, 2011.

# ARTICLE 4
# Division of Income for Tax Purposes

## 7-4-1. Short title.

Chapter 7, Article 4 NMSA 1978 may be cited as the "Uniform Division of Income for Tax Purposes Act".

**History:** 1953 Comp., § 72-15A-16, enacted by Laws 1965, ch. 203, § 1; 1981, ch. 37, § 47.

**ANNOTATIONS**

**Law reviews.** — For article, "New Mexico Taxes: Taking Another Look," see 32 N.M.L. Rev. 351 (2002).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Construction and application of Uniform Division of Income for Tax Purposes Act, 8 A.L.R.4th 934.

## 7-4-2. Definitions.

As used in the Uniform Division of Income for Tax Purposes Act:

A. "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and income from the disposition or liquidation of a business or segment of a business. "Business income" includes income from tangible and intangible property if the acquisition, management or disposition of the property constitute integral parts of the taxpayer's regular trade or business operations;

B. "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed;

C. "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services;

D. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "nonbusiness income" means all income other than business income;

F. "sales" means all gross receipts of the taxpayer not allocated under Sections 7-4-5 through 7-4-9 NMSA 1978 of the Uniform Division of Income for Tax Purposes Act;

G. "secretary" means the secretary of taxation and revenue or a division director delegated by the secretary; and

H. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

**History:** 1953 Comp., § 72-15A-17, enacted by Laws 1965, ch. 203, § 2; 1986, ch. 20, § 55; 1999, ch. 47, § 7.

## ANNOTATIONS

**The 1999 amendment,** effective June 18, 1999, in Subsection A inserted "income from the disposition or liquidation of a business or segment of a business. 'Business income'" and made minor stylistic changes.

## I. GENERAL CONSIDERATION.

**"Transactions and activity in the regular course of the taxpayer's trade or business"** means business deals and the performance of a specific function in the normal, typical, customary or accustomed policy or procedure of the taxpayer's trade or business. Champion Int'l Corp. v. Bureau of Revenue, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70; Tipperary Corp. v. N.M. Bureau of Revenue, 1979-NMCA-031, 93 N.M. 22, 595 P.2d 1212, cert. denied, 92 N.M. 675, 593 P.2d 1078.

## II. CONSTITUTIONAL ISSUES.

**Fairly apportioned tax constitutional. —** When the apportioned tax is only on that portion of taxpayer's income that fairly represents the extent of taxpayer's business activities in this state, tax is not violative of the due process or commerce clauses of the federal constitution. Tipperary Corp. v. N.M. Bureau of Revenue, 1979-NMCA-031, 93 N.M. 22, 595 P.2d 1212, cert. denied, 92 N.M. 675, 593 P.2d 1078.

**Taxation of dividends from foreign subsidiary. —** The right of a state to tax dividends from foreign subsidiaries must be considered in relation to the due process requirements that the income attributed to a state for tax purposes be rationally related to values connected with the taxing state. F.W. Woolworth Co. v. Taxation & Revenue Dep't, 458 U.S. 354, 102 S. Ct. 3128, 73 L. Ed. 2d 819, rehearing denied, 459 U.S. 961, 103 S. Ct. 274, 74 L. Ed. 2d 213 (1982).

**Taxation of income from foreign tax credit.** — A foreign tax credit arising from the taxation by foreign nations of a corporation's foreign subsidiaries that had no unitary business relationship with the state, efforts by the state to tax this income "deemed received" - with respect to which the state contributed nothing - were held to contravene the due process clause. F.W. Woolworth Co. v. Taxation & Revenue Dep't, 458 U.S. 354, 102 S. Ct. 3128, 73 L. Ed. 2d 819, rehearing denied, 459 U.S. 961, 103 S. Ct. 274, 74 L. Ed. 2d 213 (1982).

## III. BUSINESS INCOME.

**All income of business organization is not "business income";** business income must arise from the regular course of business. Tipperary Corp. v. N.M. Bureau of Revenue, 1979-NMCA-031, 93 N.M. 22, 595 P.2d 1212, cert. denied, 92 N.M. 675, 593 P.2d 1078.

**Business income must arise from such transactions.** — To constitute business income the income must arise from transactions and activity in the regular course of a trade or business. McVean & Barlow, Inc. v. N.M. Bureau of Revenue, 1975-NMCA-128, 88 N.M. 521, 543 P.2d 489 (Ct. App.), cert. denied, 89 N.M. 6, 546 P.2d 71 (1975).

**Factors pertinent in determining if income is business income.** — Pertinent in determining whether income arises from transactions in the regular course of business is the nature of the particular transaction and former practices of the business entity; also pertinent is how the income is used. Champion Int'l Corp. v. Bureau of Revenue, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70; Tipperary Corp. v. N.M. Bureau of Revenue, 1979-NMCA-031, 93 N.M. 22, 595 P.2d 1212, cert. denied, 92 N.M. 675, 593 P.2d 1078.

**Use of investment income.** — The use to which a multistate corporation put its investment income was determinative of whether it was business income. Champion Int'l Corp. v. Bureau of Revenue, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

**Determination of business income.** — Use to which income is put determines whether it is business income. Tipperary Corp. v. N.M. Bureau of Revenue, 1979-NMCA-031, 93 N.M. 22, 595 P.2d 1212, cert. denied, 92 N.M. 675, 593 P.2d 1078.

**Short-term investment income held business income.** — Since a multistate corporation derived interest income from capital earned in its business, rather than having a large cash balance in the bank, purchasing short-term investments and highly liquid assets from which the interest was derived, money from which short-term investments was needed for future business activity, such investment was a specific function of the corporation, and that it was usual and customary in the corporation's business to follow this practice, whenever there was enough money or business income that was not immediately needed in the business, and therefore the investment income

was business income. Champion Int'l Corp. v. Bureau of Revenue, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

**Rent of part of office space held business income.** — Although a multistate corporate taxpayer claimed that income derived from rent of 5% of its total office space was not "business income" because it was not in the business of renting real estate, the most reasonable inference to be drawn from the record is that rental of available office space was a customary procedure, done in the regular course of the taxpayer's business, and since there was no evidence in the record to contradict this inference, the rental income was held to be "business income." Champion Int'l Corp. v. Bureau of Revenue, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

**Income from sale of telephone poles by paper company held business income.** — Since a multistate corporation manufactured wood and paper products from timber on land owned or leased by it, and sold some of its logs to telephone utilities for use as telephone poles and the sale of logs was a normal, customary procedure in the taxpayer's business for the year in question and had been for several years, the income arising therefrom was income arising from transactions and activity in the regular course of the taxpayer's trade or business. Champion Int'l Corp. v. Bureau of Revenue, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

**When coal lease sale in regular course of business.** — Since taxpayer is in the business of exploration and development of oil, gas and minerals, the sale of the coal leases is in the regular course of this business. Tipperary Corp. v. New Mexico Bureau of Revenue, 1979-NMCA-031, 93 N.M. 22, 595 P.2d 1212, cert. denied, 92 N.M. 675, 593 P.2d 1078.

**Coal lease sale taxable.** — Since taxpayer's business is unitary and since a gain from the sale of its coal leases is business income under Subsection A of this section, this state can tax a percentage of this income. Tipperary Corp. v. New Mexico Bureau of Revenue, 1979-NMCA-031, 93 N.M. 22, 595 P.2d 1212, cert. denied, 92 N.M. 675, 593 P.2d 1078.

**Income from coal dragline leases held business income.** — Oil company's income from its dragline leases was business income because the leases generated substantial capital for the company's general business purposes, and the leases were ongoing, recurring transactions constituting a regular or customary portion of company's overall business, which contributed to the company's economic enterprise as a whole. Kewanee Indus., Inc. v. Reese, 1993-NMSC-006, 114 N.M. 784, 845 P.2d 1238.

**Income from liquidation of part of business held not business income.** — Since the taxpayer was not in the business of buying and selling pipeline equipment and the transaction in question was a partial liquidation of taxpayer's business and a total cessation and liquidation of one facet of the business, the sale of equipment did not constitute an integral part of the regular trade or business operations of taxpayer and

the proceeds thereof were not business income. McVean & Barlow, Inc. v. N.M. Bureau of Revenue, 1975-NMCA-128, 88 N.M. 521, 543 P.2d 489, cert. denied, 89 N.M. 6, 546 P.2d 71.

## IV. UNITARY BUSINESS PRINCIPLE.

**Underlying unitary business required.** — The linchpin of apportionability for state income taxation of an interstate enterprise is the unitary-business principle. F.W. Woolworth Co. v. Taxation & Revenue Dep't, 458 U.S. 354, 102 S. Ct. 3128, 73 L. Ed. 2d 819, *reh'g denied*, 459 U.S. 961, 103 S. Ct. 274, 74 L. Ed. 2d 213 (1982).

**Derivation of dividend income from subsidiaries.** — The potential to operate a company as part of a unitary business is not dispositive when, looking at the underlying economic realities of a unitary business, the dividend income from subsidiaries in fact is derived from unrelated business activity which constitutes a discrete business enterprise. F.W. Woolworth Co. v. Taxation & Revenue Dep't, 458 U.S. 354, 102 S. Ct. 3128, 73 L. Ed. 2d 819, *reh'g denied*, 459 U.S. 961, 103 S. Ct. 274, 74 L. Ed. 2d 213 (1982).

**Existence of underlying unitary business.** — When, except for the type of occasional oversight - with respect to capital structure, major debt, and dividends - that any parent gives to an investment in a subsidiary, there is little or no integration of business activities or centralization of management of the parent company and its foreign subsidiaries, there is no underlying unitary business that would justify the state's taxing of dividends from the foreign subsidiaries. F.W. Woolworth Co. v. Taxation & Revenue Dep't, 458 U.S. 354, 102 S. Ct. 3128, 73 L. Ed. 2d 819, *reh'g denied*, 459 U.S. 961, 103 S. Ct. 274, 74 L. Ed. 2d 213 (1982).

**Multistate business may be unitary or independent.** — A multistate business is a "unitary business" for income tax purposes when operations conducted in one state benefit and are in turn benefited by operations in another state, and if its various parts are interdependent and of mutual benefit so as to form one integral business rather than several business entities, it is unitary. On the other hand, if a multistate business enterprise is conducted in a way that one, some or all of the business operations outside New Mexico are independent of and do not contribute to the business operations within this state, the factors attributable to the outside activity may be excluded. Champion Int'l Corp. v. Bureau of Revenue, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

**Taxpayer must show business independent to exclude income.** — Where a multistate corporation challenged commissioner's allocation of certain interest, rent and gains to business income, but failed to produce evidence that its business activity outside of New Mexico was dependent or independent of its instate operations, or that the interest, rent and gains income was not an integral part of its business carried on in this state, no question was raised whether any of its income was nonbusiness income because there was no evidence that its activities were not part of a unitary business,

and therefore the assessed additional corporate income tax was affirmed. Champion Int'l Corp. v. Bureau of Revenue, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — What constitutes trade or business under Internal Revenue Code (U.S.C.A. Title 26), 161 A.L.R. Fed. 245.

## 7-4-3. Allocation and apportionment of income in general.

Except as otherwise provided by law any taxpayer having income which is taxable both within and without this state, other than the rendering of purely personal services by an individual shall allocate and apportion his net income as provided in the Uniform Division of Income for Tax Purposes Act.

**History:** 1953 Comp., § 72-15A-18, enacted by Laws 1965, ch. 203, § 3; 1981, ch. 37, § 48.

**ANNOTATIONS**

**Cross references.** — For income allocation and apportionment, *see* 7-2-11 NMSA 1978.

For Multistate Tax Compact, *see* 7-5-1 NMSA 1978 et seq.

**Constitutionality of apportionment.** — The United States Constitution does not impose any single method of apportionment on a multistate or multinational taxpayer's income. NCR Corp. v. Taxation & Revenue Dep't, 1993-NMCA-060, 115 N.M. 612, 856 P.2d 982, cert. denied, 115 N.M. 677, 857 P.2d 788, cert. denied, 512 U.S. 1245, 114 S. Ct. 2763, 129 L. Ed. 2d 877 (1994).

**Factors pertinent in determining if income is business income.** — Pertinent in determining whether income arises from transactions in the regular course of business is the nature of the particular transaction and former practices of the business entity; also pertinent is how the income is used. Champion Int'l Corp. v. Bureau of Revenue, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70 (specially concurring opinion).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 394, 456, 483, 491 to 493, 569 to 577, 581.

85 C.J.S. Taxation §§ 1694 et seq., 1715 et seq., 1756 to 1759.

## 7-4-4. When taxable in another state.

For purposes of allocation and apportionment of income under the Uniform Division of Income for Tax Purposes Act, a taxpayer is taxable in another state if:

A. in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

B. that state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether the state does or does not.

**History:** 1953 Comp., § 72-15A-19, enacted by Laws 1965, ch. 203, § 4.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 471, 542.

What suits at domicile of corporation involving corporate stock or rights and obligations incident thereto are in rem, jurisdiction in which may rest upon constructive service of process against nonresidents, 145 A.L.R. 1393.

Income tax on nonresident or on foreign corporation, 156 A.L.R. 1370.

84 C.J.S. Taxation §§ 38, 72, 92 to 93, 112 to 115, 165, 177 to 180; 85 C.J.S. Taxation §§ 1693, 1701 to 1705, 1715 to 1719.

## 7-4-5. Allocation of certain nonbusiness income.

Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in Sections 6 through 9 [7-4-6 to 7-4-9 NMSA 1978] of the Uniform Division of Income for Tax Purposes Act.

**History:** 1953 Comp., § 72-15A-20, enacted by Laws 1965, ch. 203, § 5.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 195, 196, 365, 554, 572, 574, 659.

84 C.J.S. Taxation §§ 90, 112 to 115, 123 to 124, 149, 163 to 164; 85 C.J.S. Taxation §§ 1191, 1721 to 1735, 1719, 1756 to 1759.

## 7-4-6. Allocation of rents and royalties.

A. Net rents and royalties from real property located in this state are allocable to this state.

B. Net rents and royalties from tangible personal property are allocable to this state:

(1) if and to the extent that the property is utilized in this state; or

(2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

C. The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

**History:** 1953 Comp., § 72-15A-21, enacted by Laws 1965, ch. 203, § 6.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 190, 195, 196, 264, 265, 658 to 665.

Solid mineral royalty as real or personal property, 68 A.L.R.2d 728.

Effect of § 26 of Uniform Partnership Act as converting realty into personalty, 80 A.L.R.2d 1107.

84 C.J.S. Taxation §§ 92 to 94, 112 to 115.

## 7-4-7. Allocation of capital gains and losses.

A. Capital gains and losses from sales of real property located in this state are allocable to this state.

B. Capital gains and losses from sales of tangible personal property are allocable to this state if:

(1) the property had a situs in this state at the time of the sale; or

(2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

C. Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

**History:** 1953 Comp., § 72-15A-22, enacted by Laws 1965, ch. 203, § 7.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 553 to 556.

Capital gain or loss on failure to exercise an option or privilege, 36 A.L.R.2d 1391.

Modern views as to capital gains or ordinary income treatment of profit on sale of subdivided realty which is asserted to be "capital asset" under § 1221 of the Internal Revenue Code of 1954 (26 USCS § 1221), 45 A.L.R. Fed. 292.

84 C.J.S. Taxation §§ 11, 148, 151 to 164, 172 to 173, 227, 231 to 234, 237, 404, 406, 419 to 420; 85 C.J.S. Taxation §§ 1721 to 1725.

## 7-4-8. Allocation of interest and dividends.

Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

**History:** 1953 Comp., § 72-15A-23, enacted by Laws 1965, ch. 203, § 8.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 664, 665, 667, 677, 680.

84 C.J.S. Taxation §§ 227, 231 to 234, 237.

## 7-4-9. Allocation of patent and copyright royalties.

A. Patent and copyright royalties are allocable to this state:

(1) if and to the extent that the patent or copyright is utilized by the payer in this state; or

(2) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

B. A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states

of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

C. A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

**History:** 1953 Comp., § 72-15A-24, enacted by Laws 1965, ch. 203, § 9.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 664, 665, 667, 677, 680.

Power of state to tax royalties from patents, 55 A.L.R. 931.

84 C.J.S. Taxation §§ 227, 231 to 234, 237.

## 7-4-10. Apportionment of business income.

A. Except as provided in Subsections B and C of this section, all business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three.

B. A taxpayer whose principal business activity in New Mexico is manufacturing may elect to have business income apportioned to this state:

(1) in the taxable year beginning on or after January 1, 2014 and prior to January 1, 2015, by multiplying the income by a fraction, the numerator of which is twice the sales factor plus the property factor plus the payroll factor and the denominator of which is four;

(2) in the taxable year beginning on or after January 1, 2015 and prior to January 1, 2016, by multiplying the income by a fraction, the numerator of which is three multiplied by the sales factor plus the property factor plus the payroll factor and the denominator of which is five;

(3) in the taxable year beginning on or after January 1, 2016 and prior to January 1, 2017, by multiplying the income by a fraction, the numerator of which is seven multiplied by the sales factor plus one and one-half multiplied by the property factor plus one and one-half multiplied by the payroll factor and the denominator of which is ten;

(4) in the taxable year beginning on or after January 1, 2017 and prior to January 1, 2018, by multiplying the income by a fraction, the numerator of which is eight multiplied by the sales factor plus the property factor plus the payroll factor and the denominator of which is ten; and

(5) in taxable years beginning on or after January 1, 2018, by multiplying the income by a fraction, the numerator of which is the total sales of the taxpayer in New Mexico during the taxable year and the denominator of which is the total sales of the taxpayer from any location within or outside of the state during the taxable year.

C. A taxpayer whose principal business activity in New Mexico is a headquarters operation may elect to have business income apportioned to this state by multiplying the income by a fraction, the numerator of which is the total sales of the taxpayer in New Mexico during the taxable year and the denominator of which is the total sales of the taxpayer from any location within or outside of the state during the taxable year.

D. To elect the method of apportionment provided by Subsection B or C of this section, the taxpayer shall notify the department of the election, in writing, no later than the date on which the taxpayer files the return for the first taxable year to which the election will apply. The election will apply to that taxable year and to each taxable year thereafter until the taxpayer notifies the department, in writing, that the election is terminated, except that the taxpayer shall not terminate the election until the method of apportioning business income provided by Subsection B or C of this section has been used by the taxpayer for at least three consecutive taxable years, including a total of at least thirty-six calendar months. The election will apply to the separately filed return of the taxpayer or the combined or consolidated return the taxpayer has elected to be included pursuant to Section 7-2A-8.3 or 7-2A-8.4 NMSA 1978.

E. For purposes of this section:

(1) "headquarters operation" means:

(a) the center of operations of a business: 1) where corporate staff employees are physically employed; 2) where centralized functions are performed, including administrative, planning, managerial, human resources, purchasing, information technology and accounting, but not including operating a call center; 3) the function and purpose of which is to manage and direct most aspects and functions of the business operations within a subdivided area of the United States; 4) from which final authority over regional or subregional offices, operating facilities and any other offices of the business are issued; and 5) including national and regional headquarters if the national headquarters is subordinate only to the ownership of the business or its representatives and the regional headquarters is subordinate to the national headquarters; or

(b) the center of operations of a business: 1) the function and purpose of which is to manage and direct most aspects of one or more centralized functions; and 2) from which final authority over one or more centralized functions is issued; and

(2) "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include:

(a) construction;

(b) farming;

(c) power generation, except for electricity generation at a facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act [Articles 1 through 6 and 8 through 13 of Chapter 62 NMSA 1978]; or

(d) processing natural resources, including hydrocarbons.

History: 1978 Comp., § 7-4-10, enacted by Laws 1993, ch. 153, § 1; 2001, ch. 57, § 1; 2001, ch. 284, § 3; 2001, ch. 337, § 1; 2002, ch. 37, § 6; 2009, ch. 147, § 1; 2013, ch. 160, § 7; 2015 (1st S.S.), ch. 2, § 6.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1993, ch. 153, § 1, repealed 7-4-10 NMSA 1978, as enacted by Laws 1985, ch. 203, § 10, and enacted a new section, effective June 18, 1993.

**Repeals.** — Laws 2001, ch. 337, § 7 repealed Laws 1999, ch. 35, § 1, which would have repealed this section, effective January 1, 2003.

Laws 2001, ch. 57, § 1 and Laws 2001, ch. 284, § 3 were repealed by Laws 2002, ch. 37, § 9, effective May 15, 2002.

**The 2015 (1st S.S.) amendment,** effective September 6, 2015, provided for taxpayers whose principal business activity in New Mexico is a headquarters operation to elect to have business income apportioned to this state, and added the definition for "headquarters operation"; in Subsection A, after "as provided in", deleted "Subsection B" and added "Subsections B and C"; in the introductory sentence of Subsection B, after "principal business activity", added "in New Mexico"; added Subsection C and redesignated the succeeding subsections accordingly; in Subsection D, after "Subsection B", added "or C", and added the last sentence; in Subsection E, added a new Paragraph (1), added the paragraph designation "(2)" preceding "'manufacturing'", and redesignated former Paragraphs (1), (2), (3) and (4) of Subsection D as Subparagraphs E(2)(a), (b), (c) and (d), respectively.

**Applicability.** — Laws 2015 (1st S.S.), ch. 2, § 25 provided that the provisions of Laws 2015 (1st S.S.), ch. 2, § 6 apply to taxable years beginning on or after January 1, 2015.

**The 2013 amendment,** effective January 1, 2014, phased in the use of a single sales factor by certain taxpayers in apportioning corporate income to the state over five years; deleted former Subsection B, which provided for the apportionment of business income by manufacturers, the procedure for electing the method of apportionment, and limitations on the election of a method of apportionment; and added Subsections B and C.

**Applicability.** — Laws 2013, ch. 160, § 14 provided that Laws 2013, ch. 160, § 7 applies to taxable years beginning on or after January 1, 2014.

**The 2009 amendment,** effective June 19, 2009, in Paragraph (3) of Subsection C, deleted "and the Electric Utility Industry Restructuring Act of 1999".

**The 2002 amendment,** effective May 15, 2002, inserted the exception in Subsection C(3).

**The 2001 amendment,** effective June 15, 2001, deleted preliminary language concerning the purpose of the section from former Subsection A; added current Subsection A; redesignated former Subsection A as Subsection B; inserted "For taxable years beginning prior to January 1, 2011" to Subsection B; and deleted former Subsection B concerning apportion of business income to the state.

**Constitutionality of apportionment.** — The United States Constitution does not impose any single method of apportionment on a multistate or multinational taxpayer's income. NCR Corp. v. Taxation & Revenue Dep't, 1993-NMCA-060, 115 N.M. 612, 856 P.2d 982, cert. denied, 115 N.M. 677, 857 P.2d 788, cert. denied, 512 U.S. 1245, 114 S. Ct. 2763, 129 L. Ed. 2d 877 (1994).

**Constitutionality of formula applied to taxation of dividends received from foreign subsidiaries.** — Taxation of dividends from foreign subsidiaries under the separate corporate entity method violates the commerce clause of the United States Constitution, and application of the *Detroit* formula is an insufficient remedy. Conoco, Inc. v. N.M. Taxation & Revenue Dep't, 1997-NMSC-005, 122 N.M. 736, 931 P.2d 730, cert. denied, 521 U.S. 1112, 117 S. Ct. 2497, 138 L. Ed. 2d 1003 (1997), *rev'g*1997-NMCA-004, 122 N.M. 745, 931 P.2d 739.

**Standard for challenge of apportionment.** — A taxpayer seeking to invalidate a state's apportionment formula must show by clear and cogent evidence that the income attributed to the state is in fact disproportionate to the business transacted in that state. NCR Corp. v. Taxation & Revenue Dep't, 1993-NMCA-060, 115 N.M. 612, 856 P.2d 982, cert. denied, 115 N.M. 677, 857 P.2d 788, cert. denied, 512 U.S. 1245, 114 S. Ct. 2763, 129 L. Ed. 2d 877 (1994).

**Apportionment of multinational income.** — Under this statutory formula, the income attributable to the state is determined by multiplying the taxpayer's gross income by a fraction which represents the ratio of sales, payroll, and property located in the state to

the total sales, payroll, and property of the corporation. This does not violate the Foreign Commerce Clause of the U.S. Constitution by taxing foreign income because the tax in question is not a tax on any of the domestic corporation's foreign subsidiaries; instead, the tax falls upon an apportioned share of the domestic corporation's income which it receives in the form of royalties, interest, and dividends from its unitary foreign subsidiaries. The fact that the tax is apportioned in part upon the domestic corporation's foreign income sources does not constitute a bar to state taxation. NCR Corp. v. Taxation & Revenue Dep't, 1993-NMCA-060, 115 N.M. 612, 856 P.2d 982, cert. denied, 115 N.M. 677, 857 P.2d 788, cert. denied, 512 U.S. 1245, 114 S. Ct. 2763, 129 L. Ed. 2d 877 (1994).

**Taxation of undistributed earnings.** — Because its subsidiaries with Subpart F (26 U.S.C. § 952) income remain part of the parent's unitary business and the federal government requires inclusion of the parent's Subpart F income in gross income, under the unitary business principle, the state assessments in question here do not violate the United States or New Mexico Constitutions, are fairly apportioned, and tax a fair portion of such income even though some of the income is undistributed subsidiary earnings. NCR Corp. v. Taxation & Revenue Dep't, 1993-NMCA-060, 115 N.M. 612, 856 P.2d 982, cert. denied, 115 N.M. 677, 857 P.2d 788, cert. denied, 512 U.S. 1245, 114 S. Ct. 2763, 129 L. Ed. 2d 877 (1994).

## 7-4-11. Property factor for apportionment of business income.

The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

**History:** 1953 Comp., § 72-15A-26, enacted by Laws 1965, ch. 203, § 11.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 190, 202, 208, 218, 220, 658 to 665.

Situs as between different states or countries of tangible chattels for purposes of property taxation, 110 A.L.R. 707.

84 C.J.S. Taxation §§ 92 to 94, 112 to 115, 153 to 157, 172 to 173, 397 to 401, 416.

## 7-4-12. Valuation of property for inclusion in property factor.

Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rate is the

annual rental paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

**History:** 1953 Comp., § 72-15A-27, enacted by Laws 1965, ch. 203, § 12.

## 7-4-13. Determination of average value of property for inclusion in property factor.

The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the department may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

**History:** 1953 Comp., § 72-15A-28, enacted by Laws 1965, ch. 203, § 13; 1986, ch. 20, § 56.

## 7-4-14. Payroll factor for apportionment of business income.

The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

**History:** 1953 Comp., § 72-15A-29, enacted by Laws 1965, ch. 203, § 14.

## 7-4-15. Determination of compensation for inclusion in payroll factor.

Compensation is paid in this state if:

A. the individual's service is performed entirely within the state; or

B. the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

C. some of the service is performed in the state and:

(1) the base of operations, or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

**History:** 1953 Comp., § 72-15A-30, enacted by Laws 1965, ch. 203, § 15.

## 7-4-16. Sales factor for apportionment of business income.

The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

**History:** 1953 Comp., § 72-15A-31, enacted by Laws 1965, ch. 203, § 16.

## 7-4-17. Determination of sales in this state of tangible personal property for inclusion in sales factor.

Sales of tangible personal property are in this state if:

A. the property is delivered or shipped to a purchaser other than the United States government within this state regardless of the f. o. b. point or other conditions of the sale; or

B. the property is shipped from an office, store, warehouse, factory or other place of storage in this state and:

(1) the purchaser is the United States government; or

(2) the taxpayer:

(a) is not taxable in the state of the purchaser; and

(b) did not make an election for apportionment of business income pursuant to Subsection B or C of Section 7-4-10 NMSA 1978.

History: 1953 Comp., § 72-15A-32, enacted by Laws 1965, ch. 203, § 17; 2013, ch. 160, § 8; 2015 (1st S.S.), ch. 2, § 7.

**ANNOTATIONS**

**The 2015 (1st S.S.) amendment,** effective September 6, 2015, amended the qualifications for the determination of sales of tangible personal property in this state; in Subparagraph B(2)(b), after "Subsection B", added "or C".

**Applicability.** — Laws 2015 (1st S.S.), ch. 2, § 25 provided that Laws 2015 (1st S.S.), ch. 2, § 7 apply to taxable years beginning on or after January 1, 2015.

**The 2013 amendment,** effective January 1, 2014, excluded certain sales from being apportioned as sales in New Mexico; and added Subparagraph (b) of Paragraph (2) of Subsection B.

**Applicability.** — Laws 2013, ch. 160, § 14 provided that Laws 2013, ch. 160, § 8 applies to taxable years beginning on or after January 1, 2014.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 195, 196.

84 C.J.S. Taxation §§ 92 to 94, 112 to 115, 155 to 157, 172 to 173, 397 to 401, 416.

## 7-4-18. Determination of sales in this state of other than tangible personal property for inclusion in sales factor.

Sales, other than sales of tangible personal property, are in this state if:

A. the income-producing activity is performed in this state; or

B. the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

**History:** 1953 Comp., § 72-15A-33, enacted by Laws 1965, ch. 203, § 18.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 195, 196.

84 C.J.S. Taxation §§ 92 to 94, 112 to 115, 155 to 157, 172 to 173, 397 to 401, 416.

## 7-4-19. Equitable adjustment of standard allocation or apportionment.

If the allocation and apportionment provisions of the Uniform Division of Income for Tax Purposes Act do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

A. separate accounting;

B. the exclusion of any one or more of the factors;

C. the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

D. the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

**History:** 1953 Comp., § 72-15A-34, enacted by Laws 1965, ch. 203, § 19; 1977, ch. 249, § 46; 1986, ch. 20, § 57.

**ANNOTATIONS**

**Taxpayer's burden to show when modification of formula necessary.** — Since there was nothing arbitrary or unreasonable about the department's conclusion that dividend income is apportionable without modification of the allocation and apportionment formula, the taxpayer bears the burden of showing by clear and cogent evidence that modification of the formula is necessary. Taxation & Revenue Dep't v. F.W. Woolworth Co., 1981-NMSC-008, 95 N.M. 519, 624 P.2d 28, *rev'd on other grounds*, 458 U.S. 354, 102 S. Ct. 3128, 73 L. Ed. 2d 819, *reh'g denied*, 459 U.S. 961, 103 S. Ct. 274, 74 L. Ed. 2d 213 (1982).

## 7-4-20. Agreements authorized in unusual cases.

In circumstances within the scope of Section 7-4-19 NMSA 1978 and in other circumstances where the revenues of this state would not be adversely affected, the secretary is authorized to enter into an agreement in writing with any person with respect to apportionment and allocation of that person's income. Except upon a showing of fraud or misrepresentation of a material fact or a change in the statutory law, such agreement shall be conclusive. Any agreement, however, may be terminated by either party by written notice thereof to the other party at least ninety days before the beginning of the taxable year to which the termination applies.

**History:** 1953 Comp., § 72-15A-35, enacted by Laws 1965, ch. 203, § 20; 1981, ch. 37, § 49; 1986, ch. 20, § 58.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 7, 597; 72 Am. Jur. 2d State and Local Taxation § 833.

## 7-4-21. Construction of act.

The Uniform Division of Income for Tax Purposes Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**History:** 1953 Comp., § 72-15A-36, enacted by Laws 1965, ch. 203, § 21.

# ARTICLE 5
# Multistate Tax Compact

## 7-5-1. Compact enacted and entered into.

The "Multistate Tax Compact" is enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

"MULTISTATE TAX COMPACT

Article I. Purposes.

The purposes of this compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.

2. Promote uniformity or compatibility in significant components of tax systems.

3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.

4. Avoid duplicative taxation.

Article II. Definitions.

As used in this compact:

1. "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States.

2. "Subdivision" means any governmental unit or special district of a state.

3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency or person acting as a business entity in more than one state.

4. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.

5. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.

6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.

7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.

8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax.

9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

## Article III. Elements of Income Tax Laws.

### Taxpayer Option, State and Local Taxes.

1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

### Taxpayer Option, Short Form.

2. Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or

tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of $100,000 may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in five years, may adjust the $100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the $100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

Coverage.

3. Nothing in this Article relates to the reporting or payment of any tax other than an income tax.

Article IV. Division of Income.

1. As used in this Article, unless the context otherwise requires:

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.

(e) "Nonbusiness income" means all income other than business income.

(f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state or local government or governmental agency.

(g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this Article.

(h) "State" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(i) "This state" means the state in which the relevant tax return is filed or, in the case of application of this Article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this Article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this Article, the taxpayer may elect to allocate and apportion his entire net income as provided in this Article.

3. For purposes of allocation and apportionment of income under this Article, a taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdication [jurisdiction] to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this Article.

5. (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is

unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

6. (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

7. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

8. (a) Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that the patent [or] copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

14. Compensation is paid in this state if:

(a) the individual's service is performed entirely within the state;

(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

16. Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

17. Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

18. If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors;

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

## Article V. Elements of Sales and Use Tax Laws.

### Tax Credit.

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

### Exemption Certificates, Vendors May Rely.

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

## Article VI. The Commission.

### Organization and Management.

1. (a) The multistate tax commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law

may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or his designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under paragraph 1(e) of this Article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a chairman, a vice chairman and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix his duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees.

2. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice chairman, treasurer and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

Powers.

3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) Study state and local tax systems and particular types of state and local taxes.

(b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.

(c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance.

4. (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under paragraph (1)(i) of this Article: provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under paragraph 1(i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained in this Article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

## Article VII. Uniform Regulations and Forms.

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

2. Prior to the adoption of any regulation, the commission shall:

(a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

## Article VIII. Interstate Audits.

1. This Article shall be in force only in those party states that specifically provide therefor by statute.

2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident; provided that such state has adopted this Article.

4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this Article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this paragraph apply only to courts in a state that has adopted this Article.

5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

6. Information obtained by any audit pursuant to this Article shall be confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this Article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this Article.

8. In no event shall the commission make any charge against a taxpayer for an audit.

9. As used in this Article, "tax," in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

## Article IX. Arbitration.

1. Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this Article in effect, notwithstanding the provisions of Article VII.

2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

3. Whenever a taxpayer who has elected to employ Article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

7. The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed

may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in states that have adopted this Article.

8. Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for the purposes of making the apportionment or allocation, but for no other purpose.

10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.

11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.

12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.

## Article X. Entry Into Force and Withdrawal.

1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

3. No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be

discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

Article XI. Effect on Other Laws and Jurisdiction.

Nothing in this compact shall be construed to:

(a) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III 2 of this compact.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax; provided that the definition of "tax" in Article VIII 9 may apply for the purposes of that Article and the commission's powers of study and recommendation pursuant to Article VI 3 may apply.

(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

Article XII. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters."

**History:** 1953 Comp., § 72-15A-37, enacted by Laws 1967, ch. 56, § 1.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For income allocation and apportionment, *see* 7-2-11 NMSA 1978.

For Uniform Division of Income for Tax Purposes Act, *see* 7-4-1 NMSA 1978 et seq.

For taxpayer option to elect alternative tax pursuant to Article III 2, *see* 7-5-2 NMSA 1978.

For applicability of Article VIII as to interstate audits, *see* 7-5-7 NMSA 1978.

For filing rules, *see* 14-4-3 NMSA 1978.

**MTC certificates.** — Mere possession of a New Mexico taxpayer identification number by a foreign purchaser does not automatically preclude a seller from ever accepting a Multistate Tax Commission (MTC) certificate from such purchaser in good faith. Siemens Energy & Automation, Inc. v. N.M. Taxation & Revenue Dep't, 1994-NMCA-173, 119 N.M. 316, 889 P.2d 1238.

**Gross receipts and foreign taxpayers.** — The mere possession of a New Mexico registration number by a foreign taxpayer does not mean that the taxpayer is registered with New Mexico for gross receipts tax purposes; the possession of a New Mexico taxpayer identification number did not mean that the taxpayer acknowledged that a nexus existed with respect to its activities in New Mexico for gross receipts tax purposes. Siemens Energy & Automation, Inc. v. N.M. Taxation & Revenue Dep't, 1994-NMCA-173, 119 N.M. 316, 889 P.2d 1238.

**Law reviews.** — For article, "New Mexico Taxes: Taking Another Look," see 32 N.M.L. Rev. 351 (2002).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 456, 569 to 577.

85 C.J.S. Taxation §§ 1694 et seq., 1738 to 1755.

## 7-5-2. Election of alternative tax.

Any person:

A. who is required by the Income Tax Act [Chapter 7, Article 2 NMSA 1978] or the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] to file a return;

B. whose only activities in New Mexico consist of making sales;

C. who does not own or rent real estate within the state of New Mexico; and

D. whose annual gross sales in or into New Mexico amount to not more than one hundred thousand dollars ($100,000)

may elect to pay a tax of three-fourths of one percent of his annual gross receipts derived from sales in or into New Mexico in lieu of paying an income tax.

**History:** 1953 Comp., § 72-15A-38, enacted by Laws 1967, ch. 56, § 2; 1971, ch. 20, § 4; 1981, ch. 37, § 50; 1987, ch. 277, § 6.

**ANNOTATIONS**

**Cross references.** — For compact provisions relating to alternative tax, *see* Article III 2 of 7-5-1 NMSA 1978.

## 7-5-3. Appointment of multistate tax commission member.

The governor shall appoint the member of the multistate tax commission to represent New Mexico from among the persons made eligible by Article VI 1(a) of the compact [7-5-1 NMSA 1978].

**History:** 1953 Comp., § 72-15A-39, enacted by Laws 1967, ch. 56, § 3.

## 7-5-4. Alternate designated by commissioner.

The member representing New Mexico on the multistate tax commission may be represented thereon by an alternate designated by him. Any such alternate shall be a principal deputy or assistant of the member of the commission in the agency which the member heads.

**History:** 1953 Comp., § 72-15A-40, enacted by Laws 1967, ch. 56, § 4.

## 7-5-5. Counsel to be designated.

The member of the commission for New Mexico shall designate either the attorney general, one of the attorney general's assistants, or special counsel working for the agency of which the member is head, as his counsel in respect to his functions as a member of the multistate tax commission.

**History:** 1953 Comp., § 72-15A-41, enacted by Laws 1967, ch. 56, § 5.

**ANNOTATIONS**

**Cross references.** — For legal adviser to secretary of taxation and revenue, *see* 9-11-11 NMSA 1978.

## 7-5-6. Local government advisers.

The governor, after consultation with representatives of local governments, shall appoint three persons who are representative of subdivisions affected or likely to be affected by the Multistate Tax Compact. The member of the commission representing New Mexico, and any alternate designated by him, shall consult regularly with these appointees, in accordance with Article VI 1(b) of the compact.

**History:** 1953 Comp., § 72-15A-42, enacted by Laws 1967, ch. 56, § 6.

## 7-5-7. Interaudits provisions made applicable.

Article VIII of the Multistate Tax Compact relating to interaudits shall be in force in and with respect to New Mexico.

**History:** 1953 Comp., § 72-15A-44, enacted by Laws 1967, ch. 56, § 8.

# ARTICLE 5A
# Streamlined Sales and Use Tax Administration

## 7-5A-1. Short title.

This act may be cited as the "Streamlined Sales and Use Tax Administration Act".

History: Laws 2005, ch. 225, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 225 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 7-5A-2. Legislative findings.

The legislature finds that a simplified sales tax and use tax system that treats transactions in a competitively neutral manner will strengthen and preserve sales taxes and use taxes as vital revenue sources for this state and its local governments and will help preserve the fiscal sovereignty of this state. The legislature also finds that such a system will substantially reduce the administrative burdens of collection for sellers. While states have the sovereign right to set their own tax policies, states should cooperatively develop a streamlined sales tax and use tax system that is simplified, uniform and fair.

History: Laws 2005, ch. 225, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 225 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 7-5A-3. Definitions.

As used in the Streamlined Sales and Use Tax Administration Act:

A. "agreement" means the streamlined sales and use tax agreement;

B. "certified automated system" means software certified jointly by member states to:

(1) calculate the sales tax imposed by each jurisdiction on a transaction;

(2) determine the amount of tax to remit to the appropriate state; and

(3) maintain a record of the transaction;

C. "certified service provider" means an agent that performs all of the sales tax functions of a seller and that is certified jointly by member states to perform all of the sales tax functions of the seller;

D. "member state" means a state of the United States that enters into the agreement with another state and the District of Columbia if it enters into the agreement with another state;

E. "person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation and any other legal entity;

F. "sales tax" means the gross receipts tax levied pursuant to the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] or a tax imposed by a state on the sale of goods or services;

G. "seller" means a person making sales, leases and rentals of personal property and services; and

H. "use tax" means the compensating tax levied pursuant to the Gross Receipts and Compensating Tax Act.

History: Laws 2005, ch. 225, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 225 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 7-5A-4. Authority to enter agreement.

A. The secretary of taxation and revenue may enter into the agreement with one or more member states to simplify and modernize sales tax and use tax administration and to reduce the burden of tax compliance for sellers.

B. The secretary of taxation and revenue is authorized to:

(1) act jointly with member states to establish standards for a certified automated system and establish performance standards for multistate sellers pursuant to the agreement;

(2) take actions reasonably required to implement the provisions of the Streamlined Sales and Use Tax Administration Act; and

(3) adopt rules with member states pursuant to the agreement.

C. The secretary of taxation and revenue or the secretary's designee is authorized to represent this state before member states.

History: Laws 2005, ch. 225, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 225 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 7-5A-5. Relationship to state law.

A provision of the agreement does not invalidate or amend any provision of state law. Implementation of a condition of the agreement shall be adopted by the legislature.

History: Laws 2005, ch. 225, § 5.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 225 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 7-5A-6. Agreement requirements.

The secretary of taxation and revenue shall not enter into the agreement unless the agreement:

A. sets restrictions to achieve more uniform state tax rates by limiting:

(1) the number of member state tax rates;

(2) the application of maximums on the amount of member state taxes due on transactions; and

(3) the application of thresholds on the application of member state taxes;

B. establishes uniform standards for:

(1) sourcing transactions to taxing jurisdictions;

(2) administering exempt sales; and

(3) providing allowances that a seller can receive for bad debts;

C. requires member states to develop and adopt uniform definitions of sales tax and use tax terms that enable the member states to make policy choices consistent with the definitions;

D. provides for a certified automated system that allows a seller to register to collect and remit sales taxes and use taxes for each member state;

E. provides that registration with the certified automated system and the collection of a sales tax and a use tax in a member state will not be used to determine if the seller has a nexus with a member state for tax purposes;

F. provides for reduction of the burden of complying with local sales taxes and use taxes by:

(1) restricting variances between the member state and local tax bases;

(2) requiring each member state to administer the sales tax and use tax levied by a local jurisdiction within the member state so that a seller collecting and remitting the taxes will not be required to register or file a return with, remit funds to or be subject to an independent audit from a local taxing jurisdiction;

(3) restricting change in each local sales tax rate and use tax rate and setting an effective date for a change in the boundaries of a local taxing jurisdiction; and

(4) providing notice of a change in each local sales tax rate and use tax rate and of a change in the boundaries of a local taxing jurisdiction;

G. outlines monetary allowances provided by member states to sellers and certified service providers;

H. requires each state to certify compliance with the terms of the agreement before becoming a member state and to maintain compliance with provisions of the agreement pursuant to the law of the member state while a member state;

I. requires each member state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information; and

J. provides for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives with which to consult with respect to the administration of the agreement.

History: Laws 2005, ch. 225, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 225 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

**Amnesty for registration is unconstitutional.** — Granting amnesty, pursuant to Section 402 of the Streamlined Sales and Use Tax Agreement, to a seller for gross receipts tax liability incurred during the twelve-month period preceding the state's participation in the agreement would amount to a subsidy of the seller's business in violation of the anti-donation clause of Article IX, Section 14 of the New Mexico Constitution and Article IV, Section 32, which prohibits the diminution or extinguishment of an obligation already in occurred and owed to the state. 2012 Op. Att'y Gen. No. 12-01.

## 7-5A-7. Member states.

The agreement is an accord among member states in furtherance of their governmental functions. The agreement permits each member state to establish and maintain a cooperative, uniform, simplified system to apply sales taxes and use taxes pursuant to the law of the member state.

History: Laws 2005, ch. 225, § 7.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 225 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 7-5A-8. Limited binding and beneficial effect.

A. The agreement binds and benefits only this state and other member states. Only a member state is an intended beneficiary of the agreement. A benefit to a person other than a member state is established by the law of this state and member states and not by the terms of the agreement.

B. A person shall not:

(1) have a cause of action or a defense pursuant to the agreement; and

(2) challenge an action or inaction of a department, agency, political subdivision or instrumentality of this state on the grounds that the action or inaction is not consistent with the agreement.

C. A law of this state or the application of the law is valid despite the inconsistency of the law or its application with the agreement.

History: Laws 2005, ch. 225, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 225 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 7-5A-9. Liability.

A. A certified service provider is liable for sales taxes and use taxes due from each member state on each sales transaction that it processes for the seller, except as otherwise provided by this section. A seller that contracts with the certified service provider is not liable to this state for sales tax or use tax due on a transaction processed by the certified service provider unless the seller misrepresents the type of item it sells or commits fraud. In the absence of probable cause that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on transactions processed by the certified service provider. A seller is subject to audit for a transaction not processed by the certified service provider. Member states acting jointly may:

(1) audit data pertaining to the seller that is stored in the certified automated system; and

(2) review procedures of the seller to determine if the certified automated system functions properly and the extent to which the transactions of the seller are processed by this certified service provider.

B. A certified service provider is responsible for the proper functioning of a certified automated system and is liable to this state for underpayments of tax attributable to system errors. A seller that uses a certified automated system is liable to this state for reporting and remitting tax.

C. A seller that has a proprietary system for determining the amount of tax due on a transaction and has agreed to establish a performance standard for the system is liable for failure of the system to meet the standard.

History: Laws 2005, ch. 225, § 9.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 225 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

# ARTICLE 6
# Banking and Financial Corporations Tax

(Repealed by Laws 1981, ch. 37, § 97.)

## 7-6-1 to 7-6-9. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1981, ch. 37, § 97, repealed 7-6-1 to 7-6-9 NMSA 1978, relating to the Banking and Financial Corporations Tax Act, effective January 1, 1982. For present provisions relating to corporate income tax, *see* Chapter 7, Article 2A NMSA 1978.

# ARTICLE 7
# Estate Tax

## 7-7-1. Short title.

Sections 7-7-1 through 7-7-12 NMSA 1978 may be cited as the "Estate Tax Act".

**History:** 1953 Comp., § 72-33-1, enacted by Laws 1973, ch. 345, § 1; 1989, ch. 122, § 1.

**ANNOTATIONS**

**Cross references.** — For provisions applicable to administration and enforcement, *see* 7-1-2 and 7-7-10 NMSA 1978.

**The 1989 amendment,** effective June 16, 1989, substituted "Sections 7-7-1 through 7-7-12 NMSA 1978" for "Sections 1 through 12 of this act".

**Construction of tax statutes.** — Statutes imposing taxes and providing means for the collection of the same should be construed strictly insofar as they may operate to deprive the citizen of his property by summary proceedings or to impose penalties or forfeitures upon him; but otherwise tax laws ought to be construed with fairness, if not liberality, in order to carry out the intention of the legislature and further the important public interests which such statutes subserve. NBS Corp. v. Valdez, 1965-NMSC-027, 75 N.M. 379, 405 P.2d 224.

**Law reviews.** — For symposium, "Tax Implications of the Equal Rights Amendment," see 3 N.M.L. Rev. 69 (1973).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Construction and application of "pay-all-taxes" provision in will, as including liability of nontestamentary property for inheritance and estate taxes, 56 A.L.R.5th 133.

## 7-7-2. Definitions.

As used in the Estate Tax Act [7-7-1 through 7-7-12 NMSA 1978]:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "certificate" means a certificate of no tax due or a receipt for payment of the tax due under the Estate Tax Act;

C. "decedent" means a deceased individual;

D. "federal credit" means the maximum amount of the credit for estate death taxes allowed by Section 2011 for the decedent's net estate;

E. "gross estate" means "gross estate" as defined and used in Section 2031 of the United States Internal Revenue Code of 1986, as amended or renumbered;

F. "net estate" means "taxable estate" as defined in Section 2051 of the United States Internal Revenue Code of 1986, as amended or renumbered;

G. "nonresident" means a decedent who was domiciled outside New Mexico at his death;

H. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity

and, to the extent permitted by law, any federal, state or other governmental unit or subdivision or agency, department or instrumentality thereof;

I. "personal representative" means the executor or administrator of a decedent or, if no executor or administrator is appointed, qualified and acting, any person who has possession of any property;

J. "property" means property included in the gross estate;

K. "resident" means a decedent who was domiciled in New Mexico at his death;

L. "Section 2011" means Section 2011 of the United States Internal Revenue Code of 1986, as amended or renumbered; and

M. "transfer" means "transfer" as defined and used in Section 2001 of the United States Internal Revenue Code of 1986, as amended or renumbered.

**History:** 1953 Comp., § 72-33-2, enacted by Laws 1973, ch. 345, § 2; 1974, ch. 27, § 1; 1977, ch. 249, § 63; 1986, ch. 20, § 59; 1989, ch. 122, § 2.

**ANNOTATIONS**

**Cross references.** — For Sections 2001, 2011, 2031 and 2051 of the Internal Revenue Code, *see* 26 U.S.C. §§ 2001, 2011, 2031 and 2051, respectively.

**The 1989 amendment,** effective June 16, 1989, substituted "'department'" for "'bureau' or 'department'"at the beginning of Subsection A, and substituted "1986" for "1954" in Subsections E, F, L and M.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Diverse adjudications, actual or potential, by courts of different states, as to domicile of decedent as regards taxation, probate of will, administration or distribution of estate, 121 A.L.R. 1200.

What passes under term "personal property" in will, 31 A.L.R.5th 499.

85 C.J.S. Taxation §§ 1797 to 1801, 1824 to 1825.

## 7-7-3. Residents; tax imposed; credit for tax paid other state.

A. A tax in an amount equal to the federal credit is imposed on the transfer of the net estate of every resident.

B. If any property of a resident is subject to a death tax imposed by another state for which a credit is allowed by Section 2011, and if the tax imposed by the other state is not qualified by a reciprocal provision allowing the property to be taxed in the state of

decedent's domicile, the amount of the tax due under this section shall be credited with the lesser of:

(1) the amount of the death tax paid the other state and credited against the federal estate tax; or

(2) an amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of the property subject to the death tax imposed by the other state and the denominator of which is the value of the decedent's gross estate.

**History:** 1953 Comp., § 72-33-3, enacted by Laws 1973, ch. 345, § 3.

**ANNOTATIONS**

**Cross references.** — For the meaning of "Section 2011", *see* 7-7-2L NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 42 Am. Jur. 2d Inheritance, Estate and Gift Taxes §§ 106 and 122.

Review of decisions of United States supreme court since Union Refrigerator Transit Co. v. Kentucky, 199 U.S. 194, 26 S. Ct. 36, 50 L. Ed. 150 (1905), on situs of personal property for purposes of taxation, 123 A.L.R. 179, 139 A.L.R. 1463, 153 A.L.R. 270.

Deductibility from testator's gross estate, under 26 USCS § 2055, of bequests for public, charitable, and religious uses, 46 A.L.R. Fed. 246.

85 C.J.S. Taxation §§ 1792 et seq., 1819 to 1824, 1929 to 1931.

## 7-7-4. Nonresidents; tax imposed; exemption.

A. Tax in an amount computed as provided in this section is imposed on the transfer of the net estate located in New Mexico of every nonresident.

B. The tax shall be computed by multiplying the federal credit by a fraction, the numerator of which is the value of the property located in New Mexico and the denominator of which is the value of the decedent's gross estate.

C. For purposes of this section, the following is included as property located in New Mexico:

(1) debts arising from transactions in, or having a business situs in, New Mexico; and

(2) the securities of any corporation or other entity organized under the laws of New Mexico.

D. The transfer of the personal property of a nonresident is exempt from the tax imposed by this section to the extent that the personal property of residents is exempt from taxation under the laws of the state in which the nonresident is domiciled.

**History:** 1953 Comp., § 72-33-4, enacted by Laws 1973, ch. 345, § 4; 1999, ch. 47, § 8.

**ANNOTATIONS**

**The 1999 amendment,** effective June 18, 1999, inserted "personal" in two places in Subsection D.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 42 Am. Jur. 2d Inheritance, Estate and Gift Taxes §§ 3 to 4, 59 et seq., and 223.

Deductibility from testator's gross estate, under 26 USCS § 2055, of bequests for public, charitable, and religious uses, 46 A.L.R. Fed. 246.

85 C.J.S. Taxation §§ 1794 to 1795, 1800 to 1802, 1819, 1825.

## 7-7-5. Tax return.

The personal representative of every estate subject to the tax imposed by the Estate Tax Act [7-7-1 through 7-7-12 NMSA 1978] who is required by the laws of the United States to file a federal estate tax return shall file with the department on or before the date the federal estate tax return is required to be filed, including any extension of time for filing the federal estate tax return:

A. a return for the taxes due under the Estate Tax Act; and

B. a copy of the federal estate tax return.

**History:** 1953 Comp., § 72-33-5, enacted by Laws 1973, ch. 345, § 5; 1989, ch. 122, § 3.

**ANNOTATIONS**

**The 1989 amendment,** effective June 16, 1989, substituted "department" for "bureau" in the undesignated introductory paragraph.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 42 Am. Jur. 2d Inheritance, Estate and Gift Taxes §§ 318 to 322, 327, 335, 342.

85 C.J.S. Taxation §§ 1883 to 1888, 1896 to 1897, 1976, 1982.

## 7-7-6. Date payment due.

The taxes imposed by the Estate Tax Act [7-7-1 through 7-7-12 NMSA 1978] shall be paid by the personal representative on or before the date the return for the taxes is required by Section 7-7-5 NMSA 1978 to be filed.

**History:** 1953 Comp., § 72-33-6, enacted by Laws 1973, ch. 345, § 6; 1989, ch. 122, § 4.

**ANNOTATIONS**

**The 1989 amendment,** effective June 16, 1989, substituted "Section 7-7-5 NMSA 1978" for "Section 5 of the Estate Tax Act".

**Personal representative is liable for state inheritance tax.** Cosby v. Shackelford, 408 F.2d 1144 (10th Cir. 1969) (decided under former law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 42 Am. Jur. 2d Inheritance, Estate and Gift Taxes §§ 248 to 252, 257, 265, 272.

85 C.J.S. Taxation §§ 1883 to 1888, 1896 to 1897, 1976, 1982.

## 7-7-7. Interest on amount due; extension of time to file federal return.

Interest, as provided in the Tax Administration Act [Chapter 7 Article 1 NMSA 1978], shall be paid to the state on the amount of tax due under the Estate Tax Act [7-7-1 through 7-7-12 NMSA 1978], from the first day following the day on which payment of the tax would be due in the absence of an extension of time, until the day paid, whether or not the personal representative is granted an extension of time within which to file the federal estate tax return.

**History:** 1953 Comp., § 72-33-7, enacted by Laws 1973, ch. 345, § 7.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 42 Am. Jur. 2d Inheritance, Estate and Gift Taxes §§ 248 to 252, 257, 265, 272.

85 C.J.S. Taxation §§ 1883 to 1888, 1896 to 1897, 1976, 1982.

## 7-7-8. Department to file certificate; final settlement of account.

A. Except as otherwise provided in Subsection B of this section, the department shall file a certificate with the clerk of the county in which the estate or any part of it is located when:

(1) no taxes imposed by the Estate Tax Act [7-7-1 through 7-7-12 NMSA 1978] are due; or

(2) the taxes due under the Estate Tax Act have been paid.

B. If the estate is not required to file a federal estate tax return, the filing of a certificate by the department is not required.

C. No court shall allow the final settlement of the account of any personal representative until either a certificate is filed as provided in this section if the estate is required to file a federal estate tax return or the personal representative demonstrates that the estate was not required to file a federal estate tax return.

**History:** 1953 Comp., § 72-33-8, enacted by Laws 1973, ch. 345, § 8; 1989, ch. 122, § 5.

**ANNOTATIONS**

**The 1989 amendment,** effective June 16, 1989, substituted "department" for "bureau" in the catchline and in the introductory paragraph of Subsection A; added "Except as otherwise provided in Subsection B of this section," at the beginning of the introductory paragraph of Subsection A; added present Subsection B; and redesignated former Subsection B as present Subsection C, while inserting therein "either" and adding all of the language following "section".

## 7-7-9. Administration not applied for; application or waiver by the department.

A. If no person interested in the estate of a decedent applies for letters testamentary or of administration within thirty days after the death of the decedent, the department may apply to the probate court having jurisdiction for the appointment of an administrator and after a hearing, the probate court shall appoint an administrator of the estate of the decedent.

B. If the administration of the estate of a decedent is not necessary, the department may waive administration. The department shall not waive administration until the taxes due under the Estate Tax Act [7-7-1 through 7-7-12 NMSA 1978] are paid.

**History:** 1953 Comp., § 72-33-9, enacted by Laws 1973, ch. 345, § 9; 1989, ch. 122, § 6.

**ANNOTATIONS**

**Cross references. —** For court having jurisdiction, *see* 45-1-303 and 45-3-201 NMSA 1978.

**The 1989 amendment,** effective June 16, 1989, substituted "the department" for "bureau" in the catchline, and substituted "department" for "bureau" throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Dispensing with, or revoking grant of, administration of decedent's estate on ground that administration is not necessary, 70 A.L.R. 386.

85 C.J.S. Taxation § 1896 to 1897.

## 7-7-10. Administration.

The Estate Tax Act [7-7-1 through 7-7-12 NMSA 1978] shall be administered and enforced as provided in the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

**History:** 1953 Comp., § 72-33-10, enacted by Laws 1973, ch. 345, § 10.

**ANNOTATIONS**

**Cross references.** — For provisions applicable to administration and enforcement, *see* 7-1-2 NMSA 1978.

## 7-7-11. Sale of property to pay tax.

A personal representative may sell so much of any property as is necessary to pay the taxes due under the Estate Tax Act [7-7-1 through 7-7-12 NMSA 1978]. A personal representative may sell so much of any property specifically bequeathed or devised as is necessary to pay the proportionate amount of the taxes due on the transfer of the property and the fees and expenses of the sale, unless the legatee or devisee pays the personal representative the proportionate amount of the taxes due.

**History:** 1953 Comp., § 72-33-11, enacted by Laws 1973, ch. 345, § 11.

## 7-7-12. Liability for failure to pay tax before distribution or delivery.

A. Any personal representative who distributes any property without first paying, securing another's payment of, or furnishing security for payment of the taxes due under the Estate Tax Act [7-7-1 through 7-7-12 NMSA 1978] is personally liable for the taxes due to the extent of the value of any property that may come or may have come into his possession. Security for payment of the taxes due under the Estate Tax Act shall be in an amount equal to or greater than the value of all property that is or has come into the possession of such personal representative, as of the time such security is furnished.

B. Any person who has the control, custody or possession of any property and who delivers any of the property to the personal representative or legal representative of the decedent outside New Mexico without first paying, securing another's payment of, or

furnishing security for payment of the taxes due under the Estate Tax Act is liable for the taxes due under the Estate Tax Act to the extent of the value of the property delivered. Security for payment of the taxes due under the Estate Tax Act shall be in an amount equal to or greater than the value of all property delivered to the personal representative or legal representative of the decedent outside New Mexico by such a person.

C. For the purposes of this section, persons who do not have possession of a decedent's property (absent special circumstances) include mortgagees or pledgees, stockbrokers or stock transfer agents, bank and other depositories of checking and savings accounts, safe-deposit companies and life insurance companies.

**History:** 1953 Comp., § 72-33-12, enacted by Laws 1973, ch. 345, § 12; 1975, ch. 257, § 8-126.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 42 Am. Jur. 2d Inheritance, Estate and Gift Taxes §§ 251 et seq.

Rights and liabilities as between sureties on successive bonds given by executor, administrator, trustee or guardian, 76 A.L.R. 904.

Transmission of fund from ancillary to domiciliary jurisdiction, or liability of sureties on bond given in the latter jurisdiction, as affecting liability of sureties on bond given in the former jurisdiction, 78 A.L.R. 575.

Power or discretion of court, after bond of executor, administrator, or testamentary trustee has been given, to dispense with, discontinue, or modify bond, 121 A.L.R. 951.

Liability of executor or administrator to estate because of overpaying or unnecessarily paying tax, 55 A.L.R.3d 785.

## 7-7-13, 7-7-14. Reserved.

## 7-7-15. Short title.

Sections 7-7-15 through 7-7-20 NMSA 1978 may be cited as the "Art Acceptance Act".

**History:** 1978 Comp., § 7-7-15, enacted by Laws 1983, ch. 209, § 1; 1993, ch. 30, § 13.

**ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, substituted "Sections 7-7-15 through 7-7-20 NMSA 1978" for "This act".

## 7-7-16. Definitions.

As used in the Art Acceptance Act [7-7-15 through 7-7-20 NMSA 1978]:

A. "board" means the board of regents of the museum of New Mexico;

B. "decedent" means the deceased individual;

C. "division" or "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

D. "museum" means the museum of New Mexico;

E. "personal representative" means the executor or administrator of a decedent or, if no executor or administrator is appointed, qualified and acting, any person who has possession of any property of the decedent; and

F. "work of art" includes any painting, drawing, print, photograph, sculpture, carving, textile, basketry, artifact, natural specimen, rare book, authors' papers, objects of historical or technical interest or other article of intrinsic cultural value.

**History:** 1978 Comp., § 7-7-16, enacted by Laws 1983, ch. 209, § 2; 1986, ch. 20, § 60; 1987, ch. 164, § 1.

## 7-7-17. Payment of estate tax in works of art.

A decedent's estate may pay all or part of any tax owed by the decedent's estate to the state by payment in the form of one or more works of art in the manner provided by the Art Acceptance Act [7-7-15 through 7-7-20 NMSA 1978], provided:

A. the decedent has so directed by a will; or

B. in the absence of a direction in the decedent's will, the personal representative finds that this method of payment is advantageous to the estate.

**History:** 1978 Comp., § 7-7-17, enacted by Laws 1983, ch. 209, § 3.

## 7-7-18. Procedure for payment in works of art.

A. The personal representative desiring to pay all or part of an estate tax owed the state in the form of one of or more works of art shall first obtain an appraisal of the work acceptable to the federal internal revenue service and shall then notify the museum director in writing of the desire to offer the work to the museum. The board shall, within a reasonable period of time and upon the recommendation of the museum director, notify the personal representative and the division in writing as to whether in the

judgment of the board it would be advantageous to the state to accept the one or more works of art as payment or partial payment for the estate tax. The board's decision shall be final and not appealable.

B. Acceptance of a work of art shall be deemed advantageous to the state if its acceptance meets the following criteria:

(1) it encourages growth of the museum's collections by the addition of significant and original works of art;

(2) it furthers the preservation and understanding of the arts traditions which exist in New Mexico;

(3) it furthers the appreciation of arts and cultures by the people of New Mexico; or

(4) it is compatible with the standards and collections policies of the museum.

**History:** 1978 Comp., § 7-7-18, enacted by Laws 1983, ch. 209, § 4.

## 7-7-19. Agreement on valuation.

A. If the board finds that it would be advantageous for the state to accept payment in one or more works of art as payment or partial payment for the estate tax, the personal representative shall, as a condition of state acceptance of this method of payment, forward a copy of the proposed valuation to the division. The division shall have forty-five days from the date of the notification of the proposed valuation to object to that valuation.

B. If the division objects to the proposed valuation, it shall set forth the objection in writing and forward it to the personal representative. The personal representative may take into account the division's objections and submit a new valuation for the division's approval. If the division rejects the new valuation within forty-five days of its submission, the state shall be deemed not to accept the proposed method of payment in works of art.

C. If the division does not object to a submitted valuation of a work of art within forty-five days of its submission, the state shall be deemed to have accepted the work of art for the museum collection as complete or partial payment of the estate tax owed and the board shall assume title to that work of art as soon as practicable.

**History:** 1978 Comp., § 7-7-19, enacted by Laws 1983, ch. 209, § 5.

## 7-7-20. Credit against tax.

A. Upon assumption of title to a work of art by the board, the department shall credit against the amount owed by the estate the valuation of that work of art as agreed upon under Section 7-7-19 NMSA 1978. In no case shall any credit allowed by the Art Acceptance Act [7-7-15 through 7-7-20 NMSA 1978] be greater than the amount of the estate tax owed by the decedent's estate.

B. The board shall not during any fiscal year assume title to works of art which have an aggregate value of more than five million dollars ($5,000,000).

**History:** 1978 Comp., § 7-7-20, enacted by Laws 1983, ch. 209, § 6; 1987, ch. 164, § 2.

# ARTICLE 8
# Uniform Unclaimed Property Act

## 7-8-1 to 7-8-40. Repealed and Recompiled.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 25, § 33 repealed 7-8-1 to 7-8-20 and 7-8-21 to 7-8-40 NMSA 1978, as enacted or amended by Laws 1989, ch. 293, §§ 1 to 41, Laws 1991, ch. 151, § 1, and Laws 1995, ch. 51, §§ 1 & 2, relating to unclaimed property, effective July 1, 1997. For provisions of former sections, *see* the 1996 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* Chapter 7, Article 8A NMSA 1978.

**Recompilations.** — Former 7-8-20.1 NMSA 1978, as enacted by Laws 1990, ch. 98, § 1, was recompiled and amended as 7-8A-10.1 NMSA 1978 by Laws 1997, ch. 25, § 32.

# ARTICLE 8A
# Uniform Unclaimed Property Act

## 7-8A-1. Definitions.

As used in the Uniform Unclaimed Property Act (1995):

(1) "administrator" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department who exercises authority lawfully delegated to him by the secretary;

(2) "apparent owner" means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder;

(3) "business association" means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited

liability company, business trust, trust company, land bank, safe deposit company, safekeeping depository, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit;

(4) "domicile" means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation;

(5) "financial organization" means a savings and loan association, building and loan association, savings bank, industrial bank, bank, banking organization or credit union;

(6) "holder" means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to the Uniform Unclaimed Property Act (1995);

(7) "insurance company" means an association, corporation or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection and workers' compensation insurance;

(8) "mineral" means gas; oil; coal; other gaseous, liquid and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of New Mexico;

(9) "mineral proceeds" means amounts payable for the extraction, production or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:

(i) for the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties and delay rentals;

(ii) for the extraction, production or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments and production payments; and

(iii) under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement and farm-out agreement;

(10) "money order" includes an express money order and a personal money order, on which the remitter is the purchaser. The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee;

(11) "owner" means a person who has a legal or equitable interest in property subject to the Uniform Unclaimed Property Act (1995) or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust and a creditor, claimant or payee in the case of other property;

(12) "person" means an individual; business association; financial organization; estate; trust; government; governmental subdivision, agency, or instrumentality; or any other legal or commercial entity;

(13) "property" means tangible property described in Section 7-8A-3 NMSA 1978 or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments therefrom, but excludes child, spousal or medical support received by the child support enforcement division of the human services department, the New Mexico IV-D agency. The term includes property that is referred to as or evidenced by:

(i) money, a check, draft, deposit, interest or dividend;

(ii) credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds or unidentified remittance;

(iii) stock or other evidence of ownership of an interest in a business association or financial organization;

(iv) a bond, debenture, note or other evidence of indebtedness;

(v) money deposited to redeem stocks, bonds, coupons or other securities or to make distributions;

(vi) an amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance or health and disability insurance; and

(vii) an amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance or similar benefits;

(14) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(15) "state" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States; and

(16) "utility" means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam or gas.

**History:** Laws 1997, ch. 25, § 1; 2003, ch. 283, § 1.

## ANNOTATIONS

**The 2003 amendment,** effective June 20, 2003, in Paragraph A(13), substituted "Section 7-8A-3 NMSA 1978" for "Section 3 of the Uniform Unclaimed Property Act (1995)" following "property described in", inserted "but excludes child, spousal or medical support received by the child support enforcement division of the human services department, the New Mexico IV-D agency" following "or increments therefrom".

**Former act did not infringe banking laws or burden banks.** — There is no unlawful infringement on the national banking laws nor undue burden placed on the performance of the bank's duties by the provisions of the former article. Clovis Nat'l Bank v. Callaway, 1961-NMSC-129, 69 N.M. 119, 364 P.2d 748.

**New Mexico's act is fashioned on 1995 Uniform Unclaimed Property Act** (1995 UPA), promulgated by the National Conference of Commissioners on Uniform State Laws. Wilson v. Mass. Mut. Life Ins. Co., 2004-NMCA-051, 135 N.M. 506, 90 P.3d 525, cert. denied, 2004-NMCERT-004, 135 N.M. 563, 91 P.3d 604, *overruled on other grounds by* Schultz v. Pojoaque Tribal Police Dep't, 2010-NMSC-034, 148 N.M. 692, 242 P.3d 259.

**Phrases "ordinary course of business" and "course of business" are interchangeable.** Wilson v. Mass. Mut. Life Ins. Co., 2004-NMCA-051, 135 N.M. 506, 90 P.3d 525, cert. denied, 2004-NMCERT-004, 135 N.M. 563, 91 P.3d 604, *overruled on other grounds by* Schultz v. Pojoaque Tribal Police Dep't, 2010-NMSC-034, 148 N.M. 692, 242 P.3d 259.

**Course of business means** business practice that is routine, regular, usual, or normally done. Wilson v. Mass. Mut. Life Ins. Co., 2004-NMCA-051, 135 N.M. 506, 90 P.3d 525, cert. denied, 2004-NMCERT-004, 135 N.M. 563, 91 P.3d 604, *overruled on other grounds*, Schultz v. Pojoaque Tribal Police Dep't, 2010-NMSC-034, 148 N.M. 692, 242 P.3d 259.

**State can compel surrender to it of deposit balances** which have been abandoned or forgotten. In doing so, constitutional requirements must be met and there must be no

violation of national banking laws. Clovis Nat'l Bank v. Callaway, 1961-NMSC-129, 69 N.M. 119, 364 P.2d 748.

**There must be reasonable notice and opportunity to be heard** before ownership can be transferred to the state and the requirements of due process satisfied. Clovis Nat'l Bank v. Callaway, 1961-NMSC-129, 69 N.M. 119, 364 P.2d 748.

**Certificates awarded to insurance policyholders in class action settlement.** — Certificates being issued as part of class action settlement are not part of the insurance company's regular line of products; nor is the issuance of certificates a routine, usual, or normal practice. Instead, they are being issued as a result of a one-time settlement. Because they were not held, issued, or owed in the course of business, the certificates do not meet the definition of property under the Act. Wilson v. Mass. Mut. Life Ins. Co., 2004-NMCA-051, 135 N.M. 506, 90 P.3d 525, cert. denied, 2004-NMCERT-004, 135 N.M. 563, 91 P.3d 604, *overruled on other grounds by* Schultz v. Pojoaque Tribal Police Dep't, 2010-NMSC-034, 148 N.M. 692, 242 P.3d 259.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 1 et seq.; 27 Am. Jur. 2d Escheat §§ 1 to 48.

Validity, construction, and application of lost or abandoned goods statutes, 23 A.L.R.4th 1025.

Modern status of rules as to ownership of treasure trove as between finder and owner of property on which found, 61 A.L.R.4th 1180.

1 C.J.S. Abandonment §§ 1 to 12; 30A C.J.S. Escheat § 1 et seq.

## 7-8A-2. Presumptions of abandonment.

A. Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) traveler's check, fifteen years after issuance;

(2) money order, seven years after issuance;

(3) stock or other equity interest in a business association or financial organization, including a security entitlement under Article 8 [55-8-101 NMSA 1978] of the Uniform Commercial Code, five years after the earlier of:

(a) the date of the most recent dividend, stock split or other distribution unclaimed by the apparent owner; or

(b) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications or communications to the apparent owner;

(4) debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, five years after the date of the most recent interest payment unclaimed by the apparent owner;

(5) a demand, savings or time deposit, including a deposit that is automatically renewable, five years after the earlier of maturity or the date of the last indication by the owner of interest in the property; but a deposit that is automatically renewable is deemed matured for purposes of this section upon its initial date of maturity, unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;

(6) money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued;

(7) gift certificate, five years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be sixty percent of the certificate's face value;

(8) amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(9) property distributable by a business association or financial organization in a course of dissolution, one year after the property becomes distributable;

(10) property received by a court as proceeds of a class action and not distributed pursuant to the judgment, one year after the distribution date;

(11) property held by a court, government, governmental subdivision, agency or instrumentality, one year after the property becomes distributable;

(12) wages or other compensation for personal services, one year after the compensation becomes payable;

(13) deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable;

(14) property in an individual retirement account, defined benefit plan or other account or plan that is qualified for tax deferral under the income tax laws of the United

States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty; and

(15) all other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

B. At the time that an interest is presumed abandoned under Subsection A of this section, any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

C. Property is unclaimed if, for the applicable period set forth in Subsection A of this section, the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

D. An indication of an owner's interest in property includes:

(1) the presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(2) owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease or change the amount or type of property held in the account;

(3) the making of a deposit to or withdrawal from a bank account; and

(4) the payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

E. Property is payable or distributable for purposes of the Uniform Unclaimed Property Act (1995) notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

History: Laws 1997, ch. 25, § 2; 2007, ch. 125, § 2.

**ANNOTATIONS**

**Cross references.** — For gift certificate expiration dates, *see* 57-12-25 NMSA 1978.

**The 2007 amendment,** effective July 1, 2007, increased the time for abandonment of gift certificates to five years.

**Severability.** — Laws 2007, ch. 125, § 4 provided for the severability of Laws 2007, ch. 125, §§ 1 and 2 if any part or application thereof is held invalid.

**Applicability.** — Laws 2007, ch. 125, §4 provided that Laws 2007, ch. 125, §§ 1 and 2 apply to gift certificates sold or offered for sale on or after July 1, 2007.

## 7-8A-3. Contents of safe deposit box or other safekeeping depository.

Tangible property held in a safe deposit box or other safekeeping depository in this state in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law, are presumed abandoned if the property remains unclaimed by the owner for more than five years after expiration of the lease or rental period on the box or other depository.

**History:** Laws 1997, ch. 25, § 3.

## 7-8A-4. Rules for taking custody.

Except as otherwise provided in the Uniform Unclaimed Property Act (1995) or by other statute of this state, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this state if:

(1) the last known address of the apparent owner, as shown on the records of the holder, is in this state;

(2) the records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this state;

(3) the records of the holder do not reflect the last known address of the apparent owner and it is established that:

(i) the last known address of the person entitled to the property is in this state; or

(ii) the holder is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) the last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property and the holder is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state;

(5) the last known address of the apparent owner, as shown on the records of the holder, is in a foreign country and the holder is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state;

(6) the transaction out of which the property arose occurred in this state, the holder is domiciled in a state that does not provide for the escheat or custodial taking of the property, and the last known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the escheat or custodial taking of the property; or

(7) the property is a traveler's check or money order purchased in this state, or the issuer of the traveler's check or money order has its principal place of business in this state and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property, or does not show the state in which the instrument was purchased.

**History:** Laws 1997, ch. 25, § 4.

## 7-8A-5. Dormancy charge.

A holder may deduct from property presumed abandoned a charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled. The amount of the deduction is limited to an amount that is not unconscionable.

**History:** Laws 1997, ch. 25, § 5.

## 7-8A-6. Burden of proof as to property evidenced by record of check or draft.

A record of the issuance of a check, draft or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the administrator's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the

requisite period of abandonment. Defenses of payment, satisfaction, discharge and want of consideration are affirmative defenses that must be established by the holder.

**History:** Laws 1997, ch. 25, § 6.

## 7-8A-7. Report of abandoned property.

A. A holder of property presumed abandoned shall make a report to the administrator concerning the property.

B. The report must be verified and must contain:

(1) a description of the property;

(2) except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of fifty dollars ($50.00) or more;

(3) an aggregated amount of items valued under fifty dollars ($50.00) each;

(4) in the case of an amount of fifty dollars ($50.00) or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;

(5) in the case of property held in a safe deposit box or other safekeeping depository, an indication of the place where it is held and where it may be inspected by the administrator and any amounts owing to the holder;

(6) the date, if any, on which the property became payable, demandable or returnable and the date of the last transaction with the apparent owner with respect to the property; and

(7) other information that the administrator by rule prescribes as necessary for the administration of the Uniform Unclaimed Property Act (1995).

C. If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

D. The report must be filed before November 1 of each year and cover the twelve months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding.

E. A holder of more than twenty-five properties presumed abandoned shall report the properties in an electronic media and in a format determined by the administrator to be compatible with computer programming and equipment used by the administrator for processing.

F. The holder of property presumed abandoned shall send written notice to the apparent owner, not more than one hundred twenty days or less than sixty days before filing the report, stating that the holder is in possession of property subject to the Uniform Unclaimed Property Act (1995), if:

(1) the holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(2) the claim of the apparent owner is not barred by a statute of limitations; and

(3) the value of the property is fifty dollars ($50.00) or more.

G. Before the date for filing the report, the holder of property presumed abandoned may request the administrator to extend the time for filing the report. The administrator may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

H. The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with Subsection F of this section.

**History:** Laws 1997, ch. 25, § 7; 2006, ch. 37, § 1.

**ANNOTATIONS**

**The 2006 amendment,** effective July 1, 2006, added Subsection E to require the holders of more than twenty-five properties presumed abandoned to report the properties electronically.

## 7-8A-8. Payment or delivery of abandoned property.

(a) Except for property held in a safe deposit box or other safekeeping depository, upon filing the report required by Section 7 [7-8A-7 NMSA 1978] of the Uniform Unclaimed Property Act (1995), the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the administrator the property described in the report as unclaimed, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended until a penalty or forfeiture would no longer result. Tangible property held in a safe deposit box or other safekeeping depository may not be delivered to the

administrator until one hundred twenty days after filing the report required by Section 7 of the Uniform Unclaimed Property Act (1995).

(b) If the property reported to the administrator is a security or security entitlement under Article 8 [55-8-101 NMSA 1978] of the Uniform Commercial Code, the administrator is an appropriate person to make an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with Article 8 of the Uniform Commercial Code.

(c) If the holder of property reported to the administrator is the issuer of a certificated security, the administrator has the right to obtain a replacement certificate pursuant to Section 55-8-405 NMSA 1978, but an indemnity bond is not required.

(d) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with Section 10 [7-8A-10 NMSA 1978] of the Uniform Unclaimed Property Act (1995).

**History:** Laws 1997, ch. 25, § 8.

## 7-8A-9. Notice and publication of lists of abandoned property.

(a) The administrator shall publish a notice not later than November 30 of the year next following the year in which abandoned property has been paid or delivered to the administrator. The notice must be published in a newspaper of general circulation in the county of this state in which is located the last known address of any person named in the notice. If a holder does not report an address for the apparent owner, or the address is outside this state, the notice must be published in the county in which the holder has its principal place of business within this state or another county that the administrator reasonably selects. The advertisement must be in a form that, in the judgment of the administrator, is likely to attract the attention of the apparent owner of the unclaimed property. The form must contain:

(1) the name of each person appearing to be the owner of the property, as set forth in the report filed by the holder;

(2) the last known address or location of each person appearing to be the owner of the property, if an address or location is set forth in the report filed by the holder;

(3) a statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the administrator; and

(4) a statement that information about the property and its return to the owner is available to a person having a legal or beneficial interest in the property, upon request to the administrator.

(b) The administrator is not required to advertise the name and address or location of an owner of property having a total value less than fifty dollars ($50.00), or information concerning a traveler's check, money order or similar instrument.

**History:** Laws 1997, ch. 25, § 9.

## 7-8A-10. Custody by state; recovery by holder; defense of holder.

(a) In this section, payment or delivery is made in "good faith" if:

(1) payment or delivery was made in a reasonable attempt to comply with the Uniform Unclaimed Property Act (1995);

(2) the holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned; and

(3) there is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(b) Upon payment or delivery of property to the administrator, the state assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the administrator in good faith is relieved of all liability arising thereafter with respect to the property.

(c) A holder who has paid money to the administrator pursuant to the Uniform Unclaimed Property Act (1995) may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under Section 19(a) [7-8A-19(a) NMSA 1978] of the Uniform Unclaimed Property Act (1995).

(d) A holder who has delivered property other than money to the administrator pursuant to the Uniform Unclaimed Property Act (1995) may reclaim the property if it is still in the possession of the administrator, without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(e) The administrator may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

(f) If a holder pays or delivers property to the administrator in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the administrator, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the administrator.

(g) Property removed from a safe deposit box or other safekeeping depository is received by the administrator subject to the holder's right to be reimbursed for the cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The administrator shall reimburse the holder out of the proceeds remaining after deducting the expense incurred by the administrator in selling the property.

**History:** Laws 1997, ch. 25, § 10.

## 7-8A-10.1. Exercise of due diligence; liability; notice.

A. Notwithstanding any other provisions of the Uniform Unclaimed Property Act (1995), the holder of unclaimed intangible property in the form of checks in payment of royalty interests, working interests or other interests payable out of oil and gas production with a value of fifty dollars ($50.00) or more who fails to exercise due diligence in attempting to locate the apparent owner of such property during the running of the period specified under Section 2 [7-8A-2 NMSA 1978] of the Uniform Unclaimed Property Act (1995) constituting a presumption of abandonment of such intangible property is subject to payment to the owner if such property is successfully claimed within the time specified by the Uniform Unclaimed Property Act (1995) or to the state of New Mexico upon payment or delivery of the property to the administrator, interest at the annual rate of interest computed as provided in Subsection B of Section 7-1-67 NMSA 1978 on the value of the intangible property, such interest running from the date commencing after the first year in which the property remained unclaimed to the date of payment or delivery.

B. Proof of the exercise of due diligence to locate the apparent owner shall be:

(1) evidence of written notice mailed to the last known address of the apparent owner; and

(2) proof of publication of notice to the apparent owner made between the end of the first year in which the property remained unclaimed and the end of the third year in which the property remained unclaimed. The publication of the notice required by this subsection for property presumed to be abandoned under the provisions of Section 7 [7-8A-7 NMSA 1978] of the Uniform Unclaimed Property Act (1995) shall be made at least

thirty days, but not more than ninety days, prior to the due date on which the report of abandoned property is required to be filed.

C. Publication as required in Subsection B of this section consists of publication in a newspaper of general circulation in the county of this state in which is located the last known address of the apparent owner, or if no address is listed or the address is outside the state, in a newspaper published in the county in which the holder of the property has his principal place of business within the state. The notice shall be published at least once a week for two consecutive weeks and shall be entitled:

"NOTICE OF THE NAME OF A PERSON APPEARING TO BE THE OWNER OF ABANDONED PROPERTY".

D. The published notice shall contain:

(1) the name and last known address, if any, of the person entitled to notice as specified in this section;

(2) a statement that information concerning the unclaimed property may be obtained from the holder of the property;

(3) the name and address of the holder of the property; and

(4) a statement that if proof of claim is not presented by the owner to the holder and the owner's right to receive the property is not established to the holder's satisfaction before the expiration of the period specified by the Uniform Unclaimed Property Act (1995) for the presumption of abandonment, the intangible property will be placed in the custody of the state of New Mexico and subject to escheat to the general fund of the state.

E. The provisions of this section shall not apply to the United States or any agency or instrumentality of the United States or to the state of New Mexico or any agency or political subdivision of the state.

F. Any holder of property that has been presumed to be abandoned for more than three years as of January 1, 1990 shall not be presumed to be negligent by the failure to publish a notice in a newspaper of general circulation as required by this section.

**History:** Laws 1990, ch. 98, § 1; 1978 Comp., § 7-8-20.1, recompiled and amended as 1978 Comp., 7-8A-10.1 by Laws 1997, ch. 25, § 32.

## ANNOTATIONS

**Recompilations.** — This section was formerly compiled as 7-8-20.1 NMSA 1978 and was recompiled by Laws 1997, ch. 25, § 32.

**The 1997 amendment,** effective July 1, 1997, inserted "1995" following "Uniform Unclaimed Property Act" twice in Subsection A and in Paragraph D(4), substituted "Section 2 of the Uniform Unclaimed Property Act (1995)" for "Sections 7-8-3 and 7-8-6 through 7-8-16 NMSA 1978" in Subsection A, and substituted "Section 7 of the Uniform Unclaimed Property Act (1995)" for "Sections 7-8-8, 7-8-9, 7-8-11, 7-8-13 and 7-8-15 NMSA 1978" in Paragraph B(2).

## 7-8A-11. Crediting of dividends, interest and increments to owner's account.

If property other than money is delivered to the administrator under the Uniform Unclaimed Property Act (1995), the owner is entitled to receive from the administrator any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money. If the property was an interest-bearing demand, savings, or time deposit, including a deposit that is automatically renewable, the administrator shall pay interest at a rate of five percent a year or any lesser rate the property earned while in the possession of the holder. Interest begins to accrue when the property is delivered to the administrator and ceases on the earlier of the expiration of ten years after delivery or the date on which payment is made to the owner. Interest on interest-bearing property is not payable for any period before the effective date of the Uniform Unclaimed Property Act (1995), unless authorized by law superseded by that act.

**History:** Laws 1997, ch. 25, § 11.

## 7-8A-12. Public sale of abandoned property.

A. Except as otherwise provided in this section, the administrator, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in this state or by any reasonable method, which in the judgment of the administrator affords the most favorable market for the property. The administrator may decline the highest bid and re-offer the property for sale if the administrator considers the bid to be insufficient. The administrator need not offer the property for sale if the administrator considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold.

B. Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the administrator. If securities are sold by the administrator before the expiration of three years after their delivery to the administrator, a person making a claim under the Uniform Unclaimed Property Act (1995) before the end of the three-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, plus dividends, interest and other

increments thereon up to the time the claim is made, less any deduction for expenses of sale. A person making a claim under the Uniform Unclaimed Property Act (1995) after the expiration of the three-year period is entitled to receive the securities delivered to the administrator by the holder, if they still remain in the custody of the administrator, or the net proceeds received from sale and is not entitled to receive any appreciation in the value of the property occurring after delivery to the administrator except in a case of intentional misconduct or malfeasance by the administrator.

C. A purchaser of property at a sale conducted by the administrator pursuant to the Uniform Unclaimed Property Act (1995) takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

**History:** Laws 1997, ch. 25, § 12; 2006, ch. 37, § 2.

**ANNOTATIONS**

**The 2006 amendment,** effective July 1, 2006, provided in Subsection A that the administrator may sell abandoned property by any reasonable method.

## 7-8A-13. Deposit of funds.

A. Except as otherwise provided by this section, the administrator shall promptly deposit in the tax administration suspense fund for distribution pursuant to the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] all money received under the Uniform Unclaimed Property Act (1995), including the proceeds from the sale of abandoned property under Section 7-8A-12 NMSA 1978. The administrator shall retain in the unclaimed property fund at least one hundred thousand dollars ($100,000) for the purposes of the Uniform Unclaimed Property Act (1995), from which the administrator shall pay claims duly allowed. The administrator shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or annuity listed in the report of an insurance company, its number, the name of the company and the amount due.

B. Before making a deposit to the tax administration suspense fund, the administrator may deduct:

(1) expenses of sale of abandoned property;

(2) costs of mailing and publication in connection with abandoned property;

(3) reasonable service charges; and

(4) expenses incurred in examining records of holders of property and in collecting the property from those holders.

History: Laws 1997, ch. 25, § 13; 2007 (1st S.S.), ch. 2, § 10.

**ANNOTATIONS**

**The 2007 amendment,** effective June 28, 2007, changed the distribution of money from the general fund to purposes provided in the Uniform Unclaimed Property Act (1995).

## 7-8A-14. Claim of another state to recover property.

(a) After property has been paid or delivered to the administrator under the Uniform Unclaimed Property Act (1995), another state may recover the property if:

(1) the property was paid or delivered to the custody of this state because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other state and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(2) the property was paid or delivered to the custody of this state because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state subsequently enacted the property has escheated or become subject to a claim of abandonment by that state;

(3) the records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(4) the property was subjected to custody by this state under Section 4(6) [7-8A-4(6) NMSA 1978] of the Uniform Unclaimed Property Act (1995), and under the laws of the state of domicile of the holder the property has escheated or become subject to a claim of abandonment by that state; or

(5) the property is a sum payable on a traveler's check, money order or similar instrument that was purchased in the other state and delivered into the custody of this state under Section 4(7) [7-8A-4(7) NMSA 1978] of the Uniform Unclaimed Property Act (1995), and under the laws of the other state the property has escheated or become subject to a claim of abandonment by that state.

(b) A claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the administrator, who shall decide the claim within ninety days after it is presented. The administrator shall allow the claim upon

determining that the other state is entitled to the abandoned property under Subsection (a) of this section.

(c) The administrator shall require another state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim to the property.

**History:** Laws 1997, ch. 25, § 14.

## 7-8A-15. Filing claim with administrator; handling of claims by administrator.

(a) A person, excluding another state, claiming property paid or delivered to the administrator may file a claim on a form prescribed by the administrator and verified by the claimant.

(b) Within ninety days after a claim is filed, the administrator shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the administrator shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the administrator or maintain an action under Section 16 of the Uniform Unclaimed Property Act (1995).

(c) Within thirty days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the administrator to the claimant, together with any dividend, interest or other increment to which the claimant is entitled under Sections 11 and 12 [7-8A-11 and 7-8A-12 NMSA 1978] of the Uniform Unclaimed Property Act (1995).

(d) A holder who pays the owner for property that has been delivered to the state and which, if claimed from the administrator by the owner would be subject to an increment under Sections 11 and 12 of the Uniform Unclaimed Property Act (1995), may recover from the administrator the amount of the increment.

**History:** Laws 1997, ch. 25, § 15.

**ANNOTATIONS**

**The Unclaimed Property Act's administrative process is exclusive and mandatory.** — Where petitioner was appointed the personal representative of his deceased grandfather's estate, and where the probate court, at petitioner's request, issued an order directing the New Mexico taxation and revenue department (department) to release $70,000 of unclaimed property that belonged to decedent, and where the probate court transferred the case to the district court when the department refused to release the property, the district court's order directing the department to comply with the probate court and release the unclaimed property to petitioner was

invalid, because the administrative claim filing provisions of the Unclaimed Property Act, 7-8A-1 to 7-8A-31 NMSA 1978, are exclusive and mandatory, and therefore the district court did not have jurisdiction to determine that the property was estate property or to enforce the probate court's order as the probate court had no authority to order the department to release the unclaimed property to petitioner. In re Estate of McElveny, 2017-NMSC-024, *rev'g* 2015-NMCA-080, 355 P.3d 75.

**The Uniform Unclaimed Property Act is not the exclusive mode for disbursing unclaimed property.** — There is no intent expressed by the legislature that the Uniform Unclaimed Property Act supersedes the Uniform Probate Code; therefore, the district court's general civil jurisdiction in formal probate proceedings gave the district court jurisdiction to order the taxation and revenue department to release unclaimed property of decedent to petitioner, as personal representative of decedent's estate, notwithstanding the procedures set forth in this section for acquiring unclaimed property. In re Estate of McElveny, 2015-NMCA-080, cert. granted, 2015-NMCERT-007.

## 7-8A-16. Appeal; action to establish claim.

A. A person aggrieved by a decision of the administrator may file an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. A person whose claim has not been acted upon within ninety days after its filing may maintain an original action to establish the claim in the district court for the first judicial district, naming the administrator as a defendant.

C. If the aggrieved person establishes the claim in an action against the administrator, the court may award the claimant reasonable attorney fees.

**History:** Laws 1997, ch. 25, § 16; 1998, ch. 55, § 18; 1999, ch. 265, § 18.

**ANNOTATIONS**

**Cross references.** — For appeal of final decisions by agencies to district court, *see* Section 39-3-1.1 NMSA 1978.

For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

**The 1999 amendment,** effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection A.

**The 1998 amendment,** effective September 1, 1998, inserted "Appeal;" in the section heading; added the Subsection designations; in Subsection A, inserted "may file an appeal pursuant to the provisions of Section 12-8A-1 NMSA 1978"; inserted "A person" in Subsection B; substituted "attorney" for "attorney's" in Subsection C; and made minor capitalization and stylistic changes.

**Administrative remedies must be exhausted prior to seeking court relief.** — Where petitioner was appointed the personal representative of his deceased grandfather's estate, and where the probate court, at petitioner's request, issued an order directing the New Mexico taxation and revenue department (department) to release $70,000 of unclaimed property that belonged to decedent, and where the probate court transferred the case to the district court when the department refused to release the property, petitioner erroneously sought relief from the district court before exhausting his administrative remedies under the Uniform Unclaimed Property Act (act), 7-8A-1 to 7-8A-31 NMSA 1978, because under the act, it is clear that the legislature intended the department to decide unclaimed property matters prior to parties seeking relief in the courts. In re Estate of McElveny, 2017-NMSC-024, *rev'g* 2015-NMCA-080, 355 P.3d 75.

## 7-8A-17. Election to take payment or delivery.

(a) The administrator may decline to receive property reported under the Uniform Unclaimed Property Act (1995) which the administrator considers to have a value less than the expenses of notice and sale.

(b) A holder, with the written consent of the administrator and upon conditions and terms prescribed by the administrator, may report and deliver property before the property is presumed abandoned. Property so delivered must be held by the administrator and is not presumed abandoned until it otherwise would be presumed abandoned under the Uniform Unclaimed Property Act (1995).

**History:** Laws 1997, ch. 25, § 17.

## 7-8A-18. Destruction or disposition of property having no substantial commercial value; immunity from liability.

If the administrator determines after investigation that property delivered under the Uniform Unclaimed Property Act (1995) has no substantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the state or any officer or against the holder for or on account of an act of the administrator under this section, except for intentional misconduct or malfeasance.

**History:** Laws 1997, ch. 25, § 18.

## 7-8A-19. Periods of limitation.

(a) The expiration, before or after the effective date of the Uniform Unclaimed Property Act (1995), of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute or court order, does not preclude the property from being presumed abandoned or affect a duty to file a report or to pay or

deliver or transfer property to the administrator as required by the Uniform Unclaimed Property Act (1995).

(b) An action or proceeding may not be maintained by the administrator to enforce the Uniform Unclaimed Property Act (1995) in regard to the reporting, delivery, or payment of property more than ten years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

**History:** Laws 1997, ch. 25, § 19.

**ANNOTATIONS**

## 7-8A-20. Requests for reports and examination of records.

(a) The administrator may require a person who has not filed a report, or a person whom the administrator believes has filed an inaccurate, incomplete or false report, to file a verified report in a form specified by the administrator. The report must state whether the person is holding property reportable under the Uniform Unclaimed Property Act (1995), describe property not previously reported or as to which the administrator has made inquiry, and specifically identify and state the amounts of property that may be in issue.

(b) The administrator, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with the Uniform Unclaimed Property Act (1995). The administrator may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid or delivered under the Uniform Unclaimed Property Act (1995). The administrator may contract with any other person to conduct the examination on behalf of the administrator.

(c) The administrator at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association or financial association that is the holder of property presumed abandoned if the administrator has given the notice required by Subsection (b) of this section to both the association or organization and the agent at least ninety days before the examination.

(d) Documents and working papers obtained or compiled by the administrator, or the administrator's agents, employees or designated representatives, in the course of conducting an examination are confidential and are not public records, but the documents and papers may be:

(1) used by the administrator in the course of an action to collect unclaimed property or otherwise enforce the Uniform Unclaimed Property Act (1995);

(2) used in joint examinations conducted with or pursuant to an agreement with another state, the federal government, or any other governmental subdivision, agency or instrumentality;

(3) produced pursuant to subpoena or court order; or

(4) disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this subsection, if the other state is bound to keep the documents and papers confidential.

(e) If an examination of the records of a person results in the disclosure of property reportable under the Uniform Unclaimed Property Act (1995), the administrator may assess the cost of the examination against the holder at the rate of two hundred dollars ($200) a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to Subsection (c) of this section may be assessed only against the business association or financial organization.

(f) If, after the effective date of the Uniform Unclaimed Property Act (1995), a holder does not maintain the records required by Section 21 [7-8A-21 NMSA 1978] of that act and the records of the holder available for the periods subject to that act are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay to the administrator the amount the administrator reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been but was not reported.

**History:** Laws 1997, ch. 25, § 20.

## 7-8A-21. Retention of records.

(a) Except as otherwise provided in Subsection (b) of this section, a holder required to file a report under Section 7 [7-8A-7 NMSA 1978] of the Uniform Unclaimed Property Act (1995) shall maintain the records containing the information required to be included in the report for ten years after the holder files the report, unless a shorter period is provided by rule of the administrator.

(b) A business association or financial organization that sells, issues, or provides to others for sale or issue in this state, traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association or financial organization is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for three years after the holder files the report.

**History:** Laws 1997, ch. 25, § 21.

## 7-8A-22. Enforcement.

The administrator may maintain an action in this or another state to enforce the Uniform Unclaimed Property Act (1995). The court may award reasonable attorney's fees to the prevailing party.

**History:** Laws 1997, ch. 25, § 22.

**ANNOTATIONS**

**New Mexico has standing to assert violation** of the Unclaimed Property Act. Wilson v. Mass. Mut. Life Ins. Co., 2004-NMCA-051, 135 N.M. 506, 90 P.3d 525, cert. denied, 2004-NMCERT-004, 135 N.M. 563, 91 P.3d 604, *overruled on other grounds by* Schultz v. Pojoaque Tribal Police Dep't, 2010-NMSC-034, 148 N.M. 692, 242 P.3d 259.

**Intervention.** — Since there is an absence of any specific authority for intervention in New Mexico's Act, such a right under Rule 1-024 A(1) NMRA is not recognized. Wilson v. Mass. Mut. Life Ins. Co., 2004-NMCA-051, 135 N.M. 506, 90 P.3d 525, cert. denied, 2004-NMCERT-004, 135 N.M. 563, 91 P.3d 604, *overruled on other grounds by* Schultz v. Pojoaque Tribal Police Dep't, 2010-NMSC-034, 148 N.M. 692, 242 P.3d 259.

## 7-8A-23. Interstate agreements and cooperation; joint and reciprocal actions with other states.

(a) The administrator may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in Section 20 [7-8A-20 NMSA 1978] of the Uniform Unclaimed Property Act (1995). The administrator by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

(b) The administrator may join with another state to seek enforcement of the Uniform Unclaimed Property Act (1995) against any person who is or may be holding property reportable under that act.

(c) At the request of another state, the attorney general of this state may maintain an action on behalf of the other state to enforce, in this state, the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the attorney general in maintaining the action.

(d) The administrator may request that the attorney general of another state or another attorney commence an action in the other state on behalf of the administrator. With the approval of the attorney general of this state, the administrator may retain any other attorney to commence an action in this state on behalf of the administrator. This state shall pay all expenses, including attorney's fees, in maintaining an action under this subsection. With the administrator's approval, the expenses and attorney's fees

may be paid from money received under the Uniform Unclaimed Property Act (1995). The administrator may agree to pay expenses and attorney's fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses or attorney's fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under the Uniform Unclaimed Property Act (1995).

**History:** Laws 1997, ch. 25, § 23.

## 7-8A-24. Interest and penalties.

(a) A holder who fails to report, pay or deliver property within the time prescribed by the Uniform Unclaimed Property Act (1995) shall pay to the administrator interest at the annual rate set forth in Section 7-1-67 NMSA 1978 on the property or value thereof from the date the property should have been reported, paid or delivered.

(b) Except as otherwise provided in Subsection (c) of this section, a holder who fails to report, pay or deliver property within the time prescribed by the Uniform Unclaimed Property Act (1995), or fails to perform other duties imposed by that act, shall pay to the administrator, in addition to interest as provided in Subsection (a) of this section, a civil penalty of one hundred dollars ($100) for each day the report, payment or delivery is withheld, or the duty is not performed, up to a maximum of five thousand dollars ($5,000).

(c) A holder who willfully fails to report, pay or deliver property within the time prescribed by the Uniform Unclaimed Property Act (1995), or willfully fails to perform other duties imposed by that act, shall pay to the administrator, in addition to interest as provided in Subsection (a) of this section, a civil penalty of two hundred fifty dollars ($250) for each day the report, payment or delivery is withheld, or the duty is not performed, up to a maximum of seven thousand five hundred dollars ($7,500), plus twenty-five percent of the value of any property that should have been but was not reported.

(d) A holder who makes a fraudulent report shall pay to the administrator, in addition to interest as provided in Subsection (a) of this section, a civil penalty of five hundred dollars ($500) for each day from the date a report under the Uniform Unclaimed Property Act (1995) was due, up to a maximum of twelve thousand five hundred dollars ($12,500), plus twenty-five percent of the value of any property that should have been but was not reported.

(e) The administrator for good cause may waive, in whole or in part, penalties under Subsections (b) and (c) of this section, and shall waive penalties if the holder acted in good faith and without negligence.

**History:** Laws 1997, ch. 25, § 24.

## 7-8A-25. Agreement to locate property.

A. An agreement by an owner, the primary purpose of which is to locate, deliver, recover or assist in the recovery of property that is presumed abandoned, is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is forty-eight months after the date the property is paid or delivered to the administrator. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the administrator's denial of a claim.

B. An agreement by an owner, the primary purpose of which is to locate, deliver, recover or assist in the recovery of property, is enforceable only if the agreement is in writing, clearly sets forth the nature of the property and the services to be rendered, is signed by the apparent owner and states the value of the property before and after the fee or other compensation has been deducted.

C. If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

D. An agreement covered by this section which provides for compensation that is unconscionable is unenforceable except by the owner. An owner who has agreed to pay compensation that is unconscionable or the administrator on behalf of the owner may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorney fees to an owner who prevails in the action.

E. This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than unconscionable compensation.

**History:** Laws 1997, ch. 25, § 25; 2006, ch. 37, § 3.

**ANNOTATIONS**

**The 2006 amendment,** effective July 1, 2006, extending the time period during which an agreement to locate property is valid from twenty-four months to forty-eight months.

## 7-8A-26. Foreign transactions.

The Uniform Unclaimed Property Act (1995) does not apply to:

(1) property held, due and owing in a foreign country and arising out of a foreign transaction;

(2) funds in a member's share account in a credit union if the bylaws of the credit union provide for unclaimed funds to be used for educational or charitable uses; and

(3) patronage capital or other tangible ownership interest in a rural electric cooperative, a telephone cooperative, a water cooperative or an agricultural cooperative, if the bylaws of the cooperative provide for unclaimed patronage capital to be used for educational scholarships or other charitable uses.

**History:** Laws 1997, ch. 25, § 26.

## 7-8A-27. Transitional provisions.

(a) An initial report filed under the Uniform Unclaimed Property Act (1995) for property that was not required to be reported before the effective date of that act, but which is subject to that act, must include all items of property that would have been presumed abandoned during the ten-year period next preceding the effective date of the Uniform Unclaimed Property Act (1995) as if that act had been in effect during that period.

(b) The Uniform Unclaimed Property Act (1995) does not relieve a holder of a duty that arose before the effective date of that act to report, pay or deliver property. Except as otherwise provided in Section 19(b) [7-8A-19(b) NMSA 1978] of the Uniform Unclaimed Property Act (1995), a holder who did not comply with the law in effect before the effective date of that act is subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section.

**History:** Laws 1997, ch. 25, § 27.

## 7-8A-28. Rules.

The administrator may adopt pursuant to the State Rules Act [Chapter 14, Article 4 NMSA 1978] rules necessary to carry out the Uniform Unclaimed Property Act (1995).

**History:** Laws 1997, ch. 25, § 28.

## 7-8A-29. Uniformity of application and construction.

The Uniform Unclaimed Property Act (1995) shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of that act among states enacting it.

**History:** Laws 1997, ch. 25, § 29.

## 7-8A-30. Short title.

Chapter 7, Article 8A NMSA 1978 may be cited as the "Uniform Unclaimed Property Act (1995)".

**History:** Laws 1997, ch. 25, § 30; 2006, ch. 37, § 4.

**ANNOTATIONS**

**The 2006 amendment,** effective July 1, 2006, provided that the Uniform Unclaimed Property Act includes sections compiled within Chapter 7, Article 8A NMSA 1978.

## 7-8A-31. Severability clause.

If any provision of the Uniform Unclaimed Property Act (1995) or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

**History:** Laws 1997, ch. 25, § 31.

# ARTICLE 9
# Gross Receipts and Compensating Tax

## 7-9-1. Short title.

Chapter 7, Article 9 NMSA 1978 may be cited as the "Gross Receipts and Compensating Tax Act".

**History:** 1953 Comp., § 72-16A-1, enacted by Laws 1966, ch. 47, § 1; 1979, ch. 90, § 1.

**ANNOTATIONS**

**Cross references.** — For the applicability of the Tax Administration Act, *see* 7-1-2 NMSA 1978.

For the duties with respect to taxation of successors in business, *see* 7-1-61 NMSA 1978 et seq.

For municipal local option gross receipts taxes generally, *see* 7-19D-1 NMSA 1978 et seq.

For restrictions on municipal taxing power, *see* 3-18-2 NMSA 1978.

**Contracts of sale or service subject to gross receipts tax.** — Taxable incidents are equally apparent and are ascertainable with equal ease whether they arise out of a contract of sale or out of a contract for services, and therefore, equally subject to the New Mexico gross receipts tax. Evco v. Jones, 1971-NMCA-123, 83 N.M. 110, 488 P.2d

1214, cert. denied, 83 N.M. 105, 488 P.2d 1209, *rev'd on other grounds*, 409 U.S. 91, 93 S. Ct. 349, 34 L. Ed. 2d 325 (1972) (decided under prior law).

**Purchasers of property for lease but not lessees subject to gross receipts tax. —** Neither the gross receipts tax nor the compensating tax is payable under the law applicable to this appeal by one who leased property for sublease in this state. Such tax, however, is payable by one who has purchased property for lease in this state, thus the legislature has made a distinction with respect to tax liability as between purchasers and lessees. Rust Tractor Co. v. Bureau of Revenue, 1970-NMCA-107, 82 N.M. 82, 475 P.2d 779, cert. denied, 82 N.M. 81, 475 P.2d 778.

**Gross receipts tax but not use tax applicable to Indians. —** The exemption in § 5 of the Indian Reorganization Act of 1934 (25 U.S.C. § 465) does not encompass or bar the collection of the state's nondiscriminatory gross receipts tax pursuant to 72-16-1, 1953 Comp. (since repealed). Therefore, a tribal ski enterprise conducted by the tribe with federal funds, on federal lands leased to them, was subject to that tax. However, a compensating or use tax, 72-17-1, 1953 Comp. (since repealed), imposed on personalty installed in ski lift construction was improper under § 5. Mescalero Apache Tribe v. Jones, 411 U.S. 145, 93 S. Ct. 1267, 36 L. Ed. 2d 114 (1973) (decided under former Section 72-17-1, 1953 Comp.).

**Indian trader statutes. —** The Indian trader statutes (25 U.S.C. §§ 261 to 264) preempt the imposition of gross receipts tax of this Article on receipts for non-Indian services rendered to an Indian tribal entity on the reservation. N.M. Taxation & Revenue Dep't v. Laguna Indus., Inc., 1993-NMSC-025, 115 N.M. 553, 855 P.2d 127.

**Lessee's activity on tax-exempt Indian land subject to gross receipts tax.** Norvell v. Sangre de Cristo Dev. Co., 372 F. Supp. 348 (D.N.M. 1974), *rev'd on other grounds*, 519 F.2d 370 (10th Cir. 1975).

**Burden on taxpayer to show rate erroneous. —** When government contractor appeals the assessment of a gross receipts tax, penalty and interest, he has the burden of showing the assessment at a higher tax rate established by the 1969 Gross Receipts and Compensating Tax Act rather than a lower rate under a pre-1969 tax act was erroneous. Martinez v. Jones, 1972-NMCA-054, 83 N.M. 722, 497 P.2d 233, cert. denied, 83 N.M. 741, 497 P.2d 743.

**Regulation attacked only if taxpayer's contract properly subject thereunder. —** When party, in addition to appealing the assessment of a gross receipts tax, penalty and interest, is attacking validity of regulation governing registration of contracts for purpose of determining gross receipts and compensating tax rate, and party neither offers in evidence his contract with the state highway department, nor does he prove the essential provisions of the contract, the question of the validity of the system of registration is premature until it is shown that the contract could be properly registered under the regulation. Martinez v. Jones, 1972-NMCA-054, 83 N.M. 722, 497 P.2d 233, cert. denied, 83 N.M. 741, 497 P.2d 743.

**Electrical energy tax invalid.** — Because 7-9-80 NMSA 1978 (since repealed) insured that locally consumed electricity is subject to no tax burden from the electrical energy tax, while electricity generated in this state but sold outside the state is subject to a 2% tax, the tax itself indirectly but necessarily discriminates against electricity sold outside New Mexico; it thus violates a federal statute, 15 U.S.C. § 391, and is invalid under the supremacy clause of the United States constitution. Arizona Pub. Serv. Co. v. Snead, 441 U.S. 141, 99 S. Ct. 1629, 60 L. Ed. 2d 106 (1979).

**Federal statute invalidating energy tax constitutional.** — A federal statute, 15 U.S.C. § 391, which invalidates the New Mexico electric energy tax, does not exceed the permissible bounds of congressional action under the commerce clause of the United States constitution since congress had a rational basis for finding that the tax interfered with interstate commerce and selected a reasonable method to eliminate that interference. Arizona Pub. Serv. Co. v. Snead, 441 U.S. 141, 99 S. Ct. 1629, 60 L. Ed. 2d 106 (1979).

**Tax exemptions and deductions not unconstitutional donations unless retroactive.** — Gross receipts tax exemptions and deductions do not violate the antidonation clause of the N.M. Const., art. IX, § 14 unless they are applied retroactively to taxes due and payable. 1991 Op. Att'y Gen. No. 91-14.

**Law reviews.** — For article, "Ad Valorem Tax Status of a Private Lessee's Interest in Publicly Owned Property: Taxability of Possessory Interests in Industrial Projects under the New Mexico Industrial Revenue Bond Act," see 3 N.M.L. Rev. 136 (1973).

For article, "An Intergovernmental Approach to Tax Reform," see 4 N.M.L. Rev. 189 (1974).

For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

For article, "The Indian Tax Cases - A Territorial Analysis," see 9 N.M.L. Rev. 221 (1979).

For note, "Taxing of Electrical Energy: An Analysis of Arizona Public Service Company v. Snead," see 9 N.M.L. Rev. 349 (1979).

For article, "The Deductibility for Federal Income Tax Purposes of the New Mexico Gross Receipts Tax Paid on the Purchase of a Newly Constructed Home," see 13 N.M.L. Rev. 625 (1983).

For article, "Out of sight but not out of mind: New Mexico's tax on out-of-state services," see 20 N.M.L. Rev. 501 (1990).

For article, "New Mexico Taxes: Taking Another Look," see 32 N.M.L. Rev. 351 (2002).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State & Local Taxation §§ 28 to 30.

Income or receipts: constitutionality of tax on corporations in nature of, or purporting to be, excise or privilege tax measured by income or receipts, 71 A.L.R. 256.

Distinction from other tax: what is a property tax as distinguished from excise, license or other taxes, 103 A.L.R. 18.

Deductibility of other taxes or fees in computing excise or license taxes, 143 A.L.R. 263, 174 A.L.R. 1263.

Retroactive statute: constitutionality of retroactive statute imposing excise, license or privilege tax, 146 A.L.R. 1011.

Goods in stock: specific tax imposed on goods in stock of dealer, as excise, or property tax, 173 A.L.R. 1316.

Sales and use taxes on leased tangible personal property, 2 A.L.R.4th 859.

Transportation, freight, mailing, or handling charges billed separately to purchaser of goods as subject to sales or use taxes, 2 A.L.R.4th 1124.

Cable television equipment or services as subject to sales or use tax, 5 A.L.R.4th 754.

84 C.J.S. Taxation §§ 165 to 166.

## 7-9-2. Purpose.

The purpose of the Gross Receipts and Compensating Tax Act is to provide revenue for public purposes by levying a tax on the privilege of engaging in certain activities within New Mexico and to protect New Mexico businessmen from the unfair competition that would otherwise result from the importation into the state of property without payment of a similar tax.

**History:** 1953 Comp., § 72-16A-2, enacted by Laws 1966, ch. 47, § 2.

**ANNOTATIONS**

**Gross receipts tax is a tax upon seller.** Mescalero Apache Tribe v. O'Cheskey, 439 F. Supp. 1063 (D.N.M. 1977), *aff'd*, 625 F.2d 967 (10th Cir. 1980), cert. denied, 450 U.S. 959, 101 S. Ct. 1417, 67 L. Ed. 2d 383 (1981), *reh'g denied*, 455 U.S. 929, 102 S. Ct. 1296, 71 L. Ed. 2d 474 (1982).

**Tax is measured on gross rather than net proceeds.** This act taxes the privilege of conducting business in New Mexico, whether profitable or not. United States v. New

Mexico, 624 F.2d 111 (10th Cir. 1980), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Gross receipts and income taxes inapplicable to Indian activities within reservation.** — New Mexico may not tax income and gross receipts of Indians residing on a reservation when the income and gross receipts involved are derived solely from activities within the reservation. Hunt v. O'Cheskey, 1973-NMCA-026, 85 N.M. 381, 512 P.2d 954, cert. quashed, 85 N.M. 388, 512 P.2d 961.

**Gross Receipts and Compensating Tax Act is general** and contains no obvious legislative intent to repeal the special "in lieu of " provision of Section 60-1-15 NMSA 1978 concerning horse racing licenses. Santa Fe Downs, Inc. v. Bureau of Revenue, 1973-NMCA-064, 85 N.M. 115, 509 P.2d 882.

**Gross receipts tax and compensating tax not double taxation.** — Since the gross receipts tax and compensating tax were not imposed upon a single transaction, as appellant contended, but upon different taxable incidents; namely, (1) the use of property in this state, such use being leasing or renting it to others (compensating or use tax) and (2) the receipts derived from the payment of rental by those to whom the property was leased (gross receipts or sales tax), then imposition of both taxes did not constitute double taxation on an identical transaction and was not prohibited. Rust Tractor Co. v. Bureau of Revenue, 1970-NMCA-107, 82 N.M. 82, 475 P.2d 779, cert. denied, 82 N.M. 81, 475 P.2d 778.

**Exemption from gross receipts tax also exemption from compensating tax.** — The legislature intended to make the gross receipts tax and compensating tax correlate: an exemption from the gross receipts tax must also be treated as an exemption from the compensating tax. Western Elec. Co. v. N.M. Bureau of Revenue, 1976-NMCA-047, 90 N.M. 164, 561 P.2d 26.

**Receipts from horse races not exempt.** — The legislature, in enacting the Gross Receipts and Compensating Tax Act, did not intend to exempt receipts from horse races. There is neither ambiguity nor doubt that the language used in the Gross Receipts Tax Act applies to the receipts of a horse owner paid to him for a winning purse and the receipts of a horse trainer paid to him as his percentage of a winning purse. Till v. Jones, 1972-NMCA-046, 83 N.M. 743, 497 P.2d 745, cert. denied, 83 N.M. 740, 497 P.2d 742. See Section 7-9-40 NMSA 1978, which now exempts receipts from horse race purses.

**Deductions strictly construed against taxpayer.** — The avowed purpose of the Gross Receipts and Compensating Tax Act is to provide revenue, and any deductions must receive strict construction in favor of the taxing authority. Reed v. Jones, 1970-NMCA-050, 81 N.M. 481, 468 P.2d 882.

**Burden on taxpayer to establish deduction.** — The burden is on the taxpayer to establish clearly his right to the deduction, and the intention to authorize the deduction

claimed by the taxpayer must be clearly and unambiguously expressed in the statute. Reed v. Jones, 1970-NMCA-050, 81 N.M. 481, 468 P.2d 882.

**Implied rational basis.** — Because regulations exempted broadcasting advertisement displayers in New Mexico from the tax imposed upon taxpayer (operator of a billboard service), there was discrimination in the treatment of these different media forms, but the burden was upon the taxpayer to negative every conceivable basis which might support the discriminatory classification, because of the implied rational basis underlying every tax statute, i.e., that the state has the right, power and duty to raise the necessary funds for its public purposes, and it was held that there was a rational basis for the state to discriminate between the broadcast industry and the outdoor advertising industry in the taxation of displays of national messages. Markham Adver. Co. v. Bureau of Revenue, 1975-NMCA-071, 88 N.M. 176, 538 P.2d 1198, cert. denied, 88 N.M. 318, 540 P.2d 248.

**Law reviews.** — For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

## 7-9-3. Definitions.

As used in the Gross Receipts and Compensating Tax Act:

A. "buying" or "selling" means a transfer of property for consideration or the performance of service for consideration;

B. "department" means the taxation and revenue department, the secretary of taxation and revenue or an employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "financial corporation" means a savings and loan association or an incorporated savings and loan company, trust company, mortgage banking company, consumer finance company or other financial corporation;

D. "initial use" or "initially used" means the first employment for the intended purpose and does not include the following activities:

(1) observation of tests conducted by the performer of services;

(2) participation in progress reviews, briefings, consultations and conferences conducted by the performer of services;

(3) review of preliminary drafts, drawings and other materials prepared by the performer of the services;

(4) inspection of preliminary prototypes developed by the performer of services; or

(5) similar activities;

E. "leasing" means an arrangement whereby, for a consideration, property is employed for or by any person other than the owner of the property, except that the granting of a license to use property is licensing and is not a lease;

F. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon the taxpayer's gross receipts and required to be collected by the department at the same time and in the same manner as the gross receipts tax; "local option gross receipts tax" includes the taxes imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act [Chapter 7, Article 19D NMSA 1978], Supplemental Municipal Gross Receipts Tax Act [7-19-10 through 7-19-18 NMSA 1978], County Local Option Gross Receipts Taxes Act [Chapter 7, Article 20E NMSA 1978], Local Hospital Gross Receipts Tax Act [7-20C-1 through 7-20C-17 NMSA 1978], County Correctional Facility Gross Receipts Tax Act [Chapter 7, Article 20F NMSA 1978] and such other acts as may be enacted authorizing counties or municipalities to impose taxes on gross receipts, which taxes are to be collected by the department;

G. "manufactured home" means a movable or portable housing structure for human occupancy that exceeds either a width of eight feet or a length of forty feet constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation;

H. "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include construction;

I. "person" means:

(1) an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other entity, including any gas, water or electric utility owned or operated by a county, municipality or other political subdivision of the state; or

(2) a national, federal, state, Indian or other governmental unit or subdivision, or an agency, department or instrumentality of any of the foregoing;

J. "property" means real property, tangible personal property, licenses other than the licenses of copyrights, trademarks or patents and franchises. Tangible personal property includes electricity and manufactured homes;

K. "research and development services" means an activity engaged in for other persons for consideration, for one or more of the following purposes:

(1) advancing basic knowledge in a recognized field of natural science;

(2) advancing technology in a field of technical endeavor;

(3) developing a new or improved product, process or system with new or improved function, performance, reliability or quality, whether or not the new or improved product, process or system is offered for sale, lease or other transfer;

(4) developing new uses or applications for an existing product, process or system, whether or not the new use or application is offered as the rationale for purchase, lease or other transfer of the product, process or system;

(5) developing analytical or survey activities incorporating technology review, application, trade-off study, modeling, simulation, conceptual design or similar activities, whether or not offered for sale, lease or other transfer; or

(6) designing and developing prototypes or integrating systems incorporating the advances, developments or improvements included in Paragraphs (1) through (5) of this subsection;

L. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

M. "service" means all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a service as distinguished from selling or leasing property. "Service" includes activities performed by a person for its members or shareholders. In determining what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling. "Service" includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. That tangible personal property retains its character as tangible personal property until it is installed as an ingredient or component part of a construction project in New Mexico. Sales of tangible personal property that will become an ingredient or component part of a construction project to persons engaged in the construction business are sales of tangible personal property; and

N. "use" or "using" includes use, consumption or storage other than storage for subsequent sale in the ordinary course of business or for use solely outside this state.

History: Laws 1978, ch. 46, § 1; 1979, ch. 338, § 1; 1981, ch. 184, § 1; 1983, ch. 220, § 1; 1984, ch. 2, § 1; 1986, ch. 20, § 62; 1986, ch. 52, § 1; 1989, ch. 262, § 1; 1991, ch. 197, § 1; 1991, ch. 203, § 1; 1992, ch. 39, § 1; 1992, ch. 50, § 14; 1992, ch. 67, § 14; 1993, ch. 31, § 1; 1994, ch. 45, § 1; 1998, ch. 92, § 4; 1998, ch. 95, § 1; 1998, ch. 99, § 3; 1999, ch. 231, § 1; 2000, ch. 84, § 1; 2000, ch. 101, § 1; 2001, ch. 65, § 1; 2001, ch. 343, § 1; 2002, ch. 28, § 1; 2002, ch. 45, § 1; 2002, ch. 49, § 1; 2003, ch. 272, § 2 ; 2006, ch. 39, § 1; 2007, ch. 339, § 1.

**ANNOTATIONS**

**Compiler's notes.** — Laws 1988, ch. 19, § 5, effective July 1, 1988, repealed Laws 1986, ch. 20, § 128 and Laws 1986, ch. 52, § 4, which enacted amended versions of this section which were to take effect July 1, 1988.

Laws 1989, ch. 262, § 10, effective July 1, 1989, repealed Laws 1988, ch. 19, § 1, which enacted an amended version of this section which was to take effect July 1, 1990.

Laws 1993, ch. 31, § 13, effective July 1, 1993, repealed Laws 1990, ch. 27, § 1, Laws 1991, ch. 197, § 2, Laws 1991, ch. 203, § 2, Laws 1992, ch. 39, § 2, Laws 1992, ch. 50, § 15, and Laws 1992, ch. 67, § 15, all of which amended 7-9-3 NMSA 1978 to take effect July 1, 1993.

Laws 1993, ch. 31, § 13D, and Laws 1993, ch. 310, § 3, both effective July 1, 1993, repealed Laws 1992, ch. 40, § 2, which provided for the repeal of 7-9-3 NMSA 1978 as amended by Laws 1991, ch. 203, § 2, effective October 1, 1995, if the United States announced prior to July 1, 1995, that the space systems division of the department of the air force would be relocated to New Mexico. Laws 1993, ch. 31, § 13D and Laws 1993, ch. 310, § 3 also repealed Laws 1992, ch. 40, § 3, which provided for the repeal of the provisions of Laws 1992, ch. 40 on August 1, 1995, if the United States had not announced prior to July 1, 1995, that the space systems division of the department of the air force would be relocated to New Mexico.

**The 2007 amendment,** effective June 15, 2007, defined "leasing" to mean that a license to use property is a license and not a lease and defined "property" to include licenses other than the licenses of copyrights, trademarks or patents.

**The 2006 amendment,** effective July 1, 2006, deleted from the definition of leasing in Subsection E the provision that the sale of a license is a granting of a license to use property and in Subsection J deleted from the definition of property, patents, trademarks and copyrights.

**The 2003 amendment,** effective July 1, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

**The 2002 amendment,** effective July 1, 2002, inserted "or to provide services primarily to non-New Mexico customers" in Subsection E(2); and added Subsections F(1)(e) and F(2)(g). This section was also amended by Laws 2002, ch. 28, § 1 and Laws 2002, ch. 45, § 1. The section was set out as amended by Laws 2002, ch. 49, § 1. *See* 12-1-8 NMSA 1978.

**The 2001 amendment,** effective July 1, 2001, inserted Paragraph C(13) and redesignated the subsequent paragraphs; and added Subsection S. This section was also amended by Laws 2001, ch. 65, § 1. The section was set out as amended by Laws 2001, ch. 343, § 1. See 12-1-8 NMSA 1978.

**The 2000 amendment,** effective July 1, 2000, added Subsection E(2) and deleted "Special Municipal Gross Receipts Tax Act" preceding "County Local" in Subsection Q. This section was also amended by Laws 2000, ch. 84, § 1. The section was set out as amended by Laws 2000, ch. 101, § 1. *See* 12-1-8 NMSA 1978.

**The 1999 amendment,** effective July 1, 1999, in Subsection E, added "except that 'engaging in business' does not include having a world wide web site as a third-party content provider on a computer physically located in New Mexico but owned by another nonaffiliated person".

**The 1998 amendment,** effective January 1, 1999, added Subsection R and substituted "movable" for "moveable" in Subsection N. This section was also amended by Laws 1998, ch. 92, § 4 and Laws 1998, ch. 95, § 1. The section was set out as amended by Laws 1998, ch. 99, § 3. *See* 12-1-8 NMSA 1978.

**The 1994 amendment,** effective July 1, 1994, in Paragraph F(2), deleted "and" at the end of Subparagraph (d) and added Subparagraph (f); in Subsection N, inserted "for human occupancy" and deleted "for human occupancy" at the end; and substituted the list of gross receipt acts in Subsection Q for the former list.

**The 1993 amendment,** effective July 1, 1993, inserted "limited liability company, limited liability partnership," in Paragraph (1) of Subsection H; rewrote Paragraph (2) of Subsection H which read "the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof"; and substituted "modeling" for "modelling" in Paragraph (5) of Subsection P.

**The 1992 amendment,** effective March 9, 1992, rewrote Subsection F and in Subsection Q, inserted "Municipal Infrastructure Gross Receipts Tax Act" and "Local Hospital Gross Receipts Tax Act, County Health Care Gross Receipts Tax Act". This section was also amended by Laws 1992, ch. 39, § 1, Laws 1992, ch. 50, § 14. The section was set out as amended by Laws 1992, ch. 67, § 14. *See* 12-1-8 NMSA 1978.

**The 1991 amendment,** effective July 1, 1991, deleted "or 'division' " following " 'department' " in Subsection A; in Subsection F, substituted "any local option gross receipts tax that is" for "the County Fire Protection Excise Tax Act or any municipality or county sales or gross receipts tax which are" near the middle of the first paragraph and inserted "nation" following "Indian" in two places in the second sentence thereof; substituted "manufactured homes" for "mobile homes" at the end of Subsection I; added "except that the granting of a license to use property is the sale of a license and not a lease" at the end of Subsection J; deleted "'director' or" at the beginning of Subsection M; rewrote Subsection N, which read "'mobile home' means a house trailer that exceeds either a width of eight feet or a length of forty feet when equipped for the road"; added Subsection Q; and made a related stylistic change. This section was also amended by Laws 1991, ch. 197, § 1. The section was set out as amended by Laws 1991, ch. 203, § 1. *See* 12-1-8 NMSA 1978.

**The 1989 amendment,** effective July 1, 1989, in Subsection F inserted "from selling services performed outside New Mexico the product of which is initially used in New Mexico" near the beginning of the first sentence of the first paragraph and substituted "County Fire Protection Excise Tax Act or any municipality or county sales or gross receipts tax" for "County Sales Tax Act, the County Fire Protection Excise Tax Act, the County Gross Receipts Tax Act, the Municipal Gross Receipts Tax Act or the Supplemental Municipal Gross Receipts Tax Act" near the end of that sentence; and added Subsections O and P.

**Language of this section is definite and unambiguous.** Miller v. Bureau of Revenue, 1979-NMCA-005, 93 N.M. 252, 599 P.2d 1049, cert. denied, 92 N.M. 532, 591 P.2d 286.

**Taxpayer should be given fair, unbiased and reasonable construction,** without favor either to the taxpayer or the state, to the end that the legislative intent is effectuated and the public interests to be subserved thereby furthered. Baskin-Robbins Ice Cream Co. v. Revenue Div., 1979-NMCA-098, 93 N.M. 301, 599 P.2d 1098.

**Taxes assessed only on receipts or future receipts.** — A reading of the full act providing for gross receipts tax shows the legislative intent to be that taxes were to be assessed only on what was received or would be received. Davis v. Commissioner of Revenue, 1971-NMCA-129, 83 N.M. 152, 489 P.2d 660, cert. denied, 83 N.M. 151, 489 P.2d 659.

**Legal incidence of gross receipts tax on seller.** — The statutory language defining services places the legal incidence of the gross receipts tax on the seller. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Taxpayers must treat transactions uniformly for all purposes** within the tax scheme and not attempt to show, first, a lease for federal purposes and second, a nontaxable event for state purposes. Co-Con, Inc. v. Bureau of Revenue, 1974-NMCA-134, 87 N.M. 118, 529 P.2d 1239, cert. denied, 87 N.M. 111, 529 P.2d 1232.

**If purchase order not transfer for consideration, then not sale.** — The wording of taxpayer's purchase orders and contract, together with evidence that taxpayer invoiced only for chemicals and reagents delivered to a well and retained payment only for what was used, support the inference that a purchase order was not a transfer for consideration and therefore not a sale; therefore, since no single delivery or single day's delivery to a well ever amounted to 18 tons or more, of chemicals or reagents, although the amount specified in a purchase order might aggregate that much, taxpayer was not entitled to a deduction under Section 7-9-65 NMSA 1978. Runco Acidizing & Fracturing Co. v. Bureau of Revenue, 1974-NMCA-145, 87 N.M. 146, 530 P.2d 410.

**Corporations separate entities for taxation purposes.** — Taxpayers, a parent corporation and its 100%-owned subsidiary cannot escape corporate liability for joint

use of equipment merely because the shareholders of one of the corporations own all the equipment in question. The two corporations must be treated as separate entities for taxation purposes. Co-Con, Inc. v. Bureau of Revenue, 1974-NMCA-134, 87 N.M. 118, 529 P.2d 1239, cert. denied, 87 N.M. 111, 529 P.2d 1232.

**Renting or leasing is a "use" of property.** Rust Tractor Co. v. Bureau of Revenue, 1970-NMCA-107, 82 N.M. 82, 475 P.2d 779, cert. denied, 82 N.M. 81, 475 P.2d 778.

**Granting of license.** — The 1991 amendments to this section marked a significant change in the treatment of the granting of a license. Kmart Corp. v. Taxation & Revenue Dep't., 2006-NMSC-006, 139 N.M. 172, 131 P.3d 22.

**Receipts to owner and trainer of horse subject to tax.** — The legislature, in enacting the Gross Receipts Tax Act, did not intend to exempt receipts from horse races. There is neither ambiguity nor doubt that the language used in the Gross Receipts Tax Act applies to the receipts of a horse owner paid to him for a winning purse and the receipts of a horse trainer paid to him as his percentage of a winning purse. Till v. Jones, 1972-NMCA-046, 83 N.M. 743, 497 P.2d 745, cert. denied, 83 N.M. 740, 497 P.2d 742. See Section 7-9-40 NMSA 1978 which now exempts receipts from horse race purses.

**Disbursement agents of federal funds immune from gross receipts tax.** — Agents for the disbursement of federal funds are constitutionally immune from application of the gross receipts tax to those funds. United States v. New Mexico, 624 F.2d 111 (10th Cir. 1980), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Sales and Use Taxes §§ 63 to 67, 87 to 89, 173 to 176.

## 7-9-3.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1992, ch. 48, § 4 repealed 7-9-3.1 NMSA 1978, as enacted by Laws 1991, ch. 9, § 26, defining "livestock", effective July 1, 1992. For provisions of former section, *see* the 1991 NMSA 1978 on *NMOneSource.com.*

**Compiler's notes.** — Laws 2003, ch. 272, § 3 was to be codified as this section, but was instead codified as 7-9-3.5 NMSA 1978.

## 7-9-3.2. Additional definition.

A. As used in the Gross Receipts and Compensating Tax Act, "governmental gross receipts" means receipts of the state or an agency, institution, instrumentality or political subdivision from:

(1) the sale of tangible personal property other than water from facilities open to the general public;

(2) the performance of or admissions to recreational, athletic or entertainment services or events in facilities open to the general public;

(3) refuse collection or refuse disposal or both;

(4) sewage services;

(5) the sale of water by a utility owned or operated by a county, municipality or other political subdivision of the state; and

(6) the renting of parking, docking or tie-down spaces or the granting of permission to park vehicles, tie-down aircraft or dock boats.

"Governmental gross receipts" includes receipts from the sale of tangible personal property handled on consignment when sold from facilities open to the general public but excludes cash discounts taken and allowed, governmental gross receipts tax payable on transactions reportable for the period and any type of time-price differential.

B. As used in this section, "facilities open to the general public" does not include point of sale registers or electronic devices at a bookstore owned or operated by a public post-secondary educational institution when the registers or devices are utilized in the sale of textbooks or other materials required for courses at the institution to a student enrolled at the institution who displays a valid student identification card.

History: 1978 Comp., § 7-9-3.2, enacted by Laws 1991, ch. 8, § 1; 1992, ch. 100, § 1; 2003, ch. 125, § 1; 2004, ch. 69, § 1.

## ANNOTATIONS

**The 2004 amendments,** effective May 19, 2004, amended Subsection A to add new Paragraph (6).

**The 2003 amendment,** effective July 1, 2003, designated the first paragraph of this section to be Subsection A; redesignated former Subsections A through E to be present Paragraphs A(1) through A(5); and added present Subsection B.

**The 1992 amendment,** effective July 1, 1992, restructured the former introductory paragraph and former Subsection A as the present introductory paragraph and Subsections A through E; substituted "or" for "and" in the introductory paragraph; inserted "other than water" in Subsection A; added "refuse disposal or both" at the end of Subsection C; deleted former Subsection B, relating to receipts from the sale of tangible personal property; and added the undesignated last paragraph.

## 7-9-3.3. Definition; engaging in business.

As used in the Gross Receipts and Compensating Tax Act, "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit, except that:

A. "engaging in business" does not include having a worldwide web site as a third-party content provider on a computer physically located in New Mexico but owned by another nonaffiliated person; and

B. "engaging in business" does not include using a nonaffiliated third-party call center to accept and process telephone or electronic orders of tangible personal property or licenses primarily from non-New Mexico buyers, which orders are forwarded to a location outside New Mexico for filling, or to provide services primarily to non-New Mexico customers.

**History:** 1978 Comp., § 7-9-3.3, enacted by Laws 2003, ch. 272, § 4.

### ANNOTATIONS

**Repeals and reenactments.** — Laws 2003, ch. 272, § 4 repealed former 7-9-3.3 NMSA 1978, as enacted by Laws 2002, ch. 18, § 1, and enacted a new section, effective July 1, 2003.

**Cross references.** — For the federal Mobile Telecommunications Sourcing Act, *see* 4 U.S.C.S. § 116 et seq.

### I. BUSINESS.

**Meaning of "business".** — "Business" is that which occupies the time, attention and labor of a person for the purpose of livelihood, profit or improvement; that which is a person's concern or intent. It would be too narrow a view to hold that if appellant's intelligence, skill and labor is employed in New Mexico, he is not carrying on a business, trade or profession in this state. Sterling Title Co. v. Comm'r of Revenue, 1973-NMCA-086, 85 N.M. 279, 511 P.2d 765.

**"Engaging in business"** means carrying on or causing to be carried on any activity for the purpose of direct or indirect benefit to the taxpayer (American Automobile Association), not someone else (its members). AAA v. Bureau of Revenue, 1975-NMSC-012, 87 N.M. 330, 533 P.2d 103, *rev'd on other grounds*, 1975-NMSC-058, 88 N.M. 462, 541 P.2d 967.

**"Engaging in business".** — A taxpayer is "engaging in business" as defined by Subsection E (now Section 7-9-3.3 NMSA 1978) when it is doing what it was organized and authorized to do. Baskin-Robbins Ice Cream Co. v. Revenue Div., 1979-NMCA-098, 93 N.M. 301, 599 P.2d 1098.

**To decide whether one's activity constitutes "engaging in business"** in this state, the real question is whether the sale or lease is in line with the business for which the seller or lessor was organized and in which it engages. AAMCO Transmissions v. Taxation & Revenue Dep't, 1979-NMCA-092, 93 N.M. 389, 600 P.2d 841, cert. denied, 93 N.M. 205, 598 P.2d 1165.

**To engage in business, taxpayer must engage in services** "for other persons" with the purpose of direct or indirect benefit to itself, for which activity it receives money for the performance of its services. Twining Coop. Domestic Water & Sewer Ass'n v. Bureau of Revenue, 1976-NMCA-052, 89 N.M. 345, 552 P.2d 476, cert. denied, 90 N.M. 7, 558 P.2d 619.

**Bookkeeping and management corporation engaged in business.** — Corporation organized to centralize the bookkeeping and management functions for other corporations was engaged in business for purposes of this act. Westland Corp. v. Commissioner of Revenue, 1971-NMCA-083, 83 N.M. 29, 487 P.2d 1099, cert. denied, 83 N.M. 22, 487 P.2d 1092.

**Independent contractor subject to gross receipts taxes.** — Since carpenter did "fifty to one hundred and fifty" jobs for different people, on those jobs where the customer (employer) deducted F.I.C.A. taxes, carpenter was an employee and his compensation was exempt as wages, and where no deductions were made, the commissioner determined that he was an independent contractor and liable for payment of gross receipt taxes. Stohr v. N.M. Bureau of Revenue, 1976-NMCA-118, 90 N.M. 43, 559 P.2d 420, cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977).

**Foreign franchisor deemed "engaging in business".** — A foreign corporation which enters into agreements as a franchisor with licensees in New Mexico for use of the franchisor's trade name and trademark is engaged in business in New Mexico. American Dairy Queen Corp. v. Taxation & Revenue Dep't, 1979-NMCA-160, 93 N.M. 743, 605 P.2d 251.

**Incidence of tax on contractors selling services to United States.** — The legal incidence of the gross receipts tax was on contractors as sellers of services to the United States, not on the federal government. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

## II. PROPERTY.

**Meaning of "license".** — As "license" is not defined in the statutes, it is accordingly to be given its ordinary meaning unless a different intent is clearly indicated and as "license" is defined in terms of "to accord permission or consent," "allow," "authorize," and as "permission to act," the essential element in the creation of a license is the permission or consent of the licensor and this permission need not come from some government authority. N.M. Sheriffs & Police Ass'n v. Bureau of Revenue, 1973-NMCA-130, 85 N.M. 565, 514 P.2d 616.

**Rental of space in department store held license.** — Agreements entered into between the taxpayer and several other companies which provided for the use of space in the taxpayer's department stores for the purpose of retailing certain items were license agreements and receipts from these arrangements were taxable under this section. S.S. Kresge Co. v. Bureau of Revenue, 1975-NMCA-015, 87 N.M. 259, 531 P.2d 1232.

**Franchises.** — For purposes of the gross receipts tax act, a franchise is to be treated as a compound or "bundled" form of property, which typically includes a license to use the franchiser's trademark and a commitment by the franchiser to perform various services to assist the franchisee in the operation of the franchised business. Services that are required by the franchise agreement and any services provided by the franchiser to police, promote, maintain, or enhance the value of its franchise system, are part of the franchise, and this is so regardless of whether those services are performed in New Mexico or out-of-state. Sonic Indus., Inc. v. State, 2000-NMCA-087, 129 N.M. 657, 11 P.3d 1219, *rev'd on other grounds*, 2006-NMSC-038, 140 N.M. 212, 141 P.3d 1266.

**Telephone communications not tangible personalty.** — The decision of the commission that a telephone company which provided a private telephone line to a federal agency was not entitled to the deduction in Section 7-9-54 NMSA 1978 for the sale of tangible personal property was upheld by the appellate court which found a reasonable basis for differentiating between electricity (declared to be tangible personalty at Section 7-9-3J NMSA 1978) and telephone communications. Leaco Rural Tel. Coop., Inc. v. Bureau of Revenue, 1974-NMCA-076, 86 N.M. 629, 526 P.2d 426.

## III. SERVICES.

**Amendment to definition of service changed test from product's value to seller's activity.** — The 1976 amendment to the definition of service changed the test for taxation from one focusing on the end product's value to the purchaser to one focusing on the nature of seller's activity; on the seller's relative investment of skills and materials. EG & G, Inc. v. Dir., Revenue Div. Taxation & Revenue Dep't, 1979-NMCA-139, 94 N.M. 143, 607 P.2d 1161, cert. denied, 94 N.M. 628, 614 P.2d 545.

**Service to its members does not constitute "service to others"** as stated in the definition of "service" in this section. Twining Coop. Domestic Water & Sewer Ass'n v. Bureau of Revenue, 1976-NMCA-052, 89 N.M. 345, 552 P.2d 476, cert. denied, 90 N.M. 7, 558 P.2d 619.

**Meaning of "other persons" doubtful.** — The words "other persons" have many meanings which make the words doubtful as to meaning. When this occurs, "all doubts as to the meaning and intent of a tax statute must be construed in favor of the taxpayer." Twining Coop. Domestic Water & Sewer Ass'n v. Bureau of Revenue, 1976-NMCA-052, 89 N.M. 345, 552 P.2d 476, cert. denied, 90 N.M. 7, 558 P.2d 619.

**Intent of legislature to grant tax immunity to nonprofit corporation.** — The intent of the legislature was to grant immunity from the Gross Receipts and Compensating Tax Act to a nonprofit corporation which rendered services solely to its members for an assessment or a charge. Twining Coop. Domestic Water & Sewer Ass'n v. Bureau of Revenue, 1976-NMCA-052, 89 N.M. 345, 552 P.2d 476 (Ct. App.), cert. denied, 90 N.M. 7, 558 P.2d 619.

**Building contractor performs "service".** — A contractor in the business of constructing buildings is not a seller of construction materials but performs a service as defined in Subsection K. Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue, 1980-NMCA-094, 95 N.M. 708, 625 P.2d 1225, cert. quashed, 96 N.M. 17, 627 P.2d 412 (1981), *rev'd on other grounds*, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

**School board contracting to build school.** — When an Indian school board contracts with a federal agency to construct a school on reservation property and, in turn, contracts with a general contractor for actual construction of the building, the school board is the owner of the building and not an entity engaged in the construction business within the meaning of Subsection K. Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue, 1980-NMCA-094, 95 N.M. 708, 625 P.2d 1225, cert. quashed, 96 N.M. 17, 627 P.2d 412 (1981), *rev'd on other grounds*, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

**Horse trainer and owner performing for others are performing "service".** — When both a horse trainer and a horse owner are engaged in activities for other persons for a consideration, receipts in question were receipts from performing a service within the meaning of the Gross Receipts and Compensating Tax Act. Till v. Jones, 1972-NMCA-046, 83 N.M. 743, 497 P.2d 745, cert. denied, 83 N.M. 740, 497 P.2d 742. See Section 7-9-40 NMSA 1978 which now exempts receipts from horse race purses.

**That part of attorney's inheritance designated attorney fees taxable.** — Since attorney who was sole heir to his father's estate listed part of the inheritance received as attorney fees, that portion so designated was taxable under the gross receipts tax. Mears v. Bureau of Revenue, 1975-NMCA-006, 87 N.M. 240, 531 P.2d 1213.

**Director's fees for services to corporation.** — A member of the board of directors of a corporation was performing a service for the corporation and his fees therefrom are taxable as gross receipts. Mears v. Bureau of Revenue, 1975-NMCA-006, 87 N.M. 240, 531 P.2d 1213.

**Municipal franchise fee and telephone carriers.** — The total amount of money received by a local carrier for selling its telephone services includes the amount identified on its bills as the customer's share of the municipal franchise fee, so a telephone carrier is subject to the gross receipts tax. GTE Sw. Inc. v. Taxation & Revenue Dep't, 1992-NMCA-024, 113 N.M. 610, 830 P.2d 162, cert. denied, 113 N.M. 605, 830 P.2d 157.

**Billboard displays intrastate in character.** — Taxpayer's service is simply to post messages on billboards located in this state. It is being taxed for displaying, not for advertising. This service is intrastate in character, and thus is subject to the gross receipts tax. Mountain States Adver., Inc. v. Bureau of Revenue, 1976-NMCA-058, 89 N.M. 331, 552 P.2d 233, cert. denied, 90 N.M. 8, 558 P.2d 620.

## 7-9-3.4. Definitions; construction and construction materials.

As used in the Gross Receipts and Compensating Tax Act:

A. "construction" means:

(1) the building, altering, repairing or demolishing in the ordinary course of business any:

(a) road, highway, bridge, parking area or related project;

(b) building, stadium or other structure;

(c) airport, subway or similar facility;

(d) park, trail, athletic field, golf course or similar facility;

(e) dam, reservoir, canal, ditch or similar facility;

(f) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station, gas processing plant, coal gasification plant, refinery, distillery or similar facility;

(g) sewerage, water, gas or other pipeline;

(h) transmission line;

(i) radio, television or other tower;

(j) water, oil or other storage tank;

(k) shaft, tunnel or other mining appurtenance;

(l) microwave station or similar facility;

(m) retaining wall, wall, fence, gate or similar structure; or

(n) similar work;

(2) the leveling or clearing of land;

(3) the excavating of earth;

(4) the drilling of wells of any type, including seismograph shot holes or core drilling; or

(5) similar work; and

B. "construction material" means tangible personal property that becomes or is intended to become an ingredient or component part of a construction project, but "construction material" does not include a replacement fixture when the replacement is not construction or a replacement part for a fixture.

**History:** 1978 Comp., § 7-9-3.4, enacted by Laws 2003, ch. 272, § 5.

## ANNOTATIONS

**Effective dates.** — Laws 2003, ch. 272, § 8 made Laws 2003, ch. 272, § 5 effective July 1, 2003.

**Construction work incidental to "severing" exempt from gross receipts tax.** — The exemption provided by Section 7-9-35 NMSA 1978 applied, since "severing" was taking place as the development work was performed and none of taxpayer's work was preliminary to or preparatory for "severing"; therefore, receipts from development work, which includes construction, were exempted from the gross receipts tax and taxable under the service tax (resources excise tax) when such construction work was incidental to the "severing." Patten v. Bureau of Revenue, 1974-NMCA-051, 86 N.M. 355, 524 P.2d 527.

**"Fence" not a "structure".** — The word "structure", which follows "building" and "stadium," is limited in its meaning to things or classes of the same general character as buildings and stadia and this does not include fences. Cardinal Fence Co. v. Commissioner of Bureau of Revenue, 1972-NMCA-136, 84 N.M. 314, 502 P.2d 1004 (decided under prior law).

**Fence not within definition of "construction".** — Construction of fences does not come within the definition of "construction"in that the fencing material sold is not a component part of a construction project. Cardinal Fence Co. v. Commissioner of Bureau of Revenue, 1972-NMCA-136, 84 N.M. 314, 502 P.2d 1004 (decided under prior law).

**Erection of fences not construction.** — Since the construction of fences does not come within the definition of "construction", fencing material sold with or without setting of the posts did not become a component part of a construction project and receipts from such sales were deductible. Cardinal Fence Co. v. Commissioner of Bureau of Revenue, 1972-NMCA-136, 84 N.M. 314, 502 P.2d 1004 (decided under prior law).

**Non-Indians performing construction services for tribe subject to tax.** — Under the gross receipts tax act, non-Indian contractors involved in the construction of an Indian resort complex are subject to a tax on the gross receipts they received for performing construction services. The legal incidence of the tax falls upon them and not upon the tribe or tribal property. The state is imposing the tax solely on non-Indians who have performed services for the tribe. Mescalero Apache Tribe v. O'Cheskey, 439 F. Supp. 1063 (D.N.M. 1977), *aff'd*, 625 F.2d 967 (10th Cir. 1980), cert. denied, 450 U.S. 959, 101 S. Ct. 1417, 67 L. Ed. 2d 383 (1981), *reh'g denied*, 455 U.S. 929, 102 S. Ct. 1296, 71 L. Ed. 2d 474 (1982).

**Imposition of tax on tribal organization impermissible.** — If the economic burden of the gross receipts tax ultimately falls on a tribal organization, even though the legal incidence of the tax falls on the non-Indian contractor with whom the organization contracted to build an Indian school, the imposition of the tax impermissibly impedes the clearly expressed federal interest in promoting the quality and quantity of educational opportunities for Indians by depleting the funds available for the construction of Indian schools. Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

**Federal regulatory scheme and policy.** — The comprehensive federal regulatory scheme and the express federal policy of encouraging tribal self-sufficiency in the area of education preclude the imposition of the state gross receipts tax on the construction of school facilities on tribal lands pursuant to a contract between a tribal organization and a non-Indian contracting firm. Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

**Construction project includes wide variety of activities.** — This section was intended to make sales of construction materials to governmental entities taxable when the materials were to be incorporated into construction projects. Contrary to taxpayer's argument that Regulation GR 51:16 (now 3.2.1.11) establishes a definite test for determining whether an endeavor is a "construction project," this regulation merely states nonexclusive guidelines for determining whether materials constitute a component part of a construction project. Thus, construction projects include the wide variety of activities listed in Subsection C. Arco Materials, Inc. v. State Taxation & Revenue Dep't, 1994-NMCA-062, 118 N.M. 12, 878 P.2d 330, *rev'd on other grounds sub nom.* Blaze Constr. Co. v. Taxation & Revenue Dep't, 1994-NMSC-110, 118 N.M. 647, 884 P.2d 803, cert. denied, 514 U.S. 1016, 115 S. Ct. 1359, 131 L. Ed. 2d 216 (1995).

**"Construction" deemed question of fact.** — Whether activities of a party constitute "construction" is a question of fact for a jury. United States v. New Mexico, 642 F.2d 397 (10th Cir. 1981).

## 7-9-3.5. Definition; gross receipts.

A. As used in the Gross Receipts and Compensating Tax Act:

(1) "gross receipts" means the total amount of money or the value of other consideration received from selling property in New Mexico, from leasing or licensing property employed in New Mexico, from granting a right to use a franchise employed in New Mexico, from selling services performed outside New Mexico, the product of which is initially used in New Mexico, or from performing services in New Mexico. In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, "gross receipts" means the reasonable value of the property or service exchanged;

(2) "gross receipts" includes:

(a) any receipts from sales of tangible personal property handled on consignment;

(b) the total commissions or fees derived from the business of buying, selling or promoting the purchase, sale or lease, as an agent or broker on a commission or fee basis, of any property, service, stock, bond or security;

(c) amounts paid by members of any cooperative association or similar organization for sales or leases of personal property or performance of services by such organization;

(d) amounts received from transmitting messages or conversations by persons providing telephone or telegraph services;

(e) amounts received by a New Mexico florist from the sale of flowers, plants or other products that are customarily sold by florists where the sale is made pursuant to orders placed with the New Mexico florist that are filled and delivered outside New Mexico by an out-of-state florist; and

(f) the receipts of a home service provider from providing mobile telecommunications services to customers whose place of primary use is in New Mexico if: 1) the mobile telecommunications services originate and terminate in the same state, regardless of where the services originate, terminate or pass through; and 2) the charges for mobile telecommunications services are billed by or for a customer's home service provider and are deemed provided by the home service provider. For the purposes of this section, "home service provider", "mobile telecommunications services", "customer" and "place of primary use" have the meanings given in the federal Mobile Telecommunications Sourcing Act; and

(3) "gross receipts" excludes:

(a) cash discounts allowed and taken;

(b) New Mexico gross receipts tax, governmental gross receipts tax and leased vehicle gross receipts tax payable on transactions for the reporting period;

(c) taxes imposed pursuant to the provisions of any local option gross receipts tax that is payable on transactions for the reporting period;

(d) any gross receipts or sales taxes imposed by an Indian nation, tribe or pueblo; provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the interior of the United States; and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions;

(e) any type of time-price differential;

(f) amounts received solely on behalf of another in a disclosed agency capacity; and

(g) amounts received by a New Mexico florist from the sale of flowers, plants or other products that are customarily sold by florists where the sale is made pursuant to orders placed with an out-of-state florist for filling and delivery in New Mexico by a New Mexico florist.

B. When the sale of property or service is made under any type of charge, conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor may elect to treat all receipts, excluding any type of time-price differential, under such contracts as gross receipts as and when the payments are actually received. If the seller or lessor transfers the seller's or lessor's interest in any such contract to a third person, the seller or lessor shall pay the gross receipts tax upon the full sale or leasing contract amount, excluding any type of time-price differential.

History: 1978 Comp., § 7-9-3.5, enacted by Laws 2003, ch. 272, § 3; 2006, ch. 39, § 2; 2007, ch. 339, § 2.

## ANNOTATIONS

**Cross references.** — For the federal Mobile Telecommunications Sourcing Act, *see* 4 U.S.C.S. § 116 et seq.

**Compiler's notes.** — Laws 2003, ch. 272, § 3 originally enacted this section as 7-9-3.1 NMSA 1978. The section was renumbered by the compiler as 7-9-3.5 NMSA 1978.

**The 2007 amendment,** effective June 15, 2007, defined "gross receipts" to mean receipts from granting a right to use a franchise employed in New Mexico.

**The 2006 amendment,** effective July 1, 2006, provided in Paragraph (1) of Subsection A that gross receipts includes consideration received from licensing property employed in New Mexico.

## I. IN GENERAL.

**"Gross receipts"** means the total amount of money or the value of other considerations received from selling property or from performing services. N.M. Enters., Inc. v. Bureau of Revenue, 1974-NMCA-125, 86 N.M. 799, 528 P.2d 212.

**Selling property in New Mexico.** — The gross receipts tax only applies when the selling of property takes place within the borders of New Mexico. Kmart Corp. v. Taxation & Revenue Dep't., 2006-NMSC-006, 139 N.M. 172, 131 P.3d 22.

**Salaries and overhead of federal contractors not tax immune.** — As long as federal contractors are separate entities solely responsible for their own employees and internal management, salaries and overhead of those contractors are not obligations of the government, for purposes of tax immunity. United States v. New Mexico, 624 F.2d 111 (10th Cir. 1980), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Collection agencies gross receipts.** — A collection agency does not include the creditor's portion of the proceeds, nor the taxes it collects on behalf of the creditor, in calculating its commission proceeds, i.e., its gross receipts. Rather, a collection agency pays gross receipts tax only on the commission portion of the debt. The total tax imposed on the debt and charged to the debtor is simply the sum of the creditor's tax and the agency's tax. Martinez v. Albuquerque Collection Servs., Inc., 867 F. Supp. 1495 (D.N.M. 1994).

**Temporary staffing agencies' gross receipts.** — Temporary employee company was not excluded from paying tax on its gross receipts from clients to which it provided temporary staffing services; the receipts were taxable as reimbursements of payroll-related expenditure. MPC Ltd. v. N.M. Taxation & Revenue Dep't, 2003-NMCA-021, 133 N.M. 217, 62 P.3d 308.

## II. OUT-OF-STATE.

**Only activities within state taxable.** — The validity of the application of the gross receipts tax to general and administrative expense reimbursements depended on whether the tax was laid upon gross receipts derived from the contractors' activities within the borders of the state. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Work performed outside the state.** — If when they received reimbursements for general and administrative expenses contractors were being reimbursed for work (whether called "services" or by any other name) performed outside the state, New Mexico taxing authorities lack authority to tax those transactions. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Income accrues on an out-of-state transaction.** — Income which arises from a contract performed within the state but accrues upon a separable out-of-state transaction should be excluded from taxation as not being income arising from contracting within the state. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Mere accounting device will not avoid tax.** — Since all receipts resulted solely from the contractor's activities in the state and the general and administrative expense category appeared merely to be a cost accounting device, the entire amount of the receipts may be taxed by the state. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Apportionment between in-state and out-of-state activity does not arise** if the tax is levied only upon receipts resulting from the taxpayer's activities in New Mexico. Mountain States Adver., Inc. v. Bureau of Revenue, 1976-NMCA-058, 89 N.M. 331, 552 P.2d 233, cert. denied, 90 N.M. 8, 558 P.2d 620.

**Tax on foreign corporation's local business does not offend commerce clause.** — Gross receipts tax imposed on foreign corporation was conditioned on the local business of renting equipment located in the state. Therefore, the tax does not constitute an undue burden on interstate commerce but, on the contrary, was a tax on the taxpayers' local and intrastate business of leasing machinery. Besser Co. v. Bureau of Revenue, 1964-NMSC-169, 74 N.M. 377, 394 P.2d 141 (decided under prior gross receipts law).

**Taxing out-of-state sales impermissible.** — Tax levied on gross receipts from out-of-state sales of tangible personal property, in the nature of reproducible educational material, is an impermissible burden on commerce. Evco v. Jones, 409 U.S. 91, 93 S. Ct. 349, 34 L. Ed. 2d 325 (1972).

**Entire revenue from nonresident's display of signs in state taxable.** — Colorado corporation which displayed billboards made in Colorado by Colorado employees and whose only contact with New Mexico was the displaying of signs and using 10% of its cost in maintenance was held subject to this section for its entire revenue and not just its 10% cost of maintenance. Mountain States Adver., Inc. v. Bureau of Revenue, 1976-NMCA-058, 89 N.M. 331, 552 P.2d 233, cert. denied, 90 N.M. 8, 558 P.2d 620.

**Only value of property entering state taxed.** — Where tuition paid by New Mexico residents to a correspondence school based in Illinois covered materials valued at an average cost of $50 per student, and the remainder of the tuition covered the costs of grading, counseling and other services connected with the educational programs, virtually all of which services were performed in Illinois, it was held that only the value of the property entering New Mexico could be taxed as gross receipts of the school. Advance Schs., Inc. v. Bureau of Revenue, 1976-NMSC-007, 89 N.M. 79, 547 P.2d 562.

**Affirmative evidence needed to support use within state.** — When the corporation contracted with an out-of-state buyer provided for the corporation to destroy munitions, it was entitled to the gross receipts deduction, and the hearing officer could not properly determine that use or delivery took place within the state without some affirmative evidence in the record to support that conclusion. TPL, Inc. v. N.M. Taxation & Revenue Dep't, 2003-NMSC-007, 133 N.M. 447, 64 P.3d 474.

**Tax applicable to foreign franchisor.** — Although franchisor has no payroll, real property, personnel or offices located in this state, it does furnish signs which must be leased or purchased by its dealers, and its sales of tangible property and its granting of exclusive franchises constitute engaging in intrastate business in this state and the franchise fees received therefrom are subject to the gross receipts tax. AAMCO Transmissions v. Taxation & Revenue Dep't, 1979-NMCA-092, 93 N.M. 389, 600 P.2d 841, cert. denied, 93 N.M. 205, 598 P.2d 1165. (Superceded by statute, Sonic Indus., Inc. v. State, 2000-NMCA-087, 129 N.M. 657, 11 P.3d 1219.)

**Application of tax to franchise fees.** — The imposition of gross receipts tax on franchise fees received from this state's dealers does not violate the due process clause or commerce clause and is proper where the franchisor is in the business of selling franchises, developing and marketing parts, receiving its primary source of income from the sale of franchises, collecting a percentage of franchisee's gross receipts as a lease payment for use of the trademark and trade name and where its leased trademarks and trade names and their businesses are protected by the laws of this state; thus, franchisor is engaged in business in this state. AAMCO Transmissions v. Taxation & Revenue Dep't, 1979-NMCA-092, 93 N.M. 389, 600 P.2d 841, cert. denied, 93 N.M. 205, 598 P.2d 1165. (Superceded by statute, Sonic Indus., Inc. v. State, 2000-NMCA-087, 129 N.M. 657, 11 P.3d 1219.)

The 1991 amendment of Subsection J reclassifying licensing as selling did not alter whatever economic nexus existing between a foreign corporation and commercial activity carried on within New Mexico by its franchisees; therefore, fees paid to the corporation by New Mexico franchisees for the right to operate its restaurants located in New Mexico constituted receipts from selling property in New Mexico and were gross receipts within the meaning of Subsection F. Sonic Indus., Inc. v. State, 2000-NMCA-087, 129 N.M. 657, 11 P.3d 1219, *rev'd*, 2006-NMSC-038, 140 N.M. 212, 141 P.3d 1266.

**Tax applicable to foreign corporation.** — Although the taxpayer, a Delaware corporation, has no employees or offices located in this state, the taxpayer's most valuable assets, its trade name, trademark and related intangibles, are used in this state, taxpayer's secret formulas and techniques are utilized in this state and its method of business exploits the New Mexico market for taxpayer's benefit, taxpayer is engaged in business in New Mexico for purposes of gross receipts tax. Baskin-Robbins Ice Cream Co. v. Revenue Div., 1979-NMCA-098, 93 N.M. 301, 599 P.2d 1098 (decided under prior law).

## III. LEASES.

**Receipt of money from leasing of property is the incident** which gave rise to the imposition of the gross receipts and sales tax. Rust Tractor Co. v. Bureau of Revenue, 1970-NMCA-107, 82 N.M. 82, 475 P.2d 779, cert. denied, 82 N.M. 81, 475 P.2d 778.

**Property lease royalties are "gross receipts."** — When a taxpayer is leasing property in this state for which it receives royalties, the royalties are "gross receipts." Baskin-Robbins Ice Cream Co. v. Revenue Div., 1979-NMCA-098, 93 N.M. 301, 599 P.2d 1098 (decided under prior law).

**Gross receipts tax levied upon lessor of equipment, not user.** Co-Con, Inc. v. Bureau of Revenue, 1974-NMCA-134, 87 N.M. 118, 529 P.2d 1239, cert. denied, 87 N.M. 111, 529 P.2d 1232.

**Treating transactions as rentals for federal tax implies leasing arrangements.** — When a parent corporation and its 100%-owned subsidiary utilized certain items of equipment without regard to which held the legal title thereto, made accounting entries showing the machinery as either "receivable" or "liability," as appropriate, and treated the transactions as gross rentals for federal corporate income tax purposes, the intent of the taxpayers was to treat the arrangements as rentals or leases which were subject to gross receipts taxes. Co-Con, Inc. v. Bureau of Revenue, 1974-NMCA-134, 87 N.M. 118, 529 P.2d 1239, cert. denied, 87 N.M. 111, 529 P.2d 1232.

**Effect of Bingo and Raffle Act on lease.** — An arrangement between the owner of several properties used as bingo halls and the non-profit organizations who operated the bingo games was a lease and not a license where the organizations were required to pay rent, they were granted exclusive possession of certain facilities on the premises and the use of the facilities at certain times, and the owner could not revoke the agreement at will; although the arrangement was not a typical lease, restrictions in the Bingo and Raffle Act [60-2B-1 to 60-2B-14 NMSA 1978] accounted for the type of arrangement created and to deny that this was a lease would have made it impossible for bingo operators to enter arrangements that would qualify as leases. Quantum Corp. v. State Taxation & Revenue Dep't, 1998-NMCA-050, 125 N.M. 49, 956 P.2d 848 (decided under Bingo and Raffle Act, since repealed).

**Laundry transactions are leasings.** — Since the taxpayer's coin-operated laundry business is used for a consideration by persons other than the owner, the transactions are "leasings" as defined in Subsection J and the taxpayer is entitled to a deduction from compensating tax liability for the value of the washers and dryers. Strebeck Props., Inc. v. N.M. Bureau of Revenue, 1979-NMCA-035, 93 N.M. 262, 599 P.2d 1059.

**Franchisor's arrangements with its licensees** fall within definition of "leasing." American Dairy Queen Corp. v. Taxation & Revenue Dep't, 1979-NMCA-160, 93 N.M. 743, 605 P.2d 251 (decided under prior law).

**Granting of license.** — The 1991 amendments to this section clearly mandate a departure from treating the granting of a license as a lease to treating the granting of a license as a sale of a license. Kmart Corp. v. Taxation & Revenue Dep't., 2006-NMSC-006, 139 N.M. 172, 131 P.3d 22.

**Shelf-display contract receipts.** — Taxpayer's appeal of the hearing officer's decision and order upholding the department's assessments of a gross receipts tax and penalty was improper where she failed to overcome the statutory presumption that all receipts were taxable; the buy-down contract payments were reimbursements to the taxpayer for her sales loss incurred as a result of engaging in the discount promotions and the shelf-display contract receipts were taxable because those contracts bore a much greater resemblance to a license than to the creation and conveyance of an interest in real property that would have constituted a lease. Grogan v. N.M. Taxation & Revenue Dep't, 2003-NMCA-033, 133 N.M. 354, 62 P.3d 1236, cert. denied, 133 N.M. 413, 63 P.3d 516.

## IV. TIME-PRICE DIFFERENTIAL.

**To be taxable must be bargained for before work finished.** — In order to be taxable as a "time-price differential sale," the money in question must have been bargained for before the contract work was rendered and the final invoice delivered, and when taxpayer accepted a promissory note secured by a mortgage after it had completed its work, the additional money paid on the note was in the nature of interest and could not be characterized as "time-price" for the purposes of this section and therefore the tax as imposed by the bureau was inapplicable. Co-Con, Inc. v. Bureau of Revenue, 1974-NMCA-134, 87 N.M. 118, 529 P.2d 1239, cert. denied, 87 N.M. 111, 529 P.2d 1232 (decided under prior law).

**Time-price differential sale not taxed if no part of which was gross receipt.** — Taxpayer was not liable for state and municipal gross receipts taxes on time-price differential of installment sales contract sold to financial institution since no part of time-price differential was a "gross receipt" under the statute chargeable to taxpayer. Davis v. Comm'r of Revenue, 1971-NMCA-129, 83 N.M. 152, 489 P.2d 660, cert. denied, 83 N.M. 151, 489 P.2d 659 (decided prior to the 1972 amendment which changed Subsection F's treatment of time-price differential arrangements).

**Fees taxable even if not approved by court.** — Taxpayer was liable for the gross receipts tax assessed against fees actually received and used by the taxpayer, although the fees had not been approved by the bankruptcy court. Lopez v. N.M. Dep't of Taxation & Revenue, 1997-NMCA-115, 124 N.M. 270, 949 P.2d 284, cert. denied, 124 N.M. 311, 950 P.2d 284.

## V. AGENTS.

**"Dealer concessions"** retained from mutual fund transactions fall within the terms "commissions or fees" as used in this section. Rauscher, Pierce, Refsnes, Inc. v. Taxation & Revenue Dep't, 2002-NMSC-013, 132 N.M. 226, 46 P.3d 687.

**No agency when purchases for others merely incidental to work.** — Carpenter was not liable for assessment of gross receipts tax on purchases of materials since he did not receive any commissions or fees, but acted merely as an agent for his customers, and the purchases were merely incidental to his work as a carpenter. Stohr v. N.M. Bureau of Revenue, 1976-NMCA-118, 90 N.M. 43, 559 P.2d 420, cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977).

**No agency when purchaser consultant to client-buyers.** — When taxpayer, engaged in the business of management consultation, supervision and administration for motels, bought large quantities of tangible personal property at wholesale and sold them to its clients without additional cost or profit, the taxpayer was not a factor, agent or broker for its motel clients and was taxable for the total amount of money received from its sale to the motel clients of the tangible personal property under the Gross Receipts and Compensating Tax Act. N.M. Enters., Inc. v. Bureau of Revenue, 1974-NMCA-125, 86 N.M. 799, 528 P.2d 212.

**Term "broker"** as used in this section includes a person selling securities on behalf of others. Rauscher, Pierce, Refsnes, Inc. v. Taxation & Revenue Dep't, 2002-NMSC-013, 132 N.M. 226, 46 P.3d 687.

## 7-9-4. Imposition and rate of tax; denomination as "gross receipts tax".

A. For the privilege of engaging in business, an excise tax equal to five and one-eighth percent of gross receipts is imposed on any person engaging in business in New Mexico.

B. The tax imposed by this section shall be referred to as the "gross receipts tax".

History: 1953 Comp., § 72-16A-4, enacted by Laws 1966, ch. 47, § 4; 1969, ch. 144, § 2; 1978, ch. 151, § 2; 1981, ch. 37, § 9; 1983, ch. 213, § 15; 1986, ch. 20, § 63; 1990 (1st S.S.), ch. 1, § 2; 2010 (2nd S.S.), ch. 7, § 9.

**ANNOTATIONS**

**Cross references.** — For exemptions from the gross receipts tax, *see* 7-9-12 NMSA 1978.

For deductions from the gross receipts tax, *see* 7-9-45 NMSA 1978.

**The 2010 (2nd S.S.) amendment,** effective July 1, 2010, in Subsection A, after "excise tax equal to five", added "and one-eighth".

**The 1990 amendment,** effective July 1, 1990, substituted "five percent" for "four and three-fourths percent" in Subsection A.

## I. GENERAL CONSIDERATION.

**Reasonable tax classifications not unconstitutional.** — It is for the legislature to adopt classifications for the imposition of excise taxes as it may deem proper and any reasonable classification cannot be held to deny equal protection or due process. Edmunds v. Bureau of Revenue, 1958-NMSC-112, 64 N.M. 454, 330 P.2d 131.

**Legislature's method of imposing gross receipts and compensating tax reasonable.** — The legislature's selection of the vendor for imposition of the school tax (gross receipts tax since repealed) and of the purchaser for imposition of the former compensating tax was reasonable in view of the impossibility of subjecting a nonresident vendor - one who was out of the territorial jurisdiction of the legislature - to the school tax. Edmunds v. Bureau of Revenue, 1958-NMSC-112, 64 N.M. 454, 330 P.2d 131.

**Legislative failure to protect resident-vendor not unconstitutional.** — The failure of the legislature to protect resident-vendor against the unfair competition of importations into New Mexico, without the payment of a sales tax, of chemical reagents did not offend the constitutions of either the United States or of New Mexico so as to invalidate the school tax against him. Edmunds v. Bureau of Revenue, 1958-NMSC-112, 64 N.M. 454, 330 P.2d 131 (decided under former law).

**Standard of review on appeal.** — Department's gross receipts tax assessment can only be reversed by the court of appeals if arbitrary or capricious, or there is an abuse of discretion, such that the assessment is not supported by substantial evidence or it is otherwise not in accordance with law. ITT Educ. Serv. v. Taxation & Revenue Dep't, 1998-NMCA-078, 125 N.M. 244, 959 P.2d 969.

## II. APPLICABILITY.

**Legal incidence of gross receipts tax on seller.** — The statutory language of 7-9-3F NMSA 1978 and this section places the legal incidence of the gross receipts tax on the seller. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Incidence of tax on contractors selling services to United States.** — The legal incidence of the gross receipts tax was on contractors as sellers of services to the United States, not on the federal government. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Tax valid since contractors not agents of United States.** — Since contracts did not authorize contractors to act as agents of the United States in purchasing supplies and materials, application of the gross receipts tax to the contractual transactions for

materials and supplies was not unconstitutional. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Tax valid even though increases government's contract costs.** — That the gross receipts tax may increase cost on a contract to the government does not invalidate the tax on the grounds that a state may not directly tax the federal government since its legal incidence falls elsewhere. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Agency exemption.** — Money received by the taxpayer, a property management company, from the property owner as reimbursement for on-site employee expenses was not taxable as gross receipts, because the taxpayer was an agent for the property owner for the purpose of employing and paying the on-site employees employed at the owners property. Carlsberg Mgt. Co. v. State Taxation & Revenue Dep't, 1993-NMCA-121, 116 N.M. 247, 861 P.2d 288, but *see* 7-9-3.5 NMSA 1978, which now excludes from tax receipts received solely on behalf of another in a disclosed agency capacity.

**If bank can pass tax on, it is not real taxpayer.** — Since services of maintaining and processing other banks' accounts were not reasonably necessary or incidental to business or functions of national banking association, New Mexico was not prevented by federal law from levying gross receipts tax on association's receipts collected for said services and association could pass tax on to banks for which it performed services and was therefore not the real taxpayer. First Nat'l Bank v. Commissioner of Revenue, 1969-NMCA-090, 80 N.M. 699, 460 P.2d 64, cert. denied, 80 N.M. 707, 460 P.2d 72, appeal dismissed, 397 U.S. 661, 90 S. Ct. 1407, 25 L. Ed. 2d 643 (1970).

**Gross receipts tax may be constitutionally imposed on contractor doing work on Indian reservation** in the state if there is no imposition on the sovereignty of the United States or infringement of the Indian tribe's right to self-government. Tiffany Constr. Co. v. Bureau of Revenue, 1981-NMSC-057, 96 N.M. 296, 629 P.2d 1225.

**Gross receipts tax upon non-Indians working on reservations valid.** — When the gross receipts tax levied upon non-Indians working on state reservations is nondiscriminatory and does not preclude a possible similar tax by a tribe on activities conducted on its reservation, the Indian right to self-government is not impaired and the tax is valid. Mescalero Apache Tribe v. O'Cheskey, 625 F.2d 967 (10th Cir. 1980), cert. denied, 450 U.S. 959, 101 S. Ct. 1417, 67 L. Ed. 2d 383 (1981), reh'g denied, 455 U.S. 929, 102 S. Ct. 1296, 71 L. Ed. 2d 474; 459 U.S. 1025, 103 S. Ct. 393, 74 L. Ed. 2d 522 (1982).

**If tax ultimately falls on tribal organization.** — If the economic burden of the gross receipts tax ultimately falls on a tribal organization, even though the legal incidence of the tax falls on the non-Indian contractor with whom the organization contracted to build an Indian school, the imposition of the tax impermissibly impedes the clearly expressed federal interest in promoting the quality and quantity of educational opportunities for Indians by depleting the funds available for the construction of Indian schools. Ramah

Navajo Sch. Bd., Inc. v. Bureau of Revenue, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

**Federal regulatory scheme and policy.** — The comprehensive federal regulatory scheme and the express federal policy of encouraging tribal self-sufficiency in the area of education preclude the imposition of the state gross receipts tax on the construction of school facilities on tribal lands pursuant to a contract between a tribal organization and a non-Indian contracting firm. Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

**Sale of cigarettes to non-Indians on Indian reservation.** — Non-Indian did not have a valid agency relationship with an Indian, so as to bar the imposition of gross receipts taxes on the sale of cigarettes to non-Indians on an Indian reservation, since the Indian made no financial contribution to the commencement or operation of the business and all decision-making was in the hands of the taxpayer. Bien Mur Indian Mkt. Ctr., Inc. v. Taxation & Revenue Dep't, 1988-NMCA-104, 108 N.M. 355, 772 P.2d 885, *rev'd on other grounds*, 108 N.M. 228, 770 P.2d 873 (1989).

**Federal preemption for services rendered Indians.** — District court properly ordered state tax agency to refund gross receipts taxes paid by a private contractor on services performed on an Indian reservation for a corporation owned by an Indian tribe, in light of the fact that the Indian trader statutes, 25 U.S.C. §§ 261-264 preempted the agency's authority to impose such a tax since the federal trader statutes included services under the scope of "trade". Laguna Indus., Inc. v. N.M. Taxation & Revenue Dep't, 1992-NMCA-109, 114 N.M. 644, 845 P.2d 167, *aff'd sum nom.* N.M. Taxation & Revenue Dep't v. Laguna Indus., Inc., 1993-NMSC-025, 115 N.M. 553, 855 P.2d 127.

**Receipts from horse races not exempt.** — The legislature, in enacting the Gross Receipts Tax Act, did not intend to exempt receipts from horse races. There is neither ambiguity nor doubt that the language used in the Gross Receipts Tax Act applies to the receipts of a horse owner paid to him for a winning purse and the receipts of a horse trainer paid to him as his percentage of a winning purse. Till v. Jones, 1972-NMCA-046, 83 N.M. 743, 497 P.2d 745, cert. denied, 83 N.M. 740, 497 P.2d 742. See Section 7-9-40 NMSA 1978 which now exempts receipts from horse race purses.

**Construction work incidental to "severing" not subject to receipts tax.** — The exemption provided by 7-9-35 NMSA 1978 applied since "severing" was taking place as the development work was performed and none of taxpayer's work was preliminary to or preparatory for "severing"; therefore, receipts from development work, which includes construction, were exempted from the gross receipts tax and taxable under the service tax (resources excise tax) when such construction work was incidental to the "severing." Patten v. Bureau of Revenue, 1974-NMCA-051, 86 N.M. 355, 524 P.2d 527.

**Pawnbroker's receipts from sales of pawned chattel** were not exempt or deductible from gross receipts tax as the recoupment of principal, interest, and handling charges attendant to the initial loan transaction. Wing Pawn Shop v. Taxation & Revenue Dep't,

1991-NMCA-024, 111 N.M. 735, 809 P.2d 649 (decided on facts existing prior to enactment of Pawnbrokers Act, 56-12-1 NMSA 1978 et seq.)

**Collection agencies gross receipts.** — A collection agency does not include the creditor's portion of the proceeds, nor the taxes it collects on behalf of the creditor, in calculating its commission proceeds, i.e., its gross receipts. Rather, a collection agency pays gross receipts tax only on the commission portion of the debt. The total tax imposed on the debt and charged to the debtor is simply the sum of the creditor's tax and the agency's tax. Martinez v. Albuquerque Collection Servs., Inc., 867 F. Supp. 1495 (D.N.M. 1994).

**Nationwide school operating location in state.** — Nationwide technical-vocational school operating a location in New Mexico is subject to the gross receipts tax; the taxable base includes tuition receipts from students in New Mexico for curriculum development, financial aid services, and job placement services. ITT Educ. Serv. v. Taxation & Revenue Dep't, 1998-NMCA-078, 125 N.M. 244, 959 P.2d 969.

**Fees of management service company.** — Fees paid to a hospital management services company as reimbursement for salaries and expenses of management personnel provided by the company were subject to the gross receipts tax. Brim Healthcare, Inc. v. State Taxation & Revenue Dep't, 1995-NMCA-055, 119 N.M. 818, 896 P.2d 498 (decided under prior law).

## III. OUT-OF-STATE.

**A substantial nexus was created through activities of a sister corporation.** — Where taxpayer had no physical presence in New Mexico other than through stores in New Mexico owned by a sister corporation; and the sister corporation promoted taxpayer through sales of gift cards that were redeemable at taxpayer and that displayed taxpayer's web address, shared customer's email addresses with taxpayer, sold memberships in a shared loyalty program that gave customers a discount on purchases from taxpayer, accepted returns from taxpayer's customers in exchange for store credit which policy taxpayer advertised to its customers, and used the parent corporation's trademark which taxpayer also used, the sister corporation's activities in New Mexico on behalf of taxpayer were significantly associated with taxpayer's ability to establish and maintain a market for its sales in New Mexico and were sufficient to create a substantial nexus between taxpayer and New Mexico which permitted New Mexico to a impose the gross receipts tax on taxpayer's sales to customers in New Mexico without offending the federal Commerce Clause. N.M. Taxation & Revenue Dep't v. Barnesandnoble.com, L.L.C., 2013-NMSC-023, *aff'g* 2012-NMCA-063, 283 P.3d 298.

**Use of a trademark to establish a market in New Mexico creates a substantial nexus.** — Where taxpayer was engaged in the business of selling books online; taxpayer did not own or lease property in New Mexico and did not have retail stores or sales agents or employees in New Mexico; taxpayer's parent corporation had three

bookstores in New Mexico that used the parent corporation's trademark; taxpayer used the trademark on its website; and the stores sold gift cards that could be redeemed at the stores or through the taxpayer's website and loyalty program memberships that entitled customers to discounts at the stores or through taxpayer's website, taxpayer's use of shared marketing, name recognition and trademarks established a market for taxpayer in New Mexico which created a substantial nexus between taxpayer and New Mexico sufficient to support the imposition of the gross receipts tax on taxpayer. N.M. Taxation & Revenue Dep't v. Barnesandnoble.com, LLC, 2012-NMCA-063, 283 P.3d 298, cert. granted, 2012-NMCERT-006.

**Destination principle.** — The destination principle, which taxes the sale or use of goods that cross state lines at their destination, applies to determine whether an interstate transaction is a taxable sale under the New Mexico gross receipts tax laws. Dell Catalog Sales, L.P. v. Taxation and Revenue Dept., 2009-NMCA-001, 145 N.M. 419, 199 P.3d 863, cert. denied, 2008-NMCERT-007, cert. denied, 129 S. Ct. 1616, 173 L.Ed.2d 1030.

**Where the taxpayer sold computers by mail, telephone and internet orders from its facilities in Texas to New Mexico customers;** the taxpayer did not own or lease property in New Mexico; the taxpayer did not have retail stores, sales agents or employees in New Mexico; title to the computers transferred from the taxpayer to the customer upon shipment from the taxpayer's facility in Texas; and the taxpayer retained the risk of loss until delivery; and the computers were shipped by common carrier selected by the taxpayer, the taxpayer's activities constituted taxable sales in New Mexico because the actual consumption and use of the computers occurred in New Mexico. Dell Catalog Sales, L.P. v. Taxation and Revenue Dept., 2009-NMCA-001, 145 N.M. 419, 199 P.3d 863, cert. denied, 2008-NMCERT-007, cert. denied, 129 S. Ct. 1616, 173 L.Ed.2d 1030.

**Substantial nexus.** — Where the taxpayer sold computers by mail, telephone, and internet orders from its facilities in Texas to New Mexico customers; the taxpayer did not own or lease property in New Mexico; the taxpayer did not have retail stores, sales agents or employees in New Mexico; the taxpayer contracted with a third party to provide in-home service repairs on the computers in New Mexico; and the non-sales activities of the third party in New Mexico were an important factor in establishing and maintaining a market for the taxpayer's computers, the taxpayer had a substantial nexus with New Mexico and the imposition of gross receipts tax on the taxpayer did not violate the Commerce Clause. Dell Catalog Sales, L.P. v. Taxation and Revenue Dept., 2009-NMCA-001, 145 N.M. 419, 199 P.3d 863, cert. denied, 2008-NMCERT-007, cert. denied, 129 S. Ct. 1616, 173 L.Ed.2d 1030.

**Mere contracts are not commerce** at all, neither intrastate nor interstate. Baskin-Robbins Ice Cream Co. v. Revenue Div., 1979-NMCA-098, 93 N.M. 301, 599 P.2d 1098.

**Tax on items in interstate commerce to be fair and nondiscriminatory.** — To be sustained against a claim that a state-imposed tax runs afoul of the commerce clause of the federal constitution, a tax upon items connected with interstate commerce must: (1) be applied to an activity with a substantial nexus with the taxing state; (2) be fairly apportioned; (3) not discriminate against interstate commerce; and (4) be fairly related to the services provided by the state. Pittsburgh & Midway Coal Mining Co. v. Revenue Div., 1983-NMCA-019, 99 N.M. 545, 660 P.2d 1027, appeal dismissed, 464 U.S. 923, 104 S. Ct. 323, 78 L. Ed. 2d 296 (1983).

**New Mexico may not tax income and gross receipts of Indians** residing on a reservation when the income and gross receipts involved are derived solely from activities within the reservation. Hunt v. O'Cheskey, 1973-NMSC-068, 85 N.M. 388, 512 P.2d 961.

**Tax on gross receipts from sales in other states unconstitutional.** — Tax levied on the gross receipts from the sales of tangible personal property in another state is an impermissible burden on commerce. Evco v. Jones, 409 U.S. 91, 93 S. Ct. 349, 34 L. Ed. 2d 325 (1972).

**Place services rendered.** — To determine whether receipts from services are subject to gross receipts tax, the focus must be on what services the customers are contracting for and where those services are taking place. Simply because activity necessary to complete the services takes place out-of-state does not mean that the services provided are immune from New Mexico's gross receipts tax. Rauscher, Pierce, Refsnes, Inc. v. Taxation & Revenue Dep't, 2000-NMCA-065, 129 N.M. 404, 9 P.3d 648, affz'd 2002-NMSC-013, 132 N.M. 226, 46 P.3d 687.

**Tax incurred at point of retail sale.** — Where utilities retail their electrical energy through interstate lines only to consumers in Arizona, for that reason they incur no liability to New Mexico for its gross receipts tax, which is incurred at the point of retail sale. Arizona v. New Mexico, 425 U.S. 794, 96 S. Ct. 1845, 48 L. Ed. 2d 376 (1976).

**Discrimination between broadcast and outdoor advertising held rational.** — When regulations exempted broadcasting advertisement displayers in New Mexico from the tax imposed upon taxpayer (operator of a billboard service), there was discrimination in the treatment of these different media forms, but the burden was upon the taxpayer to negative every conceivable basis which might support the discriminatory classification, because of the implied rational basis underlying every tax statute, i.e., that the state has the right, power and duty to raise the necessary funds for its public purposes, and it was held that there was a rational basis for the state to discriminate between the broadcast industry and the outdoor advertising industry in the taxation of displays of national messages. Markham Adver. Co. v. Bureau of Revenue, 1975-NMCA-071, 88 N.M. 176, 538 P.2d 1198, cert. denied, 88 N.M. 318, 540 P.2d 248.

**Since broadcasters generally engage in interstate transmission of their messages,** and even if broadcasts by smaller stations might not always cross interstate

lines, yet the potential exists for radio and television waves to deliver transitory, interstate communications, for this reason, national advertising by local broadcasting stations has long been held exempt from state taxation. Markham Adver. Co. v. Bureau of Revenue, 1975-NMCA-071, 88 N.M. 176, 538 P.2d 1198, cert. denied, 88 N.M. 318, 540 P.2d 248.

**While billboard advertising takes place only in state.** — Taxpayer's service of posting messages for national companies on billboards located in New Mexico was being taxed for displaying an activity taking place only in this state and not for advertising; thus it was intrastate in character, and the gross receipts tax imposed on it did not constitute an undue burden on interstate commerce in violation of the federal constitution. Markham Adver. Co. v. Bureau of Revenue, 1975-NMCA-071, 88 N.M. 176, 538 P.2d 1198, cert. denied, 88 N.M. 318, 540 P.2d 248.

**If multiple taxation shown, tax would likely be unconstitutional.** — The activities of taxpayer, situated and performing services (posting billboards) in New Mexico, were not within the taxing authority of any other state, and therefore no multiple taxation was possible; the instant tax could be declared invalid upon a showing by the taxpayer that multiple taxation would be likely to result and would be likely to unduly burden interstate commerce, but neither showing was made, and therefore, no basis was demonstrated upon which a claim of potential multiple taxation as to this taxpayer could be found. Markham Adver. Co. v. Bureau of Revenue, 1975-NMCA-071, 88 N.M. 176, 538 P.2d 1198, cert. denied, 88 N.M. 318, 540 P.2d 248.

**Traffic between states absent in franchise agreement.** — If none of the "activities" of the franchise agreement are serviced by mail, telephone correspondence or by any employees of taxpayer, no intercourse or traffic between this state and another is found. Baskin-Robbins Ice Cream Co. v. Revenue Div., 1979-NMCA-098, 93 N.M. 301, 599 P.2d 1098.

**Tax constitutional on coal sales to out-of-state buyers.** — The imposition of gross receipt taxes on proceeds from the sales of coal to out-of-state buyers does not impermissibly interfere with the commerce clause of the federal constitution. Pittsburgh & Midway Coal Mining Co. v. Revenue Div., 1983-NMCA-019, 99 N.M. 545, 660 P.2d 1027, appeal dismissed, 464 U.S. 923, 104 S. Ct. 323, 78 L. Ed. 2d 296.

**Tax applicable to foreign franchisor.** — Because franchisor has no payroll, real property, personnel or offices located in this state, but it does furnish signs which must be leased or purchased by its dealers, its sales of tangible property and its granting of exclusive franchises constitute engaging in intrastate business in this state, and the franchise fees received therefrom are subject to the gross receipts tax. AAMCO Transmissions v. Taxation & Revenue Dep't, 1979-NMCA-092, 93 N.M. 389, 600 P.2d 841, cert. denied, 93 N.M. 205, 598 P.2d 1165 (superceded by statute, Sonic Indus., Inc. v. State, 2000-NMCA-087, 129 N.M. 657, 11 P.3d 1219).

**Tax applicable to franchise fees.** — The imposition of gross receipts tax on franchise fees received from this state's dealers does not violate the due process clause or commerce clause and is proper since the franchisor is in the business of selling franchises, developing and marketing parts, receiving its primary source of income from the sale of franchises, collecting a percentage of franchisee's gross receipts as a lease payment for use of the trademark and trade name and where its leased trademarks and trade names and their businesses are protected by the laws of this state; thus, franchisor is engaged in business in this state. AAMCO Transmissions v. Taxation & Revenue Dep't, 1979-NMCA-092, 93 N.M. 389, 600 P.2d 841, cert. denied, 93 N.M. 205, 598 P.2d 1165 (superceded by statute, Sonic Indus., Inc. v. State, 2000-NMCA-087, 129 N.M. 657, 11 P.3d 1219).

**Foreign corporation's opinions sent to foreign clients not taxable.** — Opinions by an Oklahoma corporation concerning subsurface geological formations of the earth's crust beneath New Mexico delivered to clients in Oklahoma and other states were not in intrastate commerce in New Mexico and the income from such opinions was not taxable in New Mexico. Seismograph Serv. Corp. v. Bureau of Revenue, 1956-NMSC-028, 61 N.M. 16, 293 P.2d 977.

**Law reviews.** — For comment, "Taxation of National Banks: A Novel Approach in the New Mexico Courts," see 10 Nat. Resources J. 615 (1970).

For article, "The Deductibility for Federal Income Tax Purposes of the New Mexico Gross Receipts Tax Paid on the Purchase of a Newly Constructed Home," see 13 N.M.L. Rev. 625 (1983).

## 7-9-4.1, 7-9-4.2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 41, § 10 repealed 7-9-4.1 NMSA 1978, as enacted by Laws 1986, ch. 20, § 67, a temporary provision relating to a credit to be deducted from the gross receipts tax, effective July 1, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

Laws 1994, ch. 45, § 8A repealed 7-9-4.2 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 1, § 3, relating to a temporary credit for the gross receipts tax, effective July 1, 1994. For provisions of former section, *see* the 1993 NMSA 1978 on *NMOneSource.com.*

## 7-9-4.3. Imposition and rate of tax; denomination as "governmental gross receipts tax".

For the privilege of engaging in certain activities by governments, there is imposed on every agency, institution, instrumentality or political subdivision of the state, except any school district and any entity licensed by the department of health that is principally

engaged in providing health care services, an excise tax of five percent of governmental gross receipts. The tax imposed by this section shall be referred to as the "governmental gross receipts tax".

**History:** 1978 Comps., § 7-9-4.1, enacted by Laws 1991, ch. 8, § 2; 1992, ch. 49, § 1; 1992, ch. 100, § 2; 1993, ch. 332, § 1; 1993, ch. 352, § 1.

**ANNOTATIONS**

**Compiler's notes. —** Laws 1991, ch. 8, § 2 enacted this section as 7-9-4.1 NMSA 1978, but, since a section with that code number had already been enacted, this section was compiled as 7-9-4.3 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, inserted "school district and any" in the first sentence. Laws 1993, ch. 332, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 1993, ch. 352, § 1. *See* 12-1-8 NMSA 1978.

**The 1992 amendment,** effective July 1, 1992, substituted all of the present language of the first sentence beginning with "every agency" for "the state of New Mexico and any agency, institution, instrumentality, or political subdivision thereof an excise tax of five percent of governmental gross receipts". This section was also amended by Laws 1992, ch. 49, § 1. The section was set out as amended by Laws 1992, ch. 100, § 2. *See* 12-1-8 NMSA 1978.

## 7-9-5. Presumption of taxability.

A. To prevent evasion of the gross receipts tax and to aid in its administration, it is presumed that all receipts of a person engaging in business are subject to the gross receipts tax. Any person engaged solely in transactions specifically exempt under the provisions of the Gross Receipts and Compensating Tax Act shall not be required to register or file a return under that act.

B. If receipts from nontaxable charges for mobile telecommunications services are aggregated with and not separately stated from taxable charges for mobile telecommunications services, then the charges for nontaxable mobile telecommunications services shall be subject to gross receipts tax unless the home service provider can reasonably identify nontaxable charges in its books and records that are kept in the regular course of business. For the purposes of this subsection, "charges for mobile telecommunications services", "home service provider" and "mobile telecommunications services" have the meanings given in the federal Mobile Telecommunications Sourcing Act.

**History:** 1953 Comp., § 72-16A-5, enacted by Laws 1966, ch. 47, § 5; 2002, ch. 18, § 3.

## ANNOTATIONS

**Compiler's notes.** — The phrase "this act", referred to in this section, means Laws 1966, ch. 47, which is compiled as in 7-9-1, 7-9-2, 7-9-4 - 7-9-11, 7-9-43, 7-9-77, 7-9-79, and 7-9-81 NMSA 1978.

**Cross references.** — For the federal Mobile Telecommunications Sourcing Act, *see* 4 U.S.C.S. § 116 et seq.

**The 2002 amendment,** effective August 1, 2002, added the Subsection A designation; made a minor stylistic change in Subsection A; and added Subsection B.

**Taxpayer must prove deduction proper.** — Any assessment of taxes by the Taxation and Revenue Department is presumed to be correct and, in protesting the assessment of taxes, taxpayer has the burden of proving the deductions were proper. In reviewing, courts will reverse the Department's decision only if it is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, or not supported by substantial evidence. Arco Materials, Inc. v. State Taxation & Revenue Dep't, 1994-NMCA-062, 118 N.M. 12, 878 P.2d 330, *rev'd on other grounds sub nom.* Blaze Constr. Co. v. Taxation & Revenue Dep't, 1994-NMSC-110, 118 N.M. 647, 884 P.2d 803, cert. denied, 514 U.S. 1016, 115 S. Ct. 1359, 131 L. Ed. 2d 216 (1995).

**Gross receipts to owner and trainer from horse races taxable.** — The legislature, in enacting the Gross Receipts Tax Act, did not intend to exempt receipts from horse races. There is neither ambiguity nor doubt that the language used in the Gross Receipts Tax Act applies to the receipts of a horse owner paid to him for a winning purse and the receipts of a horse trainer paid to him as his percentage of a winning purse. Till v. Jones, 1972-NMCA-046, 83 N.M. 743, 497 P.2d 745, cert. denied, 83 N.M. 740, 497 P.2d 742. See Section 7-9-40 NMSA 1978 which now exempts receipts from horse race purses.

**Application of presumption.** — A hearing officer's interpretation of the term "broker" and the Court of Appeals' affirmance of that interpretation is viewed in light of the presumption that "all receipts of a person engaging in business are subject to the gross receipts tax" under the provisions of this section. Rauscher, Pierce, Refsnes, Inc. v. Taxation & Revenue Dep't, 2002-NMSC-013, 132 N.M. 226, 46 P.3d 687.

**Evidence required.** — When the corporation contracted with an out-of-state buyer for the corporation to destroy munitions, it was entitled to the gross receipts deduction, and the hearing officer could not properly determine that use or delivery took place within the state without some affirmative evidence in the record to support that conclusion. TPL, Inc. v. N.M. Taxation & Revenue Dep't, 2003-NMSC-007, 133 N.M. 447, 64 P.3d 474.

**Nationwide school operating location in state.** — Nationwide technical-vocational school operating a location in New Mexico is subject to the gross receipts tax; the

taxable base includes tuition receipts from students in New Mexico for curriculum development, financial aid services, and job placement services. ITT Educ. Serv. v. Taxation & Revenue Dep't, 1998-NMCA-078, 125 N.M. 244, 959 P.2d 969.

**Standard of review on appeal.** — Department's gross receipts tax assessment can only be reversed by the court of appeals if arbitrary or capricious or there is an abuse of discretion, such that it is not supported by substantial evidence or it is otherwise not in accordance with law. ITT Educ. Serv. v. Taxation & Revenue Dep't, 1998-NMCA-078, 125 N.M. 244, 959 P.2d 969.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Reusable soft drink bottles as subject to sales or use taxes, 97 A.L.R.3d 1205.

## 7-9-6. Separately stating the gross receipts tax.

When the gross receipts tax is stated separately on the books of the seller or lessor, and if the total amount of tax that is stated separately on transactions reportable within one reporting period is in excess of the amount of gross receipts tax otherwise payable on the transactions on which the tax was stated separately, the excess amount of tax stated on the transactions within that reporting period shall be included in gross receipts.

**History:** 1953 Comp., § 72-16A-6, enacted by Laws 1966, ch. 47, § 6; 1970, ch. 28, § 1.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Reusable soft drink bottles as subject to sales or use taxes, 97 A.L.R.3d 1205.

## 7-9-7. Imposition and rate of tax; denomination as "compensating tax".

A. For the privilege of using tangible property in New Mexico, there is imposed on the person using the property an excise tax equal to five and one-eighth percent of the value of tangible property that was:

(1) manufactured by the person using the property in the state;

(2) acquired inside or outside of this state as the result of a transaction with a person located outside this state that would have been subject to the gross receipts tax had the tangible personal property been acquired from a person with nexus with New Mexico; or

(3) acquired as the result of a transaction that was not initially subject to the compensating tax imposed by Paragraph (2) of this subsection or the gross receipts tax

but which transaction, because of the buyer's subsequent use of the property, should have been subject to the compensating tax imposed by Paragraph (2) of this subsection or the gross receipts tax.

B. For the purpose of Subsection A of this section, value of tangible property shall be the adjusted basis of the property for federal income tax purposes determined as of the time of acquisition or introduction into this state or of conversion to use, whichever is later. If no adjusted basis for federal income tax purposes is established for the property, a reasonable value of the property shall be used.

C. For the privilege of using services rendered in New Mexico, there is imposed on the person using such services an excise tax equal to five percent of the value of the services at the time they were rendered. The services, to be taxable under this subsection, must have been rendered as the result of a transaction that was not initially subject to the gross receipts tax but which transaction, because of the buyer's subsequent use of the services, should have been subject to the gross receipts tax.

D. The tax imposed by this section shall be referred to as the "compensating tax".

History: 1953 Comp., § 72-16A-7, enacted by Laws 1966, ch. 47, § 7; 1969, ch. 144, § 3; 1978, ch. 151, § 3; 1981, ch. 37, § 10; 1983, ch. 213, § 16; 1986, ch. 20, § 64; 1990 (1st S.S.), ch. 1, § 4; 1993, ch. 31, § 2; 1995, ch. 50, § 1; 2010 (2nd S.S.), ch. 7, § 10; 2011, ch. 175, § 1.

## ANNOTATIONS

**The 2011 amendment,** effective June 17, 2011, imposed the compensating tax on property acquired inside or outside New Mexico.

**The 2010 (2nd S.S.) amendment,** effective July 1, 2010, in Subsection A, in the introductory sentence, added "and one-eighth"; and in Subsection A(2), after "acquired", added "as a result of a transaction with a person located"; after "outside this state", deleted "as the result of a transaction"; and after "gross receipts tax had", deleted "it occurred within this state" and added the remainder of the sentence.

**The 1995 amendment,** effective July 1, 1995, designated the former second paragraph of Subsection A as Subsection B and rewrote the provision which read "For the purpose of this subsection Value of tangible property shall be determined as of the time of acquisition or introduction into this state or of conversion to use, whichever is later", and redesignated former Subsections B and C as Subsections C and D.

**The 1993 amendment,** effective July 1, 1993, in Subsection A, inserted "tangible" preceding "property" in three places and substituted "using the property" for "using property" in the introductory paragraph.

**The 1990 amendment,** effective July 1, 1990, substituted "five percent" for "four and three-fourths percent" in the introductory paragraph of Subsection A and in the first sentence of Subsection B.

**Distribution of sales catalogues. —** Where the taxpayer sold computers by mail, telephone, and internet orders from its facilities in Texas to New Mexico customers; the taxpayer created, printed and prepared catalogues outside New Mexico and mailed the catalogues from outside New Mexico to potential New Mexico customers; and the taxpayer retained the right to determine where and how the catalogues were distributed in New Mexico, the taxpayer's distribution of sales catalogues in New Mexico constituted a use of the catalogues in New Mexico and was subject to the compensating tax. Dell Catalog Sales, L.P. v. Taxation and Revenue Dept., 2009-NMCA-001, 145 N.M. 419, 199 P.3d 863, cert. denied, 2008-NMCERT-007, cert. denied, 129 S. Ct. 1616, 173 L.Ed.2d 1030.

**The use or compensating tax is an excise tax** and not an ad valorem tax. Robert E. McKee, Gen. Contractor Inc. v. Bureau of Revenue, 1957-NMSC-082, 63 N.M. 185, 315 P.2d 832 (decided under former law).

**Any reasonable tax classification constitutional. —** It is for the legislature to adopt classifications for the imposition of excise taxes as it may deem proper and any reasonable classification cannot be held to deny equal protection or due process. Edmunds v. Bureau of Revenue, 1958-NMSC-112, 64 N.M. 454, 330 P.2d 131 (decided under former law).

**"Compensating tax" and nontaxable transaction certificates. —** This section is designed to impose a compensating tax on transactions such as one which initially would have been subject to the gross receipts tax were it not for the delivery of the nontaxable transaction certificates by the buyer of the materials or services pursuant to Sections 7-9-51 or 7-9-52 NMSA 1978. Continental Inn of Albuquerque, Inc. v. N.M. Taxation & Revenue Dep't, 1992-NMCA-030, 113 N.M. 588, 829 P.2d 946.

**Use of nontaxable transaction certificates. —** The use of nontaxable transaction certificates, not the taking of the deduction, subjects a taxpayer to the compensating tax. Continental Inn of Albuquerque, Inc. v. N.M. Taxation & Revenue Dep't, 1992-NMCA-030, 113 N.M. 588, 829 P.2d 946.

**Intangible property not subject to tax. —** Laws 1993, Chapter 31, § 2 amended the definition of property in compensating tax provisions so that it does not include intangible property. Kmart Corp. v. N.M. Taxation & Revenue Dep't., 2006-NMSC-006, 139 N.M. 172, 131 P.3d 22

**Foreign transaction subject to tax if receipts tax would apply to domestic. —** Supreme court, although finding no need to interpret this section in the disposition of the case before it, indicated that this section appeared to impose a compensating or use tax on property acquired out-of-state in an isolated transaction and used in New Mexico

only where the transaction would have been subject to a gross receipts tax if the transaction had taken place in New Mexico. Union Cnty. Feedlot, Inc. v. Vigil, 1968-NMCA-088, 79 N.M. 684, 448 P.2d 485.

**Tax applicable to reimbursements for property used under government contracts.** — Application of the compensating tax to reimbursements for property purchased out-of-state and brought into New Mexico for use under government contracts was valid. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Transportation costs excluded from sales price when paid by buyer.** — Under a regulation promulgated by the bureau (now department), in computing the compensating tax, transportation costs should be excluded from the sales price of the property when paid to the carrier by the buyer. Thus, when, under the sales contract between the taxpayer (manufacturer) and the buyer, an agency relationship existed whereby the taxpayer was authorized to pay transportation charges both on materials sold to the buyer and on materials returned by it for credit or repair, the regulation specifically excluded from the sales price of the property the transportation costs, which were paid to the carrier by the buyer, since the buyer reimbursed the manufacturer for transportation costs. Western Elec. Co. v. N.M. Bureau of Revenue, 1976-NMCA-047, 90 N.M. 164, 561 P.2d 26.

**Effect of buyer's voluntary payment of tax.** — A corporation engaged in the business of selling property in New Mexico was liable for payment of the state's gross receipts tax on the receipts of sales. The voluntary payment of compensating tax by the buyer did not relieve the seller of liability for the gross receipts tax otherwise collectible. Proficient Food Co. v. N.M. Taxation & Revenue Dep't, 1988-NMCA-042, 107 N.M. 392, 758 P.2d 806, cert. denied, 107 N.M. 308, 756 P.2d 1203.

**Contractor furnishing purchased materials to federal government liable for tax.** — Since general contractor was required by contracts with federal government to furnish materials to be used on federal reservation in New Mexico, the contractor purchased the materials, became the owner thereof, and was liable for the use or compensating tax under § 72-17-1, 1953 Comp. et seq. (now repealed); and this was not taxation of government land or other government property. Robert E. McKee, Gen. Contractor, Inc. v. Bureau of Revenue, 1957-NMSC-082, 63 N.M. 185, 315 P.2d 832.

**Existence of promissory note does not make sale executory.** — When purchase agreement was entered into out-of-state whereby purchaser would pay a deposit and make a promissory note for the balance, the agreement was not an executory document and failure to make any of the subsequent payments after the deposit did not render it executory. Therefore, the use of the article purchased was taxable pursuant to Subsection A(2). Garfield Mines, Ltd. v. O'Cheskey, 1973-NMCA-128, 85 N.M. 547, 514 P.2d 304.

**Distribution of advertising materials.** — New Mexico retailer who contracted with out-of-state advertising coordinators, but exercised control over its distribution contractors in New Mexico, "used" advertising materials distributed in the state within the meaning of this section. Phillips Mercantile Co. v. N.M. Taxation & Revenue Dep't, 1990-NMCA-006, 109 N.M. 487, 786 P.2d 1221.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Sales or use tax upon containers or packaging materials purchased by manufacturer or processor for use with goods he distributes, 4 A.L.R.4th 581.

Sales and use taxes on sale or lease of mailing or customer list, 80 A.L.R.4th 1126.

## 7-9-7.1. Department barred from taking collection actions with respect to certain compensating tax liabilities.

A. The department shall take no action to enforce collection of compensating tax due on purchases made by an individual if:

(1) the property is used only for nonbusiness purposes;

(2) the property is not a manufactured home; and

(3) the individual is not an agent for collection of compensating tax pursuant to Section 7-9-10 NMSA 1978.

B. The prohibition in Subsection A of this section does not prevent the department from enforcing collection of compensating tax on purchases from persons who are not individuals, who are agents for collection pursuant to Section 7-9-10 NMSA 1978 or who use the property in the course of engaging in business in New Mexico or from enforcing collection of compensating tax due on purchase of manufactured homes.

**History:** 1978 Comp., § 7-9-7.1, enacted by Laws 1993, ch. 45, § 1; 1994, ch. 34, § 1; 1995, ch. 50, § 2.

**ANNOTATIONS**

**Compiler's notes.** — This section, enacted as a temporary provision by Laws 1993, ch. 45, § 1, as amended by Laws 1994, ch. 34, § 1, was formerly noted under 7-9-7 NMSA 1978.

## 7-9-8. Presumption of taxability and value.

A. To prevent evasion of the compensating tax and the duty to collect it, it is presumed that property bought or sold by any person for delivery into this state is bought or sold for a taxable use in this state.

B. In determining the amount of compensating tax due on the use of property, it is presumed, in the absence of preponderant evidence of another value, that the value means the total amount of money or the reasonable value of other consideration paid for property exclusive of any type of time-price differential. However, in an exchange in which the amount of money paid does not represent the value of the property or property and service purchased, the compensating tax shall be imposed on the reasonable value of the property or property and service purchased.

C. In determining the amount of compensating tax due on the use of a service, it is presumed, in the absence of preponderant evidence of another value, that the value means the total amount of money or the reasonable value of other consideration paid for the service exclusive of any type of time-price differential. However, in an exchange in which the amount paid does not represent the value of the service purchased, the compensating tax shall be imposed on the reasonable value of the service purchased.

**History:** 1953 Comp., § 72-16A-8, enacted by Laws 1966, ch. 47, § 8; 1969, ch. 144, § 4; 1972, ch. 85, § 2.

## 7-9-9. Liability of user for payment of compensating tax.

Any person in New Mexico using property on the value of which compensating tax is payable but has not been paid is liable to the state for payment of the compensating tax, but this liability is discharged if the buyer has paid the compensating tax to the seller for payment over to the department.

**History:** 1953 Comp., § 72-16A-9, enacted by Laws 1966, ch. 47, § 9; 1983, ch. 220, § 2; 1990, ch. 41, § 1.

**ANNOTATIONS**

**The 1990 amendment,** effective July 1, 1990, substituted "department" for "division" at the end of the section and made a minor stylistic change.

**Due process not violated by actions of tax officials.** — Department did not violate taxpayer's right to due process by: (1) making an assessment before the taxpayer provided pertinent records; (2) targeting the taxpayer because it had no history of reporting compensating taxes; and (3) delaying 18 months from the time of an audit notice to the time of the field audit. Vivigen, Inc. v. Minzner, 1994-NMCA-027, 117 N.M. 224, 870 P.2d 1382.

**No offset for prior years investment credits.** — A taxpayer was not entitled to an offset in the amount it owed for compensating taxes for investment credits it had made in previous years, because it had not claimed the credits within the one-year statute of limitations period. Although the taxpayer argued that it was entitled to an offset under the doctrine of equitable recoupment, a taxpayer is not entitled to seek a credit after the statute-of-limitations period has expired unless the state is imposing a tax on the same

taxable event on a ground that is inconsistent with the original payment by the taxpayer. Vivigen, Inc. v. Minzner, 1994-NMCA-027, 117 N.M. 224, 870 P.2d 1382.

## 7-9-10. Agents for collection of compensating tax; duties.

A. Every person carrying on or causing to be carried on any activity within this state attempting to exploit New Mexico's markets who sells property or sells property and service for use in this state and who is not subject to the gross receipts tax on receipts from these sales shall collect the compensating tax from the buyer and pay the tax collected to the department. "Activity", for the purposes of this section, includes but is not limited to engaging in any of the following in New Mexico: maintaining an office or other place of business; soliciting orders through employees or independent contractors; soliciting orders through advertisements placed in newspapers or magazines published in New Mexico or advertisements broadcast by New Mexico radio or television stations, soliciting orders through programs broadcast by New Mexico radio or television stations or transmitted by cable systems in New Mexico; canvassing, demonstrating, collecting money, warehousing or storing merchandise or delivering or distributing products as a consequence of an advertising or other sales program directed at potential customers. "Activity", for the purposes of this section, does not include having a world wide web site as a third-party provider on a computer physically located in New Mexico but owned by another nonaffiliated person, and "activity" does not include using a nonaffiliated third-party call center to accept and process telephone or electronic orders of tangible personal property or licenses primarily from non-New Mexico buyers, which orders are forwarded to a location outside New Mexico for filling, or to provide services primarily to non-New Mexico customers.

B. To ensure orderly and efficient collection of the public revenue, if any application of this section is held invalid, the section's application to other situations or persons shall not be affected.

**History:** 1953 Comp., § 72-16A-10, enacted by Laws 1966, ch. 47, § 10; 1983, ch. 220, § 3; 1990, ch. 41, § 2; 1998, ch. 92, § 5; 2000, ch. 101, § 2; 2001, ch. 65, § 2.

**ANNOTATIONS**

**The 2001 amendment,** effective March 16, 2001, inserted "or to provide services primarily to non-New Mexico customers" at the end of Subsection A.

**The 2000 amendment,** effective July 1, 2000, added the phrase beginning "and 'activity' does not include using a nonaffiliated third-party call center" at the end of Subsection A.

**The 1998 amendment,** effective July 1, 1998, added the language beginning "but 'activity' does not include" to the end of Subsection A.

**The 1990 amendment,** effective July 1, 1990, in Subsection A, substituted "department" for "division" at the end of the first sentence and inserted "soliciting orders through advertisements placed in newspapers or magazines published in New Mexico or advertisements broadcast by New Mexico radio or television stations, soliciting orders through programs broadcast by New Mexico radio or television stations or transmitted by cable systems in New Mexico" in the second sentence.

## 7-9-11. Date payment due.

The taxes imposed by the Gross Receipts and Compensating Tax Act are to be paid on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

**History:** 1953 Comp., § 72-16A-11, enacted by Laws 1966, ch. 47, § 11; 1969, ch. 25, § 2.

## 7-9-12. Exemptions.

Exemptions from either the gross receipts tax or the compensating tax are not exemptions from both taxes unless explicitly stated otherwise by law.

**History:** 1978 Comp., § 7-9-12, enacted by Laws 1969, ch. 144, § 5; 1970, ch. 60, § 1; 1972, ch. 61, § 1; 1973, ch. 67, § 1; 1984, ch. 2, § 2; 2017 (1st S.S.), ch. 3, § 14.

**ANNOTATIONS**

**The 2017 (1st S.S.) amendment,** effective July 1, 2017, removed language to clarify that certain exemptions from either the gross receipts or compensating tax are not exemptions from both taxes; and deleted "Exempted from the gross receipts or compensating tax are those receipts or uses exempted in Sections 7-9-13 through 7-9-42 NMSA 1978.".

**Inequalities which result from singling out of one particular class** for taxation or exemption, infringe no constitutional limitation. Dikewood Corp. v. Bureau of Revenue, 1964-NMSC-057, 74 N.M. 75, 390 P.2d 661.

**Statute of exemption from taxation must receive a strict construction,** and no claim of exemption should be sustained unless within the express letter or the necessary scope of the exempting clause. Robert E. McKee, Gen. Contractor, Inc. v. Bureau of Revenue, 1957-NMSC-082, 63 N.M. 185, 315 P.2d 832 (decided under former law).

**Legal services performed for Indian tribe.** — The gross receipts tax may properly be imposed on a non-Indian law firm for legal services performed off the reservation on behalf of an Indian tribe; federal law cannot preempt by implication the tax under such circumstances, since, when reviewing state taxation of activities of non-Indians off the

reservation, an actual conflict with an express federal provision is required for preemption. Rodey, Dickason, Sloan, Akin & Robb, P.A. v. Revenue Div., Dep't of Taxation & Revenue, 1988-NMSC-063, 107 N.M. 399, 759 P.2d 186.

**Uncontemplated regulatory exception invalid.** — If a regulation adopted by the bureau of revenue (now taxation and revenue department) creates an exception from exempt transactions which is not contemplated by the legislative act, even though such administrative interpretations are entitled to great weight in ascertaining the meaning of the statute, the courts may not give legal sanction to the agency's incorrect construction of unambiguous statutory language. Strebeck Props., Inc. v. N.M. Bureau of Revenue, 1979-NMCA-035, 93 N.M. 262, 599 P.2d 1059.

**Burden rests squarely on taxpayer to prove entitlement to exemption.** Al Zuni Traders v. Bureau of Revenue, 1977-NMCA-025, 90 N.M. 258, 561 P.2d 1351.

**Notice of type of proof necessary to avoid taxation unnecessary.** — Under the Gross Receipts and Compensating Tax Act, the contention that prior to the first audit of its books the commissioner had not sent any notice to taxpayer, or other taxpayers in the same industry, of the type of proof necessary to avoid taxation was pure nonsense. Al Zuni Traders v. Bureau of Revenue, 1977-NMCA-025, 90 N.M. 258, 561 P.2d 1351.

**Legislature intended to make gross receipts and compensating taxes correlate:** an exemption from the gross receipts tax must also be treated as an exemption from the compensating tax. Western Elec. Co. v. N.M. Bureau of Revenue, 1976-NMCA-047, 90 N.M. 164, 561 P.2d 26.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Sales and Use Taxes § 200.

Sales or use tax upon containers of packaging materials purchased by manufacturer or processor for use with goods he distributes, 4 A.L.R.4th 581.

Eyeglasses or other optical accessories as subject to sales or use tax, 14 A.L.R.4th 1370.

What constitutes newspapers, magazines, periodicals, or the like, under sales or use tax law exemption, 25 A.L.R.4th 750.

Architectural drawings or illustrations as exempt from sales or use tax, 27 A.L.R.5th 794.

Sales and use tax exemption for medical supplies, 30 A.L.R.5th 494.

Exemption of charitable or educational organization from sales or use tax, 69 A.L.R.5th 477.

## 7-9-12.1. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1990, ch. 41, § 10 repealed Section 7-9-12.1 NMSA 1978, as enacted by Laws 1984, ch. 2, § 10, relating to findings and intent, effective July 1, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

## 7-9-13. Exemption; gross receipts tax; governmental agencies.

A. Except as otherwise provided in this section, exempted from the gross receipts tax are receipts of:

(1) the United States or any agency, department or instrumentality thereof;

(2) the state of New Mexico or any political subdivision thereof;

(3) any Indian nation, tribe or pueblo from activities or transactions occurring on its sovereign territory; or

(4) any foreign nation or agency, instrumentality or political subdivision thereof, but only when required by a treaty in force to which the United States is a party.

B. Receipts from the sale of gas or electricity by a utility owned or operated by a county, municipality or other political subdivision of a state are not exempted from the gross receipts tax.

C. Receipts from the operation of a cable television system owned or operated by a municipality are not exempted from the gross receipts tax.

**History:** 1953 Comp., § 72-16A-12.1, enacted by Laws 1969, ch. 144, § 6; 1991, ch. 8, § 4; 1993, ch. 31, § 3; 1993, ch. 208, § 7; 1994, ch. 45, § 2; 1998, ch. 89, § 1.

### ANNOTATIONS

**The 1998 amendment,** effective July 1, 1998, added Paragraph A(4) and made minor stylistic changes.

**The 1994 amendment,** effective July 1, 1994, rewrote Subsection A, which read: "Exempted from the gross receipts tax are the receipts of the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof"; and substituted "a state" for "the state" in Subsection B.

**The 1993 amendment,** effective June 18, 1993, designated the former provisions as Subsections A and B and added Subsection C This section was also amended by Laws

1993, ch. 31, § 3. The section was set out as amended by Laws 1993, ch. 208, § 7. *See* 12-1-8 NMSA 1978.

**The 1991 amendment,** effective July 1, 1991, deleted "water" following "gas" in the second sentence and made a related stylistic change.

**Disbursement agents of federal funds immune from gross receipts tax.** — Agents for the disbursement of federal funds are constitutionally immune from application of the gross receipts tax to those funds. United States v. New Mexico, 624 F.2d 111 (10th Cir. 1980), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**United States not excluded from state tax proceedings involving its contractors.** — The United States may not properly be excluded, under all circumstances, from state tax proceedings involving its contractors, since the contracts obligate the United States to provide funds necessary to defray all costs incurred in the performance of contracts, including taxes. United States v. New Mexico, 624 F.2d 111 (10th Cir. 1980), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

## 7-9-13.1. Exemption; gross receipts tax; services performed outside the state the product of which is initially used in New Mexico; exceptions.

A. Except as provided otherwise in Subsection B of this section, exempted from the gross receipts tax are the receipts from selling services performed outside New Mexico the product of which is initially used in New Mexico.

B. The exemption provided by this section does not apply to research and development services other than research and development services:

(1) sold between affiliated corporations;

(2) sold to the United States by persons, other than organizations described in Subsection A of Section 7-9-29 NMSA 1978, who are prime contractors operating facilities in New Mexico designated as national laboratories by act of congress; or

(3) sold to persons, other than organizations described in Subsection A of Section 7-9-29 NMSA 1978, who are prime contractors operating facilities in New Mexico designated as national laboratories by act of congress.

C. An "affiliated corporation" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the subject corporation. "Control" means ownership of stock in a corporation which represents at least eighty percent of the total voting power of that corporation and has a stated or par value equal to at least eighty percent of the total stated or par value of the stock of that corporation.

**History:** 1978 Comp., § 7-9-13.1, enacted by Laws 1989, ch. 262, § 4.

**ANNOTATIONS**

**Compiler's notes.** — Laws 1993, ch. 31, § 13A, effective July 1, 1993, repealed Laws 1989, ch. 262, § 11, which provided for the repeal of 7-9-13.1 NMSA 1978 on July 1, 1993.

## 7-9-13.2. Exemption; governmental gross receipts tax; receipts subject to certain other taxes.

Exempted from the governmental gross receipts tax are receipts from transactions involving tangible personal property or services on which receipts or transactions the gross receipts tax, compensating tax, motor vehicle excise tax, gasoline tax, special fuel tax, special fuel excise tax, oil and gas emergency school tax, resources tax, processors tax, service tax or the excise tax imposed under Section 66-12-6.1 NMSA 1978 is imposed.

**History:** Laws 1992, ch. 100, § 3; 1993, ch. 31, § 4.

**ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, inserted "special fuel excise tax," near the end of this section.

## 7-9-13.3. Exemption; gross receipts tax and governmental gross receipts tax; stadium surcharge.

Exempted from the gross receipts tax and from the governmental gross receipts tax are the receipts from selling tickets, parking, souvenirs, concessions, programs, advertising, merchandise, corporate suites or boxes, broadcast revenues and all other products, services or activities sold at, related to or occurring at a minor league baseball stadium on which a stadium surcharge is imposed pursuant to the Minor League Baseball Stadium Funding Act [3-65-1 through 3-65-10 NMSA 1978].

**History:** Laws 2001, ch. 231, § 12.

**ANNOTATIONS**

**Emergency clause.** — Laws 2001, ch. 231, § 13 contained an emergency clause and was approved April 3, 2001.

## 7-9-13.4. Exemption; gross receipts tax; sale of textbooks from certain bookstores to enrolled students.

Exempted from the gross receipts tax are the receipts from the sale of textbooks and other materials that are required for courses at a public post-secondary educational institution if the sale is by a bookstore located on the campus of the institution and operated pursuant to a contractual agreement with that institution and the sale is to a student enrolled at the institution who displays a valid student identification card.

**History:** Laws 2002, ch. 20, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2002, ch. 20, § 2 made Laws 2002, ch. 20, § 1 effective July 1, 2002.

## 7-9-13.5. Exemption; gross receipts tax and governmental gross receipts tax; event center surcharge.

Exempted from the gross receipts tax and from the governmental gross receipts tax are the receipts from selling tickets, parking, souvenirs, concessions, programs, advertising, merchandise, corporate suites or boxes, broadcast revenues and all other products or services sold at or related to a municipal event center or related to activities occurring at the event center on which an event center surcharge is imposed pursuant to the Municipal Event Center Funding Act [3-66-1 through 3-66-11 NMSA 1978].

History: Laws 2005, ch. 351, § 2.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2005, ch. 351 was not enacted as part of the Municipal Code but is included in that code as a convenience to the user.

**Emergency clause.** — Laws 2005, ch. 351, § 14 contained an emergency clause and was approved April 8, 2005.

## 7-9-14. Exemption; compensating tax; governmental agencies; Indians.

A. Except as otherwise provided in this subsection, there is exempted from the compensating tax the use of property by the United States or the state of New Mexico or any governmental unit or subdivision, agency, department or instrumentality thereof. The exemption provided by this subsection does not apply to:

(1) the use of property that is or will be incorporated into a metropolitan redevelopment project under the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978]; or

(2) the use of construction material.

B. Exempted from the compensating tax is the use of property by any Indian nation, tribe or pueblo or any governmental unit, subdivision, agency, department or instrumentality thereof on Indian reservations or pueblo grants.

**History:** 1953 Comp., § 72-16A-12.2, enacted by Laws 1969, ch. 144, § 7; 1985, ch. 225, § 3; 1990, ch. 41, § 3; 1993, ch. 31, § 5; 2001, ch. 343, § 2.

## ANNOTATIONS

**Cross references. —** For Community Development Incentive Act, *see* 3-64-1 NMSA 1978 et seq.

**The 2001 amendment,** effective July 1, 2001, substituted former Paragraph A(2), listing tangible personal property that becomes an ingredient or component part of a construction project, for the current Paragraph A(2).

**The 1993 amendment,** effective July 1, 1993, deleted "or any agency or instrumentality thereof" following "United States" and substituted "any governmental unit or subdivision, agency, department or instrumentality" for "any political subdivision" in the first sentence of Subsection A and, in Subsection B, deleted "the governing body of" preceding "any Indian nation" and inserted "or any governmental unit, subdivision, agency, department or instrumentality thereof".

**The 1990 amendment,** effective July 1, 1990, designated the former first and second sentences of the section as present Subsections A and B, substituted "Except as otherwise provided in this subsection" for "Except for the use of property that is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code" in the first sentence in Subsection A, added the second sentence of Subsection A, and in Subsection B, substituted "Indian nation, tribe or pueblo" for "Indian tribe or Indian pueblo".

**Taxing contractor furnishing materials to federal government not taxing government. —** When general contractor was required by contracts with federal government to furnish materials to be used on federal reservation in New Mexico, the contractor purchased the materials, became the owner thereof, and was liable for the use or compensating tax under § 72-17-1, 1953 Comp., et seq. (now repealed); and this was not taxation of government land or other government property. Robert E. McKee, Gen. Contractor, Inc. v. Bureau of Revenue, 1957-NMSC-082, 63 N.M. 185, 315 P.2d 832.

**Tax ultimately falling on tribal organization impermissible. —** If the economic burden of the gross receipts tax ultimately falls on a tribal organization, even though the legal incidence of the tax falls on the non-Indian contractor with whom the tribal organization contracted to build an Indian school, the imposition of the tax impermissibly

impedes the clearly expressed federal interest in promoting the quality and quantity of educational opportunities for Indians by depleting the funds available for the construction of Indian schools. Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

**Federal regulatory scheme and policy.** — The comprehensive federal regulatory scheme and the express federal policy of encouraging tribal self-sufficiency in the area of education preclude the imposition of the state gross receipts tax on the construction of school facilities on tribal lands pursuant to a contract between a tribal organization and a non-Indian contracting firm. Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

## 7-9-15. Exemption; compensating tax; certain organizations.

Exempted from the compensating tax is the use of property by organizations that demonstrate to the department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended or renumbered, in the conduct of functions described in Section 501(c)(3). The use of property as an ingredient or component part of a construction project is not a use in the conduct of functions described in Section 501(c)(3). This section does not apply to the use of property in an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1954, as amended or renumbered.

**History:** 1953 Comp., § 72-16A-12.3, enacted by Laws 1969, ch. 144, § 8; reenacted by Laws 1970, ch. 12, § 1; 1983, ch. 220, § 4; 1990, ch. 41, § 4.

**ANNOTATIONS**

**Cross references.** — For the exemption of certain organizations from the gross receipts tax, *see* 7-9-29 NMSA 1978.

For Sections 501(c)(3) and 513 of the Internal Revenue Code of 1954, *see* 26 U.S.C. §§ 501(c)(3) and 513, respectively.

**The 1990 amendment,** effective July 1, 1990, substituted "department" for "division" in the first sentence.

**Use of nontaxable transaction certificates.** — The use of nontaxable transaction certificates, not the taking of the deduction, subjects a taxpayer to the compensating tax. Continental Inn of Albuquerque, Inc. v. N.M. Taxation & Revenue Dep't, 1992-NMCA-030, 113 N.M. 588, 829 P.2d 946.

## 7-9-16. Exemption; gross receipts tax; certain nonprofit facilities.

Exempted from the gross receipts tax are the receipts of nonprofit entities from the operation of facilities designed and used for providing accommodations for retired elderly persons.

**History:** 1953 Comp., § 72-16A-12.4, enacted by Laws 1969, ch. 144, § 9; 1970, ch. 12, § 2; 1975, ch. 54, § 1.

## 7-9-17. Exemption; gross receipts tax; wages.

Exempted from the gross receipts tax are the receipts of employees from wages, salaries, commissions or from any other form of remuneration for personal services.

**History:** 1953 Comp., § 72-16A-12.5, enacted by Laws 1969, ch. 144, § 10.

**ANNOTATIONS**

**Wages, salaries, commissions and other forms of payment** for personal services received by an employee are specifically exempted from gross receipts tax by this section. Eaton v. Bureau of Revenue, 1972-NMCA-114, 84 N.M. 226, 501 P.2d 670, cert. denied, 84 N.M. 219, 501 P.2d 663.

**All of taxpayer's receipts, including employee's wages, taxable.** — Wages paid directly to truck drivers employed by taxpayer, pursuant to hauling agreement, which were paid out of taxpayer's gross receipts and on behalf of taxpayer, a self-employed hauler, were subject to gross receipts tax, regardless of the fact that taxpayer never received such wages to distribute to his drivers. Duke v. Bureau of Revenue, 1975-NMCA-025, 87 N.M. 360, 533 P.2d 593.

**Same taxation scheme used for both state and federal purposes.** — When carpenter filed self-employment returns with the internal revenue service for social security purposes when customers did not withhold F.I.C.A. taxes, and filed federal income tax returns which reported income from a business or profession, the taxpayer must not attempt to show one scheme for federal tax purposes and a nontaxable event for purposes of state gross receipts tax. Stohr v. N.M. Bureau of Revenue, 1976-NMCA-118, 90 N.M. 43, 559 P.2d 420, cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977).

**Percentages paid jockeys not exempt.** — Since by established custom in the state of New Mexico the horse owner pays the jockey on his winning mount 10% of the purse, and a jockey, during the course of a racing day, may ride in several races, riding various different horses, each of which may have a different owner and a horse owner is not required to withhold income tax from the jockey's share of the purse, pay F.I.C.A. tax, or make unemployment insurance contributions for the jockey, then commissioner of revenue (now secretary of taxation and revenue department) was within his authority in denying employee exemption to defendant. Rock v. Comm'r of Revenue, 1972-NMCA-012, 83 N.M. 478, 493 P.2d 963 (case decided before the exemption granted jockeys by 7-9-40 NMSA 1978).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Tips: applicability of sales tax to "tips" or service charges added in lieu of tips, 73 A.L.R.3d 1226.

## 7-9-18. Exemption; gross receipts tax and governmental gross receipts tax; agricultural products.

A. Exempted from the gross receipts tax and from the governmental gross receipts tax are the receipts from selling livestock and receipts of growers, producers, trappers or nonprofit marketing associations from selling livestock, live poultry, unprocessed agricultural products, hides or pelts. Persons engaged in the business of buying and selling wool or mohair or of buying and selling livestock on their own account are producers for the purposes of this section.

B. Receipts from selling dairy products at retail are not exempted from the gross receipts tax.

C. As used in this section, "livestock" means all domestic or domesticated animals that are used or raised on a farm or ranch, including the carcasses thereof, and also includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae upon any land in New Mexico; provided that for the purposes of Chapter 77, Article 9 NMSA 1978, "animals" or "livestock" have the meaning defined in that article. "Animals" or "livestock" does not include canine or feline animals. For the purpose of the rules governing meat inspection, wild animals, poultry and birds used for human consumption shall also be included within the meaning of "animals" or "livestock".

History: 1953 Comp., § 72-16A-12.6, enacted by Laws 1969, ch. 144, § 11; 1991, ch. 9, § 27; 1992, ch. 48, § 1; 1993, ch. 31, § 6; 2011, ch. 81, § 1.

**ANNOTATIONS**

**The 2011 amendment,** effective June 17, 2011, added a definition of "livestock".

**The 1993 amendment,** effective July 1, 1993, inserted "and governmental gross receipts tax" in the catchline and inserted "and from the governmental gross receipts tax" in the first sentence.

**The 1992 amendment,** effective July 1, 1992, deleted "or horses" following "livestock" near the beginning of the first sentence, and inserted "or of buying and selling livestock" in the second sentence.

**The 1991 amendment,** effective July 1, 1991, inserted "from selling livestock or horses and receipts" and deleted "livestock" preceding "live poultry" in the first sentence and, in the second sentence, deleted "or of buying and selling livestock" following "mohair".

## 7-9-18.1. Exemption; gross receipts tax; food stamps.

Exempted from the gross receipts tax are the receipts of a taxpayer who is approved for participation in the food stamp program authorized by U.S.C. Title 7, Chapter 51, as that chapter may be amended or renumbered, from the lawful acceptance and deposit with a financial institution of food stamps issued by the United States department of agriculture pursuant to the food stamp program.

**History:** 1978 Comp., § 7-9-18.1, enacted by Laws 1987, ch. 264, § 13 and Laws 1987, ch. 304, § 1.

**ANNOTATIONS**

**Compiler's notes.** — Laws 1987, ch. 264, § 13 and Laws 1987, ch. 304, § 1 enacted identical versions of this section.

**Cross references.** — For Chapter 51 of Title 7 of the United States Code, *see* 7 U.S.C. § 2011 et seq.

## 7-9-19. Exemption; gross receipts tax; livestock feeding.

A. Exempted from the gross receipts tax are the receipts of any person derived from feeding or pasturing livestock.

B. Receipts derived from penning or handling livestock prior to sale are receipts derived from feeding livestock for the purposes of this section.

C. Receipts derived from training livestock are receipts derived from feeding livestock for the purposes of this section.

**History:** 1953 Comp., § 72-16A-12.7, enacted by Laws 1969, ch. 144, § 12; 1974, ch. 19, § 1; 1991, ch. 9, § 28; 1992, ch. 48, § 2.

**ANNOTATIONS**

**The 1992 amendment,** effective July 1, 1992, substituted "are not" for "are" in Subsection C.

**The 1991 amendment,** effective July 1, 1991, designated the formerly undesignated provisions as Subsections A to C and, in Subsection C, inserted "not" preceding "receipts".

## 7-9-20. Exemption; gross receipts tax; certain receipts of homeowners associations.

Exempted from the gross receipts tax are those receipts of homeowners associations defined in Section 528(c)(1) (A thru D), (2), (3) and (4) (A, B and D) of the Internal Revenue Code, as amended, which are received as membership fees, dues or

assessments from members who are owners of residential units, residences or residential lots except for owners of time-share interests, for payment of taxes, insurance, utility expenses, management and improvement, maintenance or rehabilitation of those common areas, elements or facilities appurtenant thereto which are for the sole use of the owners and their guests.

**History:** 1978 Comp., § 7-9-20, enacted by Laws 1988, ch. 82, § 1.

**ANNOTATIONS**

**Compiler's notes.** — Laws 1981, ch. 37, § 97 repealed former 7-9-20 NMSA 1978, as enacted by Laws 1969, ch. 144, § 13, relating to exemption of banks and financial institutions from the Gross Receipts Act, effective January 1, 1982.

**Cross references.** — For Section 528 of the Internal Revenue Code, *see* 26 U.S.C. § 528.

## 7-9-21. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1981, ch. 37, § 97 repealed former 7-9-21 NMSA 1978, as enacted by Laws 1969, ch. 144, § 14, relating to exemption of banks and financial institutions from the Compensating Tax Act, effective January 1, 1982.

## 7-9-22. Exemption; gross receipts tax; vehicles.

Exempted from the gross receipts tax are the receipts from selling vehicles on which a tax is imposed by the Motor Vehicle Excise Tax Act [Chapter 7, Article 14 NMSA 1978], vehicles subject to registration under Section 66-3-16 NMSA 1978 and vehicles exempt from the motor vehicle excise tax pursuant to Subsection F of Section 7-14-6 NMSA 1978.

History: 1953 Comp., § 72-16A-12.10, enacted by Laws 1969, ch. 144, § 15; 1976 (S.S.), ch. 36, § 2; 1981, ch. 184, § 2; 1988, ch. 73, § 8; 2004, ch. 66, § 1.

**ANNOTATIONS**

**The 2004 amendments,** effective July 1, 2004, added "and vehicles exempt from the motor vehicle excise tax pursuant to Subsection F of Section 7-14-6 NMSA 1978" after "1978".

**There is legislative policy treating taxation of motor vehicles sales** differently from the taxation of most other business activities. City of Alamogordo v. Walker Motor Co., Inc., 1980-NMSC-038, 94 N.M. 690, 616 P.2d 403.

**Mobile homes as inventory not exempt.** — The gross receipts from the sale of mobile homes held as inventory are not exempt from the gross receipts tax. S & S Sales, Inc. v. Bureau of Revenue, 1976-NMCA-009, 88 N.M. 649, 545 P.2d 1027.

## 7-9-22.1. Exemption; gross receipts tax; boats.

Exempted from the gross receipts tax are the receipts from selling boats on which a tax is imposed by Section 66-12-6.1 NMSA 1978.

**History:** 1978 Comp., § 7-9-22.1, enacted by Laws 1987, ch. 247, § 1.

## 7-9-23. Exemption; compensating tax; vehicles.

Exempted from the compensating tax is the use of vehicles on which the tax imposed by the Motor Vehicle Excise Tax Act [Chapter 7, Article 14 NMSA 1978] has been paid, the use of vehicles subject to registration under Section 66-3-16 NMSA 1978 and the use of vehicles exempt from the motor vehicle excise tax pursuant to Subsection F of Section 7-14-6 NMSA 1978.

History: 1953 Comp., § 72-16A-12.11, enacted by Laws 1969, ch. 144, § 16; 1976 (S.S.), ch. 36, § 3; 1983, ch. 220, § 5; 1988, ch. 73, § 9; 2004, ch. 66, § 2.

**ANNOTATIONS**

**The 2004 amendments,** effective July 1, 2004, added "and the use of vehicles exempt from the motor vehicle excise tax pursuant to Subsection F of Section 7-14-6 NMSA 1978" after "1978".

## 7-9-23.1. Exemption; compensating tax; boats.

Exempted from the compensating tax is the use of boats on which the tax imposed by Section 66-12-6.1 NMSA 1978 has been paid.

**History:** 1978 Comp., § 7-9-23.1, enacted by Laws 1987, ch. 247, § 2.

## 7-9-24. Exemption; gross receipts tax; insurance companies.

Exempted from the gross receipts tax are the receipts of insurance companies or any agent thereof from premiums and any consideration received by a property bondsman, as that person is defined in Section 59A-51-2 NMSA 1978, as security or surety for a bail bond in connection with a judicial proceeding.

**History:** 1953 Comp., § 72-16A-12.12, enacted by Laws 1969, ch. 144, § 17; 1988, ch. 74, § 1.

## 7-9-25. Exemption; gross receipts tax; dividends and interest.

Exempted from the gross receipts tax are the receipts received as interest on money loaned or deposited, receipts received as dividends or interest from stocks, bonds or securities or receipts from the sale of stocks, bonds or securities.

**History:** 1953 Comp., § 72-16A-12.13, enacted by Laws 1969, ch. 144, § 18.

**ANNOTATIONS**

**Pawnbroker's receipts from sales of pawned chattel** were not exempt or deductible from gross receipts tax as the recoupment of principal, interest, and handling charges attendant to the initial loan transaction. Wing Pawn Shop v. Taxation & Revenue Dep't, 1991-NMCA-024, 111 N.M. 735, 809 P.2d 649 (decided on facts existing prior to enactment of Pawnbrokers Act, Section 56-12-1 NMSA 1978 et seq.)

## 7-9-26. Exemption; gross receipts and compensating tax; fuel.

Exempted from the gross receipts and compensating tax are the receipts from selling and the use of gasoline, special fuel or alternative fuel on which the tax imposed by Section 7-13-3, 7-16-3 or 7-16A-3 NMSA 1978 or the Alternative Fuel Tax Act has been paid and not refunded.

**History:** 1953 Comp., § 72-16A-12.14, enacted by Laws 1969, ch. 144, § 19; 1971, ch. 176, § 1; 1980, ch. 105, § 2; 1981, ch. 175, § 1; 1983, ch. 225, § 1; 1993, ch. 31, § 7; 1995, ch. 16, § 12.

**ANNOTATIONS**

**Compiler's notes.** — Section 7-16-3 NMSA 1978, referred to in this section, was repealed, effective January 1, 1993 by Laws 1992, ch. 51, § 23.

**Cross references.** — For other fuel related exemptions, *see* 7-9-32 to 7-9-34, 7-9-36 and 7-9-37 NMSA 1978.

**The 1995 amendment,** effective January 1, 1996, inserted "or alternative fuel" and "or the Alternative Fuel Tax Act".

**The 1993 amendment,** effective July 1, 1993, deleted the subsection designation "A" at the beginning; inserted "7-16A-3"; deleted former Subsection B, pertaining to the exemption of receipts from selling and use of ethanol blended fuel; and made a minor stylistic change.

**Constitutionality of deduction for ethanol-blended fuel.** — Former section 7-13-4.1 NMSA 1978 discriminated between the tax treatment of ethanol-blended fuel manufactured in New Mexico and ethanol-blended fuel manufactured elsewhere; this

discrimination violated the commerce clause. Giant Indus. Ariz., Inc. v. Taxation & Revenue Dep't, 1990-NMCA-074, 110 N.M. 442, 796 P.2d 1138.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Exemption, from sales or use tax, of water, oil, gas, other fuel, or electricity provided for residential purposes, 15 A.L.R.4th 269.

## 7-9-26.1. Exemption; gross receipts tax and compensating tax; fuel for space vehicles.

A. Exempted from the gross receipts tax are the receipts from selling fuel, oxidizer or a substance that combines fuel and oxidizer to propel space vehicles or to operate space vehicle launchers.

B. Exempted from the compensating tax is the use of fuel, oxidizer or a substance that combines fuel and oxidizer to propel space vehicles or to operate space vehicle launchers.

**History:** 1978 Comp., § 7-9-26.1, enacted by Laws 2003, ch. 62, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 62, § 5 made Laws 2003, ch. 62, § 1 effective July 1, 2003.

## 7-9-27. Exemption; compensating tax; personal effects.

Exempted from the compensating tax is the use by an individual of personal or household effects brought into the state in connection with the establishment by him of an initial residence in this state and the use of property brought into the state by a nonresident for his own nonbusiness use while temporarily within this state.

**History:** 1953 Comp., § 72-16A-12.15, enacted by Laws 1969, ch. 144, § 20.

## 7-9-28. Exemption; gross receipts tax; occasional sale of property or services.

Exempted from the gross receipts tax are the receipts from the isolated or occasional sale of or leasing of property or a service by a person who is neither regularly engaged nor holding himself out as engaged in the business of selling or leasing the same or similar property or service.

**History:** 1953 Comp., § 72-16A-12.16, enacted by Laws 1969, ch. 144, § 21.

**ANNOTATIONS**

**Oil company's receipts from coal dragline leases not exempt.** — Although oil company had not "historically" engaged in the business of leasing draglines, where it had clearly entered that business with a large investment and a long-term commitment of resources, had established 20-year terms for the leases, resulting in a fixed amount of income over a long period of time, these transactions were not occasional and were accordingly not tax exempt. Kewanee Indus., Inc. v. Reese, 1993-NMSC-006, 114 N.M. 784, 845 P.2d 1238.

**Law reviews.** — For article, "The Deductibility for Federal Income Tax Purposes of the New Mexico Gross Receipts Tax Paid on the Purchase of a Newly Constructed Home," see 13 N.M.L. Rev. 625 (1983).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Casual or isolated sales: exemption of casual, isolated or occasional sales under sales and use taxes, 42 A.L.R.3d 292.

## 7-9-29. Exemption; gross receipts tax; certain organizations.

A. Exempted from the gross receipts tax are the receipts of organizations that demonstrate to the department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended or renumbered.

B. Exempted from the gross receipts tax are the receipts from carrying on chamber of commerce, visitor bureau and convention bureau functions of organizations that demonstrate to the department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(6) of the United States Internal Revenue Code of 1954, as amended or renumbered.

C. This section does not apply to receipts derived from an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1954, as amended or renumbered.

**History:** 1978 Comp., § 7-9-29, enacted by Laws 1970, ch. 12, § 3; 1983, ch. 220, § 6; 1988, ch. 139, § 1; 1990, ch. 41, § 5.

**ANNOTATIONS**

**Cross references.** — For the exemption of certain organizations from the compensating tax, *see* 7-9-15 NMSA 1978.

For Sections 501 and 513 of the Internal Revenue Code, *see* 26 U.S.C. §§ 501 and 513.

**The 1990 amendment,** effective July 1, 1990, substituted "department" for "division" in Subsections A and B.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Charitable organization: exemption of charitable or educational organization from sales or use tax, 53 A.L.R.3d 748.

Exemption of charitable or educational organization from sales or use tax, 69 A.L.R.5th 477.

## 7-9-30. Exemption; compensating tax; railroad equipment, aircraft and space vehicles.

A. Exempted from the compensating tax is the use of railroad locomotives, trailers, containers, tenders or cars procured or bought for use in railroad transportation.

B. Exempted from the compensating tax is the use of commercial aircraft bought or leased primarily for use in the transportation of passengers or property for hire in interstate commerce.

C. Exempted from the compensating tax is the use of space vehicles for transportation of persons or property in, to or from space.

**History:** 1953 Comp., § 72-16A-12.18, enacted by Laws 1969, ch. 144, § 23; 1988, ch. 148, § 1; 2003, ch. 62, § 2.

**ANNOTATIONS**

**The 2003 amendment,** effective July 1, 2003, substituted "aircraft and space vehicles" for "and aircraft" in the section heading and added Subsection C.

**Applicability of former provision limited.** — Former 72-17-4I, 1953 Comp., (now Section 7-9-30A NMSA 1978) exempting certain railroad property from the purview of the former Compensating Tax Act, applied only to railroads engaged in the transportation of persons or property for hire on established lines. Gibbons & Reed Co. v. Bureau of Revenue, 1969-NMSC-096, 80 N.M. 462, 457 P.2d 710.

## 7-9-31. Exemption; gross receipts and compensating tax; resale activities of an armed forces instrumentality.

Exempted from the gross receipts and compensating tax are the receipts from selling tangible personal property and the use of property by any instrumentality of the armed forces of the United States engaged in resale activities.

**History:** 1953 Comp., § 72-16A-12.19, enacted by Laws 1969, ch. 144, § 24.

## 7-9-32. Exemption; gross receipts tax; oil and gas or mineral interests.

Exempted from the gross receipts tax are the receipts from the sale of or leasing of oil, natural gas or mineral interests.

**History:** 1953 Comp., § 72-16A-12.20, enacted by Laws 1969, ch. 144, § 25.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Mining exemption from sales or use tax, 47 A.L.R.4th 1229.

## 7-9-33. Exemption; gross receipts tax; products subject to Oil and Gas Emergency School Tax Act.

A. Exempted from the gross receipts tax are receipts from the sale of products the severance of which is subject to the tax imposed by the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978] except that receipts from the sale of products other than for subsequent resale in the ordinary course of business, for consumption outside the state, or for use as an ingredient or component part of a manufactured product are subject to the Gross Receipts and Compensating Tax Act as well as to the Oil and Gas Emergency School Tax Act.

B. No gross receipts tax or compensating tax pursuant to the Gross Receipts and Compensating Tax Act shall apply to storing crude oil, natural gas or liquid hydrocarbons, individually or any combination, or to the use of such products for fuel in the operation of a "production unit" as defined by the Oil and Gas Emergency School Tax Act.

**History:** 1953 Comp., § 72-16A-12.21, enacted by Laws 1969, ch. 144, § 26; 1975, ch. 133, § 1; 1984, ch. 2, § 3; 1989, ch. 115, § 1.

**ANNOTATIONS**

**The 1989 amendment,** effective July 1, 1989, substituted "products" for "persons" in the catchline; rewrote Subsection A; and in Subsection B deleted "any person for the privilege of" following "apply to", and deleted "thereof" following "combination".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Mining exemption from sales or use tax, 47 A.L.R.4th 1229.

## 7-9-34. Exemption; gross receipts tax; refiners and persons subject to Natural Gas Processors Tax Act.

A. Exempted from the gross receipts tax are receipts from the sale or processing of products the processing of which is subject to the privilege tax imposed by the Natural Gas Processors Tax Act [Chapter 7, Article 34 NMSA 1978] except that receipts from the sale of products other than for subsequent resale in the ordinary course of business, for consumption outside the state, or for use as an ingredient or component part of a manufactured product are subject to the Gross Receipts and Compensating Tax Act as well as to the Natural Gas Processors Tax Act.

B. No gross receipts tax or compensating tax pursuant to the Gross Receipts and Compensating Tax Act shall apply to receipts from storing or using crude oil, natural gas or liquid hydrocarbons, individually or any combination, when stored or used in New Mexico by a "processor", as defined by the Natural Gas Processors Tax Act, or by a person engaged in the business of refining oil, natural gas or liquid hydrocarbons who stores or uses the crude oil, natural gas or liquid hydrocarbons in the regular course of his refining business.

**History:** 1953 Comp., § 72-16A-12.22, enacted by Laws 1969, ch. 144, § 27; 1970, ch. 13, § 1; 1975, ch. 133, § 2; 1984, ch. 2, § 4; 1989, ch. 115, § 2.

**ANNOTATIONS**

**Cross references.** — For meaning of "processor", *see* 7-33-2B NMSA 1978.

**The 1989 amendment,** effective July 1, 1989, rewrote Subsection A; and in Subsection B substituted "receipts from storing" for "any person for the privilege of storing", and deleted "thereof" following "combination".

**Company not entitled to exemption when selling natural gas to refinery.** — A gas company is neither a user of natural gas nor in the business of refining natural gas when it sells natural gas to a refinery, and, thus, it is not entitled to the exemption provided in Subsection B. Gas Co. v. O'Cheskey, 1980-NMCA-085, 94 N.M. 630, 614 P.2d 547

## 7-9-35. Exemption; gross receipts tax; natural resources subject to Resources Excise Tax Act.

Exempted from the gross receipts tax are receipts from the sale or processing of natural resources the severance or processing of which are subject to the taxes imposed by the Resources Excise Tax Act [Chapter 7, Article 25 NMSA 1978] except as otherwise provided in Section 7-25-8 NMSA 1978.

**History:** 1953 Comp., § 72-16A-12.23, enacted by Laws 1969, ch. 144, § 28; 1984, ch. 2, § 5; 1989, ch. 115, § 3.

**ANNOTATIONS**

**The 1989 amendment,** effective July 1, 1989, substituted "natural resources" for "persons" in the catchline, and substituted the present provisions for "When a privilege tax is imposed for the privilege of severing or processing natural resources by the Resources Excise Tax Act, the provisions of the Resources Excise Tax Act shall apply for the privilege of engaging in business stated and in that act, and no gross receipts pursuant to the Gross Receipts and Compensating Tax Act shall apply to or create a tax liability for such privilege, except as is provided in Section 7-25-8 NMSA 1978. A taxpayer subject to the Resources Excise Tax Act is also subject to the compensating tax pursuant to the Gross Receipts and Compensating Tax Act and any other taxes imposed by any tax act which is applicable to the taxpayer pursuant to the NMSA 1978."

**Amendment to be prospectively applied.** — The amendment of this section by Laws 1984, ch . 2, § 5 is to be only prospectively applied from and after the date the legislation was signed into law, February 11, 1984. Phelps Dodge Corp. v. Revenue Div., Dep't of Taxation & Revenue, 1985-NMCA-055, 103 N.M. 20, 702 P.2d 10.

**Construction and severing work.** — Where both severing and construction work occur at the same time on the same job, the classification of "construction" is not justified and receipts from severing are exempt from gross receipts tax. J.W. Jones Const. Co., v. Revenue Div., Dep't of Taxation & Revenue, 1979-NMCA-144, 94 N.M. 39, 607 P.2d 126 (Ct. App. 1979).

**Construction work incidental to "severing" exempt.** — The exemption provided by this section applies since "severing" was taking place as the development work was performed and none of taxpayer's work was preliminary to or preparatory for "severing"; therefore, receipts from development work, which includes construction, are exempted from the gross receipts tax and taxable under the service tax (resources excise tax) when such construction work was incidental to the "severing." Patten v. Bureau of Revenue, 1974-NMCA-051, 86 N.M. 355, 524 P.2d 527.

**Taxation of lumber business activities.** — "Road maintenance" and "hauling" are an integral and indispensable part of a taxpayer's activity of severing timber and delivering it to a lumber mill and as such are exempt from the Gross Receipts Tax Act, Sections 7-9-1 to 7-9-82 NMSA 1978, by the provisions of this section, while being taxable under the Resources Excise Tax Act, 7-25-1 to 7-25-9 NMSA 1978. Carter & Sons, Inc. v. New Mexico Bureau of Revenue, 1979-NMCA-025, 92 N.M. 591, 592 P.2d 191.

**No compensation tax on property purchased outside state, used in state mine operations.** — Compensating tax may not be assessed based on property purchased outside of New Mexico but used in New Mexico in the mine operations of a taxpayer in severing uranium ore. In re Ranchers-Tufco Limestone Project Joint Venture, 1983-NMCA-126, 100 N.M. 632, 674 P.2d 522, cert. denied, 100 N.M. 505, 672 P.2d 1136 (decided prior to 1984 amendment).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Mining exemption from sales or use tax, 47 A.L.R.4th 1229.

## 7-9-36. Exemption; gross receipts tax; oil and gas consumed in the pipeline transportation of oil and gas products.

Exempted from the gross receipts tax are receipts from the sale of oil, natural gas, liquid hydrocarbon or any combination thereof consumed as fuel in the pipeline transportation of such products.

**History:** 1953 Comp., § 72-16A-12.24, enacted by Laws 1969, ch. 144, § 29.

## 7-9-37. Exemption; compensating tax; use of oil and gas in the pipeline transportation of oil and gas products.

Exempted from the compensating tax is the use of oil, natural gas, liquid hydrocarbon or any combination thereof as fuel in the pipeline transportation of such products.

**History:** 1953 Comp., § 72-16A-12.25, enacted by Laws 1969, ch. 144, § 30.

## 7-9-38. Exemption; compensating tax; use of electricity in the production, conversion and transmission of electricity.

Exempted from the compensating tax is electricity used in the production and transmission of electricity, including transmission using voltage source conversion technology.

History: 1953 Comp., § 72-16A-12.26, enacted by Laws 1969, ch. 144, § 31; 2012, ch. 12, § 1.

**ANNOTATIONS**

**The 2012 amendment,** effective July 1, 2012, exempted electricity used in the transmission of electricity using voltage source conversion technology and after "transmission of electricity", added the remainder of the sentence.

## 7-9-38.1. Exemption; gross receipts tax; interstate telecommunications services.

Exempted from the gross receipts tax are receipts from the sale or provision of interstate telecommunications services subject to the Interstate Telecommunications Gross Receipts Tax Act [Chapter 7, Article 9C NMSA 1978].

**History:** Laws 1992, ch. 50, § 12 and Laws 1992, ch. 67, § 12; 1993, ch. 31, § 8.

**ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, deleted the "to the extent that receipts from such services are" following "services" and "tax under" following "subject to".

## 7-9-38.2. Exemption; gross receipts tax; sale of certain telecommunications services.

Exempted from the gross receipts tax are receipts of a home service provider from providing mobile telecommunications services to persons whose place of primary use is outside New Mexico, regardless of where the mobile telecommunications services originate, terminate or pass through. For the purposes of this section, "home service provider", "mobile telecommunications services" and "place of primary use" have the meanings given in the federal Mobile Telecommunications Sourcing Act.

**History:** Laws 2002, ch. 18, § 2.

### ANNOTATIONS

**Cross references.** — For the federal Mobile Telecommunications Sourcing Act, *see* 4 U.S.C.S. § 116 et seq.

**Effective dates.** — Laws 2002, ch. 18, § 8 made Laws 2002, ch. 18, § 2 effective August 1, 2002.

## 7-9-39. Exemption; gross receipts tax; fees from social organizations.

A. Exempted from the gross receipts tax are the receipts from dues and registration fees of nonprofit social, fraternal, political, trade, labor or professional organizations and business leagues.

B. For the purposes of this section:

(1) "dues" means amounts that a member of an organization pays at recurring intervals to retain membership in an organization where such amounts are used for the general maintenance and upkeep of the organization; and

(2) "registration fees" means amounts paid by persons to attend a specific event sponsored by an organization to defray the cost of the event.

**History:** 1953 Comp., § 72-16A-12.27, enacted by Laws 1969, ch. 144, § 32; 1977, ch. 141, § 1.

### ANNOTATIONS

**Compiler's notes.** — The following cases were decided under the prior version of this section which exempted nonprofit business organizations.

**It is not necessary for all members to engage in business** in order for a group to constitute a business organization. AAA v. Bureau of Revenue, 1975-NMSC-058, 88 N.M. 462, 541 P.2d 967.

**Nonprofit business organization exempt.** — The supreme court has decided that a nonprofit business organization, the receipts of which are from dues and registration fees of its members, is exempt from the payment of a gross receipts tax. Twining Coop. Domestic Water & Sewer Ass'n v. Bureau of Revenue, 1976-NMCA-052, 89 N.M. 345, 552 P.2d 476, cert. denied, 90 N.M. 7, 558 P.2d 619.

**The American Automobile Association is a "business organization"** in the common understanding of that term. It is a group of people that has a more or less constant membership, a body of officers, a purpose and a set of regulations, and engages in a commercial activity, even though it is a nonprofit activity and the receipts involved in AAA's activities are from dues and registration fees. AAA v. Bureau of Revenue, 1975-NMSC-058, 88 N.M. 462, 541 P.2d 967.

**A "nonprofit" corporation** means a corporation which distributes no part of the income or profit to its members, directors or officers. AAA v. Bureau of Revenue, 1975-NMSC-012, 87 N.M. 330, 533 P.2d 103, *rev'd on other grounds*, 1975-NMSC-058, 88 N.M. 462, 541 P.2d 967.

## 7-9-40. Exemption; gross receipts tax; purses and jockey remuneration at New Mexico racetracks; receipts from gross amounts wagered.

A. Exempted from the gross receipts tax are the receipts of horsemen, jockeys and trainers from race purses at New Mexico horse racetracks subject to the jurisdiction of the state racing commission.

B. Exempted from the gross receipts tax are the receipts of a racetrack from the commissions and other amounts authorized by Section 60-1-10 NMSA 1978 to be retained by a racetrack conducting horse races under the authority of a license from the state racing commission.

**History:** 1953 Comp., § 72-16A-12.28, enacted by Laws 1970, ch. 60, § 2; 1971, ch. 145, § 1; 1985, ch. 137, § 1; 1989, ch. 260, § 1.

**ANNOTATIONS**

**Cross references.** — For the state racing commission, *see* 60-1-2 NMSA 1978.

**The 1989 amendment,** effective June 16, 1989, deleted "admissions and" following "receipts from" in the section heading; and in Subsection B restructured former Paragraph (2) so as to constitute the language beginning with "the commissions", deleted former Paragraph (1) which read "admissions to the racetrack on any racing day", and deleted former Paragraph (3) which read "the tax imposed by Paragraph (1) of Subsection A of Section 60-1-15 NMSA 1978".

**Enactment of exemption shows no intent as to prior treatment.** — Since the reporting periods for the receipts of a horse owner and a horse trainer are prior to the enactment of this section, no exemption under it is available. The fact that an exemption was subsequently enacted does not show a legislative intent that the receipts were not subject to the gross receipts tax prior to enactment of the exemption. Till v. Jones, 1972-NMCA-046, 83 N.M. 743, 497 P.2d 745, cert. denied, 83 N.M. 740, 497 P.2d 742.

## 7-9-41. Exemption; gross receipts tax; religious activities.

Exempted from the gross receipts tax are the receipts of a minister of a religious organization, which organization has been granted an exemption from federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended or renumbered, from religious services provided by the minister to an individual recipient of the service.

**History:** 1953 Comp., § 72-16A-12.29, enacted by Laws 1972, ch. 61, § 2.

### ANNOTATIONS

**Cross references.** — For Section 501(c)(3) of the Internal Revenue Code of 1954, *see* 26 U.S.C. § 501(c)(3).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Religious organization's exemption from sales or use tax, 54 A.L.R.3d 1204.

## 7-9-41.1. Exemption; gross receipts tax and governmental gross receipts tax; athletic facility surcharge.

Exempted from the gross receipts tax and from the governmental gross receipts tax are the receipts of a university from an athletic facility surcharge imposed pursuant to the University Athletic Facility Funding Act [21-30-1 through 21-30-10 NMSA 1978].

History: Laws 2007, ch. 117, § 1.

### ANNOTATIONS

**Emergency clause.** — Laws 2007, ch. 117, § 12 contained an emergency clause and was approved March 30, 2007.

## 7-9-41.2. Deleted.

### ANNOTATIONS

**Compiler's notes.** — Laws 2008, ch. 11, § 1, amended Laws 2007, ch. 172, § 29, to provide that if the requirements of Subsection A of Laws 2007, ch. 172, § 29 were not fulfilled, the effective date of this section would be July 1, 2010, provided that prior to January 1, 2010, the economic development department certify to the taxation and revenue department that construction of a railroad locomotive refueling facility project in Dona Ana county had commenced, including the land acquisition, acquisition of all necessary permits and commencement of actual construction. On February 16, 2010, the New Mexico compilation commission received a letter from the economic development department dated February 12, 2010, notifying the compilation commission that while Union Pacific had made the land acquisition, construction of a railroad locomotive refueling facility project in Doña Ana county had not commenced as required by Laws 2007, ch. 172, § 29. Therefore, Section 7-9-41.2 NMSA 1978 failed to become effective and was deleted by the compiler. For provisions of former section, *see* the 2013 NMSA 1978 on *NMOneSource.com.*

## 7-9-41.3. Exemption; receipts from sales by disabled street vendors.

A. Exempt from payment of the gross receipts tax are receipts from the sale of goods by a disabled street vendor.

B. As used in this section:

(1) "disabled" means to be blind or permanently disabled with medical improvement not expected pursuant to 42 USCA 421 for purposes of the federal Social Security Act or to have a permanent total disability pursuant to the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978]; and

(2) "street vendor" means a person licensed by a local government to sell items of tangible personal property by newly setting up a sales site daily or selling the items from a moveable cart, tray, blanket or other device.

History: Laws 2007, ch. 45, § 13 and 2007, ch. 237, § 1.

### ANNOTATIONS

**Cross references.** — For the federal Social Security Act, *see* 42 U.S.C. § 301.

**Duplicate laws.** — Laws 2007, ch. 45, § 13 and Laws 2007, ch. 237, § 1 enacted identical new sections. The section was set out as enacted by Laws 2007, ch. 237, § 1, effective June 15, 2007. *See* 12-1-8 NMSA 1978.

## 7-9-41.4. Exemption; officiating at New Mexico activities association-sanctioned school events.

Exempted from the gross receipts tax are the receipts from refereeing, umpiring, scoring or other officiating at school events sanctioned by the New Mexico activities association.

History: Laws 2009, ch. 62, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 62 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## 7-9-42. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1984, ch. 2, § 11, repealed 7-9-42 NMSA 1978, enacted by Laws 1973, ch. 67, § 2, relating to the exemption of the receipts from the leasing or licensing of theatrical and television films and tapes from the gross receipts and compensating tax, effective February 11, 1984. For present provisions relating to exemption of receipts from leasing and licensing theatrical and television films and tapes, *see* 7-9-76.2 NMSA 1978.

## 7-9-43. Nontaxable transaction certificates and other evidence required to entitle persons to deductions.

A. All nontaxable transaction certificates of the appropriate series executed by buyers or lessees should be in the possession of the seller or lessor for nontaxable transactions at the time the return is due for receipts from the transactions. If the seller or lessor is not in possession of the required nontaxable transaction certificates within sixty days from the date that the notice requiring possession of these nontaxable transaction certificates is given the seller or lessor by the department, deductions claimed by the seller or lessor that require delivery of these nontaxable transaction certificates shall be disallowed except as provided in Subsection E of this section. The nontaxable transaction certificates shall contain the information and be in a form prescribed by the department. The department by regulation may deem to be nontaxable transaction certificates documents issued by other states or the multistate tax commission to taxpayers not required to be registered in New Mexico. Only buyers or lessees who have a registration number or have applied for a registration number and have not been refused one under Subsection C of Section 7-1-12 NMSA 1978 shall execute nontaxable transaction certificates issued by the department. If the seller or lessor has been given an identification number for tax purposes by the department, the

seller or lessor shall disclose that identification number to the buyer or lessee prior to or upon acceptance of a nontaxable transaction certificate. When the seller or lessor accepts a nontaxable transaction certificate within the required time and in good faith that the buyer or lessee will employ the property or service transferred in a nontaxable manner, the properly executed nontaxable transaction certificate shall be conclusive evidence, and the only material evidence, that the proceeds from the transaction are deductible from the seller's or lessor's gross receipts.

B. Properly executed documents required to support the deductions provided in Sections 7-9-57, 7-9-58 and 7-9-74 NMSA 1978 should be in the possession of the seller at the time the return is due for receipts from the transactions. If the seller is not in possession of these documents within sixty days from the date that the notice requiring possession of these documents is given to the seller by the department, deductions claimed by the seller or lessor that require delivery of these documents shall be disallowed. These documents shall contain the information and be in a form prescribed by the department. When the seller accepts these documents within the required time and in good faith that the buyer will employ the property or service transferred in a nontaxable manner, the properly executed documents shall be conclusive evidence, and the only material evidence, that the proceeds from the transaction are deductible from the seller's gross receipts.

C. Notice, as used in this section, is sufficient if the notice is mailed or served as provided in Subsection A of Section 7-1-9 NMSA 1978. Notice by the department under this section shall not be given prior to the commencement of an audit of the seller required to be in possession of the documents.

D. To exercise the privilege of executing appropriate nontaxable transaction certificates, a buyer or lessee shall apply to the department for permission to execute nontaxable transaction certificates, except with respect to documents issued by other states or the multistate tax commission that the department has deemed to be nontaxable transaction certificates. If a person is shown on the department's records to be a delinquent taxpayer or to have a non-filed period, the department may refuse to approve the application of the person until the person has filed returns for all non-filed periods and is no longer shown to be a delinquent taxpayer, and the taxpayer may protest that refusal pursuant to Section 7-1-24 NMSA 1978. Upon the department's approval of the application, the buyer or lessee may request appropriate nontaxable transaction certificates for execution by the buyer or lessee; provided that if a person is shown on the department's records to be a delinquent taxpayer or to have a non-filed period, the department may refuse to issue nontaxable transaction certificates to the person until the person has filed returns for all non-filed periods and is no longer shown to be a delinquent taxpayer. The taxpayer may protest that refusal pursuant to Section 7-1-24 NMSA 1978. The department may require a buyer or lessee requesting and receiving nontaxable transaction certificates for execution by that buyer or lessee to report to the department the names, addresses and identification numbers assigned by the department of the sellers and lessors to whom they have delivered nontaxable transaction certificates. The department may require a seller or lessor engaged in

business in New Mexico to report to the department the names, addresses and federal employer identification numbers or state identification numbers for tax purposes issued by the department of the buyers or lessees from whom the seller or lessor has accepted nontaxable transaction certificates.

E. The secretary or secretary's delegate may accept other evidence, as specified by rule, to support the deduction provided pursuant to Section 7-9-47 NMSA 1978 for the sale of tangible personal property if a taxpayer is unable to provide a nontaxable transaction certificate within the sixty-day period specified in Subsection A of this section:

(1) prior to the issuance of an audit assessment; or

(2) if the audit assessment is protested, prior to either the taxpayer's withdrawal of the protest or the formal hearing of the protest; provided, however, that the protest in this paragraph is acknowledged by the department prior to December 31, 2011.

History: 1953 Comp., § 72-16A-13, enacted by Laws 1966, ch. 47, § 13; 1969, ch. 144, § 33; 1973, ch. 219, § 1; 1983, ch. 220, § 7; 1990, ch. 41, § 6; 1991, ch. 9, § 29; 1992, ch. 39, § 3; 1993, ch. 31, § 9; 1994, ch. 94, § 1; 1994, ch. 98, § 1; 1997, ch. 72, § 1; 1998, ch. 89, § 3; 2001, ch. 332, § 1; 2003, ch. 330, § 1; 2005, ch. 12, § 1; 2011, ch. 148, § 1.

## ANNOTATIONS

**The 2011 amendment,** effective April 7, 2011, added Subsection E to permit the secretary to accept evidence other than a nontaxable transaction certificate to support a deduction from gross receipts for the sale of tangible personal property or licenses.

**The 2005 amendment,** effective March 15, 2005, deleted Subsection D, eliminating the requirement that a new series of nontaxable transaction certificates be issued for twelve-year periods. Former Subsection E is now Subsection D.

**The 2003 amendment,** effective June 20, 2003, in Subsection D substituted "January 1, 2005" for "January 1, 1992" three times, substituted "December 31, 2004" for "December 31, 1991" following "transactions after" at the end of the first sentence, substituted "2005" for "1992" following "calendar year" at the end of the second sentence, and inserted "except the nontaxable transaction certificates issued by the department for the period January 1, 1992 to December 31, 2001 may be executed by buyers or lessees for transactions occurring prior to December 31, 2004" following "that twelve-year period" at the end of the third sentence; in Subsection E, inserted "or to have a non-filed period" following "delinquent taxpayer" near the beginning of the second sentence, inserted "has filed returns for all non-filed periods and" following "until the person" near the middle of the second sentence, inserted "or to have a non-filed period" following "delinquent taxpayer" near the middle of the third sentence, inserted

"has filed returns for all non-filed periods and" following "until the person" near the end of the third sentence, deleted "annually" following "report to the department" near the middle of the fifth sentence, and deleted "annually" following "report to the department" near the middle of the sixth sentence.

**The 2001 amendment,** effective July 1, 2001, in Subsection D, converted the former "ten-year period" to a "twelve-year period" throughout the subsection.

**The 1991 amendment,** effective June 14, 1991, in the section heading, deleted "farmers' and ranchers' statements" following "certificates" and added "Fee - Renewal" at the end; added "Subject to the provisions of Subsection D of this section" at the beginning of Subsection A; and added Subsection D.

**Execution of certificate.** — This section makes clear that only the buyer, who has or had applied for a registration number, may execute a nontaxable transaction certificate. House of Carpets, Inc., v. Bureau of Revenue, 1973-NMCA-034, 84 N.M. 747, 507 P.2d 1078.

**Liability for payment of tax.** — Where a nontaxable transaction certificate has been properly delivered to a seller of service for resale, only the reseller of the service is liable for payment of the gross receipts tax. House of Carpets, Inc., v. Bureau of Revenue, 1973-NMCA-034, 84 N.M. 747, 507 P.2d 1078.

**Taxable transaction not transformed by "nontaxable transaction certificate".** — Issuance of a "nontaxable transaction certificate" does not operate to transform an otherwise taxable transaction into a nontaxable transaction. Gas Co. v. O'Cheskey, 1980-NMCA-085, 94 N.M. 630, 614 P.2d 547.

**Commissioner (now department) has authority to issue regulations interpreting and exemplifying statutes** concerning the possession of nontaxable transaction certificates and he also has such authority as may be fairly implied from the statutory authorization. Rainbo Baking Co. v. Commissioner of Revenue, 1972-NMCA-139, 84 N.M. 303, 502 P.2d 406.

**Words "properly executed"** are used in this section in the sense of completing - filling out and signing - the nontaxable transaction certificates. Leaco Rural Tel. Coop., Inc. v. Bureau of Revenue, 1974-NMCA-076, 86 N.M. 629, 526 P.2d 426.

**Taxpayer not liable if certificates incorrectly issued.** — Although receipts from transactions involving telephone service to schools, churches, police departments, fire departments and the like were not properly deductible in the first instance because the transactions were not sales of tangible personal property, nevertheless, when the telephone company accepted the nontaxable transaction certificates in compliance with this section, the deductions authorized thereby applied and protected the company from tax liability on receipts from those transactions, regardless of the propriety or

impropriety of the certificates' issuance. Leaco Rural Tel. Coop., Inc. v. Bureau of Revenue, 1974-NMCA-076, 86 N.M. 629, 526 P.2d 426.

**Reliance on certificates improper following change in law.** — This section protects a taxpayer when the purchaser who provided the nontaxable transaction certificates (NTTC) has failed to live up to the promise that the actual transaction was nontaxable. However, it does not protect taxpayers from changes in the law that render formerly nontaxable transactions taxable. Indeed, a taxpayer has an affirmative duty to keep informed about changes in the tax law affecting liability and cannot escape tax liability for transactions based on NTTCs issued before a change in the law rendered the NTTCs invalid for those transactions. Arco Materials, Inc. v. State Taxation & Revenue Dep't, 1994-NMCA-062, 118 N.M. 12, 878 P.2d 330, *rev'd on other grounds sub nom.* Blaze Constr. Co. v. Taxation & Revenue Dep't, 1994-NMSC-110, 118 N.M. 647, 884 P.2d 803, cert. denied, 514 U.S. 1016, 115 S. Ct. 1359, 131 L. Ed. 2d 216 (1995).

**Certificate inapplicable to in-state ambulance receipts.** — A nontaxable transaction certificate accepted by a taxpayer who will make initial use of the product or service outside of this state does not apply to receipts from the taxpayer's in-state ambulance service. McKinley Ambulance Serv. v. Bureau of Revenue, 1979-NMCA-026, 92 N.M. 599, 592 P.2d 515.

## 7-9-43.1. Nontaxable transaction certificates not required by liquor wholesalers.

Notwithstanding the provisions of Section 7-9-43 NMSA 1978, a liquor wholesaler licensed as a wholesaler by the superintendent of regulation and licensing pursuant to the Liquor Control Act [60-3A-1 NMSA 1978 et seq.] is not required to obtain a nontaxable transaction certificate from a person issued a retailer's, dispenser's, restaurant, public service or governmental license by the superintendent of regulation and licensing pursuant to the Liquor Control Act for the purpose of taking deductions under the Gross Receipts and Compensating Tax Act.

**History:** Laws 1981, ch. 333, § 1; 1992, ch. 39, § 4.

**ANNOTATIONS**

**The 1992 amendment,** effective July 1, 1992, substituted "as a wholesaler by the superintendent of regulation and licensing pursuant to the Liquor Control Act" for "by the department of alcoholic beverage control", and substituted all of the present language beginning with "person" for "liquor retailer licensed by the department of alcoholic beverage control for the purpose of taking deductions under the Gross Receipts and Compensating Tax Act".

## 7-9-44. Suspension of the right to use a nontaxable transaction certificate.

A. The secretary may suspend for not more than one year the privilege of a person to execute nontaxable transaction certificates if that person:

(1) fails to pay, within one year of the date the tax is due, the compensating tax on the subsequent use of property or services purchased through the execution of a nontaxable transaction certificate; or

(2) executes with the seller or lessor a nontaxable transaction certificate inapplicable to the transaction when no compensating tax is due on that buyer's or lessee's use of the property or service.

B. The secretary may suspend for not more than six months the privilege of a person to execute nontaxable transaction certificates, to claim deductions on the basis of nontaxable transaction certificates accepted by that person or both if that person fails to account in the manner and time required by the department, in accordance with Subsection E of Section 7-9-43 NMSA 1978, for the certificates executed or accepted by that person.

C. A suspension under this section voids the department's approval of the person's application for the privilege of executing nontaxable transaction certificates and, prior to resumption of the privilege, the person whose privilege to execute nontaxable transaction certificates has been suspended shall reapply for the privilege of executing such certificates in accordance with Section 7-9-43 NMSA 1978.

D. Notwithstanding the provisions of Section 7-1-8 NMSA 1978, the department may notify the public or provide for notice to the public of the suspension of a person's privilege to execute nontaxable transaction certificates.

**History:** 1953 Comp., § 72-16A-13.1, enacted by Laws 1969, ch. 144, § 34; 1983, ch. 220, § 8; 1990, ch. 41, § 7; 1992, ch. 39, § 5; 1993, ch. 31, § 10; 2001, ch. 343, § 3.

## ANNOTATIONS

**The 2001 amendment,** effective July 1, 2001, substituted "execute" or "execution" preceding "nontaxable transaction certificate" throughout the section; added Paragraph A(2); in Subsection C, substituted "the privilege" for "use of such certificates" and deleted "and shall pay the application fee" from the end of the subsection.

**The 1993 amendment,** effective July 1, 1993, substituted "privilege" for "right" near the beginning of Subsection A; substituted "shall" for "must" in two places in Subsection C; and added Subsection D.

**The 1992 amendment,** effective July 1, 1992, designated the formerly undesignated provisions as Subsection A, and added Subsections B and C.

**The 1990 amendment,** effective July 1, 1990, substituted "secretary" for "director".

## 7-9-45. Deductions.

A. Receipts may only be deducted once from gross receipts or governmental gross receipts when computing the gross receipts tax or governmental gross receipts tax due.

B. The same receipts shall not be both exempt from the gross receipts tax and deducted from gross receipts.

C. The same receipts shall not be both exempt from the governmental gross receipts tax and deducted from governmental gross receipts.

**History:** 1978 Comp., § 7-9-45, enacted by Laws 1969, ch. 144, § 35; 1970, ch. 77, § 1; 1970, ch. 78, § 1; 1971, ch. 217, § 1; 1972, ch. 39, § 1; 1977, ch. 288, § 1; 1979, ch. 338, § 2; 1984, ch. 129, § 1; 1989, ch. 262, § 5; 1994, ch. 45, § 3; 1995, ch. 70, § 5; 1999, ch. 231, § 2; 2017 (1st S.S.), ch. 3, § 16.

**ANNOTATIONS**

**The 2017 (1st S.S.) amendment,** effective July 1, 2017, clarified that certain receipts may only be deducted once from gross receipts or governmental gross receipts when computing the gross receipts tax or governmental gross receipts tax due; in Subsection A, deleted "In computing the gross receipts tax or governmental gross receipts tax due, only those receipts specified in Sections 7-9-46 through 7-9-76.2, 7-9-77.1, 7-9-83, 7-9-85 through 7-9-87 and 7-9-89 NMSA 1978 may be deducted. Receipts, whether specified once or several times in those sections, may be deducted only once from gross receipts or governmental gross" and after "Receipts", added "may only be deducted once from gross receipts or governmental gross receipts when computing the gross receipts tax or governmental gross receipts tax due"; in Subsection B, added "The same", after the first occurrence of "receipts", deleted "that are exempted from the gross receipts tax may" and added "shall", after "not be", added "both exempt from the gross receipts tax and", and deleted the last sentence, which provided "Receipts that are deducted from gross receipts may not be exempted from the gross receipts tax."; and in Subsection C, added "The same", after the first occurrence of "receipts", deleted "that are exempted from the governmental gross receipts tax", after "shall not be", added "both exempt from the governmental gross receipts tax and", and deleted the last sentence, which provided "Receipts that are deducted from governmental gross receipts shall not be exempted from the governmental gross receipts tax.".

**The 1999 amendment,** effective July 1, 1999, in Subsection A, substituted "Sections 7-9-46 through 7-9-76.2, 7-9-77.1, 7-9-83, 7-9-85 through 7-9-87 and 7-9-89 NMSA 1978 may be deducted" for "Sections 7-9-46 through 7-9-76.2, and 7-9-83, through 7-9-85 NMSA 1978 may be deducted" in the first sentence, and substituted "several times in those sections" for "several times in Sections 7-9-46 through 7-9-76.2 and 7-9-83 through 7-9-85 NMSA 1978" in the second sentence.

**The 1995 amendment,** effective July 1, 1995, substituted "and 7-9-83 through 7-9-85" for "7-9-83 and 7-9-84" in the first and second sentences of Subsection A.

**The 1994 amendment,** effective July 1, 1994, designated the previously undesignated first two sentences as Subsection A and the previously undesignated last sentence as Subsection B; in Subsection A, inserted "or governmental gross receipts tax" in the first sentence and "7-9-83 and 7-9-84" in both sentences, and added "or governmental gross receipts" at the end of the second sentence; and added Subsection C.

**The 1989 amendment,** effective July 1, 1989, added the third and fourth sentences.

**Deductions or exemptions from a tax must be strictly construed** in favor of the taxing authority, must be clearly and unambiguously expressed in the statute, and must be clearly established by the taxpayer claiming the right thereto. Chavez v. Commissioner of Revenue, 1970-NMCA-116, 82 N.M. 97, 476 P.2d 67.

**Tax statute must also be given fair, unbiased and reasonable construction,** without favor or prejudice to either the taxpayer or the state, to the end that the legislative intent is effectuated and the public interests to be subserved thereby are furthered. Chavez v. Commissioner of Revenue, 1970-NMCA-116, 82 N.M. 97, 476 P.2d 67.

**Deductions narrowly but reasonably construed. —** If a tax is clearly applicable, except for a statutory exemption, exception or deduction therefrom, the provision for the exemption, exception or deduction must be narrowly but reasonably construed. Chavez v. Commissioner of Revenue, 1970-NMCA-116, 82 N.M. 97, 476 P.2d 67.

## 7-9-46. Deduction; gross receipts tax; governmental gross receipts; sales to manufacturers.

A. Receipts from selling tangible personal property may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person engaged in the business of manufacturing who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must incorporate the tangible personal property as an ingredient or component part of the product that the buyer is in the business of manufacturing.

B. Receipts from selling tangible personal property that is a consumable and used in such a way that it is consumed in the manufacturing process of a product, provided that the tangible personal property is not a tool or equipment used to create the manufactured product, to a person engaged in the business of manufacturing that product and who delivers a nontaxable transaction certificate to the seller may be deducted in the following percentages from gross receipts or from governmental gross receipts:

(1) twenty percent of receipts received prior to January 1, 2014;

(2) forty percent of receipts received in calendar year 2014;

(3) sixty percent of receipts received in calendar year 2015;

(4) eighty percent of receipts received in calendar year 2016; and

(5) one hundred percent of receipts received on or after January 1, 2017.

C. The purpose of the deductions provided in this section is to encourage manufacturing businesses to locate in New Mexico and to reduce the tax burden, including reducing pyramiding, on the tangible personal property that is consumed in the manufacturing process and that is purchased by manufacturing businesses in New Mexico.

D. The department shall annually report to the revenue stabilization and tax policy committee the aggregate amount of deductions taken pursuant to this section, the number of taxpayers claiming each of the deductions and any other information that is necessary to determine that the deductions are performing the purposes for which they are enacted.

E. A taxpayer deducting gross receipts pursuant to this section shall report the amount deducted separately for each deduction provided in this section and attribute the amount of the deduction to the appropriate authorization provided in this section in a manner required by the department that facilitates the evaluation by the legislature of the benefit to the state of these deductions.

F. As used in Subsection B of this section, "consumable" means tangible personal property that is incorporated into, destroyed, depleted or transformed in the process of manufacturing a product:

(1) including electricity, fuels, water, manufacturing aids and supplies, chemicals, gases, repair parts, spares and other tangibles used to manufacture a product; but

(2) excluding tangible personal property used in:

(a) the generation of power;

(b) the processing of natural resources, including hydrocarbons; and

(c) the preparation of meals for immediate consumption on- or off-premises.

History: 1953 Comp., § 72-16A-14.1, enacted by Laws 1969, ch. 144, § 36; 1992, ch. 100, § 4; 2012, ch. 5, § 4; 2013, ch. 160, § 9.

## ANNOTATIONS

**The 2013 amendment,** effective July 1, 2013, provided a definition of "consumable" for purposes of the deduction of receipts from sales to manufacturers; in Subsection B, in the introductory sentence, after "tangible personal property that is", added "a consumable and"; and added Subsection F.

**Applicability.** — Laws 2013, ch. 160, § 14 provided that Laws 2013, ch. 160, § 9 applies to gross receipts received on or after July 1, 2013.

**The 2012 amendment,** effective January 1, 2013, provided a deduction for receipts from selling tangible personal property that is consumed in the manufacturing process of a product and added Paragraphs B, C, D and E.

**The 1992 amendment,** effective July 1, 1992, inserted "governmental gross receipts" in the section heading; inserted "or from governmental gross receipts" in the first sentence; and substituted "that" for "which" in the second sentence.

**Entitlement to manufacturing deduction not found.** — A biotechnology company whose expertise was in the diagnosis of genetic disorders that could be detected through the appearance of chromosomes, and who produced tangible objects that were provided to its customers, such as a written report of its experts' diagnosis and a laminated karyotype, which consisted of photographs of chromosomes that were numbered and pasted onto a piece of laminated cardboard, did not establish its entitlement to a manufacturing deduction, since the company could not identify any out-of-state purchases that would be subject to the compensating tax of products incorporated into its reports or laminated karyotypes. The department, whose assessment is assumed correct, had identified as subject to the compensating tax such items as microscopes, sinks, and furniture, which undoubtedly were not incorporated into the documents or laminated karyotypes. Vivigen, Inc. v. Minzner, 1994-NMCA-027, 117 N.M. 224, 870 P.2d 1382.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Sales or use tax upon containers or packaging materials purchased by manufacturer or processor for use with goods he distributes, 4 A.L.R.4th 581.

Items or materials exempt from use tax as becoming component part or ingredient of manufactured or processed article, 89 A.L.R.5th 493.

## 7-9-47. Deduction; gross receipts tax; governmental gross receipts tax; sale of tangible personal property or licenses for resale.

Receipts from selling tangible personal property or licenses may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must resell the tangible personal property or license either by itself or in combination with other tangible personal property or licenses in the ordinary course of business.

**History:** 1953 Comp., § 72-16A-14.2, enacted by Laws 1969, ch. 144, § 37; 1992, ch. 39, § 6; 1992, ch. 100, § 5; 1994, ch. 45, § 4.

## ANNOTATIONS

**The 1994 amendment,** effective July 1, 1994, inserted "or licenses" in the section heading and in both sentences, and "or license" in the second sentence.

**The 1992 amendment,** effective July 1, 1992, inserted "governmental gross receipts" in the section heading; and inserted "or from governmental gross receipts" in the first sentence This section was also amended by Laws 1992, ch. 39, § 6, The section was set out as amended by Laws 1992, ch. 100, § 5. *See* 12-1-8 NMSA 1978.

**Ordinary course of business.** — Where taxpayer, whose typical business practices included owning, operating, leasing, and controlling generating plants and facilities for the generation, transmission and distribution of electricity to the public at retail, purchased turbines and related equipment to be used in the construction of a generating plant that would be conveyed to a municipality as an industrial revenue bond project, the sale of the turbines and related equipment was not in the taxpayer's ordinary course of business because the taxpayer had not previously purchased turbines and related equipment and did not plan to do so in the future, the taxpayer had not previously constructed generating plants, and there was no evidence that the transaction at issue was typical or customary within the taxpayer's industry. Pub. Serv. Co. of N.M. v. NM Taxation & Revenue Dept., 2007-NMCA-050, 141 N.M. 520, 157 P.3d 85.

**The phrase "ordinary course of business"** contemplates some evidence that a transaction is customary, normal, or regular within the company's own business or within the relevant industry at large. Pub. Serv. Co. of N.M. v. N.M. Taxation & Revenue Dept., 2007-NMCA-050, 141 N.M. 520, 157 P.3d 85.

**Legislature possesses great freedom of classification in taxation field.** — In the field of taxation, more than in other fields, the legislature possesses the greatest freedom in classification, and to attack such a classification as a violation of U.S. Const., amend. XIV places the burden on the one attacking to negative every conceivable basis which might support the classification and unless the classification is clearly arbitrary and capricious or void for uncertainty, the appellate court cannot substitute its views in selecting and classifying for those of the legislature. N.M. Newspapers, Inc. v. Bureau of Revenue, 1971-NMCA-022, 82 N.M. 436, 483 P.2d 317 (Ct. App. 1971).

**Scope of authority.** — Commissioner (now secretary) has authority to issue regulations interpreting and exemplifying statutes concerning the possession of nontaxable transaction certificates and he also has such authority as may be fairly implied from the statutory authorization. This authority, however, does not extend to imposing a time requirement which would abridge or modify the deduction authorized by

the legislature. Rainbo Baking Co. v. Comm'r of Revenue, 1972-NMCA-139, 84 N.M. 303, 502 P.2d 406.

**Certificate required.** — Since there was no evidence that contractors provided "nontaxable transaction certificates" to their vendors when they purchased property to be used in fulfilling their government contracts, the technical requirements of this section were not met. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Form of certificate.** — A seller's failure to possess a non-taxable transaction certificate in the form prescribed by the department and to procedurally present the form in a timely and proper manner provided a valid basis for denying the deductions claimed. A "blanket exemption certificate," issued by the buyer and relied upon by the seller, failed to meet this section's requirements. Proficient Food Co. v. N.M. Taxation & Revenue Dep't, 1988-NMCA-042, 107 N.M. 392, 758 P.2d 806, cert. denied, 107 N.M. 308, 756 P2d 1203.

**Reimbursement for services not sale.** — Reimbursements for materials and supplies consumed in performing services under certain government contracts were merely reimbursements for those services and did not involve a sale by the contractors of tangible personal property to the United States nor qualify for a deduction under this section. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

## 7-9-48. Deduction; gross receipts tax; governmental gross receipts; sale of a service for resale.

Receipts from selling a service for resale may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must resell the service in the ordinary course of business and the resale must be subject to the gross receipts tax or governmental gross receipts tax.

**History:** 1953 Comp., § 72-16A-14.3, enacted by Laws 1969, ch. 144, § 38; 1992, ch. 100, § 6; 2000, ch. 84, § 2.

**ANNOTATIONS**

**The 2000 amendment,** effective July 1, 2000, in the second sentence, substituted "resell the service" for "separately state the value of the service purchased in his charge for the service on its subsequent sale, and the subsequent sale must be" and inserted "the resale must be" preceding "subject to the gross receipts tax".

**The 1992 amendment,** effective July 1, 1992, inserted "governmental gross receipts" in the section catchline; inserted "or from governmental gross receipts" in the first

sentence, while adding "to the seller" at the end of that sentence; and added "or governmental gross receipts tax" at the end of the second sentence.

## 7-9-49. Deduction; gross receipts tax; sale of tangible personal property and licenses for leasing.

A. Except as otherwise provided by Subsection B of this section, receipts from selling tangible personal property and licenses may be deducted from gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate shall be engaged in a business that derives a substantial portion of its receipts from leasing or selling tangible personal property or licenses of the type sold. The buyer may not utilize the tangible personal property or license in any manner other than holding it for lease or sale or leasing or selling it either by itself or in combination with other tangible personal property or licenses in the ordinary course of business.

B. The deduction provided by this section shall not apply to receipts from selling:

(1) furniture or appliances, the receipts from the rental or lease of which are deductible under Subsection C of Section 7-9-53 NMSA 1978;

(2) coin-operated machines; or

(3) manufactured homes.

**History:** 1953 Comp., § 72-16A-14.4, enacted by Laws 1969, ch. 144, § 39; 1972, ch. 80, § 1; 1975, ch. 160, § 1; 1979, ch. 338, § 3; 1983, ch. 220, § 9; 1989, ch. 115, § 4; 1991, ch. 203, § 3; 1992, ch. 39, § 7.

**ANNOTATIONS**

**The 1992 amendment,** effective July 1, 1992, inserted "and licenses" in the section catchline and in the first sentence of Subsection A, substituted "that" for "which" and inserted "or licenses" in the second sentence, and inserted "or license" and "or licenses" in the last sentence.

**The 1991 amendment,** effective July 1, 1991, substituted "manufactured" for "mobile" in Paragraph (3) in Subsection B and made a minor stylistic change in Subsection A.

**The 1989 amendment,** effective July 1, 1989, designated the formerly undesignated provisions as Subsection A; in Subsection A substituted all of the language of the first sentence preceding "may" for "Receipts from selling tangible personal property other than furniture or appliances, the receipts from the rental or lease of which are deductible under Subsection C of Section 7-9-53 NMSA 1978, other than coin-operated machines and other than mobile homes", and substituted "sold" for "leased" at the end of the second sentence; and added Subsection B.

## 7-9-50. Deduction; gross receipts tax; lease for subsequent lease.

A. Except as provided otherwise in Subsection B of this section, receipts from leasing tangible personal property or licenses may be deducted from gross receipts if the lease is made to a lessee who delivers a nontaxable transaction certificate to the lessor. The lessee delivering the nontaxable transaction certificate may not use the tangible personal property or license in any manner other than for subsequent lease in the ordinary course of business.

B. The deduction provided by this section does not apply to receipts from leasing:

(1) furniture or appliances, the receipts from the rental or lease of which are deductible under Subsection C of Section 7-9-53 NMSA 1978;

(2) coin-operated machines; or

(3) manufactured homes.

**History:** 1953 Comp., § 72-16A-14.5, enacted by Laws 1969, ch. 144, § 40; 1972, ch. 80, § 2; 1975, ch. 160, § 2; 1979, ch. 338, § 4; 1983, ch. 220, § 10; 1991, ch. 203, § 4; 1992, ch. 39, § 8.

**ANNOTATIONS**

**The 1992 amendment,** effective July 1, 1992, in Subsection A, inserted "or licenses" in the first sentence and inserted "or license" in the second sentence.

**The 1991 amendment,** effective July 1, 1991, designated the formerly undesignated provision as Subsection A; rewrote the first sentence of Subsection A which read "receipts from leasing tangible personal property other than furniture or appliances, the receipts from the rental or lease of which are deductible under Subsection C of Section 7-9-53 NMSA 1978, other than coin-operated machines and other than mobile homes may be deducted from gross receipts if the lease is made to a lessee who delivers a nontaxable transaction certificate to the lessor"; and added Subsection B.

## 7-9-51. Deduction; gross receipts tax; sale of construction material to persons engaged in the construction business.

A. Receipts from selling construction material may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate to the seller.

B. The buyer delivering the nontaxable transaction certificate must incorporate the construction material as:

(1) an ingredient or component part of a construction project that is subject to the gross receipts tax upon its completion or upon the completion of the overall construction project of which it is a part;

(2) an ingredient or component part of a construction project that is subject to the gross receipts tax upon the sale in the ordinary course of business of the real property upon which it was constructed; or

(3) an ingredient or component part of a construction project that is located on the tribal territory of an Indian nation, tribe or pueblo.

**History:** 1953 Comp., § 72-16A-14.6, enacted by Laws 1969, ch. 144, § 41; 2000, ch. 84, § 3; 2000, ch. 98, § 1; 2001, ch. 343, § 4.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, substituted "construction material" for "tangible personal property" in Subsections A and B.

**The 2000 amendment,** effective March 7, 2000, added Subsection B(3). Laws 2000, ch. 84, § 3 enacted identical amendments to this section. The section was set out as amended by Laws 2000, ch. 98, § 1. *See* 12-1-8 NMSA 1978.

**"Engaged in the construction business."** — Since taxpayer constructed a hotel in this state, and taxpayer held a contractor's license and held itself out to the public as a contractor, there was sufficient evidence to conclude that taxpayer was "engaged in the construction business." Continental Inn of Albuquerque, Inc. v. N.M. Taxation & Revenue Dep't, 1992-NMCA-030, 113 N.M. 588, 829 P.2d 946.

**Proper issuance of nontaxable transaction certificate.** — The deduction from gross receipts pursuant to this section and 7-9-52 NMSA 1978 is not conditioned upon proper issuance of the nontaxable transaction certificates (NTTC) by the buyer. The determination of whether a NTTC has been properly issued is a matter between the department and the buyer. Continental Inn of Albuquerque, Inc. v. N.M. Taxation & Revenue Dep't, 1992-NMCA-030, 113 N.M. 588, 829 P.2d 946.

**Message to seller that seller is entitled to deductions.** — The timely delivery of a nontaxable transaction certificate (NTTC) from the buyer to the seller conveys a message to the seller that the use of the NTTC's is such that the seller is entitled to deductions under this section or 7-9-52 NMSA 1978 when taxpayer issued NTTC's to the subcontractors; taxpayer, in essence, represented to the subcontractors that the use of the NTTC's was such that the subcontractors were entitled to deductions from the gross receipts tax. Continental Inn of Albuquerque, Inc. v. N.M. Taxation & Revenue Dep't, 1992-NMCA-030, 113 N.M. 588, 829 P.2d 946.

## 7-9-51.1. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 1995, ch. 50, § 6, repealed 7-9-51.1 NMSA 1978, as enacted by Laws 1993, ch. 31, § 14, relating to gross receipts tax deductions for railway bed materials, effective July 1, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

# 7-9-52. Deduction; gross receipts tax; sale of construction services and construction-related services to persons engaged in the construction business.

A. Receipts from selling a construction service or a construction-related service may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate to the person performing the construction service or a construction-related service.

B. The buyer delivering the nontaxable transaction certificate shall have the construction services or construction-related services directly contracted for or billed to:

(1) a construction project that is subject to the gross receipts tax upon its completion or upon the completion of the overall construction project of which it is a part;

(2) a construction project that is subject to the gross receipts tax upon the sale in the ordinary course of business of the real property upon which it was constructed; or

(3) a construction project that is located on the tribal territory of an Indian nation, tribe or pueblo.

C. As used in this section, "construction-related service" means a service directly contracted for or billed to a specific construction project, including design, architecture, drafting, surveying, engineering, environmental and structural testing, security, sanitation and services required to comply with governmental construction-related regulations; but "construction-related service" excludes general business services such as legal or accounting services, equipment maintenance and real estate sales commissions.

History: 1953 Comp., § 72-16A-14.7, enacted by Laws 1969, ch. 144, § 42; 2000, ch. 84, § 4; 2000, ch. 98, § 2; 2012, ch. 5, § 5.

## ANNOTATIONS

**The 2012 amendment,** effective January 1, 2013, provided a deduction for receipts from selling construction-related services; in the title, added "and construction-related services"; in Subsection A, after "selling a construction service", added "or a

construction-related service" and after "performing the construction service", added "or a construction-related service"; in Subsection B, after "construction services", deleted "performed upon" and added the remainder of the sentence; and added Subsection C.

**The 2000 amendment,** effective March 7, 2000, added Subsection B(3). Identical amendments to this section were enacted by Laws 2000, ch. 84, § 4. The section was set out as amended by Laws 2000, ch. 98, § 2. *See* 12-1-8 NMSA 1978.

**Language of this section is definite and unambiguous.** Miller v. Bureau of Revenue, 1979-NMCA-005, 93 N.M. 252, 599 P.2d 1049, cert. denied, 92 N.M. 532, 591 P.2d 286.

**"Engaged in the construction business".** — Since taxpayer constructed a hotel in this state, and taxpayer held a contractor's license and held itself out to the public as a contractor, there is sufficient evidence to conclude that taxpayer was "engaged in the construction business." Continental Inn of Albuquerque, Inc. v. N.M. Taxation & Revenue Dep't, 1992-NMCA-030, 113 N.M. 588, 829 P.2d 946.

**Construction services exempt from tax.** — A decision of the commissioner of the bureau of revenue (now secretary of the taxation and revenue department) denying the exemption of the sale of construction services from the gross receipts tax is contrary to the law of this state providing an exemption for construction services. Miller v. Bureau of Revenue, 1979-NMCA-005, 93 N.M. 252, 599 P.2d 1049, cert. denied, 92 N.M. 532, 591 P.2d 286.

**Proper issuance of nontaxable transaction certificate.** — The deduction from gross receipts pursuant to Section 7-9-51 NMSA 1978 and this section is not conditioned upon proper issuance of the nontaxable transaction certificates (NTTC) by the buyer. The determination of whether a NTTC has been properly issued is a matter between the department and the buyer. Continental Inn of Albuquerque, Inc. v. N.M. Taxation & Revenue Dep't, 1992-NMCA-030, 113 N.M. 588, 829 P.2d 946.

**Message to seller that seller is entitled to deductions.** — The timely delivery of a nontaxable transaction certificate (NTTC) from the buyer to the seller conveys a message to the seller that the use of the NTTC's is such that the seller is entitled to deductions under Section 7-9-51 NMSA 1978 or this section when taxpayer issued NTTC's to the subcontractors; taxpayer, in essence, represented to the subcontractors that the use of the NTTC's was such that the subcontractors were entitled to deductions from the gross receipts tax. Continental Inn of Albuquerque, Inc. v. N.M. Taxation & Revenue Dep't, 1992-NMCA-030, 113 N.M. 588, 829 P.2d 946.

## 7-9-52.1. Deduction; gross receipts tax; lease of construction equipment to persons engaged in the construction business.

A. Receipts from leasing construction equipment may be deducted from gross receipts if the construction equipment is leased to a person engaged in the construction

business who delivers a nontaxable transaction certificate to the person leasing the construction equipment.

B. The lessee delivering the nontaxable transaction certificate shall only use the construction equipment at the construction location of:

(1) a construction project that is subject to the gross receipts tax upon its completion or upon the completion of the overall construction project of which it is a part;

(2) a construction project that is subject to the gross receipts tax upon the sale in the ordinary course of business of the real property upon which it was constructed; or

(3) a construction project that is located on the tribal territory of an Indian nation, tribe or pueblo.

C. As used in this section, "construction equipment" means equipment used on a construction project, including trash containers, portable toilets, scaffolding and temporary fencing.

History: Laws 2012, ch. 5, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2012, ch. 5, § 8 made Laws 2012, ch. 5, § 6 effective January 1, 2013.

## 7-9-53. Deduction; gross receipts tax; sale or lease of real property and lease of manufactured homes.

A. Receipts from the sale or lease of real property and from the lease of a manufactured home as provided in Subsection B of this section, other than receipts from the sale or lease of oil, natural gas or mineral interests exempted by Section 7-9-32 NMSA 1978, may be deducted from gross receipts. However, that portion of the receipts from the sale of real property which is attributable to improvements constructed on the real property by the seller in the ordinary course of his construction business may not be deducted from gross receipts.

B. Receipts from the rental of a manufactured home for a period of at least one month may be deducted from gross receipts. Receipts received by hotels, motels, rooming houses, campgrounds, guest ranches, trailer parks or similar facilities, except receipts received by trailer parks from the rental of a space for a manufactured home or recreational vehicle for a period of at least one month, from lodgers, guests, roomers or occupants are not receipts from leasing real property for the purposes of this section.

C. Receipts attributable to the inclusion of furniture or appliances furnished as part of a leased or rented dwelling house, manufactured home or apartment by the landlord or lessor may be deducted from gross receipts.

**History:** 1953 Comp., § 72-16A-14.8, enacted by Laws 1969, ch. 144, § 43; 1972, ch. 80, § 3; 1973, ch. 205, § 1; 1975, ch. 160, § 3; 1979, ch. 338, § 5; 1983, ch. 220, § 11; 1991, ch. 203, § 5; 1998, ch. 94, § 1.

## ANNOTATIONS

**Cross references.** — For deduction of real estate commissions from gross receipts tax, *see* 7-9-66.1 NMSA 1978.

**The 1998 amendment,** effective April 1, 1998, inserted "or recreational vehicle" near the middle of the second sentence in Subsection B.

**The 1991 amendment,** effective July 1, 1991, substituted "manufactured" for "mobile" in the section heading and throughout the section.

**Contract for correctional services not a lease.** — Where a contract for correctional services provided that the contractor was paid based on the number of inmates housed and that the contractor had the right to fill up unoccupied space with inmates from other jurisdictions, the contract was not a lease for real property. Corrections Corp. of Am. v. State of N.M., 2007-NMCA-148, 142 N.M. 779, 170 P.3d 1017.

**Receipts attributable to improvements.** — Real estate developer was not entitled to deduction for receipts from the sale of real estate attributable to improvements made on the land since those improvements were completed prior to the effective date of this section but sale was not made until after effective date, as the plain language of this section shows a legislative intent not to allow a deduction on receipts from sale of real property attributable to such improvements. Doña Ana Dev. Corp. v. Commissioner of Revenue, 1973-NMCA-018, 84 N.M. 641, 506 P.2d 798.

**Monies not received from lease of real property.** — The receipts, which this section declares not to be "receipts from leasing real property," are clearly intended to mean the monies or rentals normally received by operators of hotels, motels, etc., when being operated as such in their customary and ordinary manner, from the lodgers, guests, roomers and occupants thereof. Chavez v. Commissioner of Revenue, 1970-NMCA-116, 82 N.M. 97, 476 P.2d 67.

**"Lease" not "license".** — An arrangement between the owner of several properties used as bingo halls and the non-profit organizations who operated the bingo games was a lease and not a license where the organizations were required to pay rent, they were granted exclusive possession of certain facilities on the premises and the use of the facilities at certain times, and the owner could not revoke the agreement at will; although the arrangement was not a typical lease, restrictions in the Bingo and Raffle

Act (Sections 60-2B-1 to 60-2B-14 NMSA 1978) accounted for the type of arrangement created and to deny that this was a lease would have made it impossible for bingo operators to enter arrangements that would qualify as leases. Quantum Corp. v. Taxation & Revenue Dep't, 1998-NMCA-050, 125 N.M. 49, 956 P.2d 848.

**"License" not "lease".** — The buy-down contract payments were reimbursements to the taxpayer for her sales loss incurred as a result of engaging in the discount promotions and where the shelf-display contract receipts were taxable pursuant to this section because those contracts bore a much greater resemblance to a license than to the creation and conveyance of an interest in real property that would have constituted a lease. Grogan v. N.M. Taxation & Revenue Dep't, 2003-NMCA-033, 133 N.M. 354, 62 P.3d 1236, cert. denied, 133 N.M. 413, 63 P.3d 516.

**Yearly lease of motel.** — Since taxpayers leased motel to a railway on an annual basis at a fixed rental, having no relationship to whether the railway company let the rooms to lodgers, guests or roomers, the rental received by the taxpayer was not income received from lodgers, guests or roomers, but was income by way of rental received from the lessee railway for the entire premises, and was deductible from gross receipts. Chavez v. Commissioner of Revenue, 1970-NMCA-116, 82 N.M. 97, 476 P.2d 67.

**Receipts from license agreements not deductible.** — Agreements between the taxpayer and several other companies providing for the use of space in the taxpayer's department stores for the purpose of retailing certain items, which agreements expressly negatived the intention to create a lease, constituted licenses, the money from selling which was not deductible from the gross receipts tax under this section. S.S. Kresge Co. v. Bureau of Revenue, 1975-NMCA-015, 87 N.M. 259, 531 P.2d 1232.

**Law reviews.** — For article, "The Deductibility for Federal Income Tax Purposes of the New Mexico Gross Receipts Tax Paid on the Purchase of a Newly Constructed Home," see 13 N.M.L. Rev. 625 (1983).

## 7-9-54. Deduction; gross receipts tax; governmental gross receipts tax; sales to governmental agencies.

A. Receipts from selling tangible personal property to the United States or New Mexico or a governmental unit, subdivision, agency, department or instrumentality thereof may be deducted from gross receipts or from governmental gross receipts. Unless contrary to federal law, the deduction provided by this subsection does not apply to:

(1) receipts from selling metalliferous mineral ore;

(2) receipts from selling tangible personal property that is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code [3-60A-1 through 3-60A-13, 3-60A-14 through 3-60A-48 NMSA 1978];

(3) receipts from selling construction material; or

(4) that portion of the receipts from performing a "service" that reflects the value of tangible personal property utilized or produced in performance of such service.

B. Receipts from selling tangible personal property for any purpose to an Indian tribe, nation or pueblo or a governmental unit, subdivision, agency, department or instrumentality thereof for use on Indian reservations or pueblo grants may be deducted from gross receipts or from governmental gross receipts.

C. When a seller, in good faith, deducts receipts for tangible personal property sold to the state or a governmental unit, subdivision, agency, department or instrumentality thereof, after receiving written assurances from the buyer's representative that the property sold is not construction material, the department shall not assert in a later assessment or audit of the seller that the receipts are not deductible pursuant to Paragraph (3) of Subsection A of this section.

**History:** 1953 Comp., § 72-16A-14.9, enacted by Laws 1969, ch. 144, § 44; 1976, ch. 25, § 2; 1985, ch. 225, § 4; 1989, ch. 115, § 5; 1992, ch. 100, § 7; 1993, ch. 31, § 11; 1995, ch. 50, § 3; 2000, ch. 84, § 5; 2000, ch. 98, § 3; 2001, ch. 343, § 5; 2003, ch. 272, § 6; 2003, ch. 330, § 2.

## ANNOTATIONS

**2003 Multiple Amendments.** — Laws 2003, ch. 272, § 6 and Laws 2003, ch. 330, § 2 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2003, ch. 330, § 2, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2003, ch. 272, § 6 and Laws 2003, ch. 330, § 2 are described below. To view the session laws in their entirety, *see* the 2003 session laws on *NMOneSource.com*.

**Laws 2003, ch. 330, § 2,** effective June 20, 2003, deleted "as defined in Subsection K of Section 7-9-3 NMSA 1978" near the middle of Paragraph A(4); in Subsection C substituted "shall not assert" for "is precluded from asserting" following "material, the department" near the middle and inserted "of the seller" following "assessment or audit" near the end.

**Laws 2003, ch. 272, § 6,** effective July 1, 2003, in Subsection A, deleted "or" preceding "subdivision, agency"; and in Paragraph A(4), substituted "Subsection M" for "Subsection K".

**The 2001 amendment,** effective July 1, 2001, substituted "construction material" for "tangible personal property that will become an ingredient or component part of a construction project" in Paragraph A(3); and added Subsection C.

**The 2000 amendment,** effective March 7, 2000, inserted "for any purpose" following "personal property" in Subsection B. This section was also amended by Laws 2000, ch. 84, § 5. The section was set out as amended by Laws 2000, ch. 98, § 3. *See* 12-1-8 NMSA 1978.

**The 1995 amendment,** effective July 1, 1995, inserted "tax" following "governmental gross receipts" in the section heading, deleted "nonfissionable" preceding "metalliferous" in Paragraph C(1), and made a minor stylistic change.

**The 1993 amendment,** effective July 1, 1993, deleted "or any agency or instrumentality thereof" following "United States" and substituted "any governmental unit or subdivision, agency, department or instumentality" for "any political subdivision" in Subsection A, and deleted "the governing body of" following "personal property to" and substituted "nation or pueblo or any governmental subdivision, agency, department or instrumentality thereof" for "or Indian pueblo" in Subsection B.

**The 1992 amendment,** effective July 1, 1992, inserted "governmental gross receipts" in the section heading; added "or from governmental gross receipts" at the end of Subsections A and B; substituted "that" for "which" in Subsection C(2); and substituted "that" for "which" in Subsection C(4), while deleting "is not deductible" at the end of that subsection.

**The 1989 amendment,** effective July 1, 1989, designated the formerly undesignated first sentence as Subsection A, while substituting therein "as provided otherwise in Subsection C of this section" for "for receipts from selling nonfissionable metalliferous mineral ore and except for receipts from selling tangible personal property which is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code; designated the formerly undesignated second sentence as Subsection B, while substituting all of the language thereof preceding "to" for "Receipts from selling tangible personal property other than nonfissionable metalliferous mineral ore"; added the introductory paragraph of Subsection C and Subsections C(1) through C(3); and designated the formerly undesignated third sentence as Subsection C(4).

**Effect on government's contract costs does not invalidate tax.** — That the gross receipts tax may increase cost on a contract to the government does not validate the tax on the grounds that a state may not directly tax the federal government where its legal incidence falls elsewhere. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Suppliers of personal property for federal agents entitled to deduction.** — If contractors are procurement agents for the federal government, their suppliers of tangible personal property would be entitled to a tax deduction. United States v. New Mexico, 624 F.2d 111 (10th Cir. 1980), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Tax proper unless purchasing contractors agents of United States.** — Since contracts do not authorize the contractors to act as agents of the United States in purchasing supplies and materials, an application of the gross receipts tax to the contractual transactions for materials and supplies is not unconstitutional. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Construction project includes wide variety of activities.** — This section was intended to make sales of construction materials to governmental entities taxable when the materials were to be incorporated into construction projects. Contrary to taxpayer's argument that Regulation GR 51:16 (now 3.2.1.11 NMAC) establishes a definite test for determining whether an endeavor is a "construction project," this regulation merely states nonexclusive guidelines for determining whether materials constitute a component part of a construction project. Thus, construction projects include the wide variety of activities listed in 7-9-3C NMSA 1978. Arco Materials, Inc. v. Taxation & Revenue Dep't, 1994-NMCA-062, 118 N.M. 12, 878 P.2d 330, *rev'd on other grounds sub nom.* Blaze Constr. Co. v. Taxation & Revenue Dep't, 1994-NMSC-110, 118 N.M. 647, 884 P.2d 803, cert. denied, 514 U.S. 1016, 115 S. Ct. 1359, 131 L. Ed. 2d 216 (1995).

**Direct passage of title to government insufficient to establish agency.** — That title to tangible personal property passes directly from the vendor to the federal government is insufficient in itself to establish an agency relationship. United States v. New Mexico, 455 F. Supp. 993 (D.N.M. 1978), *aff'd in part, rev'd in part on other grounds*, 624 F.2d 111 (10th Cir. 1980), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Contract and circumstances establish agency relationship.** — In determining whether contractors are procurement agents of the federal government, the surrounding facts and contract provisions must be analyzed, and specific words naming the contractors as agents are not required so long as it is clear from the contracts and the factual circumstances that the relationship is one of agency. United States v. New Mexico, 455 F. Supp. 993 (D.N.M. 1978), *aff'd in part, rev'd in part on other grounds*, 624 F.2d 111 (10th Cir. 1980), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Determining whether contractor was a federal agent.** — Facts that contracts were management contracts, in existence for nearly 30 years and conducted in government-owned facilities with government-owned funds for the purpose of carrying out significant energy research and development administration statutory responsibilities, were important in determining whether contractor was an agent of the federal government. United States v. New Mexico, 455 F. Supp. 993 (D.N.M. 1978), *aff'd in part, rev'd in part on other grounds*, 624 F.2d 111 (10th Cir. 1980), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Tax may not be imposed on non-Indian for purchase price of materials for tribal housing project.** — The state, through its bureau of revenue (now taxation and

revenue department) and the commissioner of revenue (now secretary of the taxation and revenue department), may not impose upon a non-Indian construction company its gross receipts tax for the purchase price of materials used in connection with a tribal housing project on the Mescalero Apache reservation. Mescalero Apache Tribe v. O'Cheskey, 439 F. Supp. 1063 (D.N.M. 1977), *aff'd*, 625 F.2d 967 (10th Cir. 1980), cert. denied, 450 U.S. 959, 101 S. Ct. 1417, 67 L. Ed. 2d 383 (1981), reh'g denied, 455 U.S. 929, 102 S. Ct. 1296, 71 L. Ed. 2d 474 (1982).

**Telephone service.** — Decision that a telephone company was not entitled to a deduction under this section for receipts collected for intrastate toll charges and local phone calls from certain government organizations and organizations which had been granted federal income tax exemptions would be held, since there was a reasonable basis for differentiating between electricity (declared to be tangible personalty at 7-9-3J NMSA 1978) and telephone communications where the evidence showed that more was involved in the telephone business than the selling of electricity. Leaco Rural Tel. Coop., Inc. v. Bureau of Revenue, 1974-NMCA-076, 86 N.M. 629, 526 P.2d 426.

## 7-9-54.1. Deduction; gross receipts from sale of aerospace services to certain organizations.

A. As used in this section:

(1) "aerospace services" means research and development services sold to or for resale to an organization for resale by the organization to the United States air force; and

(2) "organization" means an organization described in Subsection A of Section 7-9-29 NMSA 1978 other than a prime contractor operating facilities in New Mexico designated as a national laboratory by act of congress.

B. Receipts from performing or selling, on or after October 1, 1995, an aerospace service for resale may be deducted from gross receipts if the sale is made to a buyer who delivers a nontaxable transaction certificate. The buyer delivering the nontaxable transaction certificate shall separately state the value of the aerospace service purchased in the buyer's charge for the aerospace service on its subsequent sale to an organization or, if the buyer is an organization, on the organization's subsequent sale to the United States, and the subsequent sale shall be in the ordinary course of business of selling aerospace services to an organization or to the United States.

C. A percentage of the receipts from selling aerospace services to or for resale to an organization may be deducted from gross receipts in accordance with the following table:

| Receipts During the Period | Deductible Percentage |
|---|---|

| | |
|---|---|
| October 1, 1995 through September 30, 1996 | 10% |
| October 1, 1996 through September 30, 1997 | 25% |
| October 1, 1997 through September 30, 1999 | 50% |
| October 1, 1999 and thereafter | 100%. |

**History:** Laws 1992, ch. 40, § 1; 1993, ch. 310, § 1; 1994, ch. 45, § 5; 1995, ch. 183, § 1.

**ANNOTATIONS**

**Cross references. —** For Spaceport Development Act, *see* 9-15-41 NMSA 1978 et seq.

**Compiler's notes. —** Laws 1992, ch. 40, § 4, as amended by Laws 1993, ch. 310, § 2, provided that the effective date of the provisions of 7-9-54.1 NMSA 1978 was October 1, 1995. Laws 1994, ch. 45, § 8 repealed Laws 1992, ch. 40, § 4 and Laws 1993, ch. 310, § 2.

Laws 1993, ch. 31, § 13D and Laws 1993, ch. 310, § 3, repealed Laws 1992, ch. 40, § 3, which provided for the repeal of ch. 40 of Laws 1993 on August 1, 1995, if the United States has not announced prior to July 1, 1995, that the space systems division of the department of the air force will be relocated to New Mexico.

**The 1995 amendment,** effective July 1, 1995, rewrote Subsection A, inserted "if the buyer is an organization, on the organization's subsequent sale" in Subsection B, and substituted "or for resale to an organization" for "the United States or any agency or instrumentality thereof" in Subsection C.

**The 1994 amendment,** effective July 1, 1994, substituted "sold to or for resale to" for "performed or sold by" in Subparagraph A(1)(a) and inserted "performing or" in the first sentence in Subsection B.

**The 1993 amendment,** effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

## 7-9-54.2. Gross receipts; deduction; spaceport operation; space operations; launching, operating and recovering space vehicles or payloads; payload services; operationally responsive space program services.

A. Receipts from launching, operating or recovering space vehicles or payloads in New Mexico may be deducted from gross receipts.

B. Receipts from preparing a payload in New Mexico are deductible from gross receipts.

C. Receipts from operating a spaceport in New Mexico are deductible from gross receipts.

D. Receipts from the provision of research, development, testing and evaluation services for the United States air force operationally responsive space program may be deducted from gross receipts.

E. As used in this section:

(1) "operationally responsive space program" means a program authorized pursuant to 10 U.S.C. 2273a;

(2) "payload" means a system, subsystem or other mechanical structure or material to be conveyed into space that is designed, constructed or intended to perform a function in space;

(3) "space" means any location beyond altitudes of sixty thousand feet above the earth's mean sea level;

(4) "space operations" means the process of commanding and controlling payloads in space; and

(5) "spaceport" means an installation and related facilities used for the launching, landing, operating, recovering, servicing and monitoring of vehicles capable of entering or returning from space.

F. Receipts from the sale of tangible personal property that will become an ingredient or component part of a construction project or from performing construction services may not be deducted under this section.

History: Laws 1995, ch. 183, § 2; 1997, ch. 73, § 1; 2001, ch. 18, § 1; 2003, ch. 62, § 3; 2007, ch. 172, § 5.

## ANNOTATIONS

**The 2007 amendment,** effective July 1, 2007, added Subsection D and Paragraph (1) of Subsection E.

**The 2003 amendment,** effective July 1, 2003, deleted "For the period from July 1, 2001 through June 30, 2006" at the beginning of Subsections A to C and rewrote Paragraph D(1).

**The 2001 amendment,** effective July 1, 2001, substituted "space operations; launching, operating and recovering space vehicles or payloads" for "launching and recovery of space launch vehicles" in the section heading; added the time periods in which receipts may be deducted from gross receipts in Subsections A, B and C; substituted "launching,

operating or recovering space vehicles" for "launching or recovering space launch vehicles" in Subsection A; deleted "for launching" following "payload" in Subsection C; in Paragraph D(1), replaced the former definition of "payload" which read "includes systems, subsystems and mechanical structures required to perform or conduct research and development on or to conduct operations of space functions, such as reconnaissance, communications, navigation and target simulations, but does not include weapons"; added Paragraph D(3) and renumbered the following subsection; and substituted "operating, recovering" for "recovery" in present Paragraph D(4).

**The 1997 amendment,** effective June 20, 1997, in Subsection A, substituted "launching or recovering space launch vehicles or payloads" for "operating a spaceport"; in Subsection B, inserted "preparing a payload for" preceding "launching" and deleted "or recovering space launch vehicles or payloads from a spaceport" following "launching"; in Subsection C, substituted "operating" for "preparing a payload for launching at"; designated former Subsection D as Paragraph D(3) and rewrote that paragraph and added Paragraphs D(1) and D(2).

## 7-9-54.3. Deduction; gross receipts tax; wind and solar generation equipment; sales to governments.

A. Receipts from selling wind generation equipment or solar generation equipment to a government for the purpose of installing a wind or solar electric generation facility may be deducted from gross receipts.

B. The deduction allowed pursuant to this section shall not be claimed for receipts from an expenditure for which a taxpayer claims a credit pursuant to Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978.

C. As used in this section:

(1) "government" means the United States or the state or a governmental unit or a subdivision, agency, department or instrumentality of the federal government or the state;

(2) "related equipment" means transformers, circuit breakers and switching and metering equipment used to connect a wind or solar electric generation plant to the electric grid;

(3) "solar generation equipment" means solar thermal energy collection, concentration and heat transfer and conversion equipment; solar tracking hardware and software; photovoltaic panels and inverters; support structures; turbines and associated electrical generating equipment used to generate electricity from solar thermal energy; and related equipment; and

(4) "wind generation equipment" means wind generation turbines, blades, nacelles, rotors and supporting structures used to generate electricity from wind and related equipment.

History: Laws 2002, ch. 37, § 8; 2010, ch. 77, § 2; 2010, ch. 78, § 2.

**ANNOTATIONS**

**The 2010 amendment,** effective July 1, 2010, in the catchline, after "wind", deleted "energy" and added "and solar" and after "sales to", deleted "government agencies" and added "governments"; in Subsection A, after "selling wind generation", deleted "nacelles, rotors or related equipment to the United States or New Mexico or any governmental unit or subdivision, agency, department or instrumentality thereof, if such equipment is installed on a supporting structure" and added "equipment or solar generation equipment to a government for the purpose of installing a wind or solar electric generation facility"; and added Subsections B and C.

**Duplicate laws.** — Laws 2010, ch. 77, § 2 and Laws 2010, ch. 78, § 2 enacted identical amendments to this section. The section was set out as amended by Laws 2010, ch. 78, § 2. *See* 12-1-8 NMSA 1978.

## 7-9-54.4. Deduction; compensating tax; space-related test articles.

A. The value of space-related test articles used in New Mexico exclusively for research or testing, placing on public display after research or testing or storage for future research, testing or public display may be deducted in computing compensating tax due. This subsection does not apply to any other use of a space-related test article.

B. The value of equipment and materials used in New Mexico for research or testing, or for supporting the research or testing of, space-related test articles or for storage of such equipment or materials for research or testing, or supporting the research and testing of, space-related test articles may be deducted in computing compensating tax due. This subsection does not apply to any other use of such equipment and materials.

C. As used in this section, a "space-related test article" is a material or device intended to be used primarily in research or testing to determine properties and qualities of the material or properties, qualities or functioning of a device or technology when the principal use of the material, device or technology is intended to be in space or as part of, or associated with, a space vehicle.

**History:** 1978 Comp., § 7-9-54.4, enacted by Laws 2003, ch. 62, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 62, § 5 made Laws 2003, ch. 62, § 4 effective July 1, 2003.

## 7-9-54.5. Deduction; compensating tax; test articles.

A. The value of test articles upon which research or testing is conducted in New Mexico pursuant to a contract with the United States department of defense may be deducted in computing the compensating tax due.

B. As used in this section, "test article" means a material or device upon which research or testing is conducted to determine the properties and qualities of the material or the properties, qualities or functioning of the device or a technology used with the device.

C. The deduction provided by this section does not apply to the value of property purchased by a prime contractor operating a facility designated as a national laboratory by an act of congress.

History: Laws 2004, ch. 16, § 3.

**ANNOTATIONS**

**Emergency clause.** — Laws 2004, ch. 16, § 4 contained an emergency clause and was approved February 27, 2004.

## 7-9-55. Deduction; gross receipts tax; governmental gross receipts tax; transaction in interstate commerce.

A. Receipts from transactions in interstate commerce may be deducted from gross receipts to the extent that the imposition of the gross receipts tax would be unlawful under the United States constitution.

B. Receipts from transactions in interstate commerce may be deducted from governmental gross receipts.

C. Receipts from transmitting messages or conversations by radio other than from one point in this state to another point in this state and receipts from the sale of radio or television broadcast time when the advertising message is supplied by or on behalf of a national or regional seller or advertiser not having its principal place of business in or being incorporated under the laws of this state, may be deducted from gross receipts. Commissions of advertising agencies from performing services in this state may not be deducted from gross receipts under this section.

**History:** 1953 Comp., § 72-16A-14.10, enacted by Laws 1969, ch. 144, § 45; Laws 1986, ch. 20, § 65; Laws 1986, ch. 52, § 2; 1993, ch. 31, § 12.

## ANNOTATIONS

**Compiler's notes.** — Laws 1988, ch. 19, § 5, effective July 1, 1988, repealed Laws 1986, ch. 20, § 129 and Laws 1986, ch. 52, § 5, which amended versions of this section which were to take effect July 1, 1988.

Laws 1988, ch. 19, § 2 repealed and reenacted 7-9-55 NMSA 1978 as amended by Laws 1986, ch. 20, § 65 and Laws 1986, ch. 52, § 2, effective July 1, 1990; however, Laws 1990, ch. 27, § 2A repealed Laws 1988, ch. 19, § 2, effective May 16, 1990.

**The 1993 amendment,** effective July 1, 1993, inserted "governmental gross receipts tax" in the section heading; inserted the subsection designations A and C; and added Subsection B.

**Constitutionality.** — The New Mexico gross receipts tax did not violate the commerce clause of the United States constitution, as applied to a California corporation which owned and operated a food and restaurant supply business with a warehouse located in Texas, and which sold food and other restaurant supplies to restaurants for use in New Mexico by obtaining orders for deliveries by telephoning the restaurants and taking down the orders over the phone, then delivering the goods in its own trucks from its warehouse in Texas to the restaurants in New Mexico. Proficient Food Co. v. N.M. Taxation & Revenue Dep't, 1988-NMCA-042, 107 N.M. 392, 758 P.2d 806, cert. denied, 107 N.M. 308, 756 P.2d 1203.

**All interstate commerce is not per se immune** from taxation. Spillers v. Commissioner of Revenue, 1970-NMCA-097, 82 N.M. 41, 475 P.2d 41, cert. denied, 82 N.M. 81, 475 P.2d 778.

**Scope of deduction.** — This section permits deduction from gross receipts to the extent that the imposition of gross receipts tax would be unlawful under the United States constitution. If imposition of the tax upon the particular gross receipts is constitutionally lawful then such receipts are not deductible hereunder. Spillers v. Commissioner of Revenue, 1970-NMCA-097, 82 N.M. 41, 475 P.2d 41, cert. denied, 82 N.M. 81, 475 P.2d 778.

**Immunity from undue burdens.** — To attain immunity a showing must be made of multiple taxation or the lack of a local taxable incident. Such showing is essential to classify the tax as one unduly burdensome to interstate commerce. Spillers v. Commissioner of Revenue, 1970-NMCA-097, 82 N.M. 41, 475 P.2d 41, cert. denied, 82 N.M. 81, 475 P.2d 778.

**Multiple taxation.** — If compensation received under advertising contracts is not protected by the commerce clause, then multiple taxation of the receipts would not bring them within such protection. N.M. Newspapers, Inc. v. Bureau of Revenue, 1971-NMCA-022, 82 N.M. 436, 483 P.2d 317.

**Classification pursuant to constitutional mandate not violative of equal protection.** — Granting a deduction, whether in accordance with statute or administrative regulations, of gross receipts which are not taxable by the state under the commerce clause, and denying such deduction with respect to receipts which are subject to state taxation, although the receipts in each instance are produced by comparable activities, is a reasonable and proper basis for classification. N.M. Newspapers, Inc. v. Bureau of Revenue, 1971-NMCA-022, 82 N.M. 436, 483 P.2d 317.

**Equal protection.** — Imposition of tax upon receipts derived by newspaper from advertising, while receipts of radio and television broadcasters are not taxed, does not constitute arbitrary and discriminatory treatment or classification in violation of the equal protection clauses of the federal and state constitutions. N.M. Newspapers, Inc. v. Bureau of Revenue, 1971-NMCA-022, 82 N.M. 436, 483 P.2d 317.

**Educational materials.** — Tax levied on gross receipts from out-of-state sales of tangible personal property in the nature of reproducible educational materials is an impermissible burden on commerce. Evco v. Jones, 409 U.S. 91, 93 S. Ct. 349, 34 L. Ed. 2d 325 (1972).

**Interstate telegraph messages.** — Employee who transmitted telegraph messages both interstate and intrastate is allowed to deduct receipts derived from interstate messages from gross receipts under this section. Ealey v. Bureau of Revenue, 1976-NMSC-010, 89 N.M. 160, 548 P.2d 440.

**Access charges and telephone carriers.** — Since the access charge is for the service of transmitting the telephone signal between the inter-local access and transport areas carrier's switching center and the local phone customer, such taxation of access charge receipts is barred by this section. GTE Sw., Inc. v. Taxation & Revenue Dep't, 1992-NMCA-024, 113 N.M. 610, 830 P.2d 162, cert. denied, 113 N.M. 605, 830 P.2d 157.

**Ancillary services and telephone carriers.** — Gross receipts tax imposed on receipts for ancillary services performed for interstate carriers is proper even though these services are related to the provision of interstate telephone service; the receipts are not receipts from transmitting messages or conversations by telephone. GTE Sw., Inc. v. Taxation & Revenue Dep't, 1992-NMCA-024, 113 N.M. 610, 830 P.2d 162, cert. denied, 113 N.M. 605, 830 P.2d 157.

**Newspaper advertising.** — Assessment of gross receipts tax against receipts of taxpayer derived from out-of-state advertising published in its newspaper was not violative of the commerce clause. N.M. Newspapers, Inc. v. Bureau of Revenue, 1971-NMCA-022, 82 N.M. 436, 483 P.2d 317.

**Commissions for booking transportation services.** — Imposition of gross receipts tax upon commissions paid to a resident agent of an interstate carrier of household goods for initiating or booking interstate transportation of such goods does not violate the federal constitution, and consequently such receipts are not properly deductible.

Spillers v. Commissioner of Revenue, 1970-NMCA-097, 82 N.M. 41, 475 P.2d 41, cert. denied, 82 N.M. 81, 475 P.2d 778.

**Burden on taxpayer.** — Even if multiple taxation could be treated as invoking the protection of the commerce clause, the taxpayer, nevertheless, would have the burden of establishing his right to immunity from taxation. N.M. Newspapers, Inc. v. Bureau of Revenue, 1971-NMCA-022,82 N.M. 436, 483 P.2d 317.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Sales and Use Taxes §§ 35 et seq.

## 7-9-56. Deduction; gross receipts tax; intrastate transportation and services in interstate commerce.

A. Receipts from transporting persons or property from one point to another in this state may be deducted from gross receipts when such persons or property, including any special or extra service reasonably necessary in connection therewith, is being transported in interstate or foreign commerce under a single contract.

B. Receipts from handling, storage, drayage or packing of property or any other accessorial services on property, which property has moved or will move in interstate or foreign commerce, when such services are performed by a local agent for a carrier or by a carrier and when such services are performed under a single contract in relation to transportation services, may be deducted from gross receipts.

C. Receipts from providing telephone or telegraph services in this state that will be used by other persons in providing telephone or telegraph services to the final user may be deducted from gross receipts.

**History:** 1978 Comp., § 7-9-56, enacted by Laws 1994, ch. 112, § 2.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1994, ch. 112, § 2 repealed 7-9-56 NMSA 1978, as amended by Laws 1994, ch. 112, § 1, and enacted the above section, effective July 1, 2001.

**To deduct receipts under Subsection A,** taxpayer is required to show three items: (1) the receipts must be from transporting persons from one point to another in this state, (2) the transportation must have been in interstate commerce and (3) the transportation must have been under a single contract. McKinley Ambulance Serv. v. Bureau of Revenue, 1979-NMCA-026, 92 N.M. 599, 592 P.2d 515.

**Intrastate transportation receipts not deductible.** — Transportation into one state from another is the indispensable test of interstate commerce. That there is both intrastate and interstate transportation under a single contract does not authorize a

deduction under Subsection A for receipts attributable to the intrastate transportation. McKinley Ambulance Serv. v. Bureau of Revenue, 1979-NMCA-026, 92 N.M. 599, 592 P.2d 515.

## 7-9-56.1. Deduction; gross receipts tax; internet services.

On and after July 1, 1998, receipts from providing leased telephone lines, telecommunications services, internet services, internet access services or computer programming that will be used by other persons in providing internet access and related services to the final user may be deducted from gross receipts if the sale is made to a person who is subject to the gross receipts tax or the interstate telecommunications gross receipts tax.

**History:** Laws 1998, ch. 92, § 1; 2000, ch. 84, § 6.

**ANNOTATIONS**

**The 2000 amendment,** effective July 1, 2000, substituted "On and after July 1, 1998" for "During the period July 1, 1998, through June 30, 2000" at the beginning of the section.

## 7-9-56.2. Deduction; gross receipts tax; hosting world wide web sites.

Receipts from hosting world wide web sites may be deducted from gross receipts. For purposes of this section, "hosting" means storing information on computers attached to the internet.

**History:** Laws 1998, ch. 92, § 2.

## 7-9-56.3. Deduction; gross receipts; trade-support company in a border zone.

A. The receipts of a trade-support company may be deducted from gross receipts if:

(1) the trade-support company first locates in New Mexico within twenty miles of a port of entry on New Mexico's border with Mexico on or after July 1, 2003 but before July 1, 2013 or on or after January 1, 2016 but before January 1, 2021;

(2) the receipts are received by the company within a five-year period beginning on the date the trade-support company locates in New Mexico and the receipts are derived from its business activities and operations at its border zone location; and

(3) the trade-support company employs at least two employees in New Mexico.

B. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

C. The department shall compile an annual report on the deduction created pursuant to this section that shall include the number of taxpayers approved by the department to receive the deduction, the aggregate amount of deductions approved and any other information necessary to evaluate the effectiveness of the deduction. Beginning in 2016 and every four years thereafter that the deduction is in effect, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction.

D. As used in this section:

(1) "employee" means an individual, other than an individual who:

(a) bears any of the relationships described in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to the employer or, if the employer is a corporation, to an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, to an individual who owns, directly or indirectly, more than fifty percent of the capital and profits interests in the entity;

(b) if the employer is an estate or trust, is a grantor, beneficiary or fiduciary of the estate or trust or is an individual who bears any of the relationships described in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to a grantor, beneficiary or fiduciary of the estate or trust; or

(c) is a dependent, as that term is described in 26 U.S.C. Section 152(a)(9), of the employer, or, if the taxpayer is a corporation, of an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, an individual who owns, directly or indirectly, more than fifty percent of the capital and profits interests in the entity or, if the employer is an estate or trust, of a grantor, beneficiary or fiduciary of the estate or trust;

(2) "port of entry" means an international port of entry in New Mexico at which customs services are provided by United States customs and border protection; and

(3) "trade-support company" means a customs brokerage firm or a freight forwarder.

History: Laws 2003, ch. 232, § 1; 2007, ch. 172, § 6; 2015 (1st S.S.), ch. 2, § 8.

## ANNOTATIONS

**The 2015 (1st S.S.) amendment,** effective January 1, 2016, restored, for a five-year period, the gross receipts tax deduction for trade-support companies that locate in New Mexico within twenty miles of a port of entry on New Mexico's border with Mexico, and required an annual report from the taxation and revenue department regarding the effectiveness of the tax deduction; in Subsection A, Paragraph (1), after "July 1, 2013", added "or on or after January 1, 2016 but before January 1, 2021"; and added new Subsections B and C, and redesignated the succeeding subsection accordingly.

**The 2007 amendment,** effective April 2, 2007, in Subsection A, extended the time frame from July 1, 2008 to July 1, 2013 and revised the definition of "port of entry" to be an international port of entry at which custom services are provided by United States customs and border protection.

# 7-9-57. Deduction; gross receipts tax; sale of certain services to an out-of-state buyer.

A. Receipts from performing a service may be deducted from gross receipts if the sale of the service is made to an out-of-state buyer who delivers to the seller either an appropriate nontaxable transaction certificate or other evidence acceptable to the secretary unless the buyer of the service or any of the buyer's employees or agents makes initial use of the product of the service in New Mexico or takes delivery of the product of the service in New Mexico.

B. Receipts from performing a service that initially qualified for the deduction provided in this section but that no longer meets the criteria set forth in Subsection A of this section shall be deductible for the period prior to the disqualification.

**History:** 1953 Comp., § 72-16A-14.12, enacted by Laws 1969, ch. 144, § 47; 1973, ch. 132, § 1; 1977, ch. 86, § 1; 1983, ch. 220, § 12; 1988, ch. 118, § 1; 1989, ch. 262, § 6; 1998, ch. 89, § 4; 2000, ch. 84, § 7.

## ANNOTATIONS

**Compiler's notes.** — Laws 1993, ch. 31, § 13A, effective July 1, 1993, repealed Laws 1989, ch. 262, § 7, which provided for the repeal and reenactment of 7-9-57 NMSA 1978, effective July 1, 1993.

**The 2000 amendment,** effective July 1, 2000, substituted "an out-of-state buyer" for "a buyer" in Subsection A.

**The 1998 amendment,** effective July 1, 1998, substituted "for export" for "to an out-of-state buyer" in the section heading; rewrote Subsection A; deleted former Subsections B and C; and redesignated Subsection D as Subsection B.

**The 1989 amendment,** effective July 1, 1989, in Subsection C substituted all of the present language of the introductory paragraph following "buyer of the service" for ", any of his employees or any person in privity with him", and deleted former Paragraph (3) which read: "concurrent with the performance of the service, has a regular place of work in New Mexico or spends more than brief and occasional periods of time in New Mexico and: (a) has any communication in New Mexico related in any way to the subject matter, performance or administration of the service with the person performing the service; or (b) himself performs work in New Mexico related to the subject matter of the service".

**Initial use.** — The flying of an airplane to a customer's out-of-state location for inspection and acceptance of airplane painting service does not constitute initial use in New Mexico. N.M. Taxation & Revenue Dep't v. Dean Baldwin Painting, Inc., 2007-NMCA-153, 143 N.M. 189, 174 P.3d 525.

**Services not deductible.** — Taxpayer, whose services performed for a buyer involved deconstruction of ammunition, ordnance, and other energetic material, was not entitled to a deduction on the basis that the services did not result in a product. TPL, Inc. v. N.M. Taxation & Revenue Dep't, 2000-NMCA-083, 129 N.M. 539, 10 P.3d 863, *rev'd*, 2003-NMSC-007, 133 N.M. 447, 64 P.3d 474..

**Services deductible.** — When the corporation contracted with an out-of-state provider for the corporation to destroy munitions, it was entitled to the gross receipts deduction, and the hearing officer could not properly determine that use or delivery took place within the state without some affirmative evidence in the record to support that conclusion. TPL, Inc. v. N.M. Taxation & Revenue Dep't, 2003-NMSC-007, 133 N.M. 447, 64 P.3d 474, *rev'g*, 2000-NMCA-083, 129 N.M. 539, 10 P.3d 863.

**"Initial use" following repair.** — Mechanic was not entitled to a deduction with respect to repairs made on a truck brought into New Mexico for such repairs and then driven back to Texas for use exclusively as a delivery truck within that state, because the return of the truck to Texas constituted an "initial use" after repair in New Mexico. Reed v. Jones, 1970-NMCA-050, 81 N.M. 481, 468 P.2d 882.

## 7-9-57.1. Deduction; gross receipts tax; sales through world wide web sites.

Receipts of any person derived from the sale of a service or property made through a world wide web site to a person with a billing address outside New Mexico may be deducted from gross receipts.

**History:** Laws 1998, ch. 92, § 3.

## 7-9-57.2. Deduction; gross receipts tax; sale of software development services.

A. To stimulate new business development, the receipts of an eligible software development company from the sale of software development services that are performed in a qualified area may be deducted from gross receipts.

B. As used in this section:

(1) "eligible software development company" means a taxpayer who is not a successor in business of another taxpayer and whose primary business in New Mexico is established after the effective date of this section, is providing software development services and who had no business location in New Mexico other than in a qualified area during the period for which a deduction under this section is sought;

(2) "qualified area" means the state of New Mexico except for an incorporated municipality with a population of more than fifty thousand according to the most recent federal decennial census; and

(3) "software development services" means custom software design and development and web site design and development but does not include software implementation or support services.

**History:** Laws 2002, ch. 10, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2002, ch. 10, § 2 made Laws 2002, ch. 10, § 1 effective July 1, 2002.

## 7-9-58. Deduction; gross receipts tax; feed; fertilizers.

A. Receipts from selling feed for livestock, including the baling wire or twine used to contain the feed, fish raised for human consumption, poultry or animals raised for their hides or pelts and from selling seeds, roots, bulbs, plants, soil conditioners, fertilizers, insecticides, germicides, insects used to control populations of other insects, fungicides or weedicides or water for irrigation purposes may be deducted from gross receipts if the sale is made to a person who states in writing that he is regularly engaged in the business of farming, ranching or raising animals for their hides or pelts.

B. Receipts of auctioneers from selling livestock or other agricultural products at auction may also be deducted from gross receipts.

**History:** 1953 Comp., § 72-16A-14.13, enacted by Laws 1969, ch. 144, § 48; 1977, ch. 231, § 1; 1983, ch. 220, § 13; 1991, ch. 9, § 30; 1991, ch. 203, § 6; 1992, ch. 48, § 3; 2002, ch. 29, § 1.

**ANNOTATIONS**

**The 2002 amendment,** effective May 15, 2002, in Subsection A inserted "including the baling wire or twine used to contain the feed" near the beginning, and made three minor stylistic changes.

**The 1992 amendment,** effective July 1, 1992, added the subsection designations and inserted "and from selling" near the beginning of Subsection A.

**The 1991 amendment,** effective July 1, 1991, inserted "germicides" in the first sentence. This section was also amended by Laws 1991, ch. 9, § 30. The section was set out as amended by Laws 1991, ch. 203, § 6. *See* 12-1-8 NMSA 1978.

## 7-9-59. Deduction; gross receipts tax; warehousing, threshing, harvesting, growing, cultivating and processing agricultural products.

A. Receipts from warehousing grain or other agricultural products may be deducted from gross receipts.

B. Receipts from threshing, cleaning, growing, cultivating or harvesting agricultural products, including the ginning of cotton, testing and transporting milk for the producer or nonprofit marketing association from the farm to a milk processing or dairy product manufacturing plant or processing for growers, producers or nonprofit marketing associations of agricultural products raised for food and fiber, including livestock, may be deducted from gross receipts.

**History:** 1953 Comp., § 72-16A-14.14, enacted by Laws 1969, ch. 144, § 49; 1970, ch. 27, § 1; 2000, ch. 26, § 1; 2000, ch. 87, § 1.

**ANNOTATIONS**

**The 2000 amendment,** effective July 1, 2000, inserted the provision that receipts from testing and transporting milk from the farm to the plant may be deducted from the gross receipts.

**Duplicate laws.** — Laws 2000, ch. 26, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 2000, ch. 87, § 1. *See* 12-1-8 NMSA 1978.

## 7-9-60. Deduction; gross receipts tax; governmental gross receipts tax; sales to certain organizations.

A. Except as provided otherwise in Subsection B of this section, receipts from selling tangible personal property to 501(c)(3) organizations may be deducted from gross receipts or from governmental gross receipts if the sale is made to an organization that delivers a nontaxable transaction certificate to the seller. The buyer

delivering the nontaxable transaction certificate shall employ the tangible personal property in the conduct of functions described in Section 501(c)(3) and shall not employ the tangible personal property in the conduct of an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1986, as amended or renumbered.

B. The deduction provided by this section does not apply to receipts from selling construction material or from selling metalliferous mineral ore; except that receipts from selling construction material or from selling metalliferous mineral ore to a 501(c)(3) organization that is organized for the purpose of providing homeownership opportunities to low-income families may be deducted from gross receipts. Receipts may be deducted under this subsection only if the buyer delivers a nontaxable transaction certificate to the seller. The buyer shall use the property in the conduct of functions described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and shall not employ the tangible personal property in the conduct of an unrelated trade or business as defined in Section 513 of that code.

C. For the purposes of this section, "501(c)(3) organization" means an organization that has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended or renumbered.

History: 1953 Comp., § 72-16A-14.15; Laws 1970, ch. 12, § 4; 1992, ch. 100, § 8; 1995, ch. 50, § 4; 2001, ch. 343, § 6; 2007, ch. 45, § 12.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1970, ch. 12, § 4 repealed former 7-9-60 NMSA 1978, as enacted by Laws 1969, ch. 144, § 50.

**Cross references.** — For Sections 501(c)(3) and 513 of the Internal Revenue Code of 1986, *see* 26 U.S.C. §§ 501(c)(3) and 513, respectively.

**The 2007 amendment,** effective July 1, 2007, in Subsection A, changed "organizations" to "501(c)(3) organizations" and deleted the former qualification that organizations had to have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended or renumbered; in Subsection B, added the exception that receipts from selling to a 501(c)(3) organization that is organized for the purpose of providing homeownership opportunities to low-income families may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate and the buyer uses the property in the conduct of functions described in Section 501(c)(3); and added Subsection C.

**The 2001 amendment,** effective July 1, 2001, substituted "construction material" for "tangible personal property that will become an ingredient or component part of a construction project" in Subsection B.

**The 1995 amendment,** effective July 1, 1995, added "tax" following "governmental growth receipts" in the section heading; designated the existing provisions as Subsection A and added Subsection B; and, in Subsection A, added the exception at the beginning, deleted "other than metalliferous mineral ore" following "personal property" near the beginning of the first sentence, substituted "shall" for "must" in two places in the second sentence, and deleted the former third sentence which read "Receipts from selling tangible personal property that will become an ingredient or component part of a construction project are not receipts from selling tangible personal property for purposes of this section".

**The 1992 amendment,** effective July 1, 1992, inserted "governmental gross receipts" in the section heading; inserted "or from governmental gross receipts" near the end of the first sentence; and twice substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

**Telephone services not tangible personalty.** — Decision that a telephone company was not entitled to a deduction under this section for receipts collected for intrastate toll charges and local phone calls from certain government organizations and organizations which had been granted federal income tax exemptions would be upheld, since there was a reasonable basis for differentiating between electricity (declared to be tangible personalty at Section 7-9-3J NMSA 1978) and telephone communications where the evidence showed that more was involved in the telephone business than the selling of electricity. Leaco Rural Tel. Coop., Inc. v. Bureau of Revenue, 1974-NMCA-076, 86 N.M. 629, 526 P.2d 426.

## 7-9-61. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1981, ch. 37, § 97, repealed 7-9-61 NMSA 1978, relating to the deduction from the gross receipts tax of the sale of tangible personal property to banks and financial corporations, effective January 1, 1982.

## 7-9-61.1. Deductions; gross receipts tax; certain receipts.

Receipts from charges made in connection with the origination, making or assumption of a loan or from charges made for handling loan payments may be deducted from gross receipts.

**History:** 1978 Comp., § 7-9-61.1, enacted by Laws 1981, ch. 37, § 52.

**ANNOTATIONS**

**"Charges made for handling loan payments". —** The phrase "charges made for handling loan payments", as used in this section, does not encompass charges made by taxpayers for their escrow services in connection with installment payments on real estate contracts. The legislature intended to allow the deduction from gross receipts only for typical loan transactions involving both a traditional lender and borrower. Any processing or collection charges typically made by either independent escrow agents, or banks acting as escrow agents, are not properly deductible from gross receipts. Security Escrow Corp. v. State Taxation & Revenue Dep't, 1988-NMCA-068, 107 N.M. 540, 760 P.2d 1306.

## 7-9-61.2. Deduction; receipts from sales to state-chartered credit unions.

Receipts from selling tangible personal property to credit unions chartered under the provisions of the Credit Union Act [Chapter 58, Article 11 NMSA 1978] are deductible to the same extent that receipts from the sale of tangible personal property to federal credit unions may be deducted pursuant to the provisions of Section 7-9-54 NMSA 1978.

**History:** 1978 Comp., § 7-9-61.2, enacted by Laws 2000, ch. 48, § 1.

**ANNOTATIONS**

**Effective dates. —** Laws 2000, ch. 48, § 2 made Laws 2000, ch. 48, § 1 effective July 1, 2000.

## 7-9-62. Deduction; gross receipts tax; agricultural implements; aircraft manufacturers; vehicles that are not required to be registered; aircraft parts and maintenance services; reporting requirements.

A. Except for receipts deductible under Subsection B of this section, fifty percent of the receipts from selling agricultural implements, farm tractors, aircraft or vehicles that are not required to be registered under the Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978] may be deducted from gross receipts; provided that, with respect to agricultural implements, the sale is made to a person who states in writing that the person is regularly engaged in the business of farming or ranching. Any deduction allowed under Section 7-9-71 NMSA 1978 must be taken before the deduction allowed by this subsection is computed.

B. Receipts of an aircraft manufacturer or affiliate from selling aircraft or from selling aircraft flight support, pilot training or maintenance training services may be deducted from gross receipts. Any deduction allowed under Section 7-9-71 NMSA 1978 must be taken before the deduction allowed by this subsection is computed.

C. Receipts from selling aircraft parts or maintenance services for aircraft or aircraft parts may be deducted from gross receipts. Any deduction allowed under Section 7-9-71 NMSA 1978 must be taken before the deduction allowed by this subsection is computed.

D. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

E. The department shall compile an annual report on the deductions provided by this section that shall include the number of taxpayers approved by the department to receive the deductions, the aggregate amount of deductions approved and any other information necessary to evaluate the effectiveness of the deductions. Beginning in 2019 and every five years thereafter that the deductions are in effect, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deductions.

F. As used in this section:

(1) "affiliate" means a business entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the aircraft manufacturer;

(2) "agricultural implement" means a tool, utensil or instrument that is depreciable for federal income tax purposes and that is:

(a) designed to irrigate agricultural crops above ground or below ground at the place where the crop is grown; or

(b) designed primarily for use with a source of motive power, such as a tractor, in planting, growing, cultivating, harvesting or processing agricultural crops at the place where the crop is grown; in raising poultry or livestock; or in obtaining or processing food or fiber, such as eggs, milk, wool or mohair, from living poultry or livestock at the place where the poultry or livestock are kept for this purpose;

(3) "aircraft manufacturer" means a business entity that in the ordinary course of business designs and builds private or commercial aircraft certified by the federal aviation administration;

(4) "business entity" means a corporation, limited liability company, partnership, limited partnership, limited liability partnership or real estate investment trust, but does not mean an individual or a joint venture;

(5) "control" means equity ownership in a business entity that:

(a) represents at least fifty percent of the total voting power of that business entity; and

(b) has a value equal to at least fifty percent of the total equity of that business entity; and

(6) "flight support" means providing navigation data, charts, weather information, online maintenance records and other aircraft or flight-related information and the software needed to access the information.

History: 1953 Comp., § 72-16A-14.17, enacted by Laws 1969, ch. 144, § 52; 1975, ch. 159, § 1; 1998, ch. 89, § 5; 2000 (2nd S.S.), ch. 4, § 1; 2007, ch. 172, § 7; 2014, ch. 19, § 1.

## ANNOTATIONS

**The 2014 amendment,** effective July 1, 2014, provided for a deduction from gross receipts for selling aircraft parts or maintenance services; in the catchline, after "registered", added "aircraft parts and maintenance services; reporting requirements"; in Subsection B, in the first sentence, after "selling aircraft", deleted "or aircraft parts or from selling services performed on aircraft or aircraft components"; added Subsections C, D and E; and in Subsection F, Paragraph (2), after "instrument that is" added "depreciable for federal income tax purposes and that is" and deleted Subparagraph (c) which read "and depreciable for federal income tax purposes".

**The 2007 amendment,** effective July 1, 2007, included receipts from the sale of aircraft parts and services and added Paragraphs (1), Subparagraph (a) of Paragraph (2) and Paragraphs (3) through (6) of Subsection C.

**The 2000 amendment,** effective July 1, 2000, inserted "Except for receipts deductible under Subsection B of this section" at the beginning of Subsection A, added a new Subsection B, and redesignated the former Subsection B as Subsection C.

**The 1998 amendment,** effective July 1, 1998, designated the existing material as Subsection A, added the proviso at the end of the first sentence and substituted "7-9-71 NMSA 1978" for "72-16A-14.28 NMSA 1978" in the second sentence; and added Subsection B.

**Lease-purchase transaction.** — Lease agreement providing that upon full payment of rentals lessee would become owner of equipment in question constituted a sale with reservation of security interest, for which seller-secured party was to pay gross receipts tax at the rate specified for transactions covering vehicles not registered under the Motor Vehicle Code. Rust Tractor Co. v. Bureau of Revenue, 1970-NMCA-107, 82 N.M. 82, 475 P.2d 779, cert. denied, 82 N.M. 81, 475 P.2d 778.

## 7-9-62.1. Deduction; gross receipts tax; aircraft sales and services; reporting requirements.

A. Receipts from the sale of or from maintaining, refurbishing, remodeling or otherwise modifying a commercial or military carrier over ten thousand pounds gross landing weight may be deducted from gross receipts.

B. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

C. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers approved by the department to receive the deduction, the aggregate amount of deductions approved and any other information necessary to evaluate the effectiveness of the deduction. Beginning in 2019 and every five years thereafter that the deduction is in effect, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction.

History: Laws 2000 (2nd S.S.), ch. 4, § 2; 2005, ch. 104, § 24; 2014, ch. 8, § 1.

**ANNOTATIONS**

**The 2014 amendment,** effective July 1, 2014, provided a deduction from gross receipts for sales of commercial and military carriers; required taxpayers to separately report the amount of the deduction; required the taxation and revenue department to compile annual reports; in the catchline, after "aircraft" added "sales and", and after "services", added "; reporting requirements"; in Subsection A, after "Receipts", added "from the sale of or"; and added Subsections B and C.

**The 2005 amendment,** effective July 1, 2005, provided a credit for receipts from maintaining refurbishing, remodeling or otherwise modifying a commercial or military carrier over ten thousand pounds gross landing weight.

## 7-9-63. Deduction; gross receipts tax; publication sales.

Receipts from publishing newspapers or magazines, except from selling advertising space, may be deducted from gross receipts.

Receipts from selling magazines at retail may not be deducted from gross receipts.

**History:** 1953 Comp., § 72-16A-14.18, enacted by Laws 1969, ch. 144, § 53.

**ANNOTATIONS**

**Advertising inserts** purchased by a New Mexico retailer from out-of-state advertising coordinators were not "newspapers" within the meaning of this section. Phillips Mercantile Co. v. N.M. Taxation & Revenue Dep't, 1990-NMCA-006, 109 N.M. 487, 786 P.2d 1221.

**Royalties from advertising.** — Since taxpayer's receipts were a royalty paid to it from advertising revenues and not receipts from publishing the magazine, there would be no deduction under this section. N.M. Sheriffs & Police Ass'n v. Bureau of Revenue, 1973-NMCA-130, 85 N.M. 565, 514 P.2d 616.

**No double taxation shown.** — Since, aside from the tax paid on the taxpayer association's royalty receipts from advertising revenue, the only other tax involved was the tax asserted to have been paid by the publisher on his receipts, there was no factual basis for a claim of double taxation. N.M. Sheriffs & Police Ass'n v. Bureau of Revenue, 1973-NMCA-130, 85 N.M. 565, 514 P.2d 616.

## 7-9-64. Deduction; gross receipts tax; newspaper sales.

Receipts from selling newspapers, except from selling advertising space, may be deducted from gross receipts.

**History:** 1953 Comp., § 72-16A-14.19, enacted by Laws 1969, ch. 144, § 54.

### ANNOTATIONS

**Advertising inserts** purchased by a New Mexico retailer from out-of-state advertising coordinators were not "newspapers" within the meaning of this section. Phillips Mercantile Co. v. N.M. Taxation & Revenue Dep't, 1990-NMCA-006, 109 N.M. 487, 786 P.2d 1221.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — What constitutes newspapers, magazines, periodicals, or the like, under sales or use tax law exemption, 25 A.L.R.4th 750.

## 7-9-65. Deduction; gross receipts tax; chemicals and reagents.

Receipts from selling chemicals or reagents to any mining, milling or oil company for use in processing ores or oil in a mill, smelter or refinery or in acidizing oil wells, and receipts from selling chemicals or reagents in lots in excess of eighteen tons may be deducted from gross receipts. Receipts from selling explosives, blasting powder or dynamite may not be deducted from gross receipts.

**History:** 1953 Comp., § 72-16A-14.21, enacted by Laws 1969, ch. 144, § 56.

### ANNOTATIONS

**Words used in this section are not ambiguous,** and the issue of legislative intent does not arise. Runco Acidizing & Fracturing Co. v. Bureau of Revenue, 1974-NMCA-145, 87 N.M. 146, 530 P.2d 410.

**Aggregation of deliveries not authorized.** — Since no single delivery or single day's delivery of chemicals or reagents to a well ever amounted to 18 tons or more, although the amount specified in a purchase order might aggregate that much, taxpayer was not entitled to a deduction under this section, since the wording of taxpayer's purchase orders and contract, supported inference that a purchase order was not a transfer for consideration and therefore not a sale. Runco Acidizing & Fracturing Co. v. Bureau of Revenue, 1974-NMCA-145, 87 N.M. 146, 530 P.2d 410.

## 7-9-66. Deduction; gross receipts tax; commissions.

A. Receipts derived from commissions on sales of tangible personal property which are not subject to the gross receipts tax may be deducted from gross receipts.

B. Receipts of the owner of a dealer store derived from commissions received for performing the service of selling from the owner's dealer store a principal's tangible personal property may be deducted from gross receipts.

C. As used in this section, "dealer store" means a merchandise facility open to the public that is owned and operated by a person who contracts with a principal to act as an agent for the sale from that facility of merchandise owned by the principal.

**History:** 1953 Comp., § 72-16A-14.22, enacted by Laws 1969, ch. 144, § 57; 1999, ch. 169, § 1.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, added Subsections B and C.

## 7-9-66.1. Deduction; gross receipts tax; certain real estate transactions.

A. Receipts from real estate commissions on that portion of the transaction subject to gross receipts tax pursuant to Subsection A of Section 7-9-53 NMSA 1978 may be deducted from gross receipts if the person claiming the deduction submits to the department evidence that the secretary finds substantiates the deduction.

B. For the purposes of this section, "commissions on that portion of the transaction subject to gross receipts tax" means that portion of the commission that bears the same relationship to the total commission as the amount of the transaction subject to gross receipts tax does to the total purchase price.

**History:** 1978 Comp., § 7-9-76.2, enacted by Laws 1984, ch. 129, § 2; 1990, ch. 41, § 8.

**ANNOTATIONS**

**Compiler's notes. —** This section was enacted as 7-9-76.2 NMSA 1978 by Laws 1984, ch. 129, § 2, but was redesignated as 7-9-66.1 NMSA 1978, as another 7-9-76.2 NMSA 1978 had previously been enacted by Laws 1984, ch. 2, § 6.

**The 1990 amendment,** effective July 1, 1990, substituted "department evidence that the secretary" for "division evidence which the director" in Subsection A and made a minor stylistic change in Subsection B.

## 7-9-67. Deduction; gross receipts tax; governmental gross receipts tax; refunds; uncollectible debts.

A. Refunds and allowances made to buyers or amounts written off the books as an uncollectible debt by a person reporting gross receipts tax on an accrual basis may be deducted from gross receipts. If debts reported uncollectible are subsequently collected, such receipts shall be included in gross receipts in the month of collection.

B. Refunds and allowances made to buyers or amounts written off the books as an uncollectible debt by a person reporting governmental gross receipts tax on an accrual basis may be deducted from governmental gross receipts. If debts reported uncollectible are subsequently collected, such receipts shall be included in governmental gross receipts in the month of collection.

**History:** 1953 Comp., § 72-16A-14.23, enacted by Laws 1969, ch. 144, § 58; 1994, ch. 45, § 6.

**ANNOTATIONS**

**The 1994 amendment,** effective July 1, 1994, inserted "governmental gross receipts tax" in the section heading, designated the previously undesignated language as Subsection A and added Subsection B.

## 7-9-68. Deduction; gross receipts tax; warranty obligations.

Receipts of a dealer from furnishing goods or services to the purchaser of tangible personal property to fulfill a warranty obligation of the manufacturer of the property may be deducted from gross receipts.

**History:** 1953 Comp., § 72-16A-14.25, enacted by Laws 1969, ch. 144, § 60.

## 7-9-69. Deduction; gross receipts tax; administrative and accounting services.

A. Receipts of a business entity for administrative, managerial, accounting and customer services performed by it for an affiliate upon a nonprofit or cost basis and receipts of a business entity from an affiliate for the joint use or sharing of office machines and facilities upon a nonprofit or cost basis may be deducted from gross receipts.

B. For the purposes of this section:

(1) "affiliate" means a business entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with another business entity;

(2) "business entity" means a corporation, limited liability company, partnership, limited partnership, limited liability partnership or real estate investment trust, but does not mean an individual or a joint venture; and

(3) "control" means equity ownership in a business entity that:

(a) represents at least fifty percent of the total voting power of that business entity; or

(b) has a value equal to at least fifty percent of the total equity of that business entity.

History: 1953 Comp., § 72-16A-14.26, enacted by Laws 1969, ch. 144, § 61; 1990, ch. 43, § 1; 1993, ch. 149, § 1; 1998, ch. 112, § 1; 2002, ch. 21, § 1; 2015, ch. 38, § 1.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, removed a restriction in the definition of "control" in the gross receipts tax deduction for administrative and accounting services; and in Paragraph (3)(a) of Subsection B, after the semicolon, deleted "and" and added "or".

**The 2002 amendment,** effective July 1, 2002, throughout the section deleted references to corporations or limited partnerships and substituted "business entity"; added Paragraph B(2) defining "business entity"; added the paragraph and subparagraph designations under Subsection B; and made minor stylistic changes in four places within Subsection B.

**The 1998 amendment,** effective July 1, 1998, in Subsection A, inserted "or an affiliate" following "corporation" near the beginning, inserted "customer" preceding "services" and substituted "the corporation or an affiliate" for "an affiliated corporation", twice; in

Subsection B, substituted "'an affiliate'" for "'affiliated corporation'" and inserted "or a limited partnership" and "or limited partnership" in the first sentence, and substituted "or of an interest in a limited partnership that" for "which" in the second sentence; and inserted "or limited partnership" at the end of Paragraphs B(1) and (2).

**The 1993 amendment,** effective June 18, 1993, substituted "fifty percent" for "eighty percent" in Paragraphs (1) and (2) of Subsection B.

**The 1990 amendment,** effective July 1, 1990, designated the former section as Subsection A, inserted "managerial" and substituted "an affiliated" and "an affiliated corporation" for "a wholly-owned subsidiary" in Subsection A, and added Subsection B.

**Scope of deduction.** — This section is purely exclusionary and limited to machines of a general administrative nature, and heavy construction equipment exchanged by taxpayers in no way qualifies for this exemption. Co-Con, Inc. v. Bureau of Revenue, 1974-NMCA-134, 87 N.M. 118, 529 P.2d 1239, cert. denied, 87 N.M. 111, 529 P.2d 1232.

## 7-9-70. Deduction; gross receipts tax; rental or lease of vehicles used in interstate commerce.

Receipts from the rental or leasing of vehicles used in the transportation of passengers or property for hire in interstate commerce under the regulations or authorization of any agency of the United States may be deducted.

**History:** 1953 Comp., § 72-16A-14.27, enacted by Laws 1969, ch. 144, § 62.

## 7-9-71. Deduction; gross receipts tax; trade-in allowance.

That portion of the receipts of a seller that is represented by a trade-in of tangible personal property of the same type being sold, except for the receipts represented by a trade-in of a manufactured home, may be deducted from gross receipts.

**History:** 1953 Comp., § 72-16A-14.28, enacted by Laws 1969, ch. 144, § 63; 1979, ch. 338, § 6; 1991, ch. 203, § 7.

### ANNOTATIONS

**The 1991 amendment,** effective July 1, 1991, substituted "manufactured" for "mobile".

## 7-9-72. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1993, ch. 30, § 28 repealed 7-9-72 NMSA 1978, as amended by Laws 1992, ch. 100, § 9, relating deductions for special fuel receipts, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 7-9-73. Deduction; gross receipts tax; governmental gross receipts; sale of prosthetic devices.

Receipts from selling prosthetic devices may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person who is licensed to practice medicine, osteopathic medicine, dentistry, podiatry, optometry, chiropractic or professional nursing and who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must deliver the prosthetic device incidental to the performance of a service and must include the value of the prosthetic device in his charge for the service.

**History:** 1953 Comp., § 72-16A-14.30, enacted by Laws 1970, ch. 78, § 2; 1992, ch. 100, § 10.

**ANNOTATIONS**

**The 1992 amendment,** effective July 1, 1992, inserted "governmental gross receipts" in the section heading, and inserted "or from governmental gross receipts" in the first sentence while therein substituting "osteopathic medicine" for "osteopathy".

## 7-9-73.1. Deduction; gross receipts; hospitals.

Fifty percent of the receipts of hospitals licensed by the department of health may be deducted from gross receipts; provided, this deduction may be applied only to the taxable gross receipts remaining after all other appropriate deductions have been taken.

**History:** Laws 1991, ch. 8, § 3; 1993, ch. 56, § 1; 1995, ch. 50, § 5.

**ANNOTATIONS**

**The 1995 amendment,** effective July 1, 1995, added the proviso at the end.

**The 1993 amendment,** effective July 1, 1993, deleted "tax" following "receipts" and "general" preceding "hospitals" in the section heading and rewrote this section which read "Fifty percent of the receipts of general hospitals may be deducted from gross receipts."

## 7-9-73.2. Deduction; gross receipts tax and governmental gross receipts tax; prescription drugs; oxygen.

A. Receipts from the sale of prescription drugs and oxygen and oxygen services provided by a licensed medicare durable medical equipment provider may be deducted from gross receipts and governmental gross receipts.

B. For the purposes of this section, "prescription drugs" means insulin and substances that are:

(1) dispensed by or under the supervision of a licensed pharmacist or by a physician or other person authorized under state law to do so;

(2) prescribed for a specified person by a person authorized under state law to prescribe the substance; and

(3) subject to the restrictions on sale contained in Subparagraph 1 of Subsection (b) of 21 USCA 353.

History: Laws 1998, ch. 95, § 2; Laws 1998, ch. 99, § 4; 2003, ch. 272, § 7; 2007, ch. 361, § 3.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, permitted a deduction for receipts from the sale of oxygen and oxygen services provided by a licensed medicare durable medical equipment provider.

**The 2003 amendment,** effective July 1, 2003, added the Subsection A designation and added Subsection B.

## 7-9-73.3. Deduction; gross receipts tax and governmental gross receipts tax; durable medical equipment; medical supplies.

A. Receipts from transactions occurring prior to July 1, 2020 that are from the sale or rental of durable medical equipment and medical supplies may be deducted from gross receipts and governmental gross receipts.

B. The purpose of the deduction provided in this section is to help protect jobs and retain businesses in New Mexico that sell or rent durable medical equipment and medical supplies.

C. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

D. The deduction provided in this section shall be taken only by a taxpayer participating in the New Mexico medicaid program whose gross receipts are no less than ninety percent derived from the sale or rental of durable medical equipment,

medical supplies or infusion therapy services, including the medications used in infusion therapy services.

E. Acceptance of a deduction provided by this section is authorization by the taxpayer receiving the deduction for the department to reveal information to the revenue stabilization and tax policy committee and the legislative finance committee necessary to analyze the effectiveness and cost of the deduction and whether the deduction is performing the purpose for which it was created.

F. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers approved by the department to receive the deduction, the aggregate amount of deductions approved and any other information necessary to evaluate the effectiveness of the deduction. Beginning in 2019 and every five years thereafter, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction and whether the deduction is performing the purpose for which it was created.

G. As used in this section:

(1) "durable medical equipment" means a medical assistive device or other equipment that:

(a) can withstand repeated use;

(b) is primarily and customarily used to serve a medical purpose and is not useful to an individual in the absence of an illness, injury or other medical necessity, including improved functioning of a body part;

(c) is appropriate for use at home exclusively by the eligible recipient for whom the durable medical equipment is prescribed; and

(d) is prescribed by a physician or other person licensed by the state to prescribe durable medical equipment;

(2) "infusion therapy services" means the administration of prescribed medication through a needle or catheter;

(3) "medical supplies" means items for a course of medical treatment, including nutritional products, that are:

(a) necessary for an ongoing course of medical treatment;

(b) disposable and cannot be reused; and

(c) prescribed by a physician or other person licensed by the state to prescribe medical supplies; and

(4) "prescribe" means to authorize the use of an item or substance for a course of medical treatment.

History: Laws 2014, ch. 26, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2014, ch. 26, § 2 made Laws 2014, ch. 26, § 1 effective July 1, 2014.

## 7-9-74. Deduction; gross receipts tax; sale of property used in the manufacture of jewelry.

Receipts from selling tangible personal property may be deducted from gross receipts if the sale is made to a person who states in writing that he will use the property so purchased in manufacturing jewelry. The buyer must incorporate the tangible personal property as an ingredient or component part of the jewelry that he is in the business of manufacturing. The deduction allowed a seller under this section shall not exceed five thousand dollars ($5,000) during any twelve-month period attributable to purchases by a single purchaser.

**History:** 1953 Comp., § 72-16A-14.31, enacted by Laws 1971, ch. 217, § 2; 1975, ch. 322, § 1; 1994, ch. 94, § 2.

**ANNOTATIONS**

**The 1994 amendment,** effective April 1, 1994, deleted the former third sentence which read, "The deduction allowed a seller under this section shall not exceed the sum of one thousand dollars ($1,000) during any twelve month period attributable to purchases by a single purchaser".

## 7-9-75. Deduction; gross receipts tax; sale of certain services performed directly on product manufactured.

Receipts from selling the service of combining or processing components or materials may be deducted from gross receipts if the sale is made to a person engaged in the business of manufacturing who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must have the service performed directly upon tangible personal property which he is in the business of manufacturing or upon ingredients or component parts thereof.

**History:** 1953 Comp., § 72-16A-14.32, enacted by Laws 1972, ch. 39, § 2.

## 7-9-76. Deduction; gross receipts tax; travel agents' commissions paid by certain entities.

Receipts of travel agents derived from commissions paid by maritime transportation companies and interstate airlines, railroads and passenger buses for booking, referral, reservation or ticket services may be deducted from gross receipts.

**History:** 1953 Comp., § 72-16A-14.33, enacted by Laws 1977, ch. 288, § 2.

## 7-9-76.1. Deduction; gross receipts tax; certain manufactured homes.

Receipts from the resale of a manufactured home may be deducted from gross receipts if the sale is made of a manufactured home that was subject to the gross receipts, compensating or motor vehicle excise tax upon its initial sale or use in New Mexico. The seller shall retain and furnish proof satisfactory to the department that a gross receipts, compensating or motor vehicle excise tax was paid upon the initial sale or use in New Mexico of a manufactured home, and in the absence of such proof, it is presumed that the tax was not paid. Proof that a New Mexico certificate of title was issued for a manufactured home in 1972 or a prior year or proof that a manufactured home for which a New Mexico certificate of title has been issued was manufactured in 1967 or a prior year is proof that a motor vehicle excise tax was paid on the initial sale or use in New Mexico of that manufactured home.

**History:** 1978 Comp., § 7-9-76.1, enacted by Laws 1979, ch. 338, § 7; 1980, ch. 103, § 1; 1990, ch. 41, § 9; 1991, ch. 203, § 8.

**ANNOTATIONS**

**The 1991 amendment,** effective July 1, 1991, substituted "manufactured" for "mobile" in the section heading and throughout the section.

**The 1990 amendment,** effective July 1, 1990, substituted "department" for "director" and made a minor stylistic change in the second sentence.

## 7-9-76.2. Deduction; gross receipts tax; films and tapes.

Receipts from the leasing or licensing of theatrical and television films and tapes to a person engaged in the business of providing public or commercial entertainment from which gross receipts are derived may be deducted from gross receipts.

**History:** 1978 Comp., § 7-9-76.2, enacted by Laws 1984, ch. 2, § 6.

**ANNOTATIONS**

**Compiler's notes.** — Laws 1984, ch. 129, § 2, also enacted a 7-9-76.2 NMSA 1978, but that section, which related to a deduction of real estate commissions from the gross receipts tax, was redesignated as 7-9-66.1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Applicability of sales or use taxes to motion pictures and video tapes, 10 A.L.R.4th 1209.

## 7-9-77. Deductions; compensating tax.

A. Fifty percent of the value of agricultural implements, farm tractors, aircraft not exempted under Section 7-9-30 NMSA 1978 or vehicles that are not required to be registered under the Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978] may be deducted from the value in computing the compensating tax due; provided that, with respect to use of agricultural implements, the person using the property is regularly engaged in the business of farming or ranching. Any deduction allowed under Subsection B of this section is to be taken before the deduction allowed by this subsection is computed. As used in this subsection, "agricultural implement" means a tool, utensil or instrument that is:

(1) designed primarily for use with a source of motive power, such as a tractor, in planting, growing, cultivating, harvesting or processing agricultural produce at the place where the produce is grown; in raising poultry or livestock; or in obtaining or processing food or fiber, such as eggs, milk, wool or mohair, from living poultry or livestock at the place where the poultry or livestock are kept for this purpose; and

(2) depreciable for federal income tax purposes.

B. That portion of the value of tangible personal property on which an allowance was granted to the buyer for a trade-in of tangible personal property of the same type that was bought may be deducted from the value in computing the compensating tax due.

**History:** 1953 Comp., § 72-16A-15, enacted by Laws 1966, ch. 47, § 15; 1969, ch. 144, § 64; 1975, ch. 159, § 2; 1988, ch. 148, § 2; 1998, ch. 89, § 6.

**ANNOTATIONS**

**The 1998 amendment,** effective July 1, 1998, in Subsection A, added the proviso at the end of the first sentence, added the last sentence and added Paragraphs A(1) and (2).

**"Vehicle" construed.** — To be a "vehicle" within the meaning of Subsection A, a machine must be capable of being utilized as a means of carrying people or other property over the highways. Kaiser Steel Corp. v. Revenue Div., 1981-NMCA-042, 96 N.M. 117, 628 P.2d 687, cert. denied, 96 N.M. 116, 628 P.2d 686.

**Neither dragline nor continuous miner within scope of section.** — Because neither a dragline nor a continuous miner can be classified as a vehicle under Section 66-1-4B NMSA 1978 (now Section 66-1-4.11 NMSA 1978), neither is in the category of "vehicles not required to be registered" within the meaning of this section. Kaiser Steel Corp. v. Revenue Div., 1981-NMCA-042, 96 N.M. 117, 628 P.2d 687, cert. denied, 96 N.M. 116, 628 P.2d 686; Pittsburgh & Midway Coal Mining Co. v. Revenue Div., 1983-NMCA-019, 99 N.M. 545, 660 P.2d 1027, appeal dismissed, 464 U.S. 923, 104 S. Ct. 323, 78 L. Ed. 2d 296 (1983).

## 7-9-77.1. Deduction; gross receipts tax; certain medical and health care services.

A. Receipts of a health care practitioner from payments by the United States government or any agency thereof for provision of medical and other health services by a health care practitioner or of medical or other health and palliative services by hospices or nursing homes to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

B. Receipts of a health care practitioner from payments by a third-party administrator of the federal TRICARE program for provision of medical and other health services by medical doctors and osteopathic physicians to covered beneficiaries may be deducted from gross receipts.

C. Receipts of a health care practitioner from payments by or on behalf of the Indian health service of the United States department of health and human services for provision of medical and other health services by medical doctors and osteopathic physicians to covered beneficiaries may be deducted from gross receipts.

D. Receipts of a clinical laboratory from payments by the United States government or any agency thereof for medical services provided by the clinical laboratory to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

E. Receipts of a home health agency from payments by the United States government or any agency thereof for medical, other health and palliative services provided by the home health agency to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

F. Prior to July 1, 2024, receipts of a dialysis facility from payments by the United States government or any agency thereof for medical and other health services provided by the dialysis facility to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

G. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department. A taxpayer who

has receipts that are deductible pursuant to this section and Section 7-9-93 NMSA 1978 shall deduct the receipts under this section prior to calculating the receipts that may be deducted pursuant to Section 7-9-93 NMSA 1978.

H. The department shall compile an annual report on the deductions created pursuant to this section that shall include the number of taxpayers approved by the department to receive each deduction, the aggregate amount of deductions approved and any other information necessary to evaluate the effectiveness of the deductions. The department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deductions and whether the deductions are providing a benefit to the state.

I. For the purposes of this section:

(1) "clinical laboratory" means a laboratory accredited pursuant to 42 USCA 263a;

(2) "dialysis facility" means an end-stage renal disease facility as defined pursuant to 42 C.F.R. 405.2102;

(3) "health care practitioner" means:

(a) an athletic trainer licensed pursuant to the Athletic Trainer Practice Act [Chapter 61, Article 14D NMSA 1978];

(b) an audiologist licensed pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act [Chapter 61, Article 14B NMSA 1978];

(c) a chiropractic physician licensed pursuant to the Chiropractic Physician Practice Act [Chapter 61, Article 4 NMSA 1978];

(d) a counselor or therapist practitioner licensed pursuant to the Counseling and Therapy Practice Act [Chapter 61, Article 9A NMSA 1978];

(e) a dentist licensed pursuant to the Dental Health Care Act [Chapter 61, Article 5A NMSA 1978];

(f) a doctor of oriental medicine licensed pursuant to the Acupuncture and Oriental Medicine Practice Act [Chapter 61, Article 14A NMSA 1978];

(g) an independent social worker licensed pursuant to the Social Work Practice Act [Chapter 61, Article 31 NMSA 1978];

(h) a massage therapist licensed pursuant to the Massage Therapy Practice Act [Chapter 61, Article 12C NMSA 1978];

(i) a naprapath licensed pursuant to the Naprapathic Practice Act [61-12F-1 through 61-12F-11 NMSA 1978];

(j) a nutritionist or dietitian licensed pursuant to the Nutrition and Dietetics Practice Act [61-7A-1 through 61-7A-15 NMSA 1978];

(k) an occupational therapist licensed pursuant to the Occupational Therapy Act [Chapter 61, Article 12A NMSA 1978];

(l) an optometrist licensed pursuant to the Optometry Act [Chapter 61, Article 2 NMSA 1978];

(m)an osteopathic physician licensed pursuant to the Osteopathic Medicine Act [Chapter 61, Article 10 NMSA 1978];

(n) a pharmacist licensed pursuant to the Pharmacy Act [Chapter 61, Article 11 NMSA 1978];

(o) a physical therapist licensed pursuant to Physical Therapy Act [61-12D-1 through 61-12D-19 NMSA 1978];

(p) a physician licensed pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978];

(q) a podiatrist licensed pursuant to the Podiatry Act [Chapter 61, Article 8 NMSA 1978];

(r) a psychologist licensed pursuant to the Professional Psychologist Act [Chapter 61, Article 9 NMSA 1978];

(s) a radiologic technologist licensed pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act [Chapter 61, Article 14E NMSA 1978];

(t) a registered nurse licensed pursuant to the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978];

(u) a respiratory care practitioner licensed pursuant to the Respiratory Care Act [Chapter 61, Article 12B NMSA 1978]; and

(v) a speech-language pathologist licensed pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act [Chapter 61, Article 14B NMSA 1978];

(4) "home health agency" means a for-profit entity that is licensed by the department of health and certified by the federal centers for medicare and medicaid services as a home health agency and certified to provide medicare services;

(5) "hospice" means a for-profit entity licensed by the department of health as a hospice and certified to provide medicare services;

(6) "nursing home" means a for-profit entity licensed by the department of health as a nursing home and certified to provide medicare services; and

(7) "TRICARE program" means the program defined in 10 U.S.C. 1072(7).

History: 1978 Comp., § 7-9-77.1, enacted by Laws 1998, ch. 96, § 1; 2000 (2nd S.S.), ch. 16, § 1; 2003, ch. 350, § 1; 2003, ch. 351, § 1; 2005, ch. 91, § 1; 2007, ch. 361, § 4; 2014, ch. 56, § 1; 2016 (2nd S.S.), ch. 3, § 4.

## ANNOTATIONS

**Cross references.** — For the provisions of Title XVIII of the federal Social Security Act, *see* 42 U.S.C. § 1395 et seq.

**The 2016 (2nd S.S.) amendment,** effective November 1, 2016, clarified the type of health care provider that may take certain gross receipts tax deductions for medical and health care services; in Subsection A, after "Receipts", added "of a health care practitioner", after "health services by", deleted "medical doctors, osteopathic physicians, doctors of oriental medicine, athletic trainers, chiropractic physicians, counselor and therapist practitioners, dentists, massage therapists, naprapaths, nurses, nutritionists, dietitians, occupational therapists, optometrists, pharmacists, physical therapists, psychologists, radiologic technologists, respiratory care practitioners, audiologists, speech-language pathologists, social workers and podiatrists" and added "a health care practitioner", and after "or of medical", added "or"; in Subsection B, after "Receipts", added "of a health care practitioner"; in Subsection C, after "Receipts", added "of a health care practitioner"; in Subsection D, after "Receipts", added "of a clinical laboratory"; in Subsection E, after "Receipts", added "of a home health agency"; in Subsection F, after "receipts", added "of a dialysis facility", after "services provided by a", deleted "a" and added "the", after "deducted from gross receipts", deleted "according to the following schedule:" and deleted Paragraphs F(1) through F(3), relating to deductions from gross receipts; in Subsection G, after the first sentence, added the second sentence; in Subsection H, after "evaluate the effectiveness of the deductions.", deleted "Beginning in 2020 and every five years thereafter that this section is in effect"; in Subsection I, deleted Paragraphs I(1) and I(2) and redesignated former Paragraph I(3) as Paragraph I(1); deleted Paragraphs I(4) and I(5) and redesignated former Paragraph I(6) as Paragraph I(2), deleted Paragraph I(7), added new Paragraph I(3) and redesignated former Paragraphs I(8) and I(9) as Paragraph I(4) and I(5), respectively, deleted Paragraphs I(10) through I(13) and redesignated former

Paragraph I(14) as Paragraph I(6), deleted Paragraphs I(15) through I(26) and redesignated former Paragraph I(27) as Paragraph I(7).

**The 2014 amendment,** effective July 1, 2014, provided a deduction from gross receipts of payments for services rendered by dialysis facilities; added Subsections F, G and H; and in Subsection I, added Paragraph (6).

**The 2007 amendment,** effective July 1, 2007, eliminated the schedules of deductible receipts for the years 2003 through 2005; expanded the list of health care providers who may deduct receipts from the United States government and its agencies; added Subsection C; and added Paragraphs (1), (2), (4) through (6), (9), (11), (12), (14), (15), and (17) through (25) of Subsection F.

**The 2005 amendment,** effective June 17, 2005, added Subsection C to provide a deduction for certain payments by the United States for medical services provided by a clinical laboratory; added Subsection D to provide a deduction for certain payments by the United States for medical, other health and palliative services provided to a home health agency; requireed that "hospice" be certified to provide medicare services; and in Subsection E, defined "clinical laboratory", "home health agency" and "nursing home".

**The 2003 amendment,** effective July 1, 2003, in Subsection A, substituted "osteopathic physicians and podiatrists" for "osteopaths"; redesignated former Subsection B as C and added present Subsection B; in Subsection C, rewrote Paragraph C(2) and added Paragraphs C(3) and (4).

**The 2000 amendment,** effective July 1, 2000, deleted former Subsections A & B, concerning deductions from gross receipts from specific dates, and redesignated the remaining subsections accordingly; in present Subsection A, deleted "on or after July 1, 2000" following "Receipts" and inserted "or of medical, other health and palliative services by a hospice"; and in present Subsection B, added Paragraph (1) and designated the remaining section text as Paragraph (2).

## 7-9-78. Deductions; compensating tax; use of tangible personal property for leasing.

A. Except as provided otherwise in Subsection B of this section, the value of tangible personal property may be deducted in computing the compensating tax due if the person using the tangible personal property:

(1) is engaged in a business which derives a substantial portion of its receipts from leasing or selling tangible personal property of the type leased;

(2) does not use the tangible personal property in any manner other than holding it for lease or sale or leasing or selling it either by itself or in combination with other tangible personal property in the ordinary course of business; and

(3) does not use the tangible personal property in a manner incidental to the performance of a service.

B. The deduction provided by this section shall not apply to the value of:

(1) furniture or appliances furnished as part of a leased or rented dwelling house or apartment by the landlord or lessor;

(2) coin-operated machines; or

(3) manufactured homes.

**History:** 1953 Comp., § 72-16A-15.1, enacted by Laws 1969, ch. 144, § 65; 1973, ch. 245, § 1; 1975, ch. 160, § 4; 1979, ch. 338, § 8; 1981, ch. 184, § 3; 1984, ch. 2, § 7; 1991, ch. 203, § 9.

## ANNOTATIONS

**The 1991 amendment,** effective July 1, 1991, inserted the subsection designation A at the beginning of the section and redesignated former Subsections A to C as Paragraphs (1) to (3) of Subsection A; rewrote the introductory paragraph of Subsection A which read "The value of tangible personal property other than furniture or appliances furnished as part of a leased or rented dwelling house or apartment by the landlord or lessor, other than coin-operated machines and other than mobile homes may be deducted in computing the compensating tax due if the person using the tangible personal property" and added Subsection B.

**Determining character of transaction.** — The characterization of a transaction as a lease may be determined by looking to the intentions of the parties as evidenced by their actions with respect to the leased property. Music Serv. Co. v. Bureau of Revenue, 1975-NMCA-114, 88 N.M. 432, 540 P.2d 1321.

**Lease and bailment distinguished.** — Since taxpayer, which was in the business of providing coin-operated, amusement and vending equipment for use by business establishments for the pleasure or amusement of their patrons, utilized two types of agreements, one of which was a lease under which payment was made to taxpayer by a flat fee, whereas in the other type of agreement payment was made by a division of the proceeds from the machines under an oral agreement based on a document called "Agreement for Joint Operation of Amusement Devices," it was held that the taxpayer knew the difference between a lease agreement and a bailment for the mutual benefit of itself and a business establishment, supporting the inference that the relationship between taxpayer and establishment was not a lease. Music Serv. Co. v. Bureau of Revenue, 1975-NMCA-114, 88 N.M. 432, 540 P.2d 1321.

**Laundry transactions are leasings.** — Since the taxpayer's coin-operated laundry business is used for a consideration by persons other than the owner, the transactions

are "leasings" as defined in Section 7-9-3J NMSA 1978, and the taxpayer is entitled to a deduction from compensating tax liability for the value of the washers and dryers. Strebeck Props., Inc. v. New Mexico Bureau of Revenue, 1979-NMCA-035, 93 N.M. 262, 599 P.2d 1059.

**Construction of temporary provision.** — Temporary provision enacted by Laws 1977, ch. 144, § 66, providing for exemption from higher tax rate for certain contracts "entered into prior to the passage of this act," necessarily referred to contracts entered into prior to July 1, 1969, the date on which, pursuant to N.M. Const., art. IV, § 23, the bill became law, and an attempt by the commissioner (now the secretary of the taxation and revenue department) to set by regulation an earlier cutoff date (the date on which the bill was signed by the governor) was invalid. R.H. Fulton, Inc. v. N.M. Bureau of Revenue, 1973-NMCA-133, 85 N.M. 583, 514 P.2d 1079.

**Exemption not waived.** — Failure to register pursuant to the terms of a regulation promulgated under a temporary exemption provision which was invalid because it set a cutoff date contrary to that provided by the legislature was not a waiver by the taxpayer of his rights under the statute. R.H. Fulton, Inc. v. N.M. Bureau of Revenue, 1973-NMCA-133, 85 N.M. 583, 514 P.2d 1079.

**Constitutionality of former temporary exemption.** — Former 72-16-5D, 1953 Comp., which exempted lump-sum or unit-price contracts entered into prior to the effective date of the act, which by their terms would not permit a price increase in the event of imposition of additional tax, from the operation of the gross receipts tax, did not amount to an arbitrary or unreasonable distinction violative of principles of equal protection and uniform taxation. Gruschus v. Bureau of Revenue, 1965-NMSC-013, 74 N.M. 775, 399 P.2d 105 (decided under prior law).

## 7-9-78.1. Deduction; compensating tax; uranium enrichment plant equipment.

The value of equipment and replacement parts for that equipment may be deducted in computing the compensating tax due if the person uses the equipment and replacement parts to enrich uranium in a uranium enrichment plant.

**History:** Laws 1999, ch. 231, § 4.

**ANNOTATIONS**

**Cross references.** — For deduction of receipts from enriched uranium and enrichment of uranium, *see* 7-9-90 NMSA 1978.

## 7-9-79. Credit; compensating tax.

A. If on property bought outside this state, a gross receipts, sales, compensating or similar tax has been levied by another state or political subdivision thereof on the

transaction by which the person using the property in New Mexico acquired the property or a compensating, use or similar tax has been levied by another state on the use of the property subsequent to its acquisition by the person using the property in New Mexico and such tax has been paid, the amount of such tax paid may be credited against any compensating tax due this state on the same property.

B. When the receipts from the sale of real property constructed by a person in the ordinary course of his construction business are subject to the gross receipts tax, the amount of compensating tax previously paid by the person on materials which became an ingredient or component part of the construction project and on construction services performed upon the construction project may be credited against the gross receipts tax due on the sale.

**History:** 1953 Comp., § 72-16A-16, enacted by Laws 1966, ch. 47, § 16; 1973, ch. 342, § 1; 1991, ch. 203, § 10.

**ANNOTATIONS**

**The 1991 amendment,** effective July 1, 1991, inserted "or a compensating, use or similar tax has been levied by another state on the use of the property subsequent to its acquisition by the person using the property in New Mexico" in Subsection A.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity and construction of provisions allowing use tax credit for tax paid in other state, 31 A.L.R.4th 1206.

## 7-9-79.1. Credit; gross receipts tax; services.

If on services performed outside the state a gross receipts sales or similar tax has been levied by another state or a political subdivision thereof and such tax has been paid, the amount of the tax paid may be credited against any gross receipts tax due this state on the receipts after July 1, 1989 from the sale in New Mexico of the product of the services performed outside this state. The amount of credit shall not exceed an amount equal to the rate of tax imposed under Section 7-9-4 NMSA 1978 multiplied by the amount subject to tax by both New Mexico and the other state or political subdivision of that state.

**History:** 1978 Comp., § 7-9-79.1, enacted by Laws 1989, ch. 262, § 8; 1994, ch. 45, § 7.

**ANNOTATIONS**

**The 1994 amendment,** effective July 1, 1994, added the second sentence and substituted "after July 1, 1989" for "during the period July 1, 1989 through June 30, 1993" in the first sentence.

## 7-9-79.2. Gross receipts tax; compensating tax; biodiesel blending facility tax credit.

A. A taxpayer who is a rack operator as defined in the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978] and who installs biodiesel blending equipment in property owned by the taxpayer for the purpose of establishing or expanding a facility to produce blended biodiesel fuel is eligible to claim a credit against gross receipts tax or compensating tax. The credit shall be an amount equal to thirty percent of the purchase cost of the equipment plus thirty percent of the cost of installing that equipment. The credit provided by this section may be referred to as the "biodiesel blending facility tax credit".

B. The biodiesel blending facility tax credit shall not exceed fifty thousand dollars ($50,000) with respect to equipment installed at any one facility.

C. Upon application from a taxpayer wishing to claim the biodiesel blending facility tax credit, the energy, minerals and natural resources department shall determine if the equipment for which the tax credit will be claimed meets the requirements of this section and if purchase and installation costs reported by the taxpayer are legitimate. Upon these determinations being made in favor of the taxpayer, the energy, minerals and natural resources department shall issue a dated certificate of eligibility containing this information and an estimate of the amount of the biodiesel blending facility tax credit for which the taxpayer is eligible.

D. To claim the biodiesel blending facility tax credit, the taxpayer shall provide to the taxation and revenue department the certificate of eligibility from the energy, minerals and natural resources department. Upon receipt of the certificate, the taxation and revenue department shall approve the claim for the credit if the total cumulative amount of approved claims for the credit for all taxpayers for the calendar year does not exceed one million dollars ($1,000,000). The department shall maintain a record of the cumulative amount of claims for the credit that have been approved and when it determines that this cumulative amount has reached one million dollars ($1,000,000), it shall cease approving any additional claims for the biodiesel blending facility tax credit.

E. If a taxpayer who has received the biodiesel blending facility tax credit ceases biodiesel blending without completing at least one hundred eighty days of availability of the facility within the first three hundred sixty-five days after the issuance of the certificate of eligibility from the energy, minerals and natural resources department, any amount of approved credit not applied against the taxpayer's gross receipts tax or compensating tax liability shall be extinguished. The taxpayer must amend the taxpayer's return, self-assess the tax owed and return any biodiesel blending facility tax credit received within four hundred twenty-five days of the date of issuance of the certificate of eligibility.

F. The tax credit provided by this section may only be applied against the taxpayer's gross receipts tax liability or compensating tax liability. If the credit exceeds the

taxpayer's tax liability in the reporting period for which it is granted, the credit may be carried forward for four years from the date of the certificate of eligibility.

G. For the purposes of this section:

(1) "biodiesel" means renewable, biodegradable, monoalkyl ester combustible liquid fuel that is derived from agricultural plant oils or animal fats and that meets American society for testing and materials D 6751 standard specification for biodiesel B100 blend stock for distillate fuels;

(2) "biodiesel blending equipment" means equipment necessary for the process of blending biodiesel with diesel fuel to produce blended biodiesel fuel;

(3) "blended biodiesel fuel" means a diesel fuel that contains at least two percent biodiesel; and

(4) "diesel fuel" means any diesel-engine fuel used for the generation of power to propel a motor vehicle."

History: Laws 2007, ch. 204, § 9.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 204, § 23 made Laws 2007, ch. 204, § 9 effective July 1, 2007.

## 7-9-80 to 7-9-81. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1982, ch. 18, § 27, repealed 7-9-80 NMSA 1978, relating to a credit for electrical energy tax or similar tax on generation of electricity which may be applied against any gross receipts tax due, effective July 1, 1982.

Laws 1989, ch. 115, § 6A repealed 7-9-80.1 and 7-9-81 NMSA 1978, as enacted by Laws 1981, ch. 39, § 114, and Laws 1966, ch. 47, § 19, relating to tax credit during period of economic adjustment and cross references, respectively, effective July 1, 1989.

## 7-9-82. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2004, ch. 116, § 7 repealed 7-9-82 NMSA 1978, as enacted by Laws 1986, ch. 20, § 68, relating to a municipal gross receipt tax credit equal to one-half of

one percent, effective January 1, 2005. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com.*

## 7-9-83. Deduction; gross receipts tax; jet fuel.

A. From July 1, 2003 through June 30, 2017, fifty-five percent of the receipts from the sale of fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted from gross receipts.

B. After June 30, 2017, forty percent of the receipts from the sale of fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted from gross receipts.

History: Laws 1993, ch. 364, § 1; 2003, ch. 214, § 2; 2006, ch. 51, § 1; 2011, ch. 74, § 1.

**ANNOTATIONS**

**Compiler's notes.** — Laws 1995, ch. 36, § 2, effective June 16, 1995, repealed Laws 1993, ch. 364, § 4, as amended by Laws 1994, ch. 5, § 26, which had provided for the repeal of 7-9-83 NMSA 1978, as enacted by Laws 1993, ch. 364, § 1, effective July 1, 1995.

**The 2011 amendment,** effective July 1, 2011, extended the sunset date for the deduction to June 30, 2017.

**The 2006 amendment,** effective May 17, 2006, changed "June 30, 2007" to "June 30, 2012" in Subsections A and B.

**The 2003 amendment,** effective July 1, 2003, added present Subsection B and inserted "From July 1, 2003 through June 30, 2007, fifty-five percent of the receipts" for "Forty percent of the receipts" at the beginning of Subsection A.

## 7-9-84. Deduction; compensating tax; jet fuel.

A. From July 1, 2003 through June 30, 2017, fifty-five percent of the value of the fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted in computing the compensating tax due.

B. After June 30, 2017, forty percent of the value of the fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted in computing the compensating tax due.

History: Laws 1993, ch. 364, § 2; 2003, ch. 214, § 3; 2006, ch. 51, § 2; 2011, ch. 74, § 2.

**ANNOTATIONS**

**Compiler's notes.** — Laws 1995, ch. 36, § 2, effective June 16, 1995, repealed Laws 1993, ch. 364, § 4, as amended by Laws 1994, ch. 5, § 26, which had provided for the repeal of 7-9-84 NMSA 1978, as enacted by Laws 1993, ch. 364, § 2, effective July 1, 1995.

**The 2011 amendment,** effective July 1, 2011, extended the sunset date for the deduction to June 30, 2017.

**The 2006 amendment,** effective May 17, 2006, changed "June 30, 2007" to "June 30, 2012" in Subsections A and B.

**The 2003 amendment,** effective July 1, 2003 added present Subsection B and inserted "From July 1, 2003 through June 30, 2007, fifty-five percent of the receipts" for "The" at the beginning of Subsection A and deleted "from the value of such fuel" following "may be deducted".

## 7-9-85. Deduction; gross receipts tax; certain organization fundraisers.

Receipts from not more than two fundraising events annually conducted by an organization that is exempt from the federal income tax as an organization described in Section 501(c), other than an organization described in Section 501(c)(3), of the United States Internal Revenue Code of 1986, as amended may be deducted from gross receipts.

**History:** Laws 1994, ch. 43, § 1.

**ANNOTATIONS**

**Cross references.** — For Section 501 of the Internal Revenue Code, *see* 26 U.S.C. § 501.

## 7-9-86. Deduction; gross receipts tax; sales to qualified film production company.

A. Receipts from selling or leasing property and from performing services may be deducted from gross receipts or from governmental gross receipts if the sale, lease or performance is made to a qualified production company that delivers a nontaxable transaction certificate to the seller, lessor or performer.

B. For the purposes of this section:

(1) "film" means a single media or multimedia program, including an advertising message, that:

(a) is fixed on film, digital medium, videotape, computer disc, laser disc or other similar delivery medium;

(b) can be viewed or reproduced;

(c) is not intended to and does not violate a provision of Chapter 30, Article 37 NMSA 1978; and

(d) is intended for reasonable commercial exploitation for the delivery medium used;

(2) "production company" means a person that produces one or more films for exhibition in theaters, on television or elsewhere;

(3) "production costs" means the costs of the following:

(a) a story and scenario to be used for a film;

(b) salaries of talent, management and labor, including payments to personal services corporations for the services of a performing artist;

(c) set construction and operations, wardrobe, accessories and related services;

(d) photography, sound synchronization, lighting and related services;

(e) editing and related services;

(f) rental of facilities and equipment; or

(g) other direct costs of producing the film in accordance with generally accepted entertainment industry practice; and

(4) "qualified production company" means a production company that meets the provisions of this section and has registered or will register with the New Mexico film division of the economic development department.

C. A qualified production company may deliver the nontaxable transaction certificates authorized by this section only with respect to production costs.

**History:** Laws 1995, ch. 80, § 1; 2003, ch. 127, § 3.

## ANNOTATIONS

**Cross references.** — For Section 62b of the Internal Revenue Code, *see* 26 U.S.C. § 62b.

**The 2003 amendment,** effective July 1, 2003, substituted "that" for "who" following "qualified production company" in Subsection A and rewrote Subsection B.

**Severability.** — Laws 2003, ch. 127, § 4 provided for the severability of the act if any part or application thereof is held invalid.

## 7-9-87. Deduction; gross receipts tax; lottery retailer receipts.

Receipts of a lottery game retailer from selling lottery tickets pursuant to the New Mexico Lottery Act [Chapter 6, Article 24 NMSA 1978] may be deducted from gross receipts.

**History:** Laws 1995, ch. 155, § 35.

## 7-9-88. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 414, § 3 repealed 7-9-88 NMSA 1978, as enacted by Laws 1997, ch. 64, § 2, relating to credit; gross receipts tax; tax paid to Santa Clara pueblo. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.* For similar present provision, *see* 7-9-88.1 NMSA 1978.

## 7-9-88.1. Credit; gross receipts tax; tax paid to certain tribes.

A. If on a taxable transaction taking place on tribal land a qualifying gross receipts, sales or similar tax has been levied by the tribe, the amount of the tribe's tax may be credited against gross receipts tax due this state or its political subdivisions pursuant to the Gross Receipts and Compensating Tax Act and a local option gross receipts tax on the same transaction. The amount of the credit shall be equal to the lesser of seventy-five percent of the tax imposed by the tribe on the receipts from the transaction or seventy-five percent of the revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of local option gross receipts taxes imposed on the receipts from the same transaction. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied proportionately against the amount of the gross receipts tax and local option gross receipts taxes and against the amount of distribution of those taxes pursuant to Section 7-1-6.1 NMSA 1978.

B. A qualifying gross receipts, sales or similar tax levied by the tribe shall be limited to a tax that:

(1) is substantially similar to the gross receipts tax imposed by the Gross Receipts and Compensating Tax Act;

(2) does not unlawfully discriminate among persons or transactions based on membership in the tribe;

(3) is levied on the taxable transaction at a rate not greater than the total of the gross receipts tax rate and local option gross receipts tax rates imposed by this state and its political subdivisions located within the exterior boundaries of the tribe;

(4) provides a credit against the tribe's tax equal to the lesser of twenty-five percent of the tax imposed by the tribe on the receipts from the transactions or twenty-five percent of the tax revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of the local option gross receipts taxes imposed on the receipts from the same transactions; and

(5) is subject to a cooperative agreement between the tribe and the secretary entered into pursuant to Section 9-11-12.1 NMSA 1978 and in effect at the time of the taxable transaction.

C. For purposes of the tax credit allowed by this section:

(1) "pueblo" means the Pueblo of Acoma, Cochiti, Isleta, Jemez, Laguna, Nambe, Picuris, Pojoaque, Sandia, San Felipe, San Ildefonso, San Juan, Santa Ana, Santa Clara, Santo Domingo, Taos, Tesuque, Zia or Zuni or the nineteen New Mexico pueblos acting collectively;

(2) "tribal land" means all land that is owned by a tribe located within the exterior boundaries of a tribe's reservation or grant and all land held by the United States in trust for that tribe; and

(3) "tribe" means a pueblo, the Jicarilla Apache Nation or the Mescalero Apache Tribe.

**History:** Laws 1999, ch. 223, § 2; 2000, ch. 62, § 1; 2001, ch. 42, § 1; 2003, ch. 414, § 1.

## ANNOTATIONS

**Cross references.** — For definition of local option gross receipts tax, *see* 7-1-3 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, substituted "tribes" for "pueblos" in the section heading; deleted "any" following "be credited against" in Subsection A; rewrote Subsection C; and substituted "tribal" or "tribe's" for "pueblo" throughout the section.

**The 2001 amendment,** effective July 1, 2001, substituted "certain pueblos" for "Santa Ana pueblo, Laguna pueblo or Nambe pueblo" in the section heading; substituted "pueblo land" for "Santa Ana pueblo land, Laguna pueblo land or Nambe pueblo land" near the beginning of Subsection A and rewrote Subsection C, which formerly defined each of the pueblo lands separately.

**The 2000 amendment,** effective July 1, 2000, inserted "or Nambe pueblo" in the section heading, inserted "or Nambe pueblo land" in Subsection A, assigned designations (1) and (2) to existing Subsection C text, and added Subsection C(3).

## 7-9-88.2. Credit; gross receipts tax; tax paid to Navajo Nation on receipts from selling coal.

A. If on receipts from selling coal severed from Navajo Nation land a qualifying gross receipts, sales, business activity or similar tax has been levied by the Navajo Nation, the amount of the Navajo Nation tax paid and not refunded may be credited against any gross receipts tax due this state or its political subdivisions pursuant to the Gross Receipts and Compensating Tax Act and any local option gross receipts tax on the same receipts. The amount of the credit shall be equal to:

(1) for the period from July 1, 2001 through June 30, 2002, the lesser of thirty-seven and one-half percent of the tax imposed by the Navajo Nation on the receipts or thirty-seven and one-half percent of the revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of local option gross receipts taxes imposed on the same receipts; and

(2) after June 30, 2002, the lesser of seventy-five percent of the tax imposed by the Navajo Nation on the receipts or seventy-five percent of the revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of local option gross receipts taxes imposed on the same receipts.

B. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied proportionately against the amounts of the distributions made pursuant to Section 7-1-6.1 NMSA 1978 of the gross receipts tax and local option gross receipts taxes imposed on those receipts.

C. A qualifying gross receipts, sales, business activity or similar tax levied by the Navajo Nation shall be limited to a tax that:

(1) is substantially similar to the gross receipts tax imposed by the Gross Receipts and Compensating Tax Act;

(2) does not unlawfully discriminate among persons or transactions based on membership in the Navajo Nation;

(3) is levied on the receipts from selling coal at a rate not greater than the total of the gross receipts tax rate and local option gross receipts tax rates imposed by this state and its political subdivisions located within the exterior boundaries of the Navajo Nation;

(4) provides a credit against the Navajo Nation tax equal to:

(a) for the period from July 1, 2001 through June 30, 2002, the lesser of twelve and one-half percent of the tax imposed by the Navajo Nation on the receipts from selling coal severed from Navajo Nation land or twelve and one-half percent of the tax revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of the local option gross receipts taxes imposed on the same receipts; and

(b) after June 30, 2002, the lesser of twenty-five percent of the tax imposed by the Navajo Nation on the receipts from selling coal severed from Navajo Nation land or twenty-five percent of the tax revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of the local option gross receipts taxes imposed on the same receipts;

(5) is not used to calculate an intergovernmental coal severance tax credit with respect to the same receipts or time period; and

(6) is subject to a cooperative agreement between the Navajo Nation and the secretary entered into pursuant to Section 9-11-12.2 NMSA 1978 and in effect at the time of the taxable transaction.

D. For purposes of the tax credit allowed by this section, "Navajo Nation land" means all land in New Mexico that, on March 1, 2001, was located within the exterior boundaries of the Navajo Nation reservation or within a dependent community of the Navajo Nation or was land held by the United States in trust for the Navajo Nation.

**History:** 1978 Comp., § 7-9-88.2, enacted by Laws 2001, ch. 134, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2001, ch. 134, § 4 made Laws 2001, ch. 134, § 1 effective July 1, 2001.

## 7-9-89. Deduction; [gross receipts tax;] sales to certain accredited diplomats and missions.

Receipts from selling or leasing property to, or from performing services for, an accredited foreign mission or an accredited member of a foreign mission may be deducted from gross receipts when a treaty in force to which the United States is a party

requires forbearance of tax when the legal incidence is upon the buyer or when the tax is customarily passed on to the buyer.

**History:** Laws 1998, ch. 89, § 2.

## 7-9-90. Deductions; gross receipts tax; sales of uranium hexafluoride and enrichment of uranium.

A. Receipts from selling uranium hexafluoride and from providing the service of enriching uranium may be deducted from gross receipts.

B. The department shall annually report to the revenue stabilization and tax policy committee aggregate amounts of deductions taken pursuant to this section, the number of taxpayers claiming the deduction and any other information that is necessary to determine that the deduction is performing a purpose that is beneficial to the state.

C. A taxpayer deducting gross receipts pursuant to this section shall report the amount deducted separately and attribute the amount of the deduction to the authorization provided in this section in a manner required by the department that facilitates the evaluation by the legislature for the benefit to the state of this deduction.

History: Laws 1999, ch. 231, § 3; 2012, ch. 13, § 1.

**ANNOTATIONS**

**Cross references.** — For deduction of value of equipment and its replacement parts from compensating tax, *see* 7-9-78.1 NMSA 1978.

**The 2012 amendment,** effective May 16, 2012, provided for a deduction of receipts from sales of uranium hexafluoride; required reports to determine whether the deduction is beneficial to the state; in the title, after "sales of", deleted "enriched", and after "uranium", added "hexafluoride"; in Subsection A, after "Receipts from selling", deleted "enriched", and after "uranium", added "hexafluoride"; and added Subsections B and C.

## 7-9-91. Deduction; compensating tax; contributions of inventory to certain organizations and governmental agencies.

A. Except as provided otherwise in Subsection D of this section, the value of tangible personal property that is removed from inventory and contributed to organizations that have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, may be deducted in computing the compensating tax due, provided that the contribution is deductible for federal income tax purposes by the person from whose inventory the property was withdrawn or, if the person from whose inventory the property was withdrawn is a pass-

through entity as that term is defined in Section 7-3-2 NMSA 1978, the contribution is deductible by the owner or owners of the pass-through entity.

B. Except as provided otherwise in Subsection D of this section, the value of tangible personal property that is removed from inventory and contributed to the United States or New Mexico or any governmental unit or subdivision, agency, department or instrumentality thereof may be deducted in computing the compensating tax due.

C. Except as provided otherwise in Subsection D of this section, the value of tangible personal property that is removed from inventory and contributed to an Indian tribe, nation or pueblo or any governmental subdivision, agency, department or instrumentality thereof for use on that Indian reservation or pueblo grant may be deducted in computing the compensating tax due.

D. Unless contrary to federal law, the deduction provided by this section does not apply to:

(1) a contribution of metalliferous mineral ore;

(2) a contribution of tangible personal property that is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978];

(3) a contribution of tangible personal property that will become an ingredient or component part of a construction project; or

(4) a contribution of tangible personal property utilized or produced in the performance of a service.

E. For purposes of this section:

(1) "inventory" means tangible personal property held for sale or lease in the ordinary course of business; and

(2) "contributed" or "contribution" means a transfer of ownership without consideration. Public acknowledgment of the contribution does not constitute consideration for the purpose of this section.

**History:** Laws 2001, ch. 135, § 1.

## ANNOTATIONS

**Cross references.** — For Section 501(c)(3) of the Internal Revenue Code of 1986, *see* 26 U.S.C.S. § 501(c)(3).

**Effective dates.** — Laws 2001, ch. 135, § 2 made Laws 2001, ch. 135, § 1 effective July 1, 2001.

## 7-9-92. Deduction; gross receipts; sale of food at retail food store.

A. Receipts from the sale of food at a retail food store that are not exempt from gross receipts taxation and are not deductible pursuant to another provision of the Gross Receipts and Compensating Tax Act may be deducted from gross receipts. The deduction provided by this section shall be separately stated by the taxpayer.

B. For the purposes of this section:

(1) "food" means any food or food product for home consumption that meets the definition of food in 7 USCA 2012(g)(1) for purposes of the federal food stamp program; and

(2) "retail food store" means an establishment that sells food for home preparation and consumption and that meets the definition of retail food store in 7 USCA 2012(k)(1) for purposes of the federal food stamp program, whether or not the establishment participates in the food stamp program.

History: Laws 2004, ch. 116, § 5.

**ANNOTATIONS**

**Cross reference.** — For penalty for incorrect reporting of food deduction, *see* 7-1-71.2 NMSA 1978.

**Effective dates.** — Laws 2004, ch. 116, § 8 made Laws 2004, ch. 116, § 5 effective January 1, 2005.

## 7-9-93. Deduction; gross receipts; certain receipts for services provided by health care practitioner.

A. Receipts of a health care practitioner for commercial contract services or medicare part C services paid by a managed health care provider or health care insurer may be deducted from gross receipts if the services are within the scope of practice of the health care practitioner providing the service. Receipts from fee-for-service payments by a health care insurer may not be deducted from gross receipts.

B. The deduction provided by this section shall be applied only to gross receipts remaining after all other allowable deductions available under the Gross Receipts and Compensating Tax Act have been taken and shall be separately stated by the taxpayer.

C. For the purposes of this section:

(1) "commercial contract services" means health care services performed by a health care practitioner pursuant to a contract with a managed health care provider or health care insurer other than those health care services provided for medicare patients pursuant to Title 18 of the federal Social Security Act or for medicaid patients pursuant to Title 19 or Title 21 of the federal Social Security Act;

(2) "health care insurer" means a person that:

(a) has a valid certificate of authority in good standing pursuant to the New Mexico Insurance Code [Chapter 59A NMSA 1978] to act as an insurer, health maintenance organization or nonprofit health care plan or prepaid dental plan; and

(b) contracts to reimburse licensed health care practitioners for providing basic health services to enrollees at negotiated fee rates;

(3) "health care practitioner" means:

(a) a chiropractic physician licensed pursuant to the provisions of the Chiropractic Physician Practice Act [Chapter 61, Article 4 NMSA 1978];

(b) a dentist or dental hygienist licensed pursuant to the Dental Health Care Act [Chapter 61, Article 5A NMSA 1978];

(c) a doctor of oriental medicine licensed pursuant to the provisions of the Acupuncture and Oriental Medicine Practice Act [Chapter 61, Article 14A NMSA 1978];

(d) an optometrist licensed pursuant to the provisions of the Optometry Act [Chapter 61, Article 2 NMSA 1978];

(e) an osteopathic physician or an osteopathic physician's assistant licensed pursuant to the provisions of the Osteopathic Medicine Act [Chapter 61, Article 10 NMSA 1978];

(f) a physical therapist licensed pursuant to the provisions of the Physical Therapy Act [61-12D-1 through 61-12D-19 NMSA 1978];

(g) a physician or physician assistant licensed pursuant to the provisions of the Medical Practice Act [Chapter 61, Article 6 NMSA 1978];

(h) a podiatrist licensed pursuant to the provisions of the Podiatry Act [Chapter 61, Article 8 NMSA 1978];

(i) a psychologist licensed pursuant to the provisions of the Professional Psychologist Act [Chapter 61, Article 9 NMSA 1978];

(j) a registered lay midwife registered by the department of health;

(k) a registered nurse or licensed practical nurse licensed pursuant to the provisions of the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978];

(l) a registered occupational therapist licensed pursuant to the provisions of the Occupational Therapy Act [Chapter 61, Article 12A NMSA 1978];

(m)a respiratory care practitioner licensed pursuant to the provisions of the Respiratory Care Act [Chapter 61, Article 12B NMSA 1978];

(n) a speech-language pathologist or audiologist licensed pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act [Chapter 61, Article 14B NMSA 1978];

(o) a professional clinical mental health counselor, marriage and family therapist or professional art therapist licensed pursuant to the provisions of the Counseling and Therapy Practice Act [Chapter 61, Article 9A NMSA 1978] who has obtained a master's degree or a doctorate;

(p) an independent social worker licensed pursuant to the provisions of the Social Work Practice Act [Chapter 61, Article 31 NMSA 1978]; and

(q) a clinical laboratory that is accredited pursuant to 42 U.S.C. Section 263a but that is not a laboratory in a physician's office or in a hospital defined pursuant to 42 U.S.C. Section 1395x;

(4) "managed health care provider" means a person that provides for the delivery of comprehensive basic health care services and medically necessary services to individuals enrolled in a plan through its own employed health care providers or by contracting with selected or participating health care providers. "Managed health care provider" includes only those persons that provide comprehensive basic health care services to enrollees on a contract basis, including the following:

(a) health maintenance organizations;

(b) preferred provider organizations;

(c) individual practice associations;

(d) competitive medical plans;

(e) exclusive provider organizations;

(f) integrated delivery systems;

(g) independent physician-provider organizations;

(h) physician hospital-provider organizations; and

(i) managed care services organizations; and

(5) "medicare part C services" means services performed pursuant to a contract with a managed health care provider for medicare patients pursuant to Title 18 of the federal Social Security Act.

History: Laws 2004, ch. 116, § 6; 2006, ch. 36, § 1; 2007, ch. 361, § 5; 2016 (2nd S.S.), ch. 3, § 5.

**ANNOTATIONS**

**Cross reference.** — For penalty for incorrect reporting of health care practitioner services deduction, *see* 7-1-71.2 NMSA 1978.

**The 2016 (2nd S.S.) amendment,** effective November 1, 2016, clarified the types of receipts of a health care practitioner that may be deducted from gross receipts; in Subsection A, after "Receipts", deleted "from payments by a managed health care provider or health care insurer" and added "of a health care practitioner", after "medicare Part C services", deleted "provided by a health care practitioner that are not otherwise deductible pursuant to another provision of the Gross Receipts and Compensating Tax Act" and added "paid by a managed health care provider or health care insurer", after "deducted from gross receipts", deleted "provided that" and added "if", after "scope of practice of the", deleted "person" and added "health care practitioner"; added a new subsection designation "B" and redesignated former Subsection B as Subsection C; in Subsection B, after "The deduction provided by this section shall be", added "applied only to gross receipts remaining after all other allowable deductions available under the Gross Receipts and Compensating Tax Act have been taken and shall be"; in Subparagraph C(3)(e), after "osteopathic physician", deleted "licensed pursuant to the provisions of Chapter 61, Article 10 NMSA 1978", and after "Osteopathic", deleted "Physicians' Assistants" and added "Medicine"; and in Subparagraph C(3)(g), after "pursuant to the provisions of", deleted "Chapter 61, Article 6 NMSA 1978" and added "the Medical Practice Act".

**The 2007 amendment,** effective July 1, 2007, added Subparagraph (q) of Paragraph (3) of Subsection B.

**The 2006 amendment,** effective July 1, 2006, added Subparagraphs (o) and (p) of Paragraph (3) of Subsection B to provide that the definition of "health care practitioner" includes licensed professional clinical mental health counselors, marriage and family therapists and professional art therapists and licensed independent social workers.

## 7-9-94. Deduction; gross receipts; military transformational acquisition programs.

A. Receipts from transformational acquisition programs performing research and development, test and evaluation at New Mexico major range and test facility bases pursuant to contracts entered into with the United States department of defense may be deducted from gross receipts through June 30, 2025.

B. As used in this section, "transformational acquisition program" means a military acquisition program authorized by the office of the secretary of defense force transformation and not physically tested in New Mexico on or before July 1, 2005.

C. The deduction provided in this section does not apply to receipts of a prime contractor operating facilities designated as a national laboratory by act of congress and is not applicable to current force programs as of July 1, 2005.

D. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deduction. No later than December 1 of each year that the deduction is in effect, the department shall compile and present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost and benefit to the state of the deduction.

History: Laws 2005, ch. 104, § 23; 2006, ch. 72, § 1; 2015, ch. 18, § 1.

**ANNOTATIONS**

**The 2015 amendment,** effective June 19, 2015, amended the Gross Receipts and Compensating Tax Act by deferring the expiration date of the deduction from gross receipts for certain military acquisition programs and required the taxation and revenue department to compile an annual report on the deduction provided by this section; in Subsection A, deleted "2016" and added "2025"; and added Subsection D.

**The 2006 amendment,** effective May 17, 2006, changed the expiration date from June 30, 2008 to June 30, 2016.

## 7-9-95. Deduction; gross receipts tax; sales of certain tangible personal property; limited period.

Receipts from the sale at retail of the following types of tangible personal property may be deducted if the sale of the property occurs during the period beginning at 12:01 a.m. on the first Friday in August and ending at midnight on the following Sunday:

A. an article of clothing or footwear designed to be worn on or about the human body if the sales price of the article is less than one hundred dollars ($100) except:

(1) any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed; and

(2) accessories, including jewelry, handbags, luggage, umbrellas, wallets, watches and similar items worn or carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing;

B. a desktop, laptop or notebook computer if the sales price of the computer does not exceed one thousand dollars ($1,000) and any associated monitor, speaker or set of speakers, printer, keyboard, microphone or mouse if the sales price of the device does not exceed five hundred dollars ($500); and

C. school supplies that are items normally used by students in a standard classroom for educational purposes, including notebooks, paper, writing instruments, crayons, art supplies, rulers, book bags, backpacks, handheld calculators, maps and globes, but not including watches, radios, compact disc players, headphones, sporting equipment, portable or desktop telephones, copiers, office equipment, furniture or fixtures.

History: Laws 2005, ch. 104, § 25.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 104, § 29 made Laws 2005, ch. 104, § 25 effective July 1, 2005.

## 7-9-96. Credit; gross receipts tax; governmental gross receipts tax; certain sales for resale.

A. A taxpayer may claim a credit against gross receipts tax or governmental gross receipts tax due for each reporting period beginning after June 2005 in an amount equal to ten percent of the receipts from selling a service for resale multiplied by:

(1) three and seven hundred seventy-five thousandths percent if the taxpayer's business location is within a municipality; or

(2) five percent if the taxpayer's business location is in the unincorporated area of a county.

B. A taxpayer may claim a credit pursuant to Subsection A of this section only if:

(1) the buyer resells the service in the ordinary course of business;

(2) the resale is not subject to the gross receipts tax or the governmental gross receipts tax; and

(3) the buyer delivers to the seller documentation in a form prescribed by the department clarifying that the service is purchased for resale in the ordinary course of business.

C. A credit permitted pursuant to this section does not apply to receipts from selling a service to a governmental entity or to a person who is a prime contractor that operates a facility in New Mexico designated as a national laboratory by an act of congress.

History: Laws 2005, ch. 104, § 26.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 104, § 29 made Laws 2005, ch. 104, § 26 effective July 1, 2005.

## 7-9-96.1. Credit; gross receipts tax; receipts of certain hospitals.

A. A hospital licensed by the department of health may claim a credit for each reporting period against the gross receipts tax due for that reporting period as follows:

(1) for a hospital located in a municipality:

(a) on or after July 1, 2007 but before July 1, 2008, in an amount equal to seven hundred fifty-five thousandths percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken;

(b) on or after July 1, 2008 but before July 1, 2009, in an amount equal to one and fifty-one hundredths percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken;

(c) on or after July 1, 2009 but before July 1, 2010, in an amount equal to two and two hundred sixty-five thousandths percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken;

(d) on or after July 1, 2010 but before July 1, 2011, in an amount equal to three and two hundredths percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken; and

(e) on or after July 1, 2011, in an amount equal to three and seven hundred seventy-five thousandths percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken; and

(2) for a hospital located in the unincorporated area of a county:

(a) on or after July 1, 2007 but before July 1, 2008, in an amount equal to one percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken;

(b) on or after July 1, 2008, but before July 1, 2009, in an amount equal to two percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken;

(c) on or after July 1, 2009 but before July 1, 2010, in an amount equal to three percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken;

(d) on or after July 1, 2010 but before July 1, 2011, in an amount equal to four percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken; and

(e) on or after July 1, 2011, in an amount equal to five percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken.

B. For the purposes of this section, "hospital" means a facility providing emergency or urgent care, inpatient medical care and nursing care for acute illness, injury, surgery or obstetrics and includes a facility licensed by the department of health as a critical access hospital, general hospital, long-term acute care hospital, psychiatric hospital, rehabilitation hospital, limited services hospital and special hospital.

History: Laws 2007, ch. 361, § 7.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 361 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2007, ch. 361, § 10 provided that Laws 2007, ch. 361, § 7 is applicable to reporting periods beginning on or after July 1, 2007.

## 7-9-96.2. Credit; gross receipts tax; unpaid charges for services provided in a hospital.

A. A licensed medical doctor or licensed osteopathic physician may claim a credit against gross receipts taxes due in the following amounts:

(1) from July 1, 2007 through June 30, 2008, thirty-three percent of the value of unpaid qualified health care services;

(2) from July 1, 2008 through June 30, 2009, sixty-seven percent of the value of unpaid qualified health care services; and

(3) on and after July 1, 2009, one hundred percent of the value of unpaid qualified health care services.

B. As used in this section:

(1) "qualified health care services" means medical care services provided by a licensed medical doctor or licensed osteopathic physician while on call to a hospital; and

(2) "value of unpaid qualified health care services" means the amount that is charged for qualified health care services, not to exceed one hundred thirty percent of the reimbursement rate for the services under the medicaid program administered by the human services department, that remains unpaid one year after the date of billing and that the licensed medical doctor or licensed osteopathic physician has reason to believe will not be paid because:

(a) at the time the services were provided, the person receiving the services had no health insurance or had health insurance that did not cover the services provided;

(b) at the time the services were provided, the person receiving the services was not eligible for medicaid; and

(c) the charges are not reimbursable under a program established pursuant to the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978].

History: Laws 2007, ch. 361, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 361, § 11 made Laws 2007, ch. 361, § 8 effective July 1, 2007.

## 7-9-97. Deduction; gross receipts tax; receipts from certain purchases by or on behalf of the state.

Receipts from the sale of property or services purchased by or on behalf of the state from funds obtained from the forfeiture of financial assurance pursuant to the New Mexico Mining Act [Chapter 69, Article 36 NMSA 1978] or the forfeiture of financial responsibility pursuant to the Water Quality Act [Chapter 74, Article 6 NMSA 1978] may be deducted from gross receipts.

History: Laws 2005, ch. 169, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 169 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 7-9-98. Deduction; compensating tax; biomass-related equipment; biomass materials.

A. The value of a biomass boiler, gasifier, furnace, turbine-generator, storage facility, feedstock processing or drying equipment, feedstock trailer or interconnection transformer may be deducted in computing the compensating tax due.

B. The value of biomass materials used for processing into biopower, biofuels or biobased products may be deducted in computing the compensating tax due.

C. As used in this section:

(1) "biobased products" means products created from plant- or crop-based resources such as agricultural crops and crop residues, forestry, pastures and rangelands that are normally made from petroleum

(2) "biofuels" means biomass converted to liquid or gaseous fuels such as ethanol, methanol, methane and hydrogen;

(3) "biomass material" means organic material that is available on a renewable or recurring basis, including:

(a) forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low commercial value materials or undesirable species, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;

(b) agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws and stover, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey and lactose;

(c) animal waste, including manure and slaughterhouse and other processing waste;

(d) solid woody waste materials, including landscape or right-of-way tree trimmings, range land maintenance residues, waste pallets, crates and manufacturing, construction and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;

(e) crops and trees planted for the purpose of being used to produce energy;

(f) landfill gas, wastewater treatment gas and biosolids, including organic waste byproducts generated during the wastewater treatment process; and

(g) segregated municipal solid waste, excluding tires and medical and hazardous waste; and

(4) "biopower" means biomass converted to produce electrical and thermal energy.

History: Laws 2005, ch. 179, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 179 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 7-9-99. Deduction; gross receipts tax; sale of engineering, architectural and new facility construction services used in construction of certain public health care facilities.

Receipts from selling an engineering, architectural or construction service used in the new facility construction of a sole community provider hospital [qualifying hospital] that is located in a federally designated health professional shortage area may be deducted from gross receipts if the sale of the engineering, architectural or construction service is made to a foundation or a nonprofit organization that:

A. has entered into a written agreement with a county to pay at least ninety-five percent of the costs of new facility construction of that sole community provider hospital [qualifying hospital]; and

B. delivers to the seller of the engineering, architectural or construction service either an appropriate nontaxable transaction certificate or other evidence acceptable to the secretary of a written agreement made in accordance with Subsection A of this section.

**History:** Laws 2006, ch. 35, § 1.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 2014, ch. 79, § 18 provided that all references in law to a sole community provider hospital shall be deemed to be references to a qualifying hospital pursuant to the Indigent Hospital and County Health Care Act, effective March 12, 2014.

**Effective dates.** — Laws 2006, ch. 35, § 3 made Laws 2006, ch. 35, § 1 effective July 1, 2006.

## 7-9-100. Deduction; gross receipts tax; sale of construction equipment and construction materials used in new facility construction of a sole community provider hospital [qualifying hospital] that is located in a federally designated health professional shortage area.

Receipts from selling construction equipment or construction materials used in the new facility construction of a sole community provider hospital [qualifying hospital] that is located in a federally designated health professional shortage area may be deducted from gross receipts if the sale of the construction equipment or construction materials is made to a foundation or a nonprofit organization that:

A. has entered into a written agreement with a county to pay at least ninety-five percent of the costs of new facility construction of that sole community provider hospital [qualifying hospital]; and

B. delivers to the seller either an appropriate nontaxable transaction certificate or other evidence acceptable to the secretary of a written agreement made in accordance with Subsection A of this section.

**History:** Laws 2006, ch. 35, § 2.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 2014, ch. 79, § 18 provided that all references in law to a sole community provider hospital shall be deemed to be references to a qualifying hospital pursuant to the Indigent Hospital and County Health Care Act, effective March 12, 2014.

**Effective dates.** — Laws 2006, ch. 35, § 3 made Laws 2006, ch. 35, § 2 effective July 1, 2006.

## 7-9-101. Deduction; gross receipts; equipment for certain electric transmission or storage facilities.

Receipts from selling equipment to the New Mexico renewable energy transmission authority or an agent or lessee of the authority may be deducted from gross receipts if the equipment is installed as part of an electric transmission facility or an interconnected storage facility acquired by the authority pursuant to the New Mexico Renewable Energy Transmission Authority Act [Chapter 62, Article 16A NMSA 1978].

History: Laws 2007, ch. 3, § 16.

**ANNOTATIONS**

**Effective date.** — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 16 effective July 1, 2007.

## 7-9-102. Deduction; compensating tax; equipment for certain electric transmission or storage facilities.

The value of equipment installed as part of an electric transmission facility or an interconnected storage facility acquired by the New Mexico renewable energy transmission authority pursuant to the New Mexico Renewable Energy Transmission Authority Act [Chapter 62, Article 16A NMSA 1978] may be deducted in computing compensating tax due.

History: Laws 2007, ch. 3, § 17.

**ANNOTATIONS**

**Effective date.** — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 17 effective July 1, 2007.

## 7-9-103. Deduction; gross receipts; services provided for certain electric transmission and storage facilities.

Receipts from providing services to the New Mexico renewable energy transmission authority or an agent or lessee of the authority for the planning, installation, repair, maintenance or operation of an electric transmission facility or an interconnected storage facility acquired by the authority pursuant to the New Mexico Renewable Energy Transmission Authority Act [Chapter 62, Article 16A NMSA 1978] may be deducted from gross receipts.

History: Laws 2007, ch. 3, § 18.

**ANNOTATIONS**

**Effective date.** — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 18 effective July 1, 2007.

## 7-9-103.1. Deduction; gross receipts tax; converting electricity.

A. Receipts from the transmission of electricity where voltage source conversion technology is employed to provide such services and from ancillary services may be deducted from gross receipts.

B. The department shall report annually to the interim revenue stabilization and tax policy committee on the expansion of voltage source conversion technology use in the transmission of electricity in New Mexico and the use of the deduction provided in this section.

C. As used in this section, "ancillary services" means services that are supplied from or in connection with facilities employing voltage source conversion technology and that are used to support or enhance the efficient and reliable operation of the electric system.

History: Laws 2012, ch. 12, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2012, ch. 12, § 4 made Laws 2012, ch. 12, § 2 effective July 1, 2012.

## 7-9-103.2. Deduction; gross receipts; electricity exchange.

A. Receipts from operating a market or exchange for the sale or trading of electricity, rights to electricity and derivative products and from providing ancillary services may be deducted from gross receipts.

B. The department shall report annually to the interim revenue stabilization and tax policy committee on use of the deduction provided in this section.

C. As used in this section, "ancillary services" means services that are supplied from or in connection with facilities employing voltage source conversion technology and that are used to support or enhance the efficient and reliable operation of the electric system.

History: Laws 2012, ch. 12, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2012, ch. 12, § 4 made Laws 2012, ch. 12, § 3 effective July 1, 2012.

## 7-9-104. Deduction; gross receipts; nonathletic special event at post-secondary educational institution.

Receipts received from July 1, 2007 through June 30, 2022 from admissions to a nonathletic special event held at a venue that is located on the campus of a post-secondary educational institution within fifty miles of the New Mexico border and that accommodates at least ten thousand persons may be deducted from gross receipts or from governmental gross receipts.

**History:** Laws 2007, ch. 33, § 1; 2012, ch. 22, § 1; 2017, ch. 46, § 1.

**ANNOTATIONS**

**The 2017 amendment,** effective June 16, 2017, expanded the deduction from gross receipts tax to both gross receipts tax and governmental gross receipts tax, and extended the expiration date of the gross receipts and governmental gross receipts tax deduction for nonathletic special events at certain post-secondary educational institutions; after "June 30", changed "2017" to "2022", and after "may be deducted from gross receipts", added "or from governmental gross receipts".

**The 2012 amendment,** effective May 16, 2012, extended the deduction for an additional five years and after "June 30", changed "2012" to "2017".

## 7-9-105. Credit for penalty pursuant to Section 7-1-71.2 NMSA 1978.

A. A taxpayer who paid a penalty pursuant to the provisions of Section 7-1-71.2 NMSA 1978 in effect prior to July 1, 2007 may claim a credit for the amount of the penalty.

B. To claim the credit provided in Subsection A of this section, the taxpayer shall apply to the taxation and revenue department prior to July 1, 2010, on forms and in the manner prescribed by the department, and shall supply documentation as required by the department.

C. The amount of credit provided in Subsection A of this section may be claimed against the taxpayer's gross receipts tax, compensating tax and withholding tax due in a reporting period. Any amount of available credit that exceeds the taxpayer's gross receipts tax, compensating tax and withholding tax due for a reporting period may be claimed in subsequent reporting periods, for a period of three years.

History: Laws 2007, ch. 45, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 45, § 16 made Laws 2007, ch. 45, § 6 effective July 1, 2007.

## 7-9-106. Deduction; military construction services.

A. Receipts from military construction services provided at New Mexico military installations to implement special operations mission transition projects pursuant to contracts entered into with the United States department of defense may be deducted from gross receipts; provided that the military installation is located in a class B county with a population greater than forty-two thousand according to the most recent federal decennial census and with a net taxable value for rate-setting purposes of less than one

billion dollars ($1,000,000,000) as determined by the local government division of the department of finance and administration for the 2006 property tax year.

B. The deduction provided in this section applies to reporting periods beginning July 1, 2007 and ending December 31, 2010.

History: Laws 2007, ch. 172, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 172, § 30 made Laws 2007, ch. 172, § 8 effective July 1, 2007.

## 7-9-107. Deduction; gross receipts tax; production or staging of professional contests.

Receipts from producing or staging a professional boxing, wrestling or martial arts contest that occurs in New Mexico, including receipts from ticket sales and broadcasting, may be deducted from gross receipts.

History: Laws 2007, ch. 172, § 9.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 172, § 30 made Laws 2007, ch. 172, § 9 effective July 1, 2007.

## 7-9-108. Deduction; gross receipts; receipts from performing management or investment advisory services for mutual funds, hedge funds or real estate investment trusts.

A. Receipts from fees received for performing management or investment advisory services for a mutual fund, hedge fund or real estate investment trust may be deducted from gross receipts.

B. As used in this section:

(1) "hedge fund" means a private investment fund or pool, the assets of which are managed by a professional management firm, that:

(a) trades or invests, through public market or private transactions, in securities, commodities, currency, derivatives or similar classes of financial assets; or

(b) is not an investment company pursuant to the provisions of 15 U.S.C. 80a-3(c)(1) or 15 U.S.C. 80a-3(c)(7);

(2) "mutual fund" means an entity registered pursuant to the federal Investment Company Act of 1940, as amended; and

(3) "real estate investment trust" means an entity described in Section 856(a) of the Internal Revenue Code of 1986, as amended, the investments of which are limited to interests in mortgages on real property and shares of or transferable certificates of beneficial interest in an entity described in Section 856(a) of the Internal Revenue Code of 1986, as amended.

History: Laws 2007, ch. 172, § 10.

**ANNOTATIONS**

**Cross references.** — For the federal Investment Company Act of 1940, *see* 15 U.S.C., § 80(a).

For the Internal Revenue Code of 1986, *see* 26 U.S.C. § 1.

**Effective dates.** — Laws 2007, ch. 172, § 30 made Laws 2007, ch. 172, § 10 effective July 1, 2007.

## 7-9-109. Deduction; gross receipts tax; veterinary medical services, medicine or medical supplies used in medical treatment of cattle.

A. Receipts from sales of veterinary medical services, medicine or medical supplies used in the medical treatment of cattle may be deducted from gross receipts if the sale is made to a person who states in writing that the person is regularly engaged in the business of ranching or farming, including dairy farming, in New Mexico or if the sale is made to a veterinarian who holds a valid license pursuant to the Veterinary Practice Act [Chapter 61, Article 14 NMSA 1978] and who is providing veterinary medical services, medicine or medical supplies in the treatment of cattle owned by that person.

B. As used in this section, "cattle" means animals of the genus bos, including dairy cattle, and does not include any other kind of livestock.

History: Laws 2007, ch. 172, § 11.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 172, § 30 made Laws 2007, ch. 172, § 11 effective July 1, 2007.

## 7-9-110. Deleted.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2008, ch. 11, § 1, amended Laws 2007, ch. 172, § 29, to provide that if the requirements of Subsection A of Laws 2007, ch. 172, § 29 were not fulfilled, the effective date of this section would be July 1, 2010, provided that prior to January 1, 2010, the economic development department certify to the taxation and revenue department that construction of a railroad locomotive refueling facility project in Dona Ana county had commenced, including the land acquisition, acquisition of all necessary permits and commencement of actual construction. On February 16, 2010, the New Mexico compilation commission received a letter from the economic development department dated February 12, 2010, notifying the compilation commission that while Union Pacific had made the land acquisition, construction of a railroad locomotive refueling facility project in Doña Ana county had not commenced as required by Laws 2007, ch. 172, § 29. Therefore, Section 7-9-110 NMSA 1978 failed to become effective and was deleted by the compiler. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

## 7-9-110.1. Deduction; gross receipts tax; locomotive engine fuel.

Receipts from the sale of fuel to a common carrier to be loaded or used in a locomotive engine may be deducted from gross receipts. For the purposes of this section, "locomotive engine" means a wheeled vehicle consisting of a self-propelled engine that is used to draw trains along railway tracks.

History: Laws 2011, ch. 60, § 1 and Laws 2011, ch. 61, § 1.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2011, ch. 61, § 5 made the effective date of Laws 2011, ch. 61, §§ 1, 2 and 3 July 1, 2013, provided that prior to July 1, 2012, the economic development department certifies to the taxation and revenue department that construction of a railroad locomotive refueling facility project in Dona Ana county has commenced, including land acquisition, acquisition of all necessary permits and commencement of actual construction and directed the taxation and revenue department to notify the New Mexico compilation commission and the director of the legislative council service prior to July 1, 2013 as to whether the certification from the economic development department has been received.

Pursuant to the provisions of Laws 2011, ch. 61, § 5, on March 7, 2012, the economic development department certified to the taxation and revenue department that construction of a railroad locomotive refueling facility project in Dona Ana county had commenced, including land acquisition, acquisition of all necessary permits and commencement of actual construction, and directed the taxation and revenue department to notify the New Mexico compilation commission and the director of the legislative council service prior to July 1, 2013, that the certification was received. Therefore, Laws 2011, ch. 61, §§ 1, 2 and 3 become effective July 1, 2013.

**Duplicate laws.** — Laws 2011, ch. 60, § 1 and Laws 2011, ch. 61, § 1 enacted identical new sections. The section was set out as enacted by Laws 2011, ch. 61, § 1. *See* 12-1-8 NMSA 1978.

## 7-9-110.2. Deduction; compensating tax; locomotive engine fuel.

The value of fuel to be loaded or used by a common carrier in a locomotive engine may be deducted in computing the compensating tax due. For the purposes of this section, "locomotive engine" means a wheeled vehicle consisting of a self-propelled engine that is used to draw trains along railway tracks.

History: Laws 2011, ch. 60, § 2 and Laws 2011, ch. 61, § 2.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2011, ch. 61, § 5 made the effective date of Laws 2011, ch. 61, §§ 1, 2 and 3 July 1, 2013, provided that prior to July 1, 2012, the economic development department certifies to the taxation and revenue department that construction of a railroad locomotive refueling facility project in Dona Ana county has commenced, including land acquisition, acquisition of all necessary permits and commencement of actual construction and directed the taxation and revenue department to notify the New Mexico compilation commission and the director of the legislative council service prior to July 1, 2013 as to whether the certification from the economic development department has been received.

Pursuant to the provisions of Laws 2011, ch. 61, § 5, on March 7, 2012, the economic development department certified to the taxation and revenue department that construction of a railroad locomotive refueling facility project in Dona Ana county had commenced, including land acquisition, acquisition of all necessary permits and commencement of actual construction, and directed the taxation and revenue department to notify the New Mexico compilation commission and the director of the legislative council service prior to July 1, 2013, that the certification was received. Therefore, Laws 2011, ch. 61, §§ 1, 2 and 3 become effective July 1, 2013.

**Duplicate laws.** — Laws 2011, ch. 60, § 2 and Laws 2011, ch. 61, § 2 enacted identical new sections. The section was set out as enacted by Laws 2011, ch. 61, § 2. *See* 12-1-8 NMSA 1978.

## 7-9-110.3. Purpose and requirements of locomotive fuel deduction.

A. The purpose of the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax is to encourage the construction, renovation, maintenance and operation of railroad locomotive refueling facilities and other railroad capital investments in New Mexico.

B. To be eligible for the deduction on fuel loaded or used by a common carrier in a locomotive engine from compensating tax, the fuel shall be used or loaded by a common carrier that:

(1) after July 1, 2011, made a capital investment of one hundred million dollars ($100,000,000) or more in new construction or renovations at the railroad locomotive refueling facility in which the fuel is loaded or used; or

(2) on or after July 1, 2012, made a capital investment of fifty million dollars ($50,000,000) or more in new railroad infrastructure improvements, including railroad facilities, track, signals and supporting railroad network, located in New Mexico; provided that the new railroad infrastructure improvements are not required by a regulatory agency to correct problems, such as regular or preventive maintenance, specifically identified by that agency as requiring necessary corrective action.

C. To be eligible for the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts, a common carrier shall deliver an appropriate nontaxable transaction certificate to the seller and the sale shall be made to a common carrier that:

(1) after July 1, 2011, made a capital investment of one hundred million dollars ($100,000,000) or more in new construction or renovations at the railroad locomotive refueling facility in which the fuel is sold; or

(2) on or after July 1, 2012, made a capital investment of fifty million dollars ($50,000,000) or more in new railroad infrastructure improvements, including railroad facilities, track, signals and supporting railroad network, located in New Mexico; provided that the new railroad infrastructure improvements are not required by a regulatory agency to correct problems, such as regular or preventative maintenance, specifically identified by that agency as requiring necessary corrective action.

D. The economic development department shall promulgate rules for the issuance of a certificate of eligibility for the purposes of claiming a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or compensating tax. A common carrier may request a certificate of eligibility from the economic development department to provide to the taxation and revenue department to establish eligibility for a nontaxable transaction certificate for the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts. The taxation and revenue department shall issue nontaxable transaction certificates to a common carrier upon the presentation of a certificate of eligibility obtained from the economic development department pursuant to this subsection.

E. The economic development department shall keep a record of temporary and permanent jobs from all railroad activity where a capital investment is made by a common carrier that claims a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or from compensating tax. The economic

development department and the taxation and revenue department shall estimate the amount of state revenue that is attributable to all railroad activity where a capital investment is made by a common carrier that claims a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or from compensating tax.

F. The economic development department and the taxation and revenue department shall compile an annual report with the number of taxpayers who claim the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax, the number of jobs created as a result of that deduction, the amount of that deduction approved, the net revenue to the state as a result of that deduction and any other information required by the legislature to aid in evaluating the effectiveness of that deduction. A taxpayer who claims a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or from compensating tax shall provide the economic development department and the taxation and revenue department with the information required to compile that report. The economic development department and the taxation and revenue department shall present that report before the legislative interim revenue stabilization and tax policy committee and the legislative finance committee by November of each year. Notwithstanding any other section of law to the contrary, the economic development department and the taxation and revenue department may disclose the number of applicants for the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax, the amount of the deduction approved, the number of employees of the taxpayer and any other information required by the legislature or the taxation and revenue department to aid in evaluating the effectiveness of that deduction.

G. An appropriate legislative committee shall review the effectiveness of the deduction for each taxpayer who claims the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax every six years beginning in 2019.

History: Laws 2011, ch. 60, § 3; 2011, ch. 61, § 3; 2013, ch. 123, § 1.

## ANNOTATIONS

**Repeals.** — Laws 2013, ch. 123, § 2 repealed Laws 2011, ch. 60, §§ 4 and 5 and Laws 2011, ch. 61, §§ 4 and 5, effective July 1, 2013.

**The 2013 amendment,** effective July 1, 2013, expanded the deduction for locomotive fuel from gross receipts and compensating tax; in Subsection A, after "refueling facilities and", deleted "related activities" and added "other railroad capital investments"; added Paragraph (1) of Subsection B; in Subsection C, in the introductory sentence, after "gross receipts", added "a common carrier shall deliver an appropriate nontaxable transaction certificate to the seller and"; in Paragraph (1) of Subsection B, after "the fuel is sold", deleted "and the common carrier shall deliver an appropriate nontaxable

transaction certificate to the seller"; added Paragraph (2) of Subsection C; in Subsection E, after "from all railroad activity", deleted "at each railroad locomotive refueling facility" and added "where a capital investment is made by a common carrier" and after "attributable to all railroad activity", deleted "occurring at each locomotive refueling facility" and added "where a capital investment is made by a common carrier"; and in Subsection G, after "deduction", added "for each taxpayer who claims the deduction".

**Severability.** — Laws 2013, ch. 123, § 3 provided that if any part or application of Laws 2013, ch. 123, § 1 is held invalid, the remainder or its application to other situations or persons shall not be affected.

**Applicability.** — Laws 2013, ch. 123, § 4 provided that deductions provided in Laws 2013, ch. 123, § 1 apply to gross receipts tax and compensating tax reporting periods beginning on or after July 1, 2013.

## 7-9-111. Deduction; gross receipts; hearing aids and vision aids and related services.

A. Receipts that are not exempt from gross receipts taxation and are not deductible pursuant to another provision of the Gross Receipts and Compensating Tax Act that are from the sale of vision aids or hearing aids or related services may be deducted from gross receipts.

B. As used in this section:

(1) "hearing aid" means a small electronic prescription device that amplifies sound and is usually worn in or behind the ear of a person that compensates for impaired hearing, including cochlear implants, amplification systems or other devices that are:

(a) specifically designed for use by and marketed to persons with hearing loss; and

(b) not normally used by a person who does not have a hearing loss;

(2) "low vision" means impaired vision with a significant reduction in visual function that cannot be corrected with conventional glasses or contact lenses;

(3) "related services" means services required to fit or dispense hearing aids or vision aids;

(4) "vision aid" means closed circuit television systems, monoculars, magnification systems, speech output devices or other systems that are:

(a) specifically designed for use by and marketed to persons with low vision or visual impairments; and

(b) not normally used by a person who does not have low vision or a visual impairment; and

(5) "visual impairment" means a central visual acuity of 20/200 or less in the better eye with the use of a correcting lens or a limitation in the fields of vision so that the widest diameter of the visual field subtends an angle of twenty degrees or less.

History: Laws 2007, ch. 361, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 361, § 11 made Laws 2007, ch. 361, § 6 effective July 1, 2007.

## 7-9-112. Deduction; gross receipts; solar energy systems.

A. Receipts from the sale and installation of solar energy systems may be deducted from gross receipts.

B. As used in this section, "solar energy system" means an installation that is used to provide space heat, hot water or electricity to the property in which it is installed and is:

(1) an installation that utilizes solar panels that are not also windows, including the solar panels and all equipment necessary for the installation and operation of the solar panels;

(2) a dark-colored water tank exposed to sunlight, including all equipment necessary for the installation and operation of the water tank as a part of the overall water system of the property; or

(3) a non-vented trombe wall, including all equipment necessary for the installation and operation of the trombe wall.

History: Laws 2007, ch. 204, § 10.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 204 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 7-9-113. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 99, § 4 repealed 7-9-113 NMSA 1978, as enacted by Laws 2009, ch. 99, § 1, relating to gross receipts deduction for special fuel, dyed diesel, effective July 1, 2014. For provisions of former section, *see* the 2013 NMSA 1978 on *NMOneSource.com*.

## 7-9-114. Advanced energy deduction; gross receipts and compensating taxes.

A. Receipts from selling or leasing tangible personal property or services that are eligible generation plant costs to a person that holds an interest in a qualified generating facility may be deducted from gross receipts if the holder of the interest delivers an appropriate nontaxable transaction certificate to the seller or lessor. The department shall issue nontaxable transaction certificates to a person that holds an interest in a qualified generating facility upon presentation to the department of a certificate of eligibility obtained from the department of environment pursuant to Subsection G of this section for the deduction created in this section or a certificate of eligibility pursuant to Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978. The deduction created in this section may be referred to as the "advanced energy deduction".

B. The purpose of the advanced energy deduction is to encourage the construction and development of qualified generating facilities in New Mexico and to sequester or control carbon dioxide emissions.

C. The value of eligible generation plant costs from the sale or lease of tangible personal property to a person that holds an interest in a qualified generating facility for which the department of environment has issued a certificate of eligibility pursuant to Subsection G of this section may be deducted in computing the compensating tax due.

D. The maximum tax benefit allowed for all eligible generation plant costs from a qualified generating facility shall be sixty million dollars ($60,000,000) total for eligible generation plant costs deducted or claimed pursuant to this section or Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978.

E. Deductions taken pursuant to this section shall be reported separately on a form approved by the department. The nontaxable transaction certificates used to obtain tax-deductible tangible personal property or services shall display clearly a notice to the taxpayer that the deduction shall be reported separately from any other deductions claimed from gross receipts. A taxpayer deducting eligible generation plant costs from the costs on which compensating tax is imposed shall report those eligible generation plant costs that are being deducted.

F. The deductions allowed for a qualified generating facility pursuant to this section shall be available for a ten-year period for purchases and a twenty-five-year period for leases from the year development of the qualified generating facility begins and expenditures are made for which nontaxable transaction certificates authorized pursuant to this section are submitted to sellers or lessors for eligible generation plant

costs or deductions from the costs on which compensating tax are calculated are first taken for eligible generation plant costs.

G. An entity that holds an interest in a qualified generating facility may request a certificate of eligibility from the department of environment to enable the requester to obtain a nontaxable transaction certificate for the advanced energy deduction. The department of environment shall:

(1) determine if the facility is a qualified generating facility;

(2) require that the requester provide the department of environment with the information necessary to assess whether the requester's facility meets the criteria to be a qualified generating facility;

(3) issue a certificate from sequentially numbered certificates to the requester stating that the facility is or is not a qualified generating facility within one hundred eighty days after receiving all information necessary to make a determination;

(4) issue:

(a) rules governing the procedures for administering the provisions of this subsection; and

(b) a schedule of fees in which no fee exceeds one hundred fifty thousand dollars ($150,000);

(5) deposit fees collected pursuant to this subsection in the state air quality permit fund created pursuant to Section 74-2-15 NMSA 1978; and

(6) report annually to the appropriate interim legislative committee information that will allow the legislative committee to analyze the effectiveness of the advanced energy deduction, including the identity of qualified generating facilities, the energy production means used, the amount of emissions identified in this section reduced and removed by those qualified generating facilities and whether any requests for certificates of eligibility could not be approved due to program limits.

H. The economic development department shall keep a record of temporary and permanent jobs at all qualified generating facilities in New Mexico. The economic development department and the taxation and revenue department shall measure the amount of state revenue that is attributable to activity at each qualified generating facility in New Mexico. The economic development department shall coordinate with the department of environment to report annually to the appropriate interim legislative committee on the effectiveness of the advanced energy deduction. A taxpayer who claims an advanced energy deduction shall provide the economic development department, the department of environment and the taxation and revenue department with the information required to compile the report required by this section.

Notwithstanding any other section of law to the contrary, the economic development department, the department of environment and the taxation and revenue department may disclose the number of applicants for the advanced energy deduction, the amount of the deduction approved, the number of employees of the taxpayer and any other information required by the legislature or the taxation and revenue department to aid in evaluating the effectiveness of that deduction.

I. If the department of environment issues a certificate of eligibility to a taxpayer stating that the taxpayer holds an interest in a qualified generating facility and the taxpayer does not sequester or control carbon dioxide emissions to the extent required by this section by the later of January 1, 2017 or eighteen months after the commercial operation date of the qualified generating facility, the taxpayer's certification as a qualified generating facility shall be revoked by the department of environment and the taxpayer shall repay to the state tax deductions granted pursuant to this section; provided that, if the taxpayer demonstrates to the department of environment that the taxpayer made every effort to sequester or control carbon dioxide emissions to the extent feasible and the facility's inability to meet the sequestration requirements of a qualified generating facility was beyond the facility's control, the department of environment shall determine, after a public hearing, the amount of tax deduction that should be repaid to the state. The department of environment, in its determination, shall consider the environmental performance of the facility and the extent to which the inability to meet the sequestration requirements of a qualified generating facility was in the control of the taxpayer. The repayment as determined by the department of environment shall be paid within one hundred eighty days following a final order by the department of environment.

J. The advanced energy deduction allowed pursuant to this section shall not be claimed for the same qualified expenses for which a taxpayer claims a credit pursuant to Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978 or a deduction pursuant to Section 7-9-54.3 NMSA 1978.

K. An appropriate legislative committee shall review the effectiveness of the advanced energy deduction every four years beginning in 2015.

L. As used in this section:

(1) "coal-based electric generating facility" means a new or repowered generating facility and an associated coal gasification facility, if any, that uses coal to generate electricity and that meets the following specifications:

(a) emits the lesser of: 1) what is achievable with the best available control technology; or 2) thirty-five thousandths pound per million British thermal units of sulfur dioxide, twenty-five thousandths pound per million British thermal units of oxides of nitrogen and one hundredth pound per million British thermal units of total particulate in the flue gas;

(b) removes the greater of: 1) what is achievable with the best available control technology; or 2) ninety percent of the mercury from the input fuel;

(c) captures and sequesters or controls carbon dioxide emissions so that by the later of January 1, 2017 or eighteen months after the commercial operation date of the coal-based electric generating facility, no more than one thousand one hundred pounds per megawatt-hour of carbon dioxide is emitted into the atmosphere;

(d) all infrastructure required for sequestration is in place by the later of January 1, 2017 or eighteen months after the commercial operation date of the coal-based electric generating facility;

(e) includes methods and procedures to monitor the disposition of the carbon dioxide captured and sequestered from the coal-based electric generating facility; and

(f) does not exceed a name-plate capacity of seven hundred net megawatts;

(2) "eligible generation plant costs" means expenditures for the development and construction of a qualified generating facility, including permitting; lease payments; site characterization and assessment; engineering; design; carbon dioxide capture, treatment, compression, transportation and sequestration; site and equipment acquisition; and fuel supply development used directly and exclusively in a qualified generating facility;

(3) "entity" means an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other association or a gas, water or electric utility owned or operated by a county or municipality;

(4) "geothermal electric generating facility" means a facility with a name-plate capacity of one megawatt or more that uses geothermal energy to generate electricity, including a facility that captures and provides geothermal energy to a preexisting electric generating facility using other fuels in part;

(5) "interest in a qualified generating facility" means title to a qualified generating facility; a lessee's interest in a qualified generating facility; and a county or municipality's interest in a qualified generating facility when the county or municipality issues an industrial revenue bond for construction of the qualified generating facility;

(6) "name-plate capacity" means the maximum rated output of the facility measured as alternating current or the equivalent direct current measurement;

(7) "qualified generating facility" means a facility that begins construction not later than December 31, 2015 and is:

(a) a solar thermal electric generating facility that begins construction on or after July 1, 2010 and that may include an associated renewable energy storage facility;

(b) a solar photovoltaic electric generating facility that begins construction on or after July 1, 2010 and that may include an associated renewable energy storage facility;

(c) a geothermal electric generating facility that begins construction on or after July 1, 2010;

(d) a recycled energy project if that facility begins construction on or after July 1, 2010; or

(e) a new or repowered coal-based electric generating facility and an associated coal gasification facility;

(8) "recycled energy" means energy produced by a generation unit with a name-plate capacity of not more than fifteen megawatts that converts the otherwise lost energy from the exhaust stacks or pipes to electricity without combustion of additional fossil fuel;

(9) "sequester" means to store, or chemically convert, carbon dioxide in a manner that prevents its release into the atmosphere and may include the use of geologic formations and enhanced oil, coaled methane or natural gas recovery techniques;

(10) "solar photovoltaic electric generating facility" means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar photovoltaic energy to generate electricity; and

(11) "solar thermal electric generating facility" means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar thermal energy to generate electricity, including a facility that captures and provides solar thermal energy to a preexisting electric generating facility using other fuels in part.

History: Laws 2010, ch. 77, § 1; 2010, ch. 78, § 1; 2011, ch. 115, § 1.

## ANNOTATIONS

**Cross references.** — For the department of environment, *see* 9-7A-4 NMSA 1978.

**The 2011 amendment,** effective July 1, 2011, permitted lessors of tangible personal property to deduct receipts for a twenty-five year period; added Subsection B to state the purpose of the advanced energy deduction; added Subsection H to provide for an evaluation of the economic effectiveness of the advanced energy deduction; and added

Subsection K to require a legislative review every four years of the effectiveness of the deduction.

## 7-9-115. Deduction; gross receipts tax; goods and services for the department of defense related to directed energy and satellites.

A. Prior to January 1, 2021, receipts from the sale by a qualified contractor of qualified research and development services and qualified directed energy and satellite-related inputs may be deducted from gross receipts when sold pursuant to a contract with the United States department of defense.

B. The purposes of the deduction allowed in this section are to promote new and sophisticated technology, enhance the viability of directed energy and satellite projects, attract new projects and employers to New Mexico and increase high-technology employment opportunities in New Mexico.

C. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

D. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deduction. Beginning in 2017 and each year thereafter that the deduction is in effect, the department and the economic development department shall present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction and whether the deduction is performing the purpose for which it was created.

E. As used in this section:

(1) "directed energy" means a system, including related services, that enables the use of the frequency spectrum, including radio waves, light and x-rays;

(2) "inputs" means systems, subsystems, components, prototypes and demonstrators or products and services involving optics, photonics, electronics, advanced materials, nanoelectromechanical and microelectromechanical systems, fabrication materials and test evaluation and computer control systems related to directed energy or satellites;

(3) "qualified contractor" means a person other than an organization designated as a national laboratory by act of congress or an operator of national laboratory facilities in New Mexico; provided that the operator may be a qualified contractor with respect to the operator's receipts not connected with operating the national laboratory;

(4) "qualified directed energy and satellite-related inputs" means inputs supplied to the department of defense pursuant to a contract with that department entered into on or after January 1, 2016;

(5) "qualified research and development services" means research and development services related to directed energy or satellites provided to the department of defense pursuant to a contract with that department entered into on or after January 1, 2016; and

(6) "satellite" means composite systems assembled and packaged for use in space, including launch vehicles and related products and services.

History: Laws 2015 (1st S.S.), ch. 2, § 9.

**ANNOTATIONS**

**Effective dates.** — Laws 2015 (1st S.S.), ch. 2 § 26 made Laws 2015 (1st S.S.), ch. 2, § 9 effective January 1, 2016.

# ARTICLE 9A
# Investment Credit

## 7-9A-1. Short title.

Chapter 7, Article 9A NMSA 1978 may be cited as the "Investment Credit Act".

**History:** Laws 1979, ch. 347, § 1; 1991, ch. 159, § 1; 1991, ch. 162, § 1.

**ANNOTATIONS**

**The 1991 amendment,** effective June 14, 1991, substituted "Chapter 7, Article 9A NMSA 1978" for "Sections 1 through 11 of this Act". Laws 1991, ch. 159, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 1991, ch. 162, § 1. *See* 12-1-8 NMSA 1978.

**Law reviews.** — For article, "New Mexico Taxes: Taking Another Look," see 32 N.M.L. Rev. 351 (2002).

## 7-9A-2. Purpose of act.

It is the purpose of the Investment Credit Act to provide a favorable tax climate for manufacturing businesses and to promote increased employment in New Mexico.

**History:** Laws 1979, ch. 347, § 2; 1983, ch. 206, § 1.

## 7-9A-2.1. Legislative oversight.

The interim revenue stabilization and tax policy committee during the 2005 interim shall conduct a review of the use of the investment credit and the effectiveness of the credit in meeting the state's economic development and tax policy objectives. Following the study, the committee shall determine whether changes are necessary in the Investment Credit Act and report its findings and recommendations to the second session of the forty-seventh legislature.

**History:** Laws 2001, ch. 57, § 2 and Laws 2001, ch. 337, § 2.

**ANNOTATIONS**

**Duplicate laws.** — Laws 2001, ch. 57, § 2 and Laws 2001, ch. 337, § 2, both effective June 15, 2001, enacted identical sections.

## 7-9A-3. Definitions.

As used in the Investment Credit Act:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "equipment" means an essential machine, mechanism or tool, or a component or fitting thereof, used directly and exclusively in a manufacturing operation and subject to depreciation for purposes of the Internal Revenue Code by the taxpayer carrying on the manufacturing operation. "Equipment" does not include any vehicle that leaves the site of the manufacturing operation for purposes of transporting persons or property or any property for which the taxpayer claims the credit pursuant to Section 7-9-79 NMSA 1978;

C. "manufacturing" means combining or processing components or materials, including recyclable materials, to increase their value for sale in the ordinary course of business, including genetic testing and production, but not including:

(1) construction;

(2) farming;

(3) power generation, except for electricity generation at a facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978] and the Electric Utility Industry Restructuring Act of 1999 [repealed]; or

(4) processing natural resources, including hydrocarbons;

D. "manufacturing operation" means a plant, including a genetic testing and production facility, employing personnel to perform production tasks, in conjunction with equipment not previously existing at the site, to produce goods;

E. "recyclable materials" means materials that would otherwise become solid waste if not recycled and that can be collected, separated or processed and placed in use in the form of raw materials or products; and

F. "taxpayer" means a person liable for payment of any tax, a person responsible for withholding and payment over or for collection and payment over of any tax or a person to whom an assessment has been made, if the assessment remains unabated or the amount thereof has not been paid.

**History:** Laws 1979, ch. 347, § 3; 1983, ch. 206, § 2; 1986, ch. 20, § 69; 1990, ch. 3, § 1; 1991, ch. 159, § 2; 1991, ch. 162, § 2; 2001, ch. 284, § 4; 2002, ch. 37, § 7.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 2003, ch. 336, § 9 repealed the Electric Utility Industry Restructuring Act of 1999, effective June 20, 2003.

**Cross references.** — For the Internal Revenue Code, *see* 26 U.S.C.S. § 1 et seq.

**The 2002 amendment,** effective May 15, 2002, substituted Subsection C(3) for former provisions, which detailed population and net taxable value requirements for electricity generation facilities in class B counties to be excepted from the exclusion in Subsection C.

**The 2001 amendment,** effective June 15, 2001, inserted "other than electricity generation facilities in any class B county with" in Paragraph C(3); and added Paragraphs C(3)(a) to (f).

**The 1991 amendment,** effective June 14, 1991, deleted "'director' or 'division'" following "'department'" in Subsection A; in the introductory paragraph of Subsection C, inserted "including recyclable materials" and substituted "including genetic testing and production, but not including" for "but does not include"; inserted "including a genetic testing and production facility" in Subsection D; added Subsection E; and redesignated former Subsection E as Subsection F. Laws 1991, ch. 159, § 2 enacted identical amendments to this section. The section was set out as amended by Laws 1991, ch. 162, § 2. *See* 12-1-8 NMSA 1978.

**The 1990 amendment,** effective January 1, 1991, in Subsection B, rewrote the first sentence which read: " 'equipment' means an essential machine, or tool, used directly

and exclusively in a manufacturing process, and subject to depreciation for purposes of the Internal Revenue Code" and added the language beginning "or any property" at the end of the second sentence.

## 7-9A-4. Administration of the act.

The department is charged with the administration of the Investment Credit Act.

**History:** Laws 1979, ch. 347, § 4; 1991, ch. 159, § 3; 1991, ch. 162, § 3.

**ANNOTATIONS**

**The 1991 amendment,** effective June 14, 1991, substituted "department" for "division". Laws 1991, ch. 159, § 3 enacted identical amendments to this section. The section was set out as amended by Laws 1991, ch. 162, § 3. *See* 12-1-8 NMSA 1978.

## 7-9A-5. Investment credit; amount; claimant.

The investment credit provided for in the Investment Credit Act is an amount equal to the percent of the compensating tax rate provided for in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] applied to the value of the qualified equipment and may be claimed by the taxpayer carrying on a manufacturing operation in New Mexico.

**History:** Laws 1979, ch. 347, § 5; 1983, ch. 206, § 3; 1990, ch. 3, § 2; 1991, ch. 159, § 4; 1991, ch. 162, § 4.

**ANNOTATIONS**

**Compiler's notes.** — Laws 1991, ch. 159, § 8 and Laws 1991, ch. 162, § 8, effective June 14, 1991, repealed 7-9A-5 NMSA 1978, as enacted by Laws 1990, ch. 3, § 3, which was to become effective on January 1, 1994.

**The 1991 amendment,** effective June 14, 1991, deleted former Subsections B and C, relating to limitations on claims for investment credit, and made a related stylistic change. Laws 1991, ch. 159, § 4 enacted identical amendments to this section. The section was set out as amended by Laws 1991, ch. 162, § 4. *See* 12-1-8 NMSA 1978.

## 7-9A-6. Qualified equipment.

Equipment not previously used in New Mexico and not previously approved for a credit under the Investment Credit Act that is owned by the taxpayer or owned by the United States or an agency or instrumentality thereof or the state or a political subdivision thereof and leased or subleased to the taxpayer is qualified equipment if it is in New Mexico and is incorporated or to be incorporated within one year into a manufacturing operation.

**History:** Laws 1979, ch. 347, § 6; 1983, ch. 206, § 4; 1990, ch. 3, § 4.

**ANNOTATIONS**

**Cross references.** — For definition of "equipment", *see* 7-9A-3B NMSA 1978.

**The 1990 amendment,** effective January 1, 1991, rewrote this section which read: "Equipment not previously used in New Mexico which is owned and used by a taxpayer in a manufacturing process in New Mexico is qualified equipment if it is incorporated into a manufacturing operation and if the taxpayer does not claim the credit pursuant to Section 7-9-79 NMSA 1978."

## 7-9A-7. Value of qualified equipment.

A. Prior to July 1, 2020, the value of qualified equipment shall be the adjusted basis established for the equipment under the applicable provisions of the Internal Revenue Code of 1986.

B. After June 30, 2020, the value of qualified equipment shall be the purchase price of the equipment unless the equipment is introduced into New Mexico and has been owned for more than one year prior to its introduction into New Mexico by the taxpayer applying for the credit, in which case the value shall be the reasonable value of the equipment at the time of its introduction into New Mexico; provided that no taxpayer shall for any taxable year claim a value of qualified equipment greater than two million dollars ($2,000,000).

History: Laws 1979, ch. 347, § 7; 1983, ch. 206, § 5; 1990, ch. 3, § 5; 1991, ch. 159, § 5; 1991, ch. 162, § 5; 2001, ch. 57, § 3; 2001, ch. 337, § 3; 2009, ch. 147, § 2.

**ANNOTATIONS**

**Cross references.** — For the Internal Revenue Code of 1986, *see* 26 U.S.C.S. § 1 et seq.

**Compiler's notes.** — Laws 1999, ch. 36, § 1 amended Laws 1990, ch. 3, § 10, as amended by Laws 1992, ch. 17, § 1, Laws 1992, ch. 104, § 1, and Laws 1997, ch. 62, § 3, to change the effective date of Laws 1990, ch. 3, § 6 from January 1, 2000 to January 1, 2004.

Laws 2001, ch. 57, § 7 and Laws 2001, ch. 337, § 7 repealed Laws 1990, ch. 3, § 6, which would have been effective January 1, 2004 as provided by Laws 1999, ch. 36, § 1, effective June 15, 2001.

**The 2009 amendment,** effective June 19, 2009, in Subsections A and B, changed "July 1, 2011" to "July 1, 2020".

**The 2001 amendment,** effective June 15, 2001, inserted the Subsection A designation; added "Prior to July 1, 2011" to Subsection A; and added Subsection B. This section was also amended by Laws 2001, ch. 57, § 3. The section was set out as amended by Laws 2001, ch. 337, § 3. *See* 12-1-8 NMSA 1978.

**The 1991 amendment,** effective June 14, 1991, rewrote this section which read "The value of qualified equipment shall be the purchase price of the equipment unless the equipment is introduced into New Mexico and has been owned for more than one year prior to its introduction into New Mexico by the taxpayer applying for the credit, in which case the value shall be the reasonable value of the equipment at the time of its introduction into New Mexico." Laws 1991, ch. 159, § 5 enacted identical amendments to this section. The section was set out as amended by Laws 1991, ch. 162, § 5. *See* 12-1-8 NMSA 1978.

**The 1990 amendment,** effective January 1, 1991, deleted "provided that no taxpayer shall for any taxable year claim a value of qualified equipment greater than two million dollars ($2,000,000)" at the end of the section.

## 7-9A-7.1. Employment requirements.

A. Prior to July 1, 2020, to be eligible to claim a credit pursuant to the Investment Credit Act, the taxpayer shall employ the equivalent of one full-time employee who has not been counted to meet this employment requirement for any prior claim in addition to the number of full-time employees employed on the day one year prior to the day on which the taxpayer applies for the credit for every:

(1) five hundred thousand dollars ($500,000), or portion of that amount, in value of qualified equipment claimed by the taxpayer in a taxable year in the same claim, up to a value of thirty million dollars ($30,000,000); and

(2) one million dollars ($1,000,000), or portion of that amount, in value of qualified equipment over thirty million dollars ($30,000,000) claimed by the taxpayer in a taxable year in the same claim.

B. After June 30, 2020, for every one hundred thousand dollars ($100,000) in value of qualified equipment claimed by a taxpayer in a taxable year, the taxpayer shall employ the equivalent of one full-time employee in addition to the number of full-time employees employed on the day one year prior to the day on which the taxpayer applies for credit.

C. The department may require evidence showing compliance with this section. The department may find that an additional employee meets the requirements of this section, although employed earlier than one year prior to the day on which the taxpayer applies for the credit, if the employee was only being trained prior to that date or the employee's employment was necessitated by the use of the qualified equipment.

History: 1978 Comp., § 7-9A-7.1, as enacted by Laws 1983, ch. 206, § 6; 1990, ch. 3, § 7; 1991, ch. 159, § 6; 1991, ch. 162, § 6; 2001, ch. 57, § 4; 2001, ch. 337, § 4; 2003, ch. 402, § 1; 2009, ch. 147, § 3.

**ANNOTATIONS**

**Compiler's notes.** — Laws 1999, ch. 36, § 1 amended Laws 1990, ch. 3, § 10, as amended by Laws 1992, ch. 17, § 1, Laws 1992, ch. 104, § 1, and Laws 1997, ch. 62, § 3, to change the effective date of Laws 1990, ch. 3, § 8 from January 1, 2000 to January 1, 2004.

Laws 2001, ch. 57, § 7 and Laws 2001, ch. 337, § 7 repealed Laws 1990, ch. 3, § 8, which would have been effective January 1, 2004 as provided by Laws 1999, ch. 36, § 1, effective June 15, 2001.

**The 2009 amendment,** effective June 19, 2009, in Subsections A and B, changed "July 1, 2011" to "July 1, 2020".

**The 2003 amendment,** effective June 20, 2003, deleted former Paragraph A(1), concerning qualified equipment, and redesignated the subsequent paragraphs accordingly; and deleted "over two million dollars ($2,000,000)" following "of qualified equipment" near the middle of present Subsection A(1).

**The 2001 amendment,** effective June 15, 2001, inserted "Prior to July 1, 2011" to Subsection A; added current Subsection B; and redesignated former Subsection B as C. This section was also amended by Laws 2001, ch. 57, § 4. The section was set out as amended by Laws 2001, ch. 337, § 4. *See* 12-1-8 NMSA 1978.

**The 1991 amendment,** effective June 14, 1991, rewrote this section to the extent that a detailed analysis is impracticable. Laws 1991, ch. 159, § 6 enacted identical amendments to this section. The section was set out as amended by Laws 1991, ch. 162, § 6. *See* 12-1-8 NMSA 1978.

## 7-9A-8. Claiming the credit for certain taxes.

A. A taxpayer shall apply for approval for a credit within one year following the end of the calendar year in which the qualified equipment for the manufacturing operation is purchased or introduced into New Mexico.

B. A taxpayer having applied for and been granted approval for a credit by the department pursuant to the Investment Credit Act may claim an amount of available credit against the taxpayer's compensating tax, gross receipts tax or withholding tax due to the state of New Mexico; provided that no taxpayer may claim, except as provided in Subsection C of this section, an amount of available credit for any reporting period that exceeds eighty-five percent of the sum of the taxpayer's gross receipts tax, compensating tax and withholding tax due for that reporting period. Any amount of

available credit not claimed against the taxpayer's gross receipts tax, compensating tax or withholding tax due for a reporting period may be claimed in subsequent reporting periods.

C. A taxpayer may apply by September 30 of the current calendar year for a refund of the unclaimed balance of the available credit up to a maximum of two hundred fifty thousand dollars ($250,000) if on January 1 of the current calendar year:

(1) the taxpayer's available credit is less than five hundred thousand dollars ($500,000); and

(2) the sum of the taxpayer's gross receipts tax, compensating tax and withholding tax due for the previous calendar year was less than thirty-five percent of the taxpayer's available credit but more than ten thousand dollars ($10,000).

**History:** Laws 1979, ch. 347, § 8; 1983, ch. 206, § 7; 1988, ch. 123, § 1; 1990, ch. 3, § 9; 1997, ch. 62, § 1; 2000, ch. 45, § 1.

## ANNOTATIONS

**Cross references.** — For withholding tax, *see* 7-3-1 NMSA 1978 et seq.

For gross receipts tax, *see* 7-9-1 NMSA 1978 et seq.

**The 2000 amendment,** effective May 17, 2000, inserted "except as provided in Subsection C of this section" in the first sentence of Subsection B and added Subsection C.

**The 1997 amendment** redesignated the second sentence in Subsection A as the first sentence of Subsection B and rewrote the remainder of Subsection B. Laws 1997, ch. 62 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature.

**The 1990 amendment,** effective January 1, 1991, in the first sentence in Subsection A, substituted "following the end of the calendar year" for "after" and added "into New Mexico" at the end and rewrote Subsection B which read "A taxpayer having applied for and been granted approval for an investment credit pursuant to the Investment Credit Act may claim a refund in an amount equal to the investment credit upon evidence satisfactory to the secretary of taxation and revenue that the taxpayer has paid an element of the price denominated a gross receipts tax on the qualified equipment for which a claim for refund is made."

**No offset for prior years investment credits.** — A taxpayer was not entitled to an offset in the amount it owed for compensating taxes for investment credits it had made in previous years, because it had not claimed the credits within the one-year statute of limitations period. Although the taxpayer argued that it was entitled to an offset under

the doctrine of equitable recoupment, a taxpayer is not entitled to seek a credit after the statute-of-limitations period has expired unless the state is imposing a tax on the same taxable event on a ground that is inconsistent with the original payment by the taxpayer. Vivigen, Inc. v. Minzner, 1994-NMCA-027, 117 N.M. 224, 870 P.2d 1382.

## 7-9A-9. Credit claim forms.

The department shall provide credit claim forms. A credit claim shall accompany any return to which the taxpayer wishes to apply an approved credit, and the claim shall specify the amount of credit intended to apply to each return.

**History:** Laws 1979, ch. 347, § 9; 1991, ch. 159, § 7; 1991, ch. 162, § 7.

**ANNOTATIONS**

**The 1991 amendment,** effective June 14, 1991, substituted "department" for "division" in the first sentence and "shall" for "must" in two places in the second sentence. Laws 1991, ch. 159, § 7 enacted identical amendments to this section. The section was set out as amended by Laws 1991, ch. 162, § 7. *See* 12-1-8 NMSA 1978.

## 7-9A-10. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1981, ch. 177, § 1, repealed 7-9A-10 NMSA 1978, relating to the inapplicability of the Investment Credit Act for equipment introduced or purchased after January 1, 1982, effective June 19, 1981.

## 7-9A-11. Transition provisions.

A. The provisions of this section apply on the date that changes to the provisions in the Investment Credit Act become effective limiting the amount of qualified equipment that may be claimed and increasing the employment requirements with respect to qualified equipment.

B. The amount of any available credit unclaimed on the effective date of the changes described in Subsection A of this section may be claimed, until exhausted, in accordance with the provisions of Section 7-9A-8 NMSA 1978 immediately prior to the effective date of the changes described in Subsection A of this section.

C. After the effective date described in Subsection A of this section, the department shall approve claims submitted prior to that effective date but not approved by that effective date if the claim meets the requirements of the Investment Credit Act in effect immediately prior to that effective date. The claimant may claim the amount of any available credit so approved in accordance with the provisions of Section 7-9A-8 NMSA

1978 immediately prior to the effective date of the event described in Subsection A of this section.

D. After the effective date of the changes described in Subsection A of this section, a claimant may submit and the department shall approve claims submitted on or after that effective date if the claim is with respect to qualified equipment located in the state prior to that effective date that otherwise meets the requirements of the Investment Credit Act in effect immediately prior to that effective date. The claimant may claim the amount of any available credit so approved in accordance with the provisions of Section 7-9A-8 NMSA 1978 immediately prior to the effective date of the changes described in Subsection A of this section.

E. After the effective date of the changes described in Subsection A of this section, the department may approve claims submitted on or after that effective date with respect to equipment not located in the state until after that effective date only in accordance with the provisions of the Investment Credit Act in effect after that effective date.

**History:** Laws 1997, ch. 62, § 2.

# ARTICLE 9B
# Filmmaker's Credit

(Repealed by Laws 1995, ch. 80, § 2.)

## 7-9B-1 to 7-9B-7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 80, § 2, repealed 7-9B-1 to 7-9B-7 NMSA 1978, the Filmmaker's Credit Act, as enacted by Laws 1992, ch. 47 §§ 1 to 7 and as amended by Laws 1993, ch. 30, § 14, effective July 1, 1996. For provisions of former sections, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

# ARTICLE 9C
# Interstate Telecommunications Gross Receipts Tax

## 7-9C-1. Short title.

Chapter 7, Article 9C NMSA 1978 may be cited as the "Interstate Telecommunications Gross Receipts Tax Act".

**History:** Laws 1992, ch. 50, § 1 and Laws 1992, ch. 67, § 1; 1993, ch. 30, § 15.

**ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, substituted "Chapter 7, Article 9C NMSA 1978" for "Sections 1 through 11 of this act".

## 7-9C-2. Definitions.

As used in the Interstate Telecommunications Gross Receipts Tax Act:

A. "charges for mobile telecommunications services" has the meaning given in the federal Mobile Telecommunications Sourcing Act;

B. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "engaging in interstate telecommunications business" means carrying on or causing to be carried on the business of providing interstate telecommunications service;

D. "home service provider" has the meaning given in the federal Mobile Telecommunications Sourcing Act;

E. "interstate telecommunications gross receipts" means the total amount of money or the value of other consideration received from providing:

(1) interstate telecommunications services, other than mobile telecommunications services, that either originate or terminate in New Mexico and are charged to a telephone number or account in New Mexico, regardless of where the bill for such services is actually delivered; and

(2) mobile telecommunications services that originate in one state and terminate in any location outside that state, whether within or outside the United States, to a customer with a place of primary use in New Mexico. "Interstate telecommunications gross receipts" excludes mobile telecommunications services provided to a customer with a place of primary use outside of New Mexico, cash discounts allowed and taken and interstate telecommunications gross receipts tax payable for the reporting period. Also excluded from "interstate telecommunications gross receipts" are any gross receipts or sales taxes imposed by any Indian nation, tribe or pueblo; provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the interior of the United States; and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions;

F. "interstate telecommunications service" means the service of originating or receiving in New Mexico interstate and international telephone and telegraph service, including but not limited to the transmission of voice, messages and data by way of electronic or similar means between or among points by wire, cable, fiber-optic, laser, microwave, radio, satellite or similar facilities;

G. "mobile telecommunications services" has the meaning given in the federal Mobile Telecommunications Sourcing Act;

H. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, joint venture, syndicate or other entity; the United States or any agency or instrumentality of the United States; or the state of New Mexico or any political subdivision of the state;

I. "place of primary use" has the meaning given in the federal Mobile Telecommunications Sourcing Act;

J. "private communications service" means a dedicated service for a single customer that entitles the customer to exclusive or priority use of a communications channel or group of channels between a location within New Mexico and one or more specified locations outside New Mexico; and

K. "wide-area telephone service" means a telephone service that entitles the subscriber, upon payment of a flat rate charge dependent on the total duration of all such calls and the geographic area selected by the subscriber, to either make or receive a large volume of telephonic communications to or from persons located in specified geographical areas.

**History:** Laws 1992, ch. 50, § 2 and Laws 1992, ch. 67, § 2; 1993, ch. 30, § 16; 2002, ch. 18, § 4.

## ANNOTATIONS

**Cross references.** — For the federal Mobile Telecommunications Sourcing Act, *see* 4 U.S.C.S. § 116 et seq.

**The 2002 amendment,** effective August 1, 2002, added Subsections A, D, G, and I and redesignated the remaining subsections accordingly; in Paragraph E(1) added "other than mobile telecommunication services" and at the end substituted "and" for "but excludes"; and added the first phrase of Paragraph E(2) ending with "outside of New Mexico".

**The 1993 amendment,** effective June 18, 1993, inserted "limited liability company" in Subsection E.

## 7-9C-3. Imposition and rate of tax; denomination as interstate telecommunications gross receipts tax.

A. For the privilege of engaging in interstate telecommunications business, an excise tax equal to four and one-fourth percent of interstate telecommunications gross receipts is imposed upon any person engaging in interstate telecommunications business in New Mexico.

B. The tax imposed by this section shall be referred to as the "interstate telecommunications gross receipts tax".

**History:** Laws 1992, ch. 50, § 3 and Laws 1992, ch. 67, § 3.

**ANNOTATIONS**

**Duplicate laws. —** Laws 1992, ch. 50, § 3 and Laws 1992, ch. 67, § 3 enacted identical versions of this section.

## 7-9C-4. Presumption of taxability.

A. To prevent evasion of the interstate telecommunications gross receipts tax and to aid in its administration, it is presumed that all receipts of a person engaging in interstate telecommunications business are subject to the interstate telecommunications gross receipts tax.

B. If receipts from nontaxable charges for mobile telecommunications services are aggregated with and not separately stated from taxable charges for mobile telecommunications services, then the charges for nontaxable mobile telecommunications services shall be subject to interstate telecommunications gross receipts tax unless the home service provider can reasonably identify nontaxable charges in its books and records that are kept in the regular course of business.

**History:** Laws 1992, ch. 50, § 4 and Laws 1992, ch. 67, § 4; 2002, ch. 18, § 5.

**ANNOTATIONS**

**The 2002 amendment,** effective August 1, 2002, added the Subsection A designation; and added Subsection B.

## 7-9C-5. Date payment due.

The interstate telecommunications gross receipts tax is to be paid to the department on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

**History:** Laws 1992 ch. 50, § 5 and Laws 1992, ch. 67, § 5.

**ANNOTATIONS**

**Duplicate laws. —** Laws 1992, ch. 50, § 5 and Laws 1992, ch. 67, § 5 enacted identical versions of this section.

## 7-9C-6. Deduction; certain telephone services.

Receipts from the provision of wide-area telephone service and private communications service in this state may be deducted from interstate telecommunications gross receipts.

**History:** Laws 1992, ch. 50, § 6 and Laws 1992, ch. 67, § 6; 1993, ch. 30, § 17.

**ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, substituted "Deduction" for "Exemption" in the section heading; and rewrote this section, which read "Exempted from the interstate telecommunications gross receipts tax are receipts from the provision of wide-area telephone service and private communications service."

## 7-9C-7. Deduction; sale of a service for resale.

A. Receipts from providing an interstate telecommunications service in this state that will be used by other persons in providing telephone or telegraph services to the final user may be deducted from interstate telecommunications gross receipts if the sale is made to a person who is subject to the interstate telecommunications gross receipts tax or to the gross receipts tax or the compensating tax.

B. Receipts during the period July 1, 1998 through June 30, 2000 from providing leased telephone lines, telecommunications services, internet access services or computer programming that will be used by other persons in providing internet access and related services to the final user may be deducted from interstate telecommunications gross receipts if the sale is made to a person who is subject to the interstate telecommunications gross receipts tax, the gross receipts tax or the compensating tax.

**History:** Laws 1992, ch. 50, § 7 and Laws 1992, ch. 67, § 7; 1998, ch. 92, § 6.

**ANNOTATIONS**

**The 1998 amendment,** effective July 1, 1998, designated Subsection A, and added Subsection B.

## 7-9C-8. Deductions; telecommunications providers.

A. Receipts from interstate telecommunications services that are provided by a corporation to itself or to an affiliated corporation may be deducted from interstate telecommunications gross receipts.

B. For the purposes of this section:

(1) "affiliated corporation" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the subject corporation; and

(2) "control" means ownership of stock in a corporation that represents at least eighty percent of the total voting power of the corporation and has a value equal to at least eighty percent of the total value of the stock of that corporation.

**History:** Laws 1992, ch. 50, § 8 and Laws 1992, ch. 67, § 8; 1993, ch. 30, § 18.

**ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, inserted "interstate telecommunications" in Subsection A.

## 7-9C-9. Deduction; bad debts.

Refunds and allowances made to buyers of interstate telecommunications services or amounts written off the books as an uncollectible debt by a person reporting interstate telecommunications gross receipts tax on an accrual basis may be deducted from interstate telecommunications gross receipts. If debts reported as uncollectible are subsequently collected, such receipts shall be included in interstate telecommunications gross receipts in the month of collection.

**History:** Laws 1992, ch. 50, § 9 and Laws 1992, ch. 67, § 9.

**ANNOTATIONS**

**Duplicate laws.** — Laws 1992, ch. 50, § 9 and Laws 1992, ch. 67, § 9 enacted identical versions of this section.

## 7-9C-10. Credit; services performed outside the state.

To prevent actual multi-jurisdictional taxation of the privilege of engaging in business of providing interstate telecommunications services, any taxpayer, upon proof that the taxpayer has paid a sales, use, gross receipts or similar tax on the same interstate telecommunications gross receipts subject to the interstate telecommunications gross receipts tax, shall be allowed a credit against the interstate telecommunications gross receipts tax to the extent of the amount of sales, use, gross receipts or similar tax properly due and paid to such other state or political subdivision of that state.

**History:** Laws 1992, ch. 50, § 10 and Laws 1992, ch. 67, § 10.

**ANNOTATIONS**

**Duplicate laws.** — Laws 1992, ch. 50, § 10 and Laws 1992, ch. 67, § 10 enacted identical versions of this section.

## 7-9C-11. Administration.

A. The department shall interpret the provisions of the interstate telecommunications gross receipts tax.

B. The department shall administer and enforce the collection of the interstate telecommunications gross receipts tax, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of the tax.

**History:** Laws 1992, ch. 50, § 11 and Laws 1992, ch. 67, § 11.

**ANNOTATIONS**

**Duplicate laws.** — Laws 1992, ch. 50, § 11 and Laws 1992, ch. 67, § 11 enacted identical versions of this section.

# ARTICLE 9D
# Capital Equipment Tax Credit

**ANNOTATIONS**

(Repealed by laws 1999, Ch. 178, §10.)

## 7-9D-1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 178, § 10 repealed 7-9D-1 NMSA 1978, as enacted by Laws 1999, ch. 178, § 1, relating to the short title of the Capital Equipment Tax Credit Act, effective July 1, 2004. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com.*

## 7-9D-2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 178, § 10 repealed 7-9D-2 NMSA 1978, as enacted by Laws 1999, ch. 178, § 2, relating to findings and purpose of the Capital Equipment Tax

Credit Act, effective July 1, 2004. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com.*

## 7-9D-3. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 178, § 10 repealed 7-9D-3 NMSA 1978, as enacted by Laws 1999, ch. 178, § 3, relating to definitions of the Capital Equipment Tax Credit Act, effective July 1, 2004. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com.*

## 7-9D-4. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 178, § 10 repealed 7-9D-4 NMSA 1978, as enacted by Laws 1999, ch. 178, § 4, relating to the capital equipment tax credit, effective July 1, 2004. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com.*

## 7-9D-5. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 178, § 10 repealed 7-9D-5 NMSA 1978, as enacted by Laws 1999, ch. 178, § 5, relating to capital equipment eligible for tax credit, effective July 1, 2004. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com.*

## 7-9D-6. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 178, § 10 repealed 7-9D-6 NMSA 1978, as enacted by Laws 1999, ch. 178, § 6, relating to eligible call center criteria, effective July 1, 2004. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com.*

## 7-9D-7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 178, § 10 repealed 7-9D-7 NMSA 1978, as enacted by Laws 1999, ch. 178, § 7, relating to claiming the tax credit, effective July 1, 2004. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com.*

## 7-9D-8. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 178, § 10 repealed 7-9D-8 NMSA 1978, as enacted by Laws 1999, ch. 178, § 8, relating to reporting requirements and liability for repayment of tax credit, effective July 1, 2004. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com.*

## 7-9D-9. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 178, § 10 repealed 7-9D-9 NMSA 1978, as enacted by Laws 1999, ch. 178, § 9, relating to administration of the Capital Equipment Tax Credit Act, effective July 1, 2004. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com.*

# ARTICLE 9E
# Laboratory Partnership with Small Business Tax Credit

## 7-9E-1. Short title.

Chapter 7, Article 9E NMSA 1978 may be cited as the "Laboratory Partnership with Small Business Tax Credit Act".

History: Laws 2000 (2nd S.S.), ch. 20, § 1; 2007, ch. 172, § 14.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, changed the statutory reference to the act.

## 7-9E-2. Purpose of act.

It is the purpose of the Laboratory Partnership with Small Business Tax Credit Act to bring the technology and expertise of the national laboratories to small businesses in New Mexico to promote economic development in the state, with an emphasis on rural areas.

**History:** Laws 2000 (2nd S.S.), ch. 20, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2000 (2nd S.S.), ch. 20 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on July 3, 2000, 90 days after the adjournment of the legislature.

## 7-9E-3. Definitions.

As used in the Laboratory Partnership with Small Business Tax Credit Act [Chapter 7, Article 9E NMSA 1978]:

A. "contractor":

(1) means a person that:

(a) has the capability to provide small business assistance; and

(b) may enter into a contract with a national laboratory to provide small business assistance; and

(2) includes:

(a) a gas, water or electric utility owned or operated by a county, municipality or other political subdivision of the state; or

(b) a national, federal, state, Indian or other governmental unit or subdivision, or an agency, department or instrumentality of any of the foregoing;

B. "department" means the taxation and revenue department, the secretary of taxation and revenue or an employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "national laboratory" means a prime contractor designated as a national laboratory by act of congress that is operating a facility in New Mexico;

D. "qualified expenditure" means an expenditure by a national laboratory in providing small business assistance, limited to the following expenditures incurred in providing the assistance:

(1) employee salaries, wages, fringe benefits and employer payroll taxes;

(2) administrative costs related directly to the provision of small business assistance, the total of which is limited to forty-nine percent of employee salaries, wages, fringe benefits and employer payroll taxes;

(3) in-state travel expenses, including per diem and mileage at the internal revenue service standard rates; and

(4) supplies and services of contractors related to the provision of small business assistance;

E. "rural area" means an area of the state outside of the exterior boundaries of a class A county that has a net taxable value for rate-setting purposes for any property tax year of more than seven billion dollars ($7,000,000,000);

F. "small business" means a business in New Mexico that conforms to the definition of small business found in the federal Small Business Act; and

G. "small business assistance" means assistance rendered by a national laboratory related to the transfer of technology, including software, manufacturing, mining, oil and gas, environmental, agricultural, information and solar and other alternative energy source technologies. "Small business assistance" includes nontechnical assistance related to expanding the New Mexico base of suppliers, including training and mentoring individual small businesses; assistance in developing business systems to meet audit, reporting and quality assurance requirements; and other supplier development initiatives for individual small businesses.

History: Laws 2000 (2nd S.S.), ch. 20, § 3; 2007, ch. 172, § 15.

**ANNOTATIONS**

**Cross references.** — For the federal Small Business Act, Public Law 85-536, *see* 15 U.S.C.S. § 631 et seq.

**The 2007 amendment,** effective July 1, 2007, revises the definitions of "contractor", "qualified expenditures" and "rural area" to include areas outside the exterior boundaries of a class A county.

## 7-9E-4. Administration of act.

The department shall administer the Laboratory Partnership with Small Business Tax Credit Act pursuant to the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

**History:** Laws 2000 (2nd S.S.), ch. 20, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 2000 (2nd S.S.), ch. 20 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on July 3, 2000, 90 days after the adjournment of the legislature.

## 7-9E-5. Eligibility requirements.

A national laboratory is eligible for a tax credit in an amount equal to qualified expenditures if:

A. the small business assistance is rendered to a small business located in New Mexico;

B. the small business assistance is completed;

C. the small business certifies to the national laboratory that the small business assistance provided is not otherwise available to the small business at a reasonable cost through private industry;

D. the national laboratory provides written notice to each small business to which it is providing small business assistance of the option that the small business has to obtain ownership of or license to tangible or intangible property developed from the small business assistance;

E. the national laboratory requires small businesses to which it is providing small business assistance to acknowledge only after the small business assistance is completed that the small business assistance has been rendered; and

F. the national laboratory provides forms for small business requests and for completion of small business assistance that are in accordance with the Laboratory Partnership with Small Business Tax Credit Act and other applicable state and federal laws.

History: Laws 2000 (2nd S.S.), ch. 20, § 5; 2007, ch. 172, § 16.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, added Subsections D through F.

## 7-9E-6. Administration by the national laboratory.

To qualify for tax credits pursuant to the Laboratory Partnership with Small Business Tax Credit Act, a national laboratory shall:

A. establish a small business assistance program;

B. establish a revolving fund with initial funding from a source other than tax credits. Money from the revolving fund shall be used to pay for qualified expenditures, and the fund shall be replenished with an amount equal to the tax credits taken pursuant to the Laboratory Partnership with Small Business Tax Credit Act;

C. consult with the secretary of economic development to seek advice on improvements in the operation of the small business assistance program; and

D. establish a methodology to utilize contractors who have demonstrated the capability to provide small business assistance.

**History:** Laws 2000 (2nd S.S.), ch. 20, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2000 (2nd S.S.), ch. 20 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on July 3, 2000, 90 days after the adjournment of the legislature.

## 7-9E-7. Tax credits; amounts.

A tax credit provided pursuant to the Laboratory Partnership with Small Business Tax Credit Act shall be in an amount equal to the qualified expenditure incurred by the national laboratory to provide small business assistance to a specific small business, not to exceed ten thousand dollars ($10,000) for each small business located outside of a rural area for which small business assistance is rendered in a calendar year or twenty thousand dollars ($20,000) if the small business assistance was provided to a small business located in a rural area.

History: Laws 2000 (2nd S.S.), ch. 20, § 7; 2007, ch. 172, § 17.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, increased the maximum credit from $5,000 to $10,000 for assistance to a specific small business outside a rural area and from $10,000 to $20,000 for assistance to a small business located in a rural area.

## 7-9E-8. Claiming the tax credit; limitation.

A. A national laboratory eligible for the tax credit pursuant to the Laboratory Partnership with Small Business Tax Credit Act may claim the amount of each tax credit by crediting that amount against gross receipts taxes otherwise due pursuant to the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978]. The tax credit shall be taken on each monthly gross receipts tax return filed by the laboratory against gross receipts taxes due the state and shall not impact any local government tax distribution. In no event shall the tax credits taken by an individual national laboratory exceed two million four hundred thousand dollars ($2,400,000) in a given calendar year.

B. Tax credits claimed pursuant to the Laboratory Partnership with Small Business Tax Credit Act by all national laboratories in the aggregate for qualified expenditures for a specific small business not located in a rural area shall not exceed ten thousand dollars ($10,000).

C. Tax credits claimed pursuant to the Laboratory Partnership with Small Business Tax Credit Act by all national laboratories in the aggregate for qualified expenditures for a specific small business located in a rural area shall not exceed twenty thousand dollars ($20,000).

History: Laws 2000 (2nd S.S.), ch. 20, § 8; 2007, ch. 172, § 18.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, increased the maximum credit by an individual national laboratory fro $1,800,000 to $2,400,000 in a calendar year and added Subsections B and C.

## 7-9E-9. Termination of the revolving fund.

Should the revolving fund established pursuant to Section 6 [7-9E-6 NMSA 1978] of the Laboratory Partnership with Small Business Tax Credit Act cease to be used for the purposes stated in that act, any amounts remaining in the revolving fund, excluding initial funding from nontax credit sources, shall be paid over to the department as additional gross receipts taxes due. Such payment of additional gross receipts taxes due shall be made in the second month following the month a determination is made that the revolving fund ceases to be used for the purposes stated in that act.

**History:** Laws 2000 (2nd S.S.), ch. 20, § 9.

**ANNOTATIONS**

**Effective dates.** — Laws 2000 (2nd S.S.), ch. 20 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on July 3, 2000, 90 days after the adjournment of the legislature.

## 7-9E-10. Coordination between national laboratories.

If more than one national laboratory is eligible for a tax credit pursuant to the Laboratory Partnership with Small Business Tax Credit Act, a national laboratory shall not file a tax credit claim pursuant to the Laboratory Partnership with Small Business Tax Credit Act until:

A. coordination is developed between the national laboratories providing small business assistance pursuant to the Laboratory Partnership with Small Business Tax Credit Act that generates a joint small business assistance operational plan and a plan to ensure that the small business assistance provided by a national laboratory suits the small business's needs and challenges; and

B. a written copy of each plan formed pursuant to this section is provided to the department.

History: Laws 2007, ch. 172, § 19.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 172, § 30 made Laws 2007, ch. 172, § 19 effective July 1, 2007.

## 7-9E-11. Reporting.

A. By October 15 of each year, a national laboratory that has claimed a tax credit pursuant to the Laboratory Partnership with Small Business Tax Credit Act for the previous calendar year shall submit an annual report in writing to the department, the economic development department and an appropriate legislative interim committee.

B. If more than one national laboratory claims a tax credit pursuant to the Laboratory Partnership with Small Business Tax Credit Act for the previous calendar year, those laboratories shall jointly submit an annual report to the department, the economic development department and an appropriate legislative interim committee no later than October 15 following the calendar year in which the small business assistance was provided.

C. An annual report shall summarize activities related to and the results of the small business assistance programs that were provided by one or more national laboratories and shall include:

(1) a summary of the program results and the number of small businesses assisted in each county;

(2) a description of the projects involving multiple small businesses;

(3) results of surveys of small businesses to which small business assistance is provided;

(4) the total amount of the tax credits claimed pursuant to the Laboratory Partnership with Small Business Tax Credit Act for the year on which the report is based; and

(5) an economic impact study of jobs created, jobs retained, cost savings and increased sales generated by small businesses for which small business assistance is provided.

D. At any time after receipt of an annual report required pursuant to this section from one or more national laboratories eligible for tax credits authorized pursuant to the Laboratory Partnership with Small Business Tax Credit Act, the department or the economic development department may provide written instructions to a national

laboratory identifying future improvements in the laboratory's small business assistance program for which it receives that tax credit.

History: Laws 2007, ch. 172, § 20.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 172, § 30 made Laws 2007, ch. 172, § 20 effective July 1, 2007.

# ARTICLE 9F
# Technology Jobs and Research and Development Tax Credit

## 7-9F-1. Short title.

Chapter 7, Article 9F NMSA 1978 may be cited as the "Technology Jobs and Research and Development Tax Credit Act".

History: Laws 2000 (2nd S.S.), ch. 22, § 1; 2015 (1st S.S.), ch. 2, § 10.

**ANNOTATIONS**

**The 2015 (1st S.S.) amendment,** effective January 1, 2016, changed the title of the Technology Jobs Tax Credit Act to the "Technology Jobs and Research and Development Tax Credit Act", and changed the statutory reference from "This act" to "Chapter 7, Article 9F NMSA 1978".

**Applicability.** — Laws 2015 (1st S.S.), ch. 2, § 25 provided that Laws 2015 (1st S.S.), ch. 2, § 10 apply to taxpayers that make a qualified expenditure beginning on or after January 1, 2015.

**Temporary provisions.** — Laws 2015 (1st S.S.), ch. 2, § 22 provided that a taxpayer that becomes eligible for a research and development small business tax credit prior to January 1, 2016 but has not claimed the credit prior to January 1, 2016 may claim the credit in accordance with the provisions of the Research and Development Small Business Tax Credit Act in effect immediately prior to January 1, 2016. The taxation and revenue department shall approve claims submitted but not approved prior to January 1, 2016 if the claim meets the requirements of the Research and Development Small Business Tax Credit Act in effect immediately prior to January 1, 2016. Claiming the research and development small business tax credit pursuant to this section with respect to a reporting period renders the taxpayer ineligible to claim a credit for the same reporting period pursuant to the Technology Jobs and Research and Development Tax Credit Act.

Laws 2015 (1st S.S.), ch. 2, § 23 provided that on and after January 1, 2016, references in law to the Technology Jobs Tax Credit Act shall be deemed to be references to the Technology Jobs and Research and Development Tax Credit Act.

## 7-9F-2. Purpose of act.

It is the purpose of the Technology Jobs and Research and Development Tax Credit Act to provide a favorable tax climate for technology-based businesses engaging in research, development and experimentation and to promote increased employment and higher wages in those fields in New Mexico.

History: Laws 2000 (2nd S.S.), ch. 22, § 2; 2015 (1st S.S.), ch. 2, § 11.

**ANNOTATIONS**

**The 2015 (1st S.S.) amendment,** effective January 1, 2016, added "and Research and Development" after "Technology Jobs".

**Applicability.** — Laws 2015 (1st S.S.), ch. 2, § 25 provided that Laws 2015 (1st S.S.), ch. 2, § 11 apply to taxpayers that make a qualified expenditure beginning on or after January 1, 2015.

## 7-9F-3. Definitions.

As used in the Technology Jobs and Research and Development Tax Credit Act:

A. "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by or is under common ownership or control with another person through ownership of voting securities or other ownership interests representing a majority of the total voting power of the entity;

B. "annual payroll expense" means the wages paid or payable to employees in the state by the taxpayer in the taxable year for which the taxpayer applies for an additional credit pursuant to the Technology Jobs and Research and Development Tax Credit Act;

C. "base payroll expense" means the wages paid or payable by the taxpayer in the taxable year prior to the taxable year for which the taxpayer applies for an additional credit pursuant to the Technology Jobs and Research and Development Tax Credit Act, adjusted for any increase from the preceding taxable year in the consumer price index for the United States for all items as published by the United States department of labor in the taxable year for which the additional credit is claimed. In a taxable year during which a taxpayer has been part of a business merger or acquisition or other change in business organization, the taxpayer's base payroll expense shall include the payroll expense of all entities included in the reorganization for all positions that are included in the business entity resulting from the reorganization;

D. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "facility" means a factory, mill, plant, refinery, warehouse, dairy, feedlot, building or complex of buildings located within the state, including the land on which it is located and all machinery, equipment and other real and tangible personal property located at or within it and used in connection with its operation;

F. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon the taxpayer's gross receipts, as that term is defined in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978], and required to be collected by the department at the same time and in the same manner as the gross receipts tax; "local option gross receipts tax" includes the taxes imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act [Chapter 7, Article 19D NMSA 1978], Supplemental Municipal Gross Receipts Tax Act [Sections 7-19-10 through 7-19-18 NMSA 1978], County Local Option Gross Receipts Taxes Act [Chapter 7, Article 20E NMSA 1978], Local Hospital Gross Receipts Tax Act [7-20C-1 through 7-20C-17 NMSA 1978], County Correctional Facility Gross Receipts Tax Act [7-20F-3 through 7-20F-12 NMSA 1978] and such other acts as may be enacted authorizing counties or municipalities to impose taxes on gross receipts, which taxes are to be collected by the department in the same time and in the same manner as it collects the gross receipts tax;

G. "qualified expenditure" means an expenditure or an allocated portion of an expenditure by a taxpayer in connection with qualified research at a qualified facility, including expenditures for depletable land and rent paid or incurred for land, improvements, the allowable amount paid or incurred to operate or maintain a facility, buildings, equipment, computer software, computer software upgrades, consultants and contractors performing work in New Mexico, payroll, technical books and manuals and test materials, but not including any expenditure on property that is owned by a municipality or county in connection with an industrial revenue bond project, property for which the taxpayer has received any credit pursuant to the Investment Credit Act [Chapter 7, Article 9A NMSA 1978], property that was owned by the taxpayer or an affiliate before July 3, 2000 or research and development expenditures reimbursed by a person who is not an affiliate of the taxpayer. If a "qualified expenditure" is an allocation of an expenditure, the cost accounting methodology used for the allocation of the expenditure shall be the same cost accounting methodology used by the taxpayer in its other business activities;

H. "qualified facility" means a facility in New Mexico at which qualified research is conducted other than a facility operated by a taxpayer for the United States or any agency, department or instrumentality thereof;

I. "qualified research" means research:

(1) that is undertaken for the purpose of discovering information:

(a) that is technological in nature; and

(b) the application of which is intended to be useful in the development of a new or improved business component of the taxpayer; and

(2) substantially all of the activities of which constitute elements of a process of experimentation related to a new or improved function, performance, reliability or quality, but not related to style, taste or cosmetic or seasonal design factors;

J. "qualified research and development small business" means a taxpayer that:

(1) employed no more than fifty employees as determined by the number of employees for which the taxpayer was liable for unemployment insurance coverage in the taxable year for which an additional credit is claimed;

(2) had total qualified expenditures of no more than five million dollars ($5,000,000) in the taxable year for which an additional credit is claimed; and

(3) did not have more than fifty percent of its voting securities or other equity interest with the right to designate or elect the board of directors or other governing body of the business owned directly or indirectly by another business;

K. "rural area" means any area of the state other than the state fairgrounds, an incorporated municipality with a population of thirty thousand or more according to the most recent federal decennial census and any area within three miles of the external boundaries of an incorporated municipality with a population of thirty thousand or more according to the most recent federal decennial census;

L. "taxpayer" means any of the following persons, other than a federal, state or other governmental unit or subdivision or an agency, department, institution or instrumentality thereof:

(1) a person liable for payment of any tax;

(2) a person responsible for withholding and payment or collection and payment of any tax;

(3) a person to whom an assessment has been made if the assessment remains unabated or the assessed amount has not been paid; or

(4) for purposes of the additional credit against the taxpayer's income tax pursuant to the Technology Jobs and Research and Development Tax Credit Act and to the extent of their respective interest in that entity, the shareholders, members, partners or other owners of:

(a) a small business corporation that has elected to be treated as an S corporation for federal income tax purposes; or

(b) an entity treated as a partnership or disregarded entity for federal income tax purposes; and

M. "wages" means remuneration for services performed by an employee in New Mexico for an employer.

History: Laws 2000 (2nd S.S.), ch. 22, § 3; 2015 (1st S.S.), ch. 2, § 12.

## ANNOTATIONS

**The 2015 (1st S.S.) amendment,** effective January 1, 2016, amended and added certain definitions in the Technology Jobs and Research and Development Tax Credit Act; in the introductory sentence, after "Technology Jobs", added "and Research and Development"; in Subsection B, after "paid or payable", added "to employees in the state", after "taxpayer", deleted "for the one year period ending on the day" and added "in the taxable year for which", after "Technology Jobs", added "and Research and Development"; in Subsection C, after "payable by the taxpayer", deleted "for the one year period ending on the day one year prior to the day" and added "in the taxable year prior to the taxable year for which", after "Technology Jobs", added "and Research and Development", after "any increase", added "from the preceding taxable year", and after "department of labor", deleted "since that day" and added the remainder of the subsection; in Subsection E, after "land on which", deleted "the facility" and added "it", after "located at or within", deleted "the facility" and added "it", after "connection with", deleted "the" and added "its", and after "operation", deleted "of the facility"; added a new Subsection F and redesignated former Subsections F, G and H as Subsections G, H and I, respectively; in Subsection G, after "credit pursuant to the", deleted "Capital Equipment Tax Credit Act or the", after "an affiliate before", deleted "the effective date of the Technology Jobs Tax Credit Act" and added "July 3, 2000", and after "If", deleted "an" and added "a qualified"; added a new Subsection J and redesignated former Subsections I, J and K as Subsections K, L and M, respectively; in Subsection K, after "any area of the state other than", deleted "a class A county, a class B county that has a net taxable value for rate-setting purposes for any property tax year of more than three billion dollars ($3,000,000,000), the municipality of Rio Rancho and the area within three miles of the exterior boundaries of a class A county" and added the remainder of the subsection; in Paragraph (4) of Subsection L, after "Technology Jobs", added "and Research and Development"; and in Subsection M, after "remuneration", deleted "in cash or other form", and after "an employee", added "in New Mexico".

**Applicability.** — Laws 2015 (1st S.S.), ch. 2, § 25 provided that Laws 2015 (1st S.S.), ch. 2, § 12 apply to taxpayers that make a qualified expenditure beginning on or after January 1, 2015.

**Time to apply for tax credit.** — Because the provisions of this section, Sections 7-9F-6 and 7-9F-12 NMSA 1978 indicate a legislative concentration on annual reporting and annual payroll expense, these sections indicate no intention to provide a taxpayer an open-ended time to apply for a tax credit. Team Specialty Prods., Inc v. Taxation & Revenue Dep't., 2005-NMCA-020, 137 N.M. 50, 107 P.3d 4.

## 7-9F-4. Administration of act.

The department shall administer the Technology Jobs and Research and Development Tax Credit Act pursuant to the Tax Administration Act.

History: Laws 2000 (2nd S.S.), ch. 22, § 4; 2015 (1st S.S.), ch. 2, § 13.

**ANNOTATIONS**

**The 2015 (1st S.S.) amendment,** effective January 1, 2016, added "and Research and Development" after "Technology Jobs".

**Applicability.** — Laws 2015 (1st S.S.), ch. 2, § 25 provided that Laws 2015 (1st S.S.), ch. 2, § 13 apply to taxpayers that make a qualified expenditure beginning on or after January 1, 2015.

## 7-9F-5. Basic credit; additional credit; amounts; claimant.

A. The basic credit provided for in the Technology Jobs and Research and Development Tax Credit Act is an amount equal to five percent of the amount of qualified expenditures made by a taxpayer conducting qualified research at a qualified facility.

B. The additional credit provided for in the Technology Jobs and Research and Development Tax Credit Act is an amount equal to five percent of the amount of qualified expenditures made by a taxpayer conducting qualified research at a qualified facility.

History: Laws 2000 (2nd S.S.), ch. 22, § 5; 2015 (1st S.S.), ch. 2, § 14.

**ANNOTATIONS**

**The 2015 (1st S.S.) amendment,** effective January 1, 2016, amended language to reflect the new title of the Technology Jobs and Research and Development Tax Credit Act and increased the basic and additional tax credits provided for in the Technology Jobs and Research and Development Tax Credit Act from four percent to five percent of the amount of qualified expenditures; in Subsection A, after "Technology Jobs", added "and Research and Development", and after "an amount equal to", deleted "four" and added "five"; in Subsection B, after "Technology Jobs", added "and Research and Development", and after "an amount equal to", deleted "four" and added "five".

**Applicability.** — Laws 2015 (1st S.S.), ch. 2, § 25 provided that Laws 2015 (1st S.S.), ch. 2, § 14 apply to taxpayers that make a qualified expenditure beginning on or after January 1, 2015.

## 7-9F-6. Eligibility requirements.

A. A taxpayer conducting qualified research at a qualified facility and making qualified expenditures is eligible to claim the basic credit pursuant to the Technology Jobs and Research and Development Tax Credit Act.

B. A taxpayer conducting qualified research at a qualified facility and making qualified expenditures is eligible to claim the additional credit pursuant to the Technology Jobs and Research and Development Tax Credit Act if:

(1) the taxpayer increases the taxpayer's annual payroll expense at the qualified facility by at least seventy-five thousand dollars ($75,000) over the base payroll expense of the taxpayer;

(2) the increase in Paragraph (1) of this subsection has not previously been used to meet the requirements of this subsection; and

(3) there is at least a seventy-five-thousand-dollar ($75,000) increase in the taxpayer's annual payroll expense for every one million dollars ($1,000,000) in qualified expenditures claimed by the taxpayer in a taxable year in the same claim.

History: Laws 2000 (2nd S.S.), ch. 22, § 6; 2015 (1st S.S.), ch. 2, § 15.

**ANNOTATIONS**

**The 2015 (1st S.S.) amendment,** effective January 1, 2016, amended language to reflect the new title of the Technology Jobs and Research and Development Tax Credit Act; in Subsection A, after "Technology Jobs", added "and Research and Development"; and in the introductory sentence of Subsection B, after "Technology Jobs", added "and Research and Development".

**Applicability.** — Laws 2015 (1st S.S.), ch. 2, § 25 provided that Laws 2015 (1st S.S.), ch. 2, § 15 apply to taxpayers that make a qualified expenditure beginning on or after January 1, 2015.

**Temporary provisions.** — Laws 2015 (1st S.S.), ch. 2, § 22 provided that a taxpayer that becomes eligible for a research and development small business tax credit prior to January 1, 2016 but has not claimed the credit prior to January 1, 2016 may claim the credit in accordance with the provisions of the Research and Development Small Business Tax Credit Act in effect immediately prior to January 1, 2016. The taxation and revenue department shall approve claims submitted but not approved prior to January 1, 2016 if the claim meets the requirements of the Research and Development Small

Business Tax Credit Act in effect immediately prior to January 1, 2016. Claiming the research and development small business tax credit pursuant to this section with respect to a reporting period renders the taxpayer ineligible to claim a credit for the same reporting period pursuant to the Technology Jobs and Research and Development Tax Credit Act.

**Time to apply for tax credit.** — Because the provisions of this section, Sections 7-9F-3 and 7-9F-12 NMSA 1978 indicate a legislative concentration on annual reporting and annual payroll expense, these sections indicate no intention to provide a taxpayer an open-ended time to apply for a tax credit. Team Specialty Prods., Inc v. Taxation & Revenue Dep't., 2005-NMCA-020, 137 N.M. 50, 107 P.3d 4.

## 7-9F-7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2015 (1st S.S.), ch. 2, § 24, repealed 7-9F-7 NMSA 1978, as enacted by Laws 2000 (2nd S.S.), ch. 22, § 7, relating to qualified expenditures, effective January 1, 2016. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com*.

## 7-9F-8. Rural areas.

The amount of the basic and additional credit for which a taxpayer is otherwise eligible shall be doubled if the qualified expenditures were incurred with respect to a qualified facility in a rural area.

**History:** Laws 2000 (2nd S.S.), ch. 22, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2000 (2nd S.S.), ch. 22 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective July 3, 2000, 90 days after the adjournment of the legislature.

## 7-9F-9. Claiming the basic credit.

A. A taxpayer may apply for approval of a credit within one year following the end of the reporting period in which the qualified expenditure was made.

B. A taxpayer having applied for and been granted approval for a basic credit by the department pursuant to the Technology Jobs and Research and Development Tax Credit Act may claim the amount of the approved basic credit against the taxpayer's compensating tax, withholding tax or gross receipts tax, excluding local option gross receipts tax, due to the state of New Mexico; provided that no taxpayer may claim an amount of approved basic credit for a reporting period in which the basic credit is being

claimed that exceeds the sum of the taxpayer's compensating tax, withholding tax and gross receipts tax, excluding local option gross receipts tax, due for that reporting period.

C. Any amount of approved basic credit not claimed against the taxpayer's compensating tax, withholding tax or gross receipts tax, excluding local option gross receipts tax, due may be claimed in subsequent reporting periods for a period of up to three years from the date of the original claim.

History: Laws 2000 (2nd S.S.), ch. 22, § 9; 2015 (1st S.S.), ch. 2, § 16.

## ANNOTATIONS

**The 2015 (1st S.S.) amendment,** effective January 1, 2016, amended the provisions for claiming the basic credit pursuant to the Technology Jobs and Research and Development Tax Credit Act; in the catchline, added "basic", and after "credit", deleted "for certain taxes"; in Subsection A, after "the end of the", deleted "calendar year" and added "reporting period"; in Subsection B, after "Technology Jobs", added "and Research and Development", after "compensating tax,", added "withholding tax", after the first occurrence of "gross receipts tax,", deleted "or withholding tax" and added "excluding local option gross receipts tax", after "approved basic credit for", deleted "any" and added "a"; after "reporting period", added "in which the basic credit is being claimed", after "sum of the taxpayer's", added "compensating tax, withholding tax and", after the second occurrence of "gross receipts tax,", deleted "compensating tax and withholding tax" and added "excluding local option gross receipts tax"; deleted Subsection C, relating to claiming the tax credit against the taxpayer's income tax or corporate income tax due to the state of New Mexico, and redesignated former Subsection D as Subsection C; and in Subsection C, after "against the taxpayer's", added "compensating tax, withholding tax or", after the first occurrence of "gross receipts tax", deleted "compensating tax or withholding tax" and added "excluding local option gross receipts tax", after "due", deleted "and any amount of approved additional credit not claimed against the taxpayer's income tax or corporate income tax due for a reporting period", and after "subsequent reporting periods", deleted "provided that a husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the additional credit that would have been allowed them on a joint return" and added "for a period of up to three years from the date of the original claim".

**Applicability.** — Laws 2015 (1st S.S.), ch. 2, § 25 provided that Laws 2015 (1st S.S.), ch. 2, § 16 apply to taxpayers that make a qualified expenditure beginning on or after January 1, 2015.

**Specific period for application.** — The Technology Jobs Tax Credit Act [Technology Jobs and Research and Development Tax Credit Act] does not allow a taxpayer to apply for a tax credit during any other period than specified in this section. Team

Specialty Prods., Inc v. Taxation & Revenue Dep't., 2005-NMCA-020, 137 N.M. 50, 107 P.3d 4.

**Legislature intended** a one-year limitation period in enacting Subsection A of this section. Team Specialty Prods., Inc v. Taxation & Revenue Dep't., 2005-NMCA-020, 137 N.M. 50, 107 P.3d 4.

**Mandatory period to apply for credit. —** The one-year prescribed period contained in Subsection A of this section to apply for a tax credit is mandatory. Team Specialty Prods., Inc v. Taxation & Revenue Dep't., 2005-NMCA-020, 137 N.M. 50, 107 P.3d 4.

**No authority to grant extension. —** The Technology Jobs Tax Credit Act [Technology Jobs and Research and Development Tax Credit Act] contains no provision granting the department the authority to grant an extension of the one-year period. Team Specialty Prods., Inc v. Taxation & Revenue Dep't., 2005-NMCA-020, 137 N.M. 50, 107 P.3d 4.

The use of "may" in Subsection A of this section does not require the conclusion that the department must, or has the discretion to, permit filing beyond the one-year mentioned in this section. Team Specialty Prods., Inc v. Taxation & Revenue Dep't., 2005-NMCA-020, 137 N.M. 50, 107 P.3d 4.

**Taxpayer was not denied substantive due process** because the hearing officer found that the failure of taxpayer to file the application on time under this section was because of the negligence of their former employees and not because of their malfeasance and criminal conduct. Team Specialty Prods., Inc v. Taxation & Revenue Dep't., 2005-NMCA-020, 137 N.M. 50, 107 P.3d 4.

## 7-9F-9.1. Claiming the additional credit.

A. A taxpayer may apply for approval of an additional credit pursuant to the Technology Jobs and Research and Development Tax Credit Act within one year following the end of the taxable year in which the qualified expenditure was made.

B. A taxpayer that has applied for and been granted approval for an additional credit by the department pursuant to the Technology Jobs and Research and Development Tax Credit Act may claim the amount of the approved additional credit against the taxpayer's income tax or corporate income tax liability. Except as provided in Subsection C of this section, no taxpayer may claim an amount of approved additional credit for a taxable year in which the additional credit is being claimed that exceeds the amount of the taxpayer's income tax or corporate income tax due for that taxable year.

C. If a taxpayer is a qualified research and development small business and the amount of approved additional credit for the taxable year in which the additional credit is being claimed exceeds the taxpayer's income tax liability or corporate income tax liability, the excess shall be refunded to the taxpayer pursuant to Paragraphs (1)

through (3) of this subsection. If the taxpayer's total qualified expenditures for the taxable year for which the claim is made is:

(1) less than three million dollars ($3,000,000), the excess additional credit shall be refunded to the taxpayer;

(2) greater than or equal to three million dollars ($3,000,000) and less than four million dollars ($4,000,000), two-thirds of the excess additional credit shall be refunded to the taxpayer; and

(3) greater than or equal to four million dollars ($4,000,000) and less than or equal to five million dollars ($5,000,000), one-third of the excess additional credit shall be refunded to the taxpayer.

D. Any amount of approved additional credit not claimed against the taxpayer's income tax or corporate income tax due for a taxable year or refunded to the taxpayer may be claimed in subsequent reporting periods for a period of up to three years from the date of the original claim.

E. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the additional credit that would have been claimed on a joint return.

History: 1978 Comp., § 7-9F-9.1, enacted by Laws 2015 (1st S.S.) ch. 2, § 17.

**ANNOTATIONS**

**Effective dates.** — Laws 2015 (1st S.S.), ch. 2 § 26 makes Laws 2015 (1st S.S.), ch. 2, § 17 effective January 1, 2016.

**Applicability.** — Laws 2015 (1st S.S.), ch. 2, § 25 provided that Laws 2015 (1st S.S.), ch. 2, § 17 apply to taxable years beginning on or after January 1, 2015 and apply to taxpayers that make a qualified expenditure beginning on or after January 1, 2015.

## 7-9F-10. Credit claim forms.

The department shall provide credit claim forms. A credit claim shall accompany any return in which the taxpayer wishes to apply for an approved basic or additional credit, and the claim shall specify the amount and type of credit intended to apply to each return.

**History:** Laws 2000 (2nd S.S.), ch. 22, § 10.

**ANNOTATIONS**

**Effective dates.** — Laws 2000 (2nd S.S.), ch. 22 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective July 3, 2000, 90 days after the adjournment of the legislature.

## 7-9F-11. Recapture.

If the taxpayer or a successor in business of the taxpayer ceases operations in New Mexico for at least one hundred eighty consecutive days within a two-year period after the taxpayer has claimed a basic credit or an additional credit at a facility with respect to which the taxpayer has claimed the basic credit or the additional credit, the department shall grant no further basic credit or additional credit to the taxpayer with respect to that facility. In addition, any amount of approved basic credit not claimed against the taxpayer's gross receipts tax, compensating tax or withholding tax and any amount of approved additional credit not claimed against the taxpayer's income tax or corporate income tax shall be extinguished, and within thirty days after the one hundred eightieth day of the cessation of operations, the taxpayer shall pay the amount of any gross receipts tax, compensating tax or withholding tax for which an approved basic credit was taken and any income tax or corporate income tax against which an approved additional credit was taken. For purposes of this section, a taxpayer shall not be deemed to have ceased operations during reasonable periods for maintenance or retooling or for the repair or replacement of facilities damaged or destroyed or during the continuance of labor disputes.

**History:** Laws 2000 (2nd S.S.), ch. 22, § 11.

**ANNOTATIONS**

**Effective dates.** — Laws 2000 (2nd S.S.), ch. 22 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective July 3, 2000, 90 days after the adjournment of the legislature.

## 7-9F-12. Department report.

In October 2003 and each year thereafter, the department shall report to the legislative finance committee and the revenue stabilization and tax policy committee on the fiscal and economic impacts of the Technology Jobs Tax Credit Act [Technology Jobs and Research and Development Tax Credit Act] using the most recently available data for the two prior fiscal years. The report shall include the number of taxpayers who have received basic credits or additional credits under the Technology Jobs Tax Credit Act [Technology Jobs and Research and Development Tax Credit Act], the amounts of the basic credits and additional credits, the geographic locations of the qualified facilities and the payroll increases of taxpayers related to additional credits, subject to the confidentiality provisions of Section 7-1-8 NMSA 1978.

**History:** Laws 2000 (2nd S.S.), ch. 22, § 12.

**ANNOTATIONS**

**Effective dates.** — Laws 2000 (2nd S.S.), ch. 22 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective July 3, 2000, 90 days after the adjournment of the legislature.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 2015 (1st S.S.), ch. 2, § 10 changed the name of the Technology Jobs Tax Credit Act to the Technology Jobs and Research and Development Tax Credit Act, effective January 1, 2016.

**Time to apply for tax credit.** — Because the provisions in this section, Sections 7-9F-3 and 7-9F-6 NMSA 1978, indicate a legislative concentration on annual reporting and annual payroll expense, these sections indicate no intention to provide a taxpayer an open-ended time to apply for a tax credit. Team Specialty Prods., Inc v. Taxation & Revenue Dep't., 2005-NMCA-020, 137 N.M. 50, 107 P.3d 4.

## 7-9F-13. Taxpayer reporting requirement.

A taxpayer claiming a credit pursuant to the Technology Jobs and Research and Development Tax Credit Act shall file reports with the department. The reports shall be submitted on or before June 30 of the year following a calendar year in which the taxpayer claims a basic or additional credit and by June 30 of each of the two succeeding years. The reports shall contain information describing the taxpayer's business operations in New Mexico that is sufficient for the department to enforce the recapture provision pursuant to Section 7-9F-11 NMSA 1978. If a taxpayer fails to submit a required report, the amount of any basic or additional credit claimed for that year shall be subject to the recapture provision.

History: Laws 2015 (1st S.S.), ch. 2, § 18.

**ANNOTATIONS**

**Effective dates.** — Laws 2015 (1st S.S.), ch. 2 § 26 makes Laws 2015 (1st S.S.), ch. 2, § 18 effective January 1, 2016.

**Applicability.** — Laws 2015 (1st S.S.), ch. 2, § 25 provided that Laws 2015 (1st S.S.), ch. 2, § 18 apply to taxpayers that make a qualified expenditure beginning on or after January 1, 2015.

# ARTICLE 9G
# Other Tax Credits

## 7-9G-1. High-wage jobs tax credit; qualifying high-wage jobs.

A. A taxpayer who is an eligible employer may apply for, and the department may allow, a tax credit for each new high-wage economic-based job. The credit provided in this section may be referred to as the "high-wage jobs tax credit".

B. The purpose of the high-wage jobs tax credit is to provide an incentive for urban and rural businesses to create and fill new high-wage economic-based jobs in New Mexico.

C. The high-wage jobs tax credit may be claimed and allowed in an amount equal to ten percent of the wages distributed to an eligible employee in a new high-wage economic-based job, but shall not exceed twelve thousand dollars ($12,000) per job per qualifying period. The high-wage jobs tax credit may be claimed by an eligible employer for each new high-wage economic-based job performed for the year in which the new high-wage economic-based job is created and for the three consecutive qualifying periods as provided in this section.

D. To receive a high-wage jobs tax credit, a taxpayer shall file an application for approval of the credit with the department once per calendar year on forms and in the manner prescribed by the department. The annual application shall contain the certification required by Subsection K of this section and shall contain all qualifying periods that closed during the calendar year for which the application is made. Any qualifying period that did not close in the calendar year for which the application is made shall be denied by the department. The application for a calendar year shall be filed no later than December 31 of the following calendar year. If a taxpayer fails to file the annual application within the time limits provided in this section, the application shall be denied by the department. The department shall make a determination on the application within one hundred eighty days of the date on which the application was filed; provided that the one-hundred-eighty-day period shall not begin until the application is complete, as determined by the department.

E. A new high-wage economic-based job shall not be eligible for a credit pursuant to this section for the initial qualifying period unless the eligible employer's total number of employees with threshold jobs on the last day of the initial qualifying period at the location at which the job is performed or based is at least one more than the number of threshold jobs on the day prior to the date the new high-wage economic-based job was created. A new high-wage economic-based job shall not be eligible for a credit pursuant to this section for a consecutive qualifying period unless the total number of threshold jobs at a location at which the job is performed or based on the last day of that qualifying period is greater than or equal to the number of threshold jobs at that same location on the last day of the initial qualifying period for the new high-wage economic-based job.

F. Any consecutive qualifying period for a new high-wage economic-based job shall not be eligible for a credit pursuant to this section unless the wage, the forty-eight-week occupancy and the residency requirements for a new high-wage economic-based job are met for each consecutive qualifying period. If any consecutive qualifying period for a

new high-wage economic-based job does not meet the wage, the forty-eight-week occupancy and the residency requirements, all subsequent qualifying periods are ineligible.

G. Except as provided in Subsection H of this section, a new high-wage economic-based job shall not be eligible for a credit pursuant to this section if:

(1) the new high-wage economic-based job is created due to a business merger or acquisition or other change in business organization;

(2) the eligible employee was terminated from employment in New Mexico by another employer involved in the business merger or acquisition or other change in business organization with the taxpayer; and

(3) the new high-wage economic-based job is performed by:

(a) the person who performed the job or its functional equivalent prior to the business merger or acquisition or other change in business organization; or

(b) a person replacing the person who performed the job or its functional equivalent prior to a business merger or acquisition or other change in business organization.

H. A new high-wage economic-based job that was created by another employer and for which an application for the high-wage jobs tax credit was received and is under review by the department prior to the time of the business merger or acquisition or other change in business organization shall remain eligible for the high-wage jobs tax credit for the balance of the consecutive qualifying periods. The new employer that results from a business merger or acquisition or other change in business organization may only claim the high-wage jobs tax credit for the balance of the consecutive qualifying periods for which the new high-wage economic-based job is otherwise eligible.

I. A new high-wage economic-based job shall not be eligible for a credit pursuant to this section if the job is created due to an eligible employer entering into a contract or becoming a subcontractor to a contract with a governmental entity that replaces one or more entities performing functionally equivalent services for the governmental entity unless the job is a new high-wage economic-based job that was not being performed by an employee of the replaced entity.

J. A new high-wage economic-based job shall not be eligible for a credit pursuant to this section if the eligible employer has more than one business location in New Mexico from which it conducts business and the requirements of Subsection E of this section are satisfied solely by moving the job from one business location of the eligible employer in New Mexico to another business location of the eligible employer in New Mexico.

K. With respect to each annual application for a high-wage jobs tax credit, the employer shall certify and include:

(1) the amount of wages paid to each eligible employee in a new high-wage economic-based job during the qualifying period;

(2) the number of weeks each position was occupied during the qualifying period;

(3) whether the new high-wage economic-based job was in a municipality with a population of sixty thousand or more or with a population of less than sixty thousand according to the most recent federal decennial census and whether the job was in the unincorporated area of a county;

(4) whether the application pertains to the first, second, third or fourth qualifying period for each eligible employee;

(5) the total number of employees employed by the employer at the job location on the day prior to the qualifying period and on the last day of the qualifying period;

(6) the total number of threshold jobs performed or based at the eligible employer's location on the day prior to the qualifying period and on the last day of the qualifying period;

(7) for an eligible employer that has more than one business location in New Mexico from which it conducts business, the total number of threshold jobs performed or based at each business location of the eligible employer in New Mexico on the day prior to the qualifying period and on the last day of the qualifying period;

(8) whether the eligible employer is receiving or is eligible to receive development training program assistance pursuant to Section 21-19-7 NMSA 1978;

(9) whether the eligible employer has ceased business operations at any of its business locations in New Mexico; and

(10) whether the application is precluded by Subsection O of this section.

L. Any person who willfully submits a false, incorrect or fraudulent certification required pursuant to Subsection K of this section shall be subject to all applicable penalties under the Tax Administration Act [Chapter 7, Article 1 NMSA 1978], except that the amount on which the penalty is based shall be the total amount of credit requested on the application for approval.

M. Except as provided in Subsection N of this section, an approved high-wage jobs tax credit shall be claimed against the taxpayer's modified combined tax liability and

shall be filed with the return due immediately following the date of the credit approval. If the credit exceeds the taxpayer's modified combined tax liability, the excess shall be refunded to the taxpayer.

N. If the taxpayer ceases business operations in New Mexico while an application for credit approval is pending or after an application for credit has been approved for any qualifying period for a new high-wage economic-based job, the department shall not grant an additional high-wage jobs tax credit to that taxpayer, except as provided in Subsection O of this section, and shall extinguish any amount of credit approved for that taxpayer that has not already been claimed against the taxpayer's modified combined tax liability.

O. A taxpayer that has received a high-wage jobs tax credit shall not submit a new application for a credit for a minimum of five calendar years from the closing date of the last qualifying period for which the taxpayer received the credit if the taxpayer:

(1) lost eligibility to claim a tax credit from a previous application pursuant to Subsection E or N of this section; or

(2) reduces its total full-time employees in New Mexico by more than five percent after the date on which the last qualifying period on the taxpayer's previous application ends.

P. The economic development department and the taxation and revenue department shall report to the appropriate interim legislative committee each year the cost of this tax credit to the state and its impact on company recruitment and job creation.

Q. As used in this section:

(1) "benefits" means all remuneration for work performed that is provided to an employee in whole or in part by the employer, other than wages, including the employer's contributions to insurance programs, health care, medical, dental and vision plans, life insurance, employer contributions to pensions, such as a 401(k), and employer-provided services, such as child care, offered by an employer to the employee;

(2) "consecutive qualifying periods" means the three qualifying periods successively following the qualifying period in which the new high-wage economic-based job was created;

(3) "department" means the taxation and revenue department;

(4) "domicile" means the sole place where an individual has a true, fixed, permanent home. It is the place where the individual has a voluntary, fixed habitation of self and family with the intention of making a permanent home;

(5) "eligible employee" means an individual who is employed in New Mexico by an eligible employer and who is a resident of New Mexico; "eligible employee" does not include an individual who:

(a) bears any of the relationships described in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to the employer or, if the employer is a corporation, to an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, to an individual who owns, directly or indirectly, more than fifty percent of the capital and profits interest in the entity;

(b) if the employer is an estate or trust, is a grantor, beneficiary or fiduciary of the estate or trust or is an individual who bears any of the relationships described in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to a grantor, beneficiary or fiduciary of the estate or trust;

(c) is a dependent, as that term is described in 26 U.S.C. Section 152(a)(9), of the employer or, if the taxpayer is a corporation, of an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, of an individual who owns, directly or indirectly, more than fifty percent of the capital and profits interest in the entity or, if the employer is an estate or trust, of a grantor, beneficiary or fiduciary of the estate or trust; or

(d) is working or has worked as an employee or as an independent contractor for an entity that, directly or indirectly, owns stock in a corporation of the eligible employer or other interest of the eligible employer that represents fifty percent or more of the total voting power of that entity or has a value equal to fifty percent or more of the capital and profits interest in the entity;

(6) "eligible employer" means an employer that:

(a) sold and delivered more than fifty percent of its goods produced in New Mexico or non-retail services performed in New Mexico to persons outside New Mexico for use or resale outside New Mexico during the applicable qualifying period; provided that the fifty percent of those goods or services is measured by the eligible employer's gross receipts;

(b) is receiving or is eligible to receive development training program assistance pursuant to Section 21-19-7 NMSA 1978 during the applicable qualifying period; and

(c) whose principal business activities at the location in New Mexico for which the high-wage jobs tax credit is being claimed consist of manufacturing or performing non-retail services during the applicable qualifying period;

(7) "for use or resale outside New Mexico" means that the person who purchases the eligible employer's goods or services uses or resells the goods or services outside New Mexico or makes initial use of the goods or services outside New Mexico. If the purchaser conducts business in multiple states, goods and services are deemed for use or resale outside New Mexico, unless New Mexico is the primary market for the purchaser's goods or services;

(8) "full-time employee" means an employee who works for the same employer an average of at least thirty-two hours per week for at least forty-eight weeks per year;

(9) "manufacturing" means "manufacturing" as that term is used in Section 7-9A-3 NMSA 1978;

(10) "modified combined tax liability" means the total liability for the reporting period for the gross receipts tax imposed by Section 7-9-4 NMSA 1978 together with any tax collected at the same time and in the same manner as the gross receipts tax, such as the compensating tax, the withholding tax, the interstate telecommunications gross receipts tax, the surcharges imposed by Section 63-9D-5 NMSA 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978, minus the amount of any credit other than the high-wage jobs tax credit applied against any or all of these taxes or surcharges; but "modified combined tax liability" excludes all amounts collected with respect to local option gross receipts taxes;

(11) "new high-wage economic-based job" means a new job created in New Mexico by an eligible employer on or after July 1, 2004 and prior to July 1, 2020 that is occupied for at least forty-eight weeks of a qualifying period by an eligible employee who is paid wages calculated for the qualifying period to be at least:

(a) for a new high-wage economic-based job created prior to July 1, 2015: 1) forty thousand dollars ($40,000) if the job is performed or based in or within ten miles of the external boundaries of a municipality with a population of sixty thousand or more according to the most recent federal decennial census or in a class H county; and 2) twenty-eight thousand dollars ($28,000) if the job is performed or based in a municipality with a population of less than sixty thousand according to the most recent federal decennial census or in the unincorporated area, that is not within ten miles of the external boundaries of a municipality with a population of sixty thousand or more, of a county other than a class H county; and

(b) for a new high-wage economic-based job created on or after July 1, 2015: 1) sixty thousand dollars ($60,000) if the job is performed or based in or within ten miles of the external boundaries of a municipality with a population of sixty thousand or more according to the most recent federal decennial census or in a class H county; and 2) forty thousand dollars ($40,000) if the job is performed or based in a municipality with a population of less than sixty thousand according to the most recent federal decennial census or in the unincorporated area, that is not within ten miles of the external

boundaries of a municipality with a population of sixty thousand or more, of a county other than a class H county;

(12) "non-retail service" means a specialized service, excluding a construction service of any type, that is sold to another business or business entity and is used by the business or business entity to develop products for or deliver services to its customers. "Non-retail service" is not provided by direct individual-to- individual interaction and is not offered to the general public by the business or business entity. "Non-retail service" includes:

(a) research, development, engineering and testing services performed for a manufacturer that uses the product of the service to develop new or improve existing products;

(b) software and software application development services performed for a business;

(c) data processing and hosting services performed for a business that uses the service to deliver products or service to its own customers;

(d) digital film production services and post-film production services performed for a business that will market the digital product or film;

(e) customer or call center services performed for a business, if those services do not support retail activities of the eligible employer; and

(f) professional services, such as accounting, engineering, legal and information technology services, if the eligible employer does not offer those services for sale to the general public;

(13) "performed in New Mexico" means that the labor, activities, property and equipment necessary to complete, but not to deliver, a service all occur or are utilized within New Mexico;

(14) "produced in New Mexico" means the creation, bringing into existence or making available a good or product for commercial sale through the expense of labor or capital, or both, within New Mexico;

(15) "qualifying period" means the period of twelve months beginning on the day an eligible employee begins working in a new high-wage economic-based job or the period of twelve months beginning on the anniversary of the day an eligible employee began working in a new high-wage economic-based job;

(16) "resident" means a natural person whose domicile is in New Mexico at the time of hire or within one hundred eighty days of the date of hire;

(17) "threshold job" means a job that is occupied for at least forty-eight weeks of a calendar year by an eligible employee and that meets the wage requirements for a "new high-wage economic-based job"; and

(18) "wages" means all compensation paid by an eligible employer to an eligible employee through the employer's payroll system, including those wages that the employee elects to defer or redirect or the employee's contribution to a 401(k) or cafeteria plan program, but "wages" does not include benefits or the employer's share of payroll taxes, social security or medicare contributions, federal or state unemployment insurance contributions or workers' compensation.

History: Laws 2004, ch. 15, § 1; 2007, ch. 172, § 21; 2008, ch. 27, § 1; 2013, ch. 160, § 10; 2016 (2nd S.S.), ch. 3, § 6.

## ANNOTATIONS

**Repeals.** — Laws 2007, ch. 172, § 25 repealed Laws 2004, ch. 15, § 2, effective April 2, 2007, which would have repealed the high-wage jobs tax credit on January 1, 2010.

**The 2016 (2nd S.S.) amendment,** effective October 19, 2016, provided additional requirements to be eligible to claim a high-wage jobs tax credit; in Subsection A, after "may apply for, and the", deleted "taxation and revenue"; deleted the subsection designation "D" and added the language from former Subsection D to Subsection C; in Subsection C, after "qualifying periods.", deleted "A taxpayer shall apply for approval of the credit after the close of a qualifying period, but not later than twelve months following the end of the calendar year in which the taxpayer’s final qualifying period closes" and added "as provided in this section"; added new Subsection D; in Subsection E, after "pursuant to this section", added "for the initial qualifying period", after "total number of employees with", deleted "high-wage economic based" and added "threshold", after "more than the number", added "of threshold jobs", and after "job was created.", added the remainder of the subsection; added a new Subsection F and redesignated former Subsections F through H as Subsections G through I, respectively; in Subsection G, after the subsection designation, added "Except as provided in Subsection H of this section"; in Subsection H, after the subsection designation, deleted "Notwithstanding the provisions of Subsection F of this section", after "is under review by the", deleted "taxation and revenue", after each occurrence of "for the balance of the", added "consecutive", after "qualifying", deleted "period" and added "periods", and after "for which the", deleted "qualifying" and added "new high-wage economic based"; in Subsection I, after "A", added "new high-wage economic-based"; added a new Subsection J and redesignated former Subsection I as Subsection K; in Subsection K, in the introductory sentence, after "With respect to each", deleted "new high-wage economic-based job for which an eligible employer seeks the annual application for a", and after "shall certify", added "and include", in Paragraph K(1), after "the amount of wage", deleted "and benefits", and after "economic-based job during", deleted "each" and added "the", in Paragraph K(2), after "the number of weeks", deleted "the" and added "each", in Paragraph K(3), after the semicolon, deleted "and", added new

Paragraph K(4) and redesignated former Paragraph K(4) as Paragraph K(5), and added new Paragraphs K(6) through K(10); deleted former Subsection J; added new Subsection L and redesignated former Subsection K as Subsection M; in Subsection M, after the subsection designation, deleted "The credit provided in this section may be deducted from the" and added "Except as provided in Subsection N of this section, an approved high-wage jobs tax credit shall be claimed against the taxpayer's", after "modified combined tax liability", deleted "of a taxpayer" and added "and shall be filed with the return due immediately following the date of the credit approval", after "If the credit exceeds the", added "taxpayer's" and after "combined tax liability", deleted "of the taxpayer"; added new Subsections N and O and redesignated former Subsections L and M as Subsection P and Q, respectively; in Subsection P, after "economic development department", added "and the taxation and revenue department", and after "appropriate interim legislative committee", deleted "before November 1 of"; in Paragraph Q(1), after "including", added "the employer's contributions to", and after "employer to the employee.", deleted the remainder of the paragraph, relating to the limitation of the term "benefits"; added new Paragraphs Q(2) through Q(4) and redesignated former Paragraphs Q(2) and Q(3) as Paragraphs Q(5) and Q(6), respectively; in Subparagraph Q(6)(a), after the subparagraph designation, deleted "made" and added "sold and delivered", after "fifty percent of its", deleted "sales of", after "goods", added "produced in New Mexico", after "or", added "non-retail", after "services", deleted "produced" and added "performed", after "outside New Mexico", added "for use or resale outside New Mexico", after "qualifying period", deleted "or" and added "provided that the fifty percent of those goods or services is measured by the eligible employer's gross receipts"; in Subparagraph Q(6)(b), after "is", deleted "certified by the economic development department to be" and added "receiving or is", after "eligible", deleted "for" and added "to receive", and after "NMSA 1978", added "during the applicable qualifying period; and"; added a new Subparagraph Q(6)(c); added new Paragraphs Q(7) through Q(9) and redesignated former Paragraphs Q(4) and Q(5) as Paragraphs Q(10) and Q(11), respectively; added new Paragraphs Q(12) through Q(14) and redesignated former Paragraph Q(6) as Paragraph Q(15); added new Paragraphs Q(16) and Q(17) and redesignated former Paragraph Q(7) as Paragraph Q(18); in Paragraph Q(18), after "employer's share of payroll taxes," added "social security or medicare contributions, federal or state unemployment insurance contributions or workers' compensation".

**Applicability.** — Laws 2016 (2nd S.S.), ch. 3, § 8 provided that Laws 2016 (2nd S.S.), ch. 3, § 6 applies to applications for a high-wage jobs tax credit for a new high-wage economic-based job filed with the taxation and revenue department on or after January 1, 2017.

**The 2013 amendment,** effective June 14, 2013, clarified the application of the high-wage jobs tax credit; defined "benefits" and "wages"; added Subsection B; in Subsection C, after "twelve thousand dollars ($12,000)", added "per job per qualifying period"; in Subsection D, in the first sentence, after "for the three", deleted "following" and added "consecutive" and added the second sentence; in Subsection E, after "prior to the date the", added "new high-wage economic-based"; added Subsections F

through H; in Paragraph (3) of Subsection I, after "a population of", deleted "forty" and added "sixty" and after "of less than", deleted "forty" and added "sixty"; in Subsection M, deleted former Paragraph (1), which defined "benefits" to mean an employee benefit plan defined in the federal Employee Retirement Income Security Act; added Paragraph (1) of Subsection M; in Paragraph (2) of Subsection M, after "who is employed", added "in New Mexico"; in Subparagraph (a) of Paragraph (3) of Subsection M, after "fifty percent of its sale", added "of goods or services produced in New Mexico" and after "outside New Mexico during the", deleted "most recent twelve months of the employer's modified combined tax liability reporting periods ending prior to claiming a high-wage jobs tax credit" and added "applicable qualifying period"; in Subparagraph (b) of Paragraph (3) of Subsection M, after "is", added "certified by the economic development department to be"; in Paragraph (5) of Subsection M, after "means a", added "new", after "job created", added "in New Mexico", and after "July 1", deleted "2015" and added "2020"; in Subparagraph (a) of Paragraph (5) of Subsection M, at the beginning of the sentence, added "for a new high-wage economic-based job created prior to July 1, 2015; 1)", after "performed or based in", added "or within ten miles of the external boundaries of", after "population of", deleted "forty" and added "sixty", after "decennial census", added "or in a class H county", after "population of not less than", deleted "forty" and added "sixty", after "unincorporated area", added "that is not within ten miles of the external boundaries of a municipality with a population of sixty thousand or more", and after "of a county", added "other than a class H county" and added Subparagraph (b) of Paragraph (5) of Subsection M, and in Paragraph (7) of Subsection M, after "means", deleted "wages as defined in Paragraphs (1), (2) and (3) of U.S.C. Section 51(c)" and added the remainder of the sentence.

**Applicability.** — Laws 2013, ch. 160, § 14 provided that Laws 2013, ch. 160, § 10 applies to credit claims received on or after June 14, 2013 and to reporting periods beginning on or after that date.

**The 2008 amendment,** effective May 14, 2008, added Subsection H and in Paragraph (5) of Subsection I, extended the deadline to create new high-wage economic-based jobs to July 1, 2015.

**The 2007 amendment,** effective July 1, 2007, added "High-wage jobs" to the heading of this section.

## 7-9G-2. Advanced energy combined reporting tax credit; gross receipts tax; compensating tax; withholding tax.

A. Except as otherwise provided in this section, a taxpayer that holds an interest in a qualified generating facility located in New Mexico may claim a credit to be computed pursuant to the provisions of this section. The credit provided by this section may be referred to as the "advanced energy combined reporting tax credit".

B. As used in this section:

(1) "advanced energy tax credit" means the advanced energy income tax credit, the advanced energy corporate income tax credit and the advanced energy combined reporting tax credit;

(2) "coal-based electric generating facility" means a new or repowered generating facility and an associated coal gasification facility, if any, that uses coal to generate electricity and that meets the following specifications:

(a) emits the lesser of: 1) what is achievable with the best available control technology; or 2) thirty-five thousandths pound per million British thermal units of sulfur dioxide, twenty-five thousandths pound per million British thermal units of oxides of nitrogen and one hundredth pound per million British thermal units of total particulates in the flue gas;

(b) removes the greater of: 1) what is achievable with the best available control technology; or 2) ninety percent of the mercury from the input fuel;

(c) captures and sequesters or controls carbon dioxide emissions so that by the later of January 1, 2017 or eighteen months after the commercial operation date of the coal-based electric generating facility, no more than one thousand one hundred pounds per megawatt-hour of carbon dioxide is emitted into the atmosphere;

(d) all infrastructure required for sequestration is in place by the later of January 1, 2017 or eighteen months after the commercial operation date of the coal-based electric generating facility;

(e) includes methods and procedures to monitor the disposition of the carbon dioxide captured and sequestered from the coal-based electric generating facility; and

(f) does not exceed a name-plate capacity of seven hundred net megawatts;

(3) "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

(4) "eligible generation plant costs" means expenditures for the development and construction of a qualified generating facility, including permitting; site characterization and assessment; engineering; design; carbon dioxide capture, treatment, compression, transportation and sequestration; site and equipment acquisition; and fuel supply development used directly and exclusively in a qualified generating facility;

(5) "entity" means an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other association or a gas, water or electric utility owned or operated by a county or municipality;

(6) "geothermal electric generating facility" means a facility with a name-plate capacity of one megawatt or more that uses geothermal energy to generate electricity, including a facility that captures and provides geothermal energy to a preexisting electric generating facility using other fuels in part;

(7) "gross receipts tax due to the state" means the taxpayer's gross receipts liability for the reporting period that is:

(a) determined by, if the taxpayer's business location is described in Subsection A of Section 7-1-6.4 NMSA 1978, multiplying the taxpayer's taxable gross receipts for the reporting period by the difference between the gross receipts tax rate specified in Section 7-9-4 NMSA 1978 and one and two hundred twenty-five thousandths percent; or

(b) equal to, if the taxpayer's business location is not described in Subsection A of Section 7-1-6.4 NMSA 1978, the gross receipts tax rate specified in Section 7-9-4 NMSA 1978;

(8) "interest in a qualified generating facility" means title to a qualified generating facility; a leasehold interest in a qualified generating facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in a qualified generating facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in a qualified generating facility;

(9) "name-plate capacity" means the maximum rated output of the facility measured as alternating current or the equivalent direct current measurement;

(10) "qualified generating facility" means a facility that begins construction not later than December 31, 2015 and is:

(a) a solar thermal electric generating facility that begins construction on or after July 1, 2007 and that may include an associated renewable energy storage facility;

(b) a solar photovoltaic electric generating facility that begins construction on or after July 1, 2009 and that may include an associated renewable energy storage facility;

(c) a geothermal electric generating facility that begins construction on or after July 1, 2009;

(d) a recycled energy project if that facility begins construction on or after July 1, 2007; or

(e) a new or repowered coal-based electric generating facility and an associated coal gasification facility;

(11) "recycled energy" means energy produced by a generation unit with a name-plate capacity of not more than fifteen megawatts that converts the otherwise lost energy from the exhaust stacks or pipes to electricity without combustion of additional fossil fuel;

(12) "sequester" means to store, or chemically convert, carbon dioxide in a manner that prevents its release into the atmosphere and may include the use of geologic formations and enhanced oil, coalbed methane or natural gas recovery techniques;

(13) "solar photovoltaic electric generating facility" means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar photovoltaic energy to generate electricity; and

(14) "solar thermal electric generating facility" means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar thermal energy to generate electricity, including a facility that captures and provides solar energy to a preexisting electric generating facility using other fuels in part.

C. A taxpayer that holds an interest in a qualified generating facility may be allocated the right to claim the advanced energy combined reporting tax credit without regard to the taxpayer's relative interest in the qualified generating facility if:

(1) the business entity making the allocation provides notice of the allocation and the taxpayer's interest in the qualified generating facility to the department on forms prescribed by the department;

(2) allocations to the taxpayer and all other taxpayers allocated a right to claim the advanced energy tax credit shall not exceed one hundred percent of the advanced energy tax credit allowed for the qualified generating facility; and

(3) the taxpayer and all other taxpayers allocated a right to claim the advanced energy tax credits collectively own at least a five percent interest in the qualified generating facility.

D. Upon receipt of the notice of an allocation of the right to claim all or a portion of the advanced energy combined reporting tax credit, the department shall verify the allocation due to the recipient.

E. Subject to the limit imposed in Subsection K of this section, the advanced energy combined reporting tax credit with respect to a qualified generating facility shall equal six percent of the eligible generation plant costs of the qualified generating facility. Taxpayers eligible to claim an advanced energy combined reporting tax credit holding

less than one hundred percent of the interest in the qualified generating facility shall designate an individual to report annually to the department. That designated individual shall report the eligible generation plant costs incurred during the calendar year and the relative interest of those costs attributed to each eligible interest holder. The taxpayers shall submit a copy of the relative interests attributed to each interest holder to the department, and any change to the apportioned interests shall be submitted to the department. The designated person and the department may identify a mutually acceptable reporting schedule.

F. A taxpayer may apply for the advanced energy combined reporting tax credit by submitting to the taxation and revenue department a certificate issued by the department of environment pursuant to Subsection K of this section, documentation showing the taxpayer's interest in the qualified generating facility identified in the certificate, documentation of all eligible generation plant costs incurred by the taxpayer prior to the date of the application by the taxpayer for the advanced energy combined reporting tax credit and any other information the taxation and revenue department requests to determine the amount of tax credit due to the taxpayer.

G. A taxpayer having applied for and been granted approval to claim an advanced energy combined reporting tax credit by the department pursuant to this section may claim an amount of available credit against the taxpayer's gross receipts tax, compensating tax or withholding tax due to the state. Any balance of the advanced energy combined reporting tax credit that the taxpayer is approved to claim after applying that tax credit against the taxpayer's gross receipts tax, compensating tax or withholding tax liabilities may be claimed by the taxpayer against the taxpayer's tax liability pursuant to the Income Tax Act by claiming an advanced energy income tax credit or against the taxpayer's tax liability pursuant to the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] by claiming an advanced energy corporate income tax credit. The advanced energy combined reporting tax credit is not refundable. The total amount of tax credit claimed pursuant to this section, when combined with the advanced energy tax credits claimed pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] and the Corporate Income and Franchise Tax Act, shall not exceed the total amount of advanced energy tax credits approved by the department for the qualified generating facility.

H. A taxpayer that is liable for the payment of gross receipts or compensating tax with respect to the ownership, development, construction, maintenance or operation of a new coal-based electric generating facility that does not meet the criteria for a qualified generating facility and that begins construction after January 1, 2007 shall not claim an advanced energy tax combined reporting credit pursuant to this section or a gross receipts tax credit, a compensating tax credit or a withholding tax credit pursuant to any other state law.

I. If the amount of the advanced energy tax credit approved by the department exceeds the taxpayer's liability, the excess may be carried forward for up to ten years.

J. The aggregate amount of advanced energy tax credit that may be claimed with respect to each qualified generating facility shall not exceed sixty million dollars ($60,000,000).

K. An entity that holds an interest in a qualified generating facility may request a certificate of eligibility from the department of environment to enable the requester to apply for the advanced energy combined reporting tax credit. The department of environment:

(1) shall determine if the facility is a qualified generating facility;

(2) shall require that the requester provide the department of environment with the information necessary to assess whether the requester's facility meets the criteria to be a qualified generating facility;

(3) shall issue a certificate to the requester stating that the facility is or is not a qualified generating facility within one hundred eighty days after receiving all information necessary to make a determination;

(4) shall:

(a) issue rules governing the procedure for administering the provisions of this subsection and Subsection L of this section and for providing certificates of eligibility for advanced energy tax credits;

(b) issue a schedule of fees in which no fee exceeds one hundred fifty thousand dollars ($150,000); and

(c) deposit fees collected pursuant to this paragraph in the state air quality permit fund created pursuant to Section 74-2-15 NMSA 1978; and

(5) shall report annually to the appropriate interim legislative committee information that will allow the legislative committee to analyze the effectiveness of the advanced energy tax credits, including the identity of qualified generating facilities, the energy production means used, the amount of emissions identified in this section reduced and removed by those qualified generating facilities and whether any requests for certificates of eligibility could not be approved due to program limits.

L. If the department of environment issues a certificate of eligibility to a taxpayer stating that the taxpayer holds an interest in a qualified generating facility and the taxpayer does not sequester or control carbon dioxide emissions to the extent required by this section by the later of January 1, 2017 or eighteen months after the commercial operation date of the qualified generating facility, the taxpayer's certification as a qualified generating facility shall be revoked by the department of environment and the taxpayer shall repay to the state tax credits granted pursuant to this section; provided that if the taxpayer demonstrates to the department of environment that the taxpayer

made every effort to sequester or control carbon dioxide emissions to the extent feasible and the facility's inability to meet the sequestration requirements of a qualified generating facility was beyond the facility's control, in which case the department of environment shall determine, after a public hearing, the amount of the tax credit that should be repaid to the state. The department of environment, in its determination, shall consider the environmental performance of the facility and the extent to which the inability to meet the sequestration requirements of a qualified generating facility was in the control of the taxpayer. The repayment as determined by the department of environment shall be paid within one hundred eighty days following a final order by the department of environment.

M. Expenditures for which a taxpayer claims an advanced energy combined reporting tax credit pursuant to this section are ineligible for credits pursuant to the provisions of the Investment Credit Act [Chapter 7, Article 9A NMSA 1978] or any other credit against personal income tax, corporate income tax, compensating tax, gross receipts tax or withholding tax.

N. A taxpayer shall apply for approval for a credit within one year following the end of the calendar year in which the eligible generation plant costs are incurred.

History: Laws 2007, ch. 229, § 1; 2009, ch. 279, § 3.

## ANNOTATIONS

**The 2009 amendment,** effective June 19, 2009, in Subsection A, in the first sentence, at the beginning of the sentence, added "Except as otherwise provided in this section"; and after "qualified generating facility" added "located in New Mexico"; and in the second sentence, after "advanced energy", added "combined reporting"; added Paragraphs (1) through (3) of Subsection B; deleted former Paragraph (3) of Subsection B, which defined "qualified generating facility"; added Paragraphs (5) through (10) of Subsection B; added Paragraphs (13) and (14) of Subsection B; added Subsections C and D; in Subsection E, after "the advanced energy", added "combined reporting"; after "tax credit", added "with respect to a qualified generating facility"; and added the second through the fifth sentences; in Subsection F, after "advanced energy", added "combined reporting" and between "identified in the certificate" and "and any other information", added new language; in Subsection G, after "been granted approval", deleted "for a" and added "to claim an advanced energy combined reporting tax"; and added the second and third sentences; in Subsection H, after "advanced energy tax", added "combined reporting"; in Subsection I, after "If the amount of the", added "advanced tax" and after "tax credit", deleted "claimed" and added "approved by the department"; in Subsection J, after "aggregate amount of", added "advanced energy"; in Subsection K, after "entity that holds", deleted "title to" and added "an interest"; and after "advanced energy", added "combined reporting"; in Subparagraph (a) of Paragraph (4) of Subsection K, changed the reference from Subsection J to Subsection L and after "of this section", added "and for providing certificates of eligibility for advanced energy tax credits"; in Subsection L, after "stating that the taxpayer", deleted "is" and added "holds

an interest in"; and in Subsection M, after "a taxpayer claims", deleted "a" and added "an advanced energy combined reporting tax" and after "other credit against", added "personal income tax, corporate income tax".

# ARTICLE 9H
# Research and Development Small Business Tax Credit

## 7-9H-1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2015 (1st S.S.), ch. 2, § 24 repealed 7-9H-1 NMSA 1978, as enacted by Laws 2005, ch. 104, § 11, relating to the short title of the act, effective January 1, 2016. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com.*

## 7-9H-2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2015 (1st S.S.), ch. 2, § 24 repealed 7-9H-2 NMSA 1978, as enacted by Laws 2005, ch. 104, § 12, relating to definitions, effective January 1, 2016. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com.*

## 7-9H-3. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2015 (1st S.S.), ch. 2, § 24 repealed 7-9H-3 NMSA 1978, as enacted by Laws 2005, ch. 104, § 13, relating to research and development small business tax credit, amount and eligibility, effective January 1, 2016. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com.*

## 7-9H-4. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2015 (1st S.S.), ch. 2, § 24 repealed 7-9H-4 NMSA 1978, as enacted by Laws 2005, ch. 104, § 14, relating to claiming the credit and credit claim forms, effective January 1, 2016. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com.*

## 7-9H-5. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2015 (1st S.S.), ch. 2, § 24 repealed 7-9H-5 NMSA 1978, as enacted by Laws 2005, ch. 104, § 15, relating to limitation on other credits, effective January 1, 2016. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com.*

## 7-9H-6. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2015 (1st S.S.), ch. 2, § 24 repealed 7-9H-6 NMSA 1978, as enacted by Laws 2005, ch. 104, § 16, relating to administration of the act, effective January 1, 2016. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com.*

# ARTICLE 9I
# Affordable Housing Tax Credit Act

## 7-9I-1. Short title.

Chapter 7, Article 9I NMSA 1978 may be cited as the "Affordable Housing Tax Credit Act".

History: Laws 2005, ch. 104, § 17; 2010, ch. 17, § 1.

**ANNOTATIONS**

**The 2010 amendment,** effective July 1, 2010, deleted "Sections 17 though 22 of this act" and added "Chapter 7, Article 9I NMSA 1978".

## 7-9I-2. Definitions.

As used in the Affordable Housing Tax Credit Act:

A. "affordable housing project" means land acquisition, construction, building acquisition, remodeling, improvement, rehabilitation, conversion or weatherization for residential housing that is approved by the authority and that includes single-family housing or multifamily housing;

B. "authority" means the New Mexico mortgage finance authority;

C. "department" means the taxation and revenue department;

D. "modified combined tax liability" means the total liability for the reporting period for the gross receipts tax imposed by Section 7-9-4 NMSA 1978 together with any tax collected at the same time and in the same manner as the gross receipts tax, such as the compensating tax, the withholding tax, the interstate telecommunications gross receipts tax, the surcharges imposed by Section 63-9D-5 NMSA 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978, minus the amount of any credit other than the affordable housing tax credit applied against any or all of these taxes or surcharges; but "modified combined tax liability" excludes all amounts collected with respect to local option gross receipts taxes and governmental gross receipts taxes; and

E. "person" means an individual, tribal government, housing authority, corporation, limited liability company, partnership, joint venture, syndicate, association or nonprofit organization.

History: Laws 2005, ch. 104, § 18; 2010, ch. 17, § 2; 2015, ch. 17, § 1.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, removed "county" and "municipality" from the definition of "person" as used in the Affordable Housing Tax Credit Act; and in Subsection E, after "individual", deleted "county, municipality".

**The 2010 amendment,** effective July 1, 2010, in Subsection A, after "authority and that includes", deleted "only" and after "multifamily housing", deleted "located in a county with a population of less than one hundred thousand according to the most recent federal decennial census".

## 7-9I-3. Investment vouchers; issuance; transfer.

A. The authority may issue an investment voucher to a person who has made an investment of land, buildings, materials, cash or services for an affordable housing project approved by the authority or for a trust fund administered by the authority. The value of the voucher shall equal fifty percent of the amount of cash invested or the fair market value of the land, buildings, materials or services invested by that person. The authority may approve an investment voucher for any affordable housing project in accordance with Subsection B of this section and in accordance with rules adopted by the authority. An investment voucher that is approved for an affordable housing project shall equal fifty percent of the amount of cash invested or the fair market value of land, buildings, materials or services invested in that affordable housing project by a person upon issuance of that investment voucher.

B. During the calendar year:

(1) beginning on January 1, 2006, the authority may issue or approve investment vouchers in an amount that shall not exceed two hundred thousand dollars ($200,000) in aggregate value;

(2) beginning on January 1, 2007, the authority may issue or approve investment vouchers in an amount that shall not exceed five hundred thousand dollars ($500,000) in aggregate value; and

(3) beginning on January 1, 2008 and during each subsequent calendar year, the authority may issue or approve investment vouchers for each calendar year in an amount that shall not exceed an aggregate value of a base rate of one dollar eighty-five cents ($1.85) adjusted annually to account for inflation, multiplied by the state population during the calendar year as determined by the United States census bureau.

C. Any limitation on the issuance or approval of investment vouchers for a calendar year pursuant to Subsection B of this section shall not apply to an investment voucher issued by the authority during that calendar year that was approved by the authority during a previous calendar year.

D. At the beginning of each calendar year that begins on or after January 1, 2009, the department shall make an adjustment for inflation pursuant to Paragraph (3) of Subsection B of this section by multiplying the base rate by a fraction, the numerator of which is the consumer price index for the previous calendar year and the denominator of which is the same index for the 2007 calendar year prior to the calendar year for which a maximum aggregate value is determined for the issuance of investment vouchers pursuant to Paragraph (3) of Subsection B of this section.

E. An investment voucher issued by the authority shall be numbered for identification and may be sold, exchanged or otherwise transferred once in whole or in part to one or more persons. The parties to such a transaction shall notify the department and the authority of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

F. The authority shall adopt rules for the approval, issuance and administration of investment vouchers pursuant to this section.

History: Laws 2005, ch. 104, § 19; 2010, ch. 17, § 3.

**ANNOTATIONS**

**The 2010 amendment,** effective July 1, 2010, in Subsection A, in the first sentence after "investment of land, buildings", added "materials"; in the second sentence, after "fair market value of the land", deleted "building or service" and added "buildings, materials or services"; and in the fourth sentence after "value of land, buildings", added "materials".

## 7-9I-4. Affordable housing project completion notice.

The authority shall certify to the department approval of an affordable housing project for which an investment voucher is issued pursuant to the Affordable Housing Tax Credit Act within twenty days of issuance of that voucher.

History: Laws 2005, ch. 104, § 20.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 104, § 29 made the Affordable Housing Tax Credit Act effective July 1, 2005.

## 7-9I-5. Affordable housing tax credit.

A. The tax credit provided in this section may be referred to as the "affordable housing tax credit". Except as otherwise provided by the Affordable Housing Tax Credit Act, a holder of an investment voucher that submits the investment voucher to the department may apply for, and the department may allow, a tax credit in an amount not to exceed the value of the investment voucher during the tax year in which the authority certifies to the department:

(1) completion of a service for which an investment voucher has been issued pursuant to the Affordable Housing Tax Credit Act; or

(2) approval by the authority or completion of an affordable housing project for which a land, building or cash donation has been made and for which an investment voucher has been issued pursuant to the Affordable Housing Tax Credit Act.

B. A holder of an investment voucher may apply all or a portion of the affordable housing tax credit against the holder's modified combined tax liability, personal income tax liability or corporate income tax liability. Any balance of the affordable housing tax credit claimed may be carried forward for up to five years from the calendar year during which the authority certifies to the department approval of the affordable housing project for which the investment voucher used to claim the affordable housing tax credit is issued. No amount of the affordable housing tax credit may be applied against a local option gross receipts tax imposed by a municipality or county or against the government gross receipts tax.

C. Notwithstanding the provisions of Section 7-1-8 NMSA 1978, the department may disclose to a person the balance of the affordable housing tax credit remaining with respect to any investment voucher submitted by that person.

History: Laws 2005, ch. 104, § 21.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 104, § 29 made the Affordable Housing Tax Credit Act effective July 1, 2005.

## 7-9I-6. Administration of the act.

Unless otherwise provided by the Affordable Housing Tax Credit Act, the department shall administer the Affordable Housing Tax Credit Act pursuant to the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

History: Laws 2005, ch. 104, § 22.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 104, § 29 made the Affordable Housing Tax Credit Act effective July 1, 2005.

# ARTICLE 9J
# Alternative Energy Product Manufacturers Tax Credit Act

## 7-9J-1. Short title.

Sections 11 through 18 of this act [7-9J-1 through 7-9J-8 NMSA 1978] may be cited as the "Alternative Energy Product Manufacturers Tax Credit Act".

History: Laws 2007, ch. 204, § 11.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 204 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 7-9J-2. Definitions.

As used in the Alternative Energy Product Manufacturers Tax Credit Act:

A. "alternative energy product" means an alternative energy vehicle, fuel cell system, renewable energy system or any component of an alternative energy vehicle, fuel cell system or renewable energy system; components for integrated gasification combined cycle coal facilities and equipment related to the sequestration of carbon from integrated gasification combined cycle plants; or, beginning in taxable year 2011 and ending in taxable year 2019, a product extracted from or secreted by a single cell photosynthetic organism;

B. "alternative energy vehicle" means a motor vehicle manufactured by an original equipment manufacturer that fully warrants and certifies that the motor vehicle meets the federal motor vehicle safety standards and is designed to be propelled in whole or in part by electricity; "alternative energy vehicle" includes a gasoline-electric hybrid motor vehicle exempt from the motor vehicle excise tax pursuant to Subsection G of Section 7-14-6 NMSA 1978;

C. "component" means a part, assembly of parts, material, ingredient or supply that is incorporated directly into an end product;

D. "department" means the taxation and revenue department, the secretary of taxation and revenue or an employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "fuel cell system" means a system that converts hydrogen, natural gas or waste gas to electricity without combustion, including:

(1) a fuel cell or a system used to generate or reform hydrogen for use in a fuel cell; or

(2) a system used to generate or reform hydrogen for use in a fuel cell, including:

(a) electrolyzers that use renewable energy; and

(b) reformers that use natural gas as the feedstock;

F. "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but "manufacturing" does not include construction, farming, power generation or processing natural resources;

G. "manufacturing equipment" means an essential machine, mechanism or tool or a component of an essential machine, mechanism or tool used directly and exclusively in a taxpayer's manufacturing operation and that is subject to depreciation pursuant to the Internal Revenue Code of 1986 by the taxpayer carrying on the manufacturing; provided that "manufacturing equipment" does not include a vehicle that leaves the site of a manufacturing operation for the purpose of transporting persons or property, including property for which the taxpayer claims a credit pursuant to Section 7-9-79 NMSA 1978;

H. "manufacturing operation" means a plant employing personnel to perform production tasks, in conjunction with manufacturing equipment not previously existing at the site, to produce alternative energy products;

I. "modified combined tax liability" means the total liability for the reporting period for the gross receipts tax imposed by Section 7-9-4 NMSA 1978 together with any tax

collected at the same time and in the same manner as that gross receipts tax, such as the compensating tax, the withholding tax, the interstate telecommunications gross receipts tax, the surcharge imposed by Section 63-9D-5 NMSA 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978, minus the amount of any credit other than the alternative energy product manufacturers tax credit applied against any or all of those taxes or surcharges; provided that "modified combined tax liability" excludes all amounts collected with respect to local option gross receipts taxes;

J. "pass-through entity" means a business association other than:

(1) a sole proprietorship;

(2) an estate or trust;

(3) a corporation, limited liability company, partnership or other entity that is not a sole proprietorship taxed as a corporation for federal income tax purposes for the taxable year; or

(4) a partnership that is organized as an investment partnership in which the partner's income is derived solely from interest, dividends and sales of securities;

K. "qualified expenditure" means an expenditure for the purchase of manufacturing equipment made after July 1, 2006 by a taxpayer approved by the department;

L. "renewable energy" means energy from solar heat, solar light, wind, geothermal energy, landfill gas or biomass either singly or in combination that produces low or zero emissions and has substantial long-term production potential;

M. "renewable energy system" means a system using only renewable energy to produce hydrogen or to generate electricity, including related cogeneration systems that create mechanical energy or that produce heat or steam for space or water heating and agricultural or small industrial processes and includes a:

(1) photovoltaic energy system;

(2) solar-thermal energy system;

(3) biomass energy system;

(4) wind energy system;

(5) hydrogen production system; or

(6) battery cell energy system; and

N. "taxpayer" means a person, including a shareholder, member, partner or other owner of a pass-through entity, that is liable for payment of a tax or to whom an assessment has been made if the assessment remains unabated or the amount thereof has not been paid.

History: Laws 2007, ch. 204, § 12; 2011, ch. 108, § 1.

**ANNOTATIONS**

**Cross references.** — For the Internal Revenue Code of 1986, *see* 26 U.S.C. § 1.

**The 2011 amendment,** effective June 17, 2011, included products of single cell photosynthetic organisms as eligible alternative energy products for taxable years 2011 through 2019.

## 7-9J-3. Administration.

The department shall administer the Alternative Energy Product Manufacturers Tax Credit Act pursuant to the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

History: Laws 2007, ch. 204, § 13.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 204 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 7-9J-4. Alternative energy product manufacturers tax credit.

A. A tax credit to be known as the "alternative energy product manufacturers tax credit" may be claimed by a taxpayer in an amount:

(1) for which the taxpayer has been granted approval by the department pursuant to the Alternative Energy Product Manufacturers Tax Credit Act; and

(2) not to exceed five percent of the taxpayer's qualified expenditures.

B. The alternative energy product manufacturers tax credit may only be deducted from the taxpayer's modified combined tax liability. Any portion of the alternative energy product manufacturers tax credit that remains unused at the end of the taxpayer's reporting period may be carried forward for five years.

History: Laws 2007, ch. 204, § 14.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 204 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 7-9J-5. Eligibility requirements; employment.

To be eligible to claim a credit pursuant to the Alternative Energy Product Manufacturers Tax Credit Act, the taxpayer shall employ a number of full-time employees equal to one full-time employee in addition to the number of full-time employees employed one year prior to the day on which the taxpayer applies for the credit for every:

A. five hundred thousand dollars ($500,000), or a portion of that amount, of qualified expenditures claimed by the taxpayer in a taxable year in the same claim, up to a value of thirty million dollars ($30,000,000); and

B. one million dollars ($1,000,000), or a portion of that amount, in value of qualified expenditures over thirty million dollars ($30,000,000) claimed by the taxpayer in a taxable year in the same claim.

History: Laws 2007, ch. 204, § 15.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 204 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 7-9J-6. Approval of credit; issuance and denial; application; deadlines.

A. The department shall issue or deny approval for an alternative energy product manufacturers tax credit in response to a taxpayer's application for approval for the credit. The department shall issue approval for a credit claimed by a taxpayer who satisfies the requirements of the Alternative Energy Product Manufacturers Tax Credit Act.

B. The department may require a taxpayer who claims an alternative energy product manufacturers tax credit to produce evidence of the taxpayer's compliance with the Alternative Energy Product Manufacturers Tax Credit Act.

C. A taxpayer may apply for approval of an alternative energy product manufacturers tax credit on or before the last day of the year following the end of the calendar year in which the qualified expenditure is made. The department shall not issue approval for the alternative energy product manufacturers tax credit if the taxpayer

applies for approval after the last day of the year following the end of the calendar year in which the qualified expenditure is made.

History: Laws 2007, ch. 204, § 16.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 204 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 7-9J-7. Recapture.

If the taxpayer or a successor in the business of the taxpayer ceases operations at a facility in New Mexico for at least one hundred eighty consecutive days within a two-year period after the taxpayer has claimed an alternative energy product manufacturers tax credit, the department shall not grant additional alternative energy product manufacturers tax credits with respect to that facility. Any amount of the approved credit with respect to that facility that is not claimed against the taxpayer's modified combined tax liability shall be extinguished, and within thirty days after the one hundred eightieth day of cessation of operations, the taxpayer shall pay the modified income tax liability against which an approved credit was taken. For the purposes of this section, a taxpayer shall not be deemed to have ceased operations during reasonable periods for maintenance or retooling, for the repair or replacement of facilities damaged or destroyed or during labor disputes.

History: Laws 2007, ch. 204, § 17.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 204 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 7-9J-8. Credit claim forms.

The department shall provide credit claim forms and instructions. A credit claim form shall accompany any return in which the taxpayer claims a credit, and the claim shall specify the amount of credit intended to apply to each return.

History: Laws 2007, ch. 204, § 18.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 204 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

# ARTICLE 10
# Gross Receipts Tax Registration

## 7-10-1. Short title.

Chapter 7, Article 10 NMSA 1978 may be cited as the "Gross Receipts Tax Registration Act".

**History:** 1953 Comp., § 72-16A-30, enacted by Laws 1970, ch. 26, § 1; 1995, ch. 70, § 7.

**ANNOTATIONS**

**The 1995 amendment,** effective July 1, 1995, substituted "Chapter 7, Article 10 NMSA 1978" for "This act" in this section.

## 7-10-2. Purpose of act.

The purpose of the Gross Receipts Tax Registration Act is to ensure that all persons doing business with the state, whether leasing property employed in New Mexico, performing services in New Mexico or selling property in New Mexico, are registered with the department for payment of the gross receipts tax.

**History:** 1953 Comp., § 72-16A-31, enacted by Laws 1970, ch. 26, § 2; 1995, ch. 70, § 8.

**ANNOTATIONS**

**The 1995 amendment,** effective July 1, 1995, substituted "ensure" for "insure" and "department" for "bureau" in this section.

## 7-10-3. Definitions.

As used in the Gross Receipts Tax Registration Act:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity; and

C. "state" means any state agency, department or office that has authority to contract in the name of the state or to make payments from state funds.

**History:** 1953 Comp., § 72-16A-32, enacted by Laws 1970, ch. 26, § 3; 1977, ch. 249, § 51; 1986, ch. 20, § 70; 1995, ch. 70, § 9.

**ANNOTATIONS**

**The 1995 amendment,** effective July 1, 1995, deleted '"bureau' or" at the beginning of Subsection A.

## 7-10-4. Persons doing business with the state; registration to pay the gross receipts tax required.

Any person leasing or selling property to the state or performing services for the state, as those terms are used in the Gross Receipts and Compensating Tax Act, shall be registered with the department to pay the gross receipts tax unless that person has no business location, employees or property in New Mexico and does not conduct business in New Mexico through agents or contractors.

**History:** 1953 Comp., § 72-16A-33, enacted by Laws 1970, ch. 26, § 4; 1995, ch. 70, § 10.

**ANNOTATIONS**

**The 1995 amendment,** effective July 1, 1995, substituted "shall' for "must" and "department" for "bureau", and added the language beginning "unless that person".

## 7-10-5. Penalty for noncompliance.

If any person required to register under the provisions of Section 7-10-4 NMSA 1978 is not registered to pay the gross receipts tax, the state shall withhold payment of the amount due until the person has presented evidence of registration with the department to pay the gross receipts tax.

**History:** 1953 Comp., § 72-16A-34, enacted by Laws 1970, ch. 26, § 5; 1995, ch. 70, § 11.

**ANNOTATIONS**

**The 1995 amendment,** effective July 1, 1995, substituted "required to register under the provisions of Section 7-10-4 NMSA 1978" for "who leases or sells property to or performs services for the state", and "department" for "bureau".

# ARTICLE 11
# Railroad Car Company Tax

## 7-11-1. Short title.

Chapter 7, Article 11 NMSA 1978 may be cited as the "Railroad Car Company Tax Act".

**History:** 1978 Comp., § 7-11-1, enacted by Laws 1982, ch. 18, § 17.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1982, ch. 18, § 17, repealed former 7-11-1 NMSA 1978, relating to definitions, and enacted a new section. For present provisions relating to definitions, *see* 7-11-2 NMSA 1978.

## 7-11-2. Definitions.

As used in the Railroad Car Company Tax Act:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "gross earnings" means the total income received from all sources by an organization from the use or operation of railway cars within the state;

C. "organization" means every foreign or domestic car or car line company, every foreign or domestic joint-stock company, every foreign or domestic mercantile company, every foreign or domestic corporation of any other class, every foreign organization classed as a New England, Massachusetts or business trust, every association for profit, every partnership and every individual who owns one or more railway cars other than a railroad company operating its own or leased lines; and

D. "railway car" means any passenger, sleeping, parlor, refrigerator, tank, observation, dining, freight or coal car.

**History:** 1978 Comp., § 7-11-1; reenacted as 1978 Comp., § 7-11-2, enacted by Laws 1982, ch. 18, § 18; 1986, ch. 20, § 71; 1988, ch. 95, § 1.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 392 to 395.

84 C.J.S. Taxation § 225.

## 7-11-3. Imposition of tax; tax rate; tax in lieu of property taxes.

A. There is imposed on the gross earnings of each organization for the 1996 and subsequent calendar years a tax of one and one-half percent.

B. The tax imposed in Subsection A of this section is in lieu of all property taxes on railway cars owned by an organization.

**History:** 1978 Comp., § 7-11-3, enacted by Laws 1982, ch. 18, § 19; 1987, ch. 108, § 1; 1997, ch. 92, § 1.

**ANNOTATIONS**

**The 1997 amendment,** effective April 8, 1997, in Subsection A, substituted "1996" for "1987" and "one and one-half percent" for "three and one-half percent".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 127, 291, 392 to 395, 399, 402, 405, 427, 438.

## 7-11-4. Situs of railway cars; gross earnings.

A. For the purpose of taxation, any railway car owned by an organization and used exclusively within this state or used partially within and partially without this state has situs within this state.

B. The term "gross earnings" shall be construed to mean all earnings on business beginning and ending within this state and on a proportion, based on the division of mileage in this state by the entire mileage over which business is done, of all interstate business passing through, into or out of this state.

**History:** 1978 Comp., § 7-11-4, enacted by Laws 1982, ch. 18, § 20.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1982, ch. 18, § 20, repealed former 7-11-4 NMSA 1978, relating to the inspection and verification of filed reports by the revenue division of the taxation and revenue department, and enacted a new section.

## 7-11-5. Withholding and payment of tax; duty of railroads using or leasing cars to make reports.

Every railroad company using or leasing the railway cars of any organization, upon making payment to such organization for the use or lease of railway cars, shall withhold from such payment an amount equal to the product of the tax rate specified in Subsection A of Section 7-11-3 NMSA 1978 multiplied by the gross earnings. On or before March 1 of each year, such railroad company shall report to the department on a form prescribed by the department the amounts of such payments and the amounts withheld for the preceding calendar year. The amounts withheld shall be remitted with the report.

**History:** Laws 1982, ch. 18, § 21; 1988, ch. 95, § 2.

## 7-11-6. Liability of organizations.

Every organization is liable for any difference between an amount equal to the product of the tax rate specified in Subsection A of Section 7-11-3 NMSA 1978 multiplied by its gross earnings and the sum of withheld taxes remitted for that organization by one or more railroad companies for that year.

**History:** 1978 Comp., § 7-11-6, enacted by Laws 1982, ch. 18, § 22; 1988, ch. 95, § 3.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1982, ch. 18, § 22, repealed former 7-11-6 NMSA 1978, relating to limitations on the amount of tax to be imposed on railroad car companies such that it shall not exceed the ad valorem rate, and enacted a new section.

## 7-11-7 to 7-11-12. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1982, ch. 18, § 27, repealed 7-11-7 to 7-11-12 NMSA 1978, relating to imposition of tax upon railroad car companies or similar organizations, penalties for failure to pay tax and limitations on opportunity to contest tax determinations, effective July 1, 1982.

# ARTICLE 12
# Cigarette Tax

## 7-12-1. Cigarette Tax Act; short title.

Chapter 7, Article 12 NMSA 1978 may be cited as the "Cigarette Tax Act".

**History:** 1953 Comp., § 72-14-1, enacted by Laws 1971, ch. 77, § 1; 1985, ch. 25, § 1.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1971, ch. 77, § 1, repealed 72-14-1, 1953 Comp., relating to definitions applicable to the cigarette and tobacco tax, and enacted a new 7-12-1 NMSA 1978. For present provisions relating to definitions, *see* 7-12-2 NMSA 1978.

**Cross references.** — For applicability of the Tax Administration Act to the Cigarette Tax Act, *see* 7-1-2 NMSA 1978.

**Determining validity of former law.** — If doubt existed with respect to an issue of existing danger to the public health which the legislature sought to forestall by means of former law imposing an excise tax on cigars and cigarettes, supreme court had a duty to resolve that doubt in favor of the legislative determination and constitutionality. State ex rel. Hughes v. Cleveland, 1943-NMSC-029, 47 N.M. 230, 141 P.2d 192.

**Exemption of former law from referendum.** — Former act relating to cigarette and tobacco tax was exempt from referendum under constitutional provision which exempts measures providing for preservation of public peace, health or safety. State ex rel. Hughes v. Cleveland, 1943-NMSC-029, 47 N.M. 230, 141 P.2d 192.

**In pari materia.** — Insofar as former act allocated proceeds of the excise tax on cigars and cigarettes to old-age assistance, it was to be read in pari materia with the Public Welfare Act. State ex rel. Hughes v. Cleveland, 1943-NMSC-029, 47 N.M. 230, 141 P.2d 192.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation § 615.

Specific tax imposed on goods in stock of tobacco dealers as excise tax, 173 A.L.R. 1324.

Tobacco: validity, construction and application of state statutes forbidding possession, transportation or sale of unstamped or unlicensed cigarettes or other tobacco products, 46 A.L.R.3d 1342.

## 7-12-2. Definitions.

As used in the Cigarette Tax Act:

A. "cigarette" means:

(1) any roll of tobacco or any substitute for tobacco wrapped in paper or in any substance not containing tobacco;

(2) any roll of tobacco that is wrapped in any substance containing tobacco, other than one hundred percent natural leaf tobacco, which, because of its appearance, the type of tobacco used in the filler, its packaging and labeling, or its marketing and advertising, is likely to be offered to, or purchased by, consumers as a cigarette, as described in Paragraph (1) of this subsection;

(3) bidis and kreteks; or

(4) any other roll of tobacco that is defined as a "cigarette" in Subsection D of Section 6-4-12 NMSA 1978;

B. "close of business" means that time when a business ceases to operate for the remainder of the day or 12:00 a.m., if the business is open and conducting business at 12:00 a.m.;

C. "contraband cigarettes" means cigarette packages with counterfeit stamps, counterfeit cigarettes, cigarettes that have false or fraudulent manufacturing labels, cigarettes not sold in packages of five, ten, twenty or twenty-five, cigarette packages without the tax, tax-credit or tax-exempt stamps required by the Cigarette Tax Act and cigarettes produced by a manufacturer or in a brand family not included in the directory;

D. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee;

E. "directory" means a listing of tobacco product manufacturers and brand families that is developed, maintained and published by the attorney general under the Tobacco Escrow Fund Act [6-4-14 through 6-4-24 NMSA 1978];

F. "distributor" means a person licensed pursuant to the Cigarette Tax Act to sell or distribute cigarettes in New Mexico. "Distributor" does not include:

(1) a retailer;

(2) a cigarette manufacturer, export warehouse proprietor or importer with a valid permit pursuant to 26 U.S.C. 5713, if that person sells cigarettes in New Mexico only to distributors that hold valid licenses under the laws of a state or sells to an export warehouse proprietor or to another manufacturer; or

(3) a common or contract carrier transporting cigarettes pursuant to a bill of lading or freight bill, or a person who ships cigarettes through the state by a common or contract carrier pursuant to a bill of lading or freight bill;

G. "license" means a license granted pursuant to the Cigarette Tax Act that authorizes the holder to conduct business as a manufacturer or distributor of cigarettes;

H. "manufacturer" means a person that manufactures, fabricates, assembles, processes or labels a cigarette or that imports from outside the United States, directly or indirectly, a finished cigarette for sale or distribution in the United States;

I. "master settlement agreement" means the settlement agreement and related documents entered into on November 23, 1998 by the state and leading United States tobacco product manufacturers;

J. "package" means an individual pack, box or other container; "package" does not include a container that itself contains other containers, such as a carton of cigarettes;

K. "qualifying tribal cigarette tax" means an excise, privilege or similar tax at a minimum rate of:

(1) three and seventy-five hundredths cents ($.0375) per cigarette if the cigarettes are packaged in lots of twenty or twenty-five;

(2) seven and one-half cents ($.075) per cigarette if the cigarettes are packaged in lots of ten; or

(3) fifteen cents ($.15) per cigarette if the cigarettes are packaged in lots of five;

L. "retailer" means a person, whether located within or outside of New Mexico, that sells cigarettes at retail to a consumer in New Mexico and the sale is not for resale;

M. "stamp" means an adhesive label issued and authorized by the department to be affixed to cigarette packages for excise tax purposes and upon which is printed a serial number and the words "State of New Mexico" and "tobacco tax";

N. "tax stamp" means a stamp that has a specific cigarette tax value pursuant to the Cigarette Tax Act;

O. "tax-credit stamp" means a stamp that indicates the cigarette package bearing the stamp is to be or has been sold by a retailer located on land of a tribe that has imposed a qualifying tribal cigarette tax;

P. "tax-exempt stamp" means a stamp that indicates a tax-exempt status pursuant to the Cigarette Tax Act;

Q. "tribal member" means a person who is recognized by the governing body of an Indian tribe to be an enrolled member of that Indian tribe;

R. "tribe" means a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico, including:

(1) a political subdivision, agency or department of a tribe;

(2) an incorporated or unincorporated enterprise of a tribe, one or more tribes or a political subdivision of a tribe; or

(3) a corporation considered to be an Indian or a tribe by the federal government or the state; and

S. "tribe's land" means the reservation, pueblo grant or trust land of a tribe and property held by the United States in trust jointly for the nineteen New Mexico Indian pueblos pursuant to Public Law 95-232.

History: Laws 1943, ch. 95, § 1; 1941 Comp. Supp., § 76-1601; Laws 1947, ch. 84, § 1; 1949, ch. 180, § 1; 1953 Comp., § 72-14-1; Laws 1957, ch. 28, § 1; 1970, ch. 70, § 1; reenacted as 1953 Comp., § 72-14-2 by Laws 1971, ch. 77, § 2; 1977, ch. 249, § 43; 1984, ch. 51, § 1; 1986, ch. 20, § 72; 1995, ch. 70, § 12; 2006, ch. 91, § 1; 2007, ch. 182, § 1; 2009, ch. 197, § 11; 2010 (2nd S.S.), ch. 5, § 2.

## ANNOTATIONS

**The 2010 (2nd S. S.) amendment,** effective July 1, 2010, added Subsection B; in Subsection C, after "cigarette packages without the tax", added "tax-credit"; and added Subsections K, O, Q, R and S.

**The 2009 amendment,** effective July 1, 2009, in Paragraph (2) of Subsection A, after "Paragraph (1) of this subsection", deleted "and 'cigarette' includes"; added Paragraph (4) of Subsection A; in Subsection B, after "Cigarette Tax Act", added the remainder of the sentence; and added Subsection D.

**The 2007 amendment,** effective June 15, 2007, changed the definition of "cigarette" and "contraband cigarette".

**The 2006 amendment,** effective May 17, 2006, defined "cigarette" in Subsection A; deleted Subsection B, which defined "person"; added a new Subsection B to define "contraband cigarettes"; deleted Subsection D which defined "secretary"; added a new Subsection D to define "distributor"; added a new Subsection E to define "license"; added a new Subsection F to define "manufacturer"; added a new Subsection G to define "master settlement agreement"; added a new Subsection H to define "package"; added a new Subsection I to define "retailer"; changed the definition of "stamp" in Subsection J (formerly Subsection E); deleted former Subsection F which defined "stamped"; deleted former Subsection G which defined "unstamped"; added Subsection K to define "tax stamp"; and added Subsection L to define "tax-exempt stamp".

**The 1995 amendment,** effective July 1, 1995, substituted "'department' means" for "'bureau', 'department' or 'division' means" in Subsection C, and in Subsection D

substituted "'secretary' means" for "'commissioner', 'director' or" and deleted "or the secretary's delegate" following "revenue".

## 7-12-3. Excise tax on cigarettes; rates.

A. For the privilege of selling, giving or consuming cigarettes in New Mexico, there is levied an excise tax at the following rates for each cigarette sold, given or consumed in this state:

(1) eight and three-tenths cents ($.083) if the cigarettes are packaged in lots of twenty or twenty-five;

(2) sixteen and six-tenths cents ($.166) if the cigarettes are packaged in lots of ten; or

(3) thirty-three and two-tenths cents ($.332) if the cigarettes are packaged in lots of five.

B. The tax imposed by this section shall be referred to as the "cigarette tax".

History: Laws 1943, ch. 95, § 2; 1941 Comp. Supp., § 76-1602; Laws 1947, ch. 111, § 1; 1949, ch. 180, § 2; 1953 Comp., § 72-14-2; Laws 1955, ch. 263, § 1; 1961, ch. 244, § 1; 1962 (S.S.), ch. 5, § 1; 1968, ch. 50, § 2; reenacted as 1953 Comp., § 72-14-3 by Laws 1971, ch. 77, § 3; 1984, ch. 52, § 1; 1985, ch. 25, §§ 1, 2, 5; 1986, ch. 13, § 2; 1993, ch. 30, § 19; 1993, ch. 358, § 2; 1995, ch. 70, § 13; 2003, ch. 341, § 2; 2007, ch. 182, § 2; 2010 (2nd S.S.), ch. 5, § 3.

**ANNOTATIONS**

**The 2010 (2nd S. S.) amendment,** effective July 1, 2010, in Subsection A(1), changed the tax rate from four and fifty-five hundredths cents ($.0455) to eight and three-tenths cents ($.083); in Subsection A(2), changed the tax rate from nine and ten-hundredths cents ($.091) to sixteen and six-tenths cents ($.166); and Subsection A(3), changed the tax rate from eighteen and twenty-hundredths cents ($.182) to thirty-three and two-tenths cents ($.332).

**The 2007 amendment,** effective June 15, 2007, added Subesctions (1) to (3) to provide new rates for cigarette packages in lots of 10 or 5.

**The 2003 amendment,** effective July 1, 2003, in Subsection A, substituted the present tax rate for "one and five hundredths cents".

**The 1995 amendment,** effective July 1, 1995, substituted "this section" for "the Cigarette Tax Act" in Subsection B.

**The 1993 amendment,** effective July 1, 1993, substituted "one and five hundredths cents ($.0105)" for "seventy-five one-hundredths of one cent ($.0075)" in Subsection A. This section was also amended by Laws 1993, ch. 30, § 19. The section was set out as amended by Laws 1993, ch. 358, § 2. *See* 12-1-8 NMSA 1978.

## 7-12-3.1. Cigarette inventory tax; imposition of tax; date payment of tax due.

A. A tax that may be identified as the "cigarette inventory tax" is imposed on a distributor that has in its possession tax-exempt stamps, tax-credit stamps or tax stamps, whether or not affixed to packages of cigarettes, at the close of business on the day prior to the date on which an increase in the cigarette tax imposed by Section 7-12-3 NMSA 1978 is effective.

B. The cigarette inventory tax due from the distributor is calculated by multiplying the number of tax stamps in the distributor's possession by the increase in the excise tax. Tax-exempt stamps and tax-credit stamps are not included in the calculation to determine the amount of cigarette inventory tax to be paid by a distributor.

C. The cigarette inventory tax is to be paid to the department on or before the twenty-fifth day of the month following the month in which the increase in the cigarette tax is effective.

History: 1978 Comp., § 7-12-3.1, enacted by Laws 1986, ch. 13, § 3; 1995, ch. 70, § 14; 2006, ch. 91, § 2; 2010 (2nd S.S.), ch. 5, § 4.

**ANNOTATIONS**

**The 2010 (2nd S. S.) amendment,** effective July 1, 2010, after "possession of tax-exempt stamps", added "tax-credit stamps" and after "affixed to packages of cigarettes", deleted "on" and added "at the close of business on the day prior to"; and in Subsection B, in the second sentence, after "Tax-exempt stamps", added "and tax-credit stamps".

**The 2006 amendment,** effective May 17, 2006, in Subsection A, deleted the provision that the tax is measured by the quantity of cigarette stamps in the possession of a person who is required to affix stamps and provided that the tax is imposed on a distributor; in Subsection A, deleted the provision that the taxable event is the existence of an inventory of stamp; added a new Subsection B to provide for the calculation of the tax; and in Subsection C (formerly Subsection B), provided that the tax is to be paid in the month following the month the increase in the tax is effective.

**The 1995 amendment,** effective July 1, 1995, substituted "department" for "division" in Subsection B.

## 7-12-3.2. Cigarette inventories.

A. At the close of business on the day prior to any date on which the cigarette tax imposed by Section 7-12-3 NMSA 1978 is increased, each distributor shall take inventory of tax-exempt stamps, tax-credit stamps and tax stamps on hand, including stamps affixed to packages of cigarettes.

B. Each distributor shall report the total number of tax-exempt stamps, tax-credit stamps and tax stamps in inventory at the close of business on the day prior to the date on which the cigarette tax increases and pay the cigarette inventory tax due.

History: 1978 Comp., § 7-12-3.2, enacted by Laws 1986, ch. 13, § 4; 2006, ch. 91, § 3; 2010 (2nd S.S.), ch. 5, § 5.

**ANNOTATIONS**

**The 2010 (2nd S. S.) amendment,** effective July 1, 2010, in Subsection A, at the beginning of the sentence, deleted "On" and added "At the close of business on the day prior to" and after "inventory of tax-exempt stamps", added "tax-credit stamps"; and in Subsection B, after "number of tax-exempt stamps", added "tax-credit stamps" and after "tax stamps in inventory", deleted "on" and added "at the close of business on the day prior to".

**The 2006 amendment,** effective May 17, 2006, in Subsection A, provided that the distributor shall take an inventory of tax-exempt stamps and tax stamps; and in Subsection B, provided that the distributor shall report the number of tax-exempt stamps and tax stamps.

## 7-12-4. Exemption.

A. Exempted from the cigarette tax are sales of cigarettes:

(1) to the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof;

(2) to a tribe, or to a tribal member licensed by the governing body of a tribe for use or sale on that tribe's land, if the tribe has in place a qualifying tribal cigarette tax; and

(3) sales that the state is prohibited from taxing by a provision of the United States constitution or the constitution of the state of New Mexico.

B. As used in this section, the term "agency or instrumentality" does not include persons who are agents or instrumentalities of the United States for a particular purpose or only when acting in a particular capacity or corporate agencies or instrumentalities.

History: Laws 1943, ch. 95, § 13; 1941 Comp. Supp., § 76-1613; reenacted as 1953 Comp., § 72-14-4 by Laws 1971, ch. 77, § 4; 1992, ch. 37, § 1; 2010 (2nd S.S.), ch. 5, § 6.

**ANNOTATIONS**

**The 2010 (2nd S. S.) amendment,** effective July 1, 2010, in Subsection A(2), at the beginning of the sentence, deleted "the governing body" and added "a tribe"; after "a tribe, or to", deleted "any enrolled" and added "a"; after "licensed by the governing body of", deleted "any Indian nation" and added "a"; after "governing body of a tribe", deleted "or pueblo"; after "for use or sale on that", deleted "reservation or pueblo grant" and added the remainder of the sentence.

**The 1992 amendment,** effective May 20, 1992, added the subsection designations; in Subsection A, added the paragraph designations, added "to the governing body or to any enrolled tribal member licensed by the governing body of any Indian nation, tribe or pueblo for use or sale on that reservation or pueblo grant; and" at the beginning of Paragraph (2), added "sales" at the beginning of Paragraph (3), and made a stylistic change; and, in Subsection B, substituted "As used in this section" for "As used herein".

## 7-12-4.1. Cigarette tax; tribal sales; tax-credit stamps.

A. A distributor shall obtain from the department tax-credit stamps to affix to packages of cigarettes sold to a tribe or a tribal member licensed or otherwise approved by a tribe to sell cigarettes under the authority of the tribe on that tribe's land; provided that the tribe has certified to the department that the tribe has in effect a qualifying tribal cigarette tax.

B. Cigarettes sold by a tribe or tribal member bearing a tax-credit stamp shall be sold for use or sale on that tribe's land or on the land of another tribe or for use but not for resale in the state or at a location off any tribe's land.

History: Laws 2010 (2nd S.S.), ch. 5, § 7.

**ANNOTATIONS**

**Effective dates.** — Laws 2010 (2nd S.S.), ch. 5, § 28 made the provisions of Laws 2010 (2nd S.S.), ch. 5, § 7 effective July 1, 2010.

## 7-12-5. Affixing stamps.

A. Except as provided in Section 7-12-6 NMSA 1978, all cigarettes shall be placed in packages or containers to which a stamp shall be affixed. Only a distributor with a valid license issued pursuant to the Cigarette Tax Act may purchase or obtain unaffixed tax-exempt stamps, tax-credit stamps or tax stamps. A distributor shall not sell or provide unaffixed stamps to another distributor, manufacturer, export warehouse

proprietor or importer with a valid permit pursuant to 26 U.S.C. 5713 or any other person.

B. Stamps shall be affixed by the distributor to each package of cigarettes to be sold or distributed in New Mexico within thirty days of receipt of those packages.

C. A distributor shall apply stamps only to packages of cigarettes that the distributor has received directly from another distributor or from a manufacturer or importer of cigarettes that possesses a valid and current permit pursuant to 26 U.S.C. 5713.

D. A distributor shall not affix a stamp to a package of cigarettes of a manufacturer or a brand family that is not included in the directory or sell, offer or possess for sale cigarettes of a manufacturer or brand family that is not included in the directory.

E. Packages shall contain cigarettes in lots of five, ten, twenty or twenty-five.

F. Unless the requirements of this section are waived pursuant to Section 7-12-6 NMSA 1978, a tax stamp shall be affixed to each package of cigarettes subject to the cigarette tax, a tax-credit stamp shall be affixed to each package of cigarettes subject to a qualifying tribal cigarette tax, and a tax-exempt stamp shall be affixed to each package of cigarettes not subject to the cigarette tax pursuant to Section 7-12-4 NMSA 1978.

G. A tax-exempt stamp or tax-credit stamp is not an excise tax stamp for purposes of determining units sold pursuant to Section 6-4-12 NMSA 1978.

H. Stamps shall be affixed inside the boundaries of New Mexico, unless the department has granted a license allowing a person to affix stamps outside New Mexico.

History: Laws 1943, ch. 95, § 3; 1941 Comp. Supp., § 76-1603; Laws 1949, ch. 180, § 3; 1953 Comp., § 72-14-3; reenacted as 1953 Comp., § 72-14-5 by Laws 1971, ch. 77, § 5; 1984, ch. 51, § 2; 1988, ch. 95, § 4; 2001, ch. 175, § 1; 2006, ch. 91, § 4; 2007, ch. 182, § 3; 2009, ch. 197, § 12; 2010 (2nd S.S.), ch. 5, § 8.

## ANNOTATIONS

**Cross references.** — For cigarette tax, *see* 7-12-3 NMSA 1978.

**The 2010 (2nd S. S.) amendment,** effective July 1, 2010, in Subsection A, in the second sentence, after "unaffixed tax-exempt stamps", added "tax-credit stamps"; in Subsection F, after "cigarettes subject to the cigarette tax", added "a tax-credit stamp shall be affixed to each package of cigarettes subject to a qualifying tribal cigarette tax"; and in Subsection G, after "tax-exempt stamp", added "or tax-credit stamp".

**The 2009 amendment,** effective July 1, 2009, in Subsection B, changed "ten days" to "thirty days"; in Subsection C, after "has received directly from" added "another distributor or from"; and added Subsection D.

**The 2007 amendment,** effective June 15, 2007, revised Subsection D to add lots of "five" and "ten".

**The 2006 amendment,** effective May 17, 2006, in Subsection A, provided an exception to affixing stamps, provides that only a distributor with a valid license may acquire unaffixed tax-exempt stamps and prohibits a distributor from selling unaffiixed stamps; added Subsection B to provide for the affixation of stamps; added Subsection C to provide that stamps may be affixed only to packages of cigarettes that have been received from a manufacturer or importer; in Subsection D (formerly Subsection B), deleted the provision that packages that are not in multiples of five cigarettes shall have a stamp of the next higher multiple of five cigarettes; in Subsection D (formerly Subsection B), provided that packages shall contain cigarettes in lots of twenty or twenty-five; in Subsection E (formerly Subsection C), deleted the provision that the stamp shall be affixed by any person who sells cigarettes manufactured by that person or who receives on consignment or buys unstamped cigarettes; in Subsection E (formerly Subsection C), provided that the stamp shall be affixed to packages subject to the cigarette tax and tax-exempt stamps shall be affixed to packages not subject to the cigarette tax; and added Subsection F to provide that a tax-exempt stamp is not an excise tax stamp.

**The 2001 amendment,** effective June 15, 2001, deleted "license fee" from the section heading and in Subsection D, deleted the provisions for a license fee.

## 7-12-6. Waiver of requirement that stamps be affixed.

The requirement imposed in Section 7-12-5 NMSA 1978 that stamps be affixed to packages or containers of cigarettes is waived if the cigarettes are:

A. distributed by a manufacturer pursuant to federal regulations and are exempt from tax pursuant to 26 U.S.C. 5704; and

B. not subsequently imported into New Mexico.

History: Laws 1943, ch. 95, § 6; 1947, ch. 84, § 4; 1949, ch. 180, § 6; 1941 Comp. Supp., § 76-1606; 1953 Comp., § 72-14-6; Laws 1955, ch. 263, § 2; 1957, ch. 166, § 1; 1962 (S.S.), ch. 14, § 1; 1970, ch. 70, § 4; reenacted by Laws 1971, ch. 77, § 6; 1984, chs. 51, 63; 1995, ch. 70, § 15; 2006, ch. 91, § 5; 2009, ch. 197, § 13.

**ANNOTATIONS**

**The 2009 amendment,** effective July 1, 2009, added Subsection B.

**The 2006 amendment,** effective May 17, 2006, provided a waiver if the cigarettes are distributed by a manufacturer pursuant to federal regulations and are exempt form tax pursuant to 26 U.S.C. 5704; deleted former Subsection A, which provided a waiver for sales of cigarettes on railroad passenger trains; and deleted former Subsection B, which provided a waiver for distribution of free samples.

**The 1995 amendment,** effective July 15, 1995, substituted "department" for "bureau" in the second sentences of Subsections A and B.

## 7-12-7. Sale of stamps; prices.

A. Only the department shall sell stamps. Stamps may be sold by the department only to a distributor.

B. Stamps shall display a serial number. Stamps bearing the same serial number shall not be sold to more than one distributor. The department shall keep records of the serial numbers of the stamps provided to each distributor.

C. A stamp shall be affixed to a package of cigarettes in such a manner as to clearly display the serial number at the point of sale.

D. Tax stamps shall be sold at their face value with the following discounts:

(1) fifty-five hundredths percent less than the face value of the first thirty thousand dollars ($30,000) of stamps purchased in one calendar month;

(2) forty-four hundredths percent less than the face value of the second thirty thousand dollars ($30,000) of stamps purchased in one calendar month; and

(3) twenty-seven hundredths percent less than the face value of stamps purchased in excess of sixty thousand dollars ($60,000) in one calendar month.

E. Tax-credit stamps shall be provided only to distributors and shall be provided free of charge; provided that the distributor is in full compliance with the reporting requirements of the Cigarette Tax Act and rules adopted pursuant to that act.

F. If the face value of tax stamps sold in a single sale is less than one thousand dollars ($1,000), the discount provided for in this section shall not be allowed.

G. Payment for tax stamps shall be made on or before the twenty-fifth day of the month following the month in which the sale of stamps by the department is made.

H. Tax-exempt stamps shall be provided only to distributors and shall be free of charge; provided that the distributor is in full compliance with the reporting requirements of the Cigarette Tax Act and rules adopted pursuant to that act.

History: Laws 1943, ch. 95, § 5; 1941 Comp. Supp., § 76-1605; Laws 1947, ch. 84, § 3; 1949, ch. 180, § 5; 1953 Comp., § 72-14-5; Laws 1963, ch. 106, § 1; 1968, ch. 50, § 3; 1970, ch. 70, § 3; reenacted as 1953 Comp., § 72-14-7 by Laws 1971, ch. 77, § 7; 1988, ch. 95, § 5; 2006, ch. 89, § 3; 2006, ch. 91, § 6; 2010 (2nd S.S.), ch. 5, § 9.

**ANNOTATIONS**

**The 2010 (2nd S. S.) amendment,** effective July 1, 2010, in Subsection D(1), changed the discount from one percent to fifty-five hundredths percent; in Subsection D(2), changed the discount from eight-tenths percent to forty-four hundredths percent; in Subsection D(3), changed the discount from one-half percent to twenty-seven hundredths percent; and added Subsection E.

**The 2006 amendment,** effective May 17, 2006, limited the sale of stamps by the department to distributors in Subsection A; added Subsection B to require a unique serial number on each stamp; added Subsection C to provide that stamps shall be affixed to display the serial numbers; changed the percentages in Subsection D from "four" to "one" in Paragraph (1), from "three" to "eight-tenths" in Paragraph (2), and from "two" to "one-half" in Paragraph (3); and added a new Subsection G providing stamps are provided to the distributors free of charge. Laws 2006, ch. 89, § 3 enacted identical amendments to this section. The section was set out as amended by Laws 2006, ch. 91, § 6. *See* 12-1-8 NMSA 1978.

## 7-12-8. Redemption of stamps.

The department shall redeem unused or destroyed stamps at the price paid by the buyer, provided acceptable proof of such destruction is provided the department. It is presumed that the stamps presented for redemption were the last stamps bought in the month in which the sale of the stamps was made. If the month in which the sale was made is unknown, the amount to be paid by the department upon redemption shall be computed as if the stamps presented for redemption were the last stamps bought in the average monthly number of stamps bought during the preceding calendar year.

**History:** Laws 1943, ch. 95, § 12; 1941 Comp. Supp., § 76-1612; 1953 Comp., § 72-14-12; Laws 1970, ch. 70, § 6; reenacted as 1953 Comp., § 72-14-8 by Laws 1971, ch. 77, § 8; 1988, ch. 95, § 6.

## 7-12-9. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2006, ch. 91, § 18, effective May 17, 2006, repealed 7-12-9 NMSA 1978, as enacted by Laws 1971, ch. 77, § 9, relating to the license for cigarette sales. For provisions of former section, *see* the 2005 NMSA 1978 on *NMOneSource.com.* For the current comparable provisions relating to the sale and resale of cigarettes in this state, *see* 7-12-9.1 to 7-12-9.4 NMSA 1978.

## 7-12-9.1. Licensing; general licensing provisions.

A. A person shall not engage in the manufacture or distribution of cigarettes in New Mexico without a license issued by the department.

B. The department shall issue or renew a license for a term not to exceed one year.

C. The department may charge a license fee of up to one hundred dollars ($100) for each manufacturer's or distributor's license issued or renewed.

D. An application for a license or renewal of a license shall be submitted on a form determined by the department and shall include:

(1) the name and address of the applicant and:

(a) if the applicant is a firm, partnership or association, the name and address of each of its members; or

(b) if the applicant is a corporation, the name and address of each of its officers;

(2) the address of the applicant's principal place of business and every location where the applicant's business is conducted; and

(3) any other information the department may require.

E. The department may issue a distributor's license and a manufacturer's license to the same person.

F. Persons licensed as manufacturers or distributors may sell stamped cigarettes at retail.

G. A license may not be granted, maintained or renewed if one or more of the following conditions applies to an applicant:

(1) the applicant owes five hundred dollars ($500) or more in delinquent cigarette taxes;

(2) the applicant has had a manufacturer's or distributor's license revoked by the department or any other state within the past two years;

(3) the applicant is convicted of a crime related to contraband cigarettes, stolen cigarettes or counterfeit stamps;

(4) the applicant is a manufacturer but not a participating manufacturer as defined in Section II(jj) of the master settlement agreement and the applicant is not in

compliance with the provisions of Section 6-4-13 NMSA 1978 or the Tobacco Escrow Fund Act; or

(5) the applicant is a manufacturer and imports cigarettes into the United States that are in violation of 19 U.S.C. 1681a or manufactures cigarettes that do not comply with the Federal Cigarette Labeling and Advertising Act.

H. In addition to a civil or criminal penalty provided by law, upon a finding that a licensee has violated a provision of the Cigarette Tax Act or the Tobacco Escrow Fund Act [6-4-14 through 6-4-24 NMSA 1978] or a rule adopted pursuant to either act, the department may revoke or suspend the license or licenses of the licensee.

I. As used in this section, "applicant" includes a person or persons owning, directly or indirectly, in the aggregate, more than ten percent of the ownership interest in the business holding or applying for a license pursuant to the Cigarette Tax Act.

History: Laws 2006, ch. 91, § 8; 2009, ch. 197, § 15.

**ANNOTATIONS**

**The 2009 amendment,** effective July 1, 2009, in Subsection B, after "shall issue", added "or renew"; and in Subsection H, after "Cigarette Tax Act", added "or the Tobacco Escrow Fund Act".

## 7-12-9.2. Distributor's license.

A. A person shall not distribute stamped packages of cigarettes for resale or sell stamped packages of cigarettes at wholesale without first obtaining a distributor's license from the department.

B. A person licensed to distribute cigarettes is authorized to:

(1) receive unstamped packages of cigarettes from a manufacturer or a distributor;

(2) purchase tax stamps and receive tax-exempt stamps and tax-credit stamps from the department;

(3) affix tax stamps, tax-credit stamps or tax-exempt stamps to unstamped packages of cigarettes;

(4) sell stamped packages of cigarettes to a retailer for resale or to a distributor; and

(5) sell unstamped packages of cigarettes to a person licensed to distribute cigarettes outside of New Mexico or to a distributor.

History: Laws 2006, ch. 91, § 8; 2009, ch. 197, § 15; 2010 (2nd S.S.), ch. 5, § 10.

**ANNOTATIONS**

**The 2010 (2nd S. S.) amendment,** effective July 1, 2010, in Subsection B(2), after "tax-exempt stamps", added "tax-credit stamps"; and in Subsection B(3), after "affix tax stamps", added "tax-credit stamps".

**The 2009 amendment,** effective July 1, 2009, in Paragraphs (1), (4) and (5) of Subsection B, at the end of the sentence, added "or to a distributor".

## 7-12-9.3. Manufacturer's license.

A. A person shall not manufacture cigarettes in New Mexico unless licensed by the department.

B. A person licensed to manufacture cigarettes in New Mexico is authorized to:

(1) manufacture, produce and package cigarettes;

(2) receive imported cigarettes;

(3) sell unstamped cigarettes to a distributor, another manufacturer or an export warehouse proprietor; and

(4) sell unstamped cigarettes outside of New Mexico.

**History:** Laws 2006, ch. 91, § 9.

**ANNOTATIONS**

**Effective dates.** — Laws 2006, ch. 91 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

## 7-12-9.4. Retail sale of cigarettes.

A retailer of cigarettes shall:

A. only obtain cigarettes for resale from a distributor;

B. only obtain stamped cigarettes;

C. not sell cigarettes at wholesale or for resale unless the retailer is also a distributor; and

D. comply with the provisions of the Cigarette Tax Act or any law or rule that applies to retailers of cigarettes.

**History:** Laws 2006, ch. 91, § 10.

**ANNOTATIONS**

**Effective dates.** — Laws 2006, ch. 91 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

## 7-12-10. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2006, ch. 91, § 18, effective May 17, 2006, repealed 7-12-10 NMSA 1978, as enacted by Laws 1971, ch. 77, § 10, relating to retention of invoices and records. For provisions of former section, *see* the 2005 NMSA 1978 on *NMOneSource.com.* For current comparable provisions, *see* 7-12-10.1 NMSA 1978.

## 7-12-10.1. Retention of invoices and records; inspection by department.

A. A manufacturer, distributor or retailer shall maintain copies of invoices for each of its facilities for every transaction involving a cigarette sale, purchase, transfer, receipt or consignment, except that a retailer need not retain copies of invoices for sales of cigarettes to consumers. An invoice shall show:

(1) the names and addresses of all persons involved in the transaction, including the seller, purchaser, consignor and consignee. If a transaction involves an additional facility of the same manufacturer, distributor or retailer, the invoice shall also show the address of the additional facility;

(2) the date;

(3) the price; and

(4) the quantity of each brand of cigarettes involved in each transaction.

B. Records required to be maintained pursuant to Subsection A of this section shall be preserved on the premises described in the license in a manner that ensures permanency and accessibility for inspection at reasonable hours by the department.

C. The records required to be maintained pursuant to Subsection A of this section shall be retained for a period of three years from the end of the year in which the

transaction occurred, unless otherwise required by law to be retained for a longer period of time.

D. The department and the secretary of the United States department of the treasury, or a designee, may inspect the reports and records required pursuant to the Cigarette Tax Act along with any stock of cigarettes in the possession of the manufacturer, distributor or retailer. The department, at its sole discretion, may share those records and reports with law enforcement officials of the federal government, other states and international authorities.

History: Laws 2006, ch. 91, § 11; 2009, ch. 197, § 16.

**ANNOTATIONS**

**The 2009 amendment,** effective July 1, 2009, in Subsection A, after "distributor", added "or retailer" and after "receipt or consignment", added "except that".

## 7-12-11. Export sellers; physical segregation of cigarettes to be exported.

A. A distributor selling and shipping cigarettes outside New Mexico may maintain unstamped packages of cigarettes on the distributor's premises if the unstamped packages to be shipped outside the state are kept in a separate part of the distributor's place of business, physically segregated from packages of cigarettes to be sold inside New Mexico and clearly identified as packages of cigarettes for shipment outside the state. If packages of cigarettes to be sold outside New Mexico are intermingled with packages of cigarettes to be sold inside New Mexico, they shall be stamped and treated for purposes of the Cigarette Tax Act as packages of cigarettes to be sold inside New Mexico.

B. Unstamped packages of cigarettes shall not be transferred by a distributor to another facility of the distributor's or to another person within New Mexico.

C. A person doing business as both a distributor and a retailer or both a distributor and a manufacturer shall maintain separate areas for stamped and unstamped packages of cigarettes.

**History:** 1953 Comp., § 72-14-11, enacted by Laws 1971, ch. 77, § 11; 2006, ch. 91, § 12.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1971, ch. 77, § 11, repealed 72-14-11, 1953 Comp., relating to revenue stamps, and enacted a new section.

**The 2006 amendment,** effective May 17, 2006, in Subsection A, provided that a distributor may maintain unstamped packages on the distributor's premises; added Subsection B to prohibit the transfer of unstamped packages to other facilities; and added Subsection C to provide that a person doing business as both a retainer and a distributor or a distributor and manufacturer shall maintain separate areas for stamped and unstamped packages.

## 7-12-12. Shipment of unstamped cigarettes in New Mexico.

A. A person that ships unstamped packages of cigarettes into New Mexico other than to a distributor shall first file a notice of the shipment with the department.

B. A person that transports unstamped packages of cigarettes into or within New Mexico shall carry, in the transporting vehicle, invoices or equivalent documents applicable to all cigarettes in the shipment. The invoices or documents shall show:

(1) the name and address of the consignor or seller;

(2) the name and address of the consignee or purchaser; and

(3) the quantity of each brand of cigarettes transported.

C. The provisions of Subsections A and B of this section shall not apply to a common or contract carrier transporting cigarettes through New Mexico to another location pursuant to a proper bill of lading or freight bill that states the quantity, source and destination of the cigarettes.

D. The department may, by regulation, require and prescribe the contents of reports to be filed with the department by persons transporting unstamped packages of cigarettes in New Mexico.

**History:** 1953 Comp., § 72-14-12, enacted by Laws 1971, ch. 77, § 12; 1988, ch. 95, § 9; 2006, ch. 91, § 13.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1971, ch. 77, § 12, repealed former 72-14-12, 1953 Comp., relating to the redemption of stamps, and enacted a new 72-14-12, 1953 Comp.

**The 2006 amendment,** effective May 17, 2006, added Subparagraph A to require a person shipping unstamped packages to file a notice of the shipment; added Subsection B to require a person who transports unstamped packages to carry invoices applicable to the cigarettes; and added Subsection C to provide that Subsections A and B do not apply to a common or contract carrier transporting cigarettes through New Mexico to an other location.

## 7-12-13. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2006, ch. 91, § 18, effective May 17, 2006, repealed 7-12-13 NMSA 1978, as enacted by Laws 1971, ch. 77, § 10, relating to penalties for violation of the Cigarette Tax Act. For provisions of former section, *see* the 2005 NMSA 1978 on *NMOneSource.com.* For the current comparable provisions, *see* 7-12-13.1 and 7-12-13.2 NMSA 1978.

## 7-12-13.1. Civil penalties.

A. Whoever knowingly fails, neglects or refuses to comply with the provisions of the Cigarette Tax Act shall be liable for, in addition to any other penalty provided in that act:

(1) for a first offense, a penalty of up to one thousand dollars ($1,000);

(2) for a second offense, a penalty of not less than one thousand five hundred dollars ($1,500) and no more than two thousand five hundred dollars ($2,500); and

(3) for a third or subsequent offense, a penalty of not less than five thousand dollars ($5,000).

B. Whoever fails to pay a tax imposed pursuant to the Cigarette Tax Act at the time the tax is due shall, in addition to any other penalty provided in that act, be liable for a penalty of five hundred percent of the tax due but unpaid.

C. Contraband cigarettes in New Mexico and the equipment used to manufacture, package or stamp them are subject to seizure, forfeiture and destruction by the department, its revenue officers or its agents or by other state or local peace officers.

D. Counterfeit stamps for use in New Mexico in the possession of any person and the equipment used to produce them are subject to seizure by the department, its revenue officers or its agents or by other state or local peace officers.

**History:** Laws 2006, ch. 91, § 16.

**ANNOTATIONS**

**Effective dates.** — Laws 2006, ch. 91 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

## 7-12-13.2. Criminal offenses; criminal penalties; seizure and destruction of evidence.

A. Whoever violates a provision of the Cigarette Tax Act or a rule adopted pursuant to that act is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

B. Whoever, with intent to defraud, fails to comply with a licensing, reporting or stamping requirement of the Cigarette Tax Act or with a licensing, reporting or stamping rule adopted pursuant to that act is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Whoever packages cigarettes for sale in New Mexico or whoever sells cigarettes in New Mexico, in packages of other than five, ten, twenty or twenty-five cigarettes is:

(1) for the first offense, guilty of a misdemeanor and when convicted shall be sentenced pursuant to Section 31-19-1 NMSA 1978; and

(2) for the second or subsequent offense, guilty of a fourth degree felony and when convicted shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

D. Whoever purchases or otherwise knowingly obtains counterfeit stamps or whoever produces, uses or causes counterfeit stamps to be used is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. Whoever sells or possesses for the purpose of sale contraband cigarettes is in violation of the Cigarette Tax Act and shall have the product and related equipment seized. If convicted of selling or possessing for sale contraband cigarettes, the person shall be sentenced as follows:

(1) a violation with a quantity of fewer than two cartons of contraband cigarettes, or the equivalent, is a petty misdemeanor and is punishable in accordance with the provisions of Section 31-19-1 NMSA 1978;

(2) a first violation with a quantity of two cartons or more of contraband cigarettes, or the equivalent, is a misdemeanor and is punishable in accordance with the provisions of Section 31-19-1 NMSA 1978; and

(3) a second or subsequent violation with a quantity of two cartons or more of contraband cigarettes, or the equivalent, is a fourth degree felony and is punishable by a fine not to exceed fifty thousand dollars ($50,000) or imprisonment for a definite term not to exceed eighteen months, or both, and shall also result in the revocation by the department of the manufacturer's or distributor's license, if any.

F. Contraband cigarettes or counterfeit stamps seized by the department or by a law enforcement agency shall be retained as evidence to the extent necessary. Contraband cigarettes or counterfeit stamps no longer needed as evidence shall be destroyed.

G. Prosecution for a violation of a provision of this section does not preclude prosecution under other applicable laws.

History: Laws 2006, ch. 91, § 17; 2009, ch. 197, § 17.

**ANNOTATIONS**

**The 2009 amendment,** effective July 1, 2009, in Subsection C, after "packages of other than", added "five, ten".

## 7-12-14. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 211, § 42, repealed 7-12-14 NMSA 1978, relating to the distribution of cigarette tax revenues, effective July 1, 1983.

## 7-12-15. County and municipality recreational fund; distribution.

A. There is created in the state treasury a fund to be known as the "county and municipality recreational fund." At the end of each month the state treasurer shall distribute all sums remaining in the county and municipality recreational fund to each county and municipality in the state as follows:

(1) to each county in the proportion that the sales of cigarettes made within the county borders, exclusive of sales within any municipality in that county, bears to the total sales of cigarettes in the state during such month; and

(2) to each municipality in the proportion that the sales of cigarettes made within the municipality during such month bears to the total sales of cigarettes in the state for such month.

B. The funds distributed to the counties and municipalities under this section shall be used for recreational facilities and salaries of instructors and other employees necessary to the operation of such facilities. Such recreational facilities shall be for the use of all persons, and juveniles and elderly persons shall not be excluded. Each county or municipality shall establish a fund to be known as the "recreational fund" into which all moneys received from the county and municipality recreational fund shall be deposited. As used in this section, "juvenile" means every person under the age of majority and "elderly person" means every person over the age of sixty years.

**History:** 1953 Comp., § 72-14-14.1, enacted by Laws 1968, ch. 50, § 5; 1969, ch. 23, § 2; 1973, ch. 138, § 28.

## 7-12-16. County and municipal cigarette tax fund; distribution.

A. There is created in the state treasury a fund to be known as the "county and municipal cigarette tax fund." At the end of each month the state treasurer shall distribute all sums remaining in the county and municipal cigarette tax fund to each county and municipality in the state as follows:

(1) to each county in the proportion that the sales of cigarettes made within the county borders, exclusive of the sales within any municipality in that county, bears to the total sales of cigarettes in the state during such month; and

(2) to each municipality in the proportion that the sales of cigarettes made within the municipality during such month bears to the total sales of cigarettes in the state for such month.

B. The funds so distributed to the counties and municipalities under this section shall be deposited in the general fund of such counties and municipalities; provided, the cigarette tax revenues distributed under the provision of this section shall not be earmarked or otherwise obligated under the terms or provisions of any prior law, prior local ordinance or prior bond agreement which pledges cigarette tax revenues to the payment of any principal or interest of revenue bonds issued pursuant to such prior law, prior local ordinance or prior bond agreement.

**History:** 1953 Comp., § 72-14-14.2, enacted by Laws 1968, ch. 50, § 6.

## 7-12-17. Reporting requirements; penalty.

A. Each person who sells in New Mexico cigarettes manufactured by that person or who receives on consignment or buys cigarettes either directly from the manufacturer or from any out-of-state person for resale in New Mexico shall report to the department by the twenty-fifth day of each month that person's sales of cigarettes during the preceding month in each municipality and within that portion of each county outside of the municipalities located in that county. The department shall then advise the state treasurer of the proportion of the total sales of cigarettes for the month within each municipality and within that portion of each county outside of municipalities, including sales of cigarettes to tribes or tribal members in a county or municipality. The reports of such persons shall, upon receipt by the department, become public records.

B. Any person who sells in New Mexico cigarettes manufactured by that person or who receives on consignment or buys cigarettes for resale in New Mexico who willfully fails to render accurately the reports required by this section and any municipal or county officer who approves any expenditure or expends funds distributed from the county and municipality recreational fund for any purposes other than permitted by Section 7-12-15 NMSA 1978 is guilty of a petty misdemeanor.

C. Any tobacco product manufacturer, stamping agent or importer of cigarettes, or any officer, employee or agent of any such entity, who knowingly makes a materially false statement in any record required to be kept by the Cigarette Tax Act, or in any

report or return required to be filed with the department by the Cigarette Tax Act, is guilty of a fourth degree felony.

History: Laws 1971, ch. 77, § 14; 1988, ch. 95, § 11; 2009, ch. 197, § 18; 2010 (2nd S.S.), ch. 5, § 11.

**ANNOTATIONS**

**The 2010 (2nd S. S.) amendment,** effective July 1, 2010, in Subsection A, in the second sentence, after "each county outside of municipalities", added "including sales of cigarettes to tribes or tribal members in a county or municipality".

**The 2009 amendment,** effective July 1, 2009, added Subsection C.

## 7-12-18. Reports.

A. A distributor shall submit periodic reports to the department, in the manner and on the form prescribed by the department. A distributor shall submit a separate report for each of its facilities. The information in the report shall be itemized and shall clearly disclose cigarette brands, quantities and the type of stamp applied to the packages of cigarettes. A report shall include:

(1) an inventory of stamped and unstamped packages of cigarettes held for sale or distribution within New Mexico at the beginning of the reporting period;

(2) the quantity of stamped packages of cigarettes held for sale or distribution within New Mexico that were received from another person during the reporting period and the name and address of each person from whom each quantity was received;

(3) the quantity of New Mexico stamped packages of cigarettes that were distributed or shipped to another distributor or retailer within New Mexico during the reporting period and the name and address of each person to whom each quantity was distributed or shipped;

(4) the quantity of unstamped packages of cigarettes that were distributed or shipped to another distributor within New Mexico during the reporting period and the name and address of each person to whom each quantity was distributed or shipped;

(5) the quantity of New Mexico stamped packages of cigarettes that were distributed or shipped to another facility of the same distributor within New Mexico during the reporting period and the address of that facility;

(6) the quantity of stamped cigarette packages that were distributed or shipped within New Mexico to a tribe or tribal member or to instrumentalities of the federal government during the reporting period and the name and address of each person, entity or instrumentality to whom each quantity was distributed or shipped;

(7) an inventory of stamped and unstamped packages of cigarettes held for sale or distribution within New Mexico at the end of the reporting period;

(8) an inventory of stamped and unstamped packages of cigarettes for sale or distribution outside of New Mexico at the beginning of the reporting period;

(9) the quantity of packages of cigarettes held for sale or distribution outside of New Mexico that were received from another person during the reporting period and the name and address of each person from whom each quantity was received;

(10) the quantity of packages of cigarettes that were distributed or shipped outside New Mexico during the reporting period;

(11) an inventory of packages of cigarettes held for sale or distribution outside of New Mexico at the end of the reporting period;

(12) the number of each type of stamp on hand at the beginning of the reporting period;

(13) the number of each type of stamp purchased or received during the reporting period;

(14) the number of each type of stamp applied during the reporting period; and

(15) the number of each type of stamp on hand at the end of the reporting period.

B. A manufacturer shall submit periodic reports in the manner and on the form prescribed by the department. The information in the report shall be itemized to clearly disclose cigarette brands and quantities. The reports shall be provided separately with respect to each of the facilities operated by the manufacturer. A report shall contain the quantity of packages of cigarettes that were distributed or shipped:

(1) to a manufacturer, distributor or retailer within New Mexico during the reporting period and the name and address of each person to whom each quantity was distributed or shipped;

(2) to another facility within New Mexico of the same manufacturer during the reporting period and the address of the facility; and

(3) within New Mexico to a tribe or tribal member or to instrumentalities of the federal government during the reporting period and the name and address of each person, entity or instrumentality to whom each quantity was distributed or shipped.

C. The department may require additional information to be submitted. The department shall establish the reporting period, which shall be no longer than three calendar months and no shorter than one calendar month.

History: Laws 2006, ch. 91, § 14; 2009, ch. 197, § 19; 2010 (2nd S.S.), ch. 5, § 12.

**ANNOTATIONS**

**The 2010 (2nd S. S.) amendment,** effective July 1, 2010, in Subsection A(6), after "New Mexico to", deleted "an Indian nation, tribe or pueblo or to a person located on the land of an Indian nation, tribe or pueblo" and added "a tribe or tribal member"; and in Subsection B(3), after "New Mexico to", deleted "an Indian nation, tribe or pueblo or to a person located on the land of an Indian nation, tribe or pueblo" and added "a tribe or tribal member".

**The 2009 amendment,** effective July 1, 2009, added Paragraph (4) of Subsection A.

## 7-12-19. Intergovernmental agreements; no waiver of sovereign immunity.

A. The department may enter into an intergovernmental agreement with a tribe to:

(1) enforce, administer or otherwise implement the provisions of the Cigarette Tax Act;

(2) increase the ability of the department to account for packages of cigarettes imported into, sold or transferred within and exported from the state; and

(3) provide for cooperative tax collection or tax administration of the cigarette tax.

B. Nothing in the Cigarette Tax Act shall be construed to waive or restrict the sovereign immunity of a tribe or the state.

History: Laws 2006, ch. 91, § 15; 2010 (2nd S.S.), ch. 5, § 13.

**ANNOTATIONS**

**The 2010 (2nd S. S.) amendment,** effective July 1, 2010, deleted former Subsection C, which defined "tribe" to mean an Indian nation, tribe or pueblo wholly within or partially in New Mexico.

# ARTICLE 12A
# Tobacco Products Tax

## 7-12A-1. Short title.

Chapter 7, Article 12A NMSA 1978 may be cited as the "Tobacco Products Tax Act".

**History:** 1978 Comp., § 7-12A-1, enacted by Laws 1986, ch. 112, § 2.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation § 615.

## 7-12A-2. Definitions.

As used in the Tobacco Products Tax Act:

A. "department" means the taxation and revenue department, the secretary or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "distribute" means to sell or to give;

C. "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit;

D. "first purchaser" means a person engaging in business in New Mexico who manufactures tobacco products or who purchases or receives on consignment tobacco products from any person outside of New Mexico, which tobacco products are to be distributed in New Mexico in the ordinary course of business;

E. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, limited liability company, limited liability partnership, other association or gas, water or electric utility owned or operated by a county or municipality or other entity of the state; "person" also means, to the extent permitted by law, a federal, state or other governmental unit or subdivision or an agency, department or instrumentality;

F. "product value" means the amount paid, net of any discounts taken and allowed, for tobacco products or, in the case of tobacco products received on consignment, the value of the tobacco products received or, in the case of tobacco products manufactured and sold in New Mexico, the proceeds from the sale by the manufacturer of the tobacco products; and

G. "tobacco product" means any product, other than cigarettes, made from or containing tobacco.

History: 1978 Comp., § 7-12A-2, enacted by Laws 1986, ch. 112, § 3; 1988, ch. 95, § 12; 2009, ch. 197, § 20.

**ANNOTATIONS**

**The 2009 amendment,** effective July 1, 2009, added Subsection B; in Subsection D, after "which tobacco products are to be", deleted "sold" and added "distributed"; and in Subsection E, after "joint venture, syndicate", added "limited liability company, limited liability partnership, other association or gas, water or electric utility owned or operated by a county or municipality"; after "other entity of the state", deleted "of New Mexico or any political subdivision thereof" and added the definition of "person".

## 7-12A-3. Imposition and rate of tax; denomination as "tobacco products tax"; date payment of tax due.

A. For the manufacture or acquisition of tobacco products in New Mexico to be distributed in the ordinary course of business and for the consumption of tobacco products in New Mexico, there is imposed an excise tax at the rate of twenty-five percent of the product value of the tobacco products.

B. The tax imposed by Subsection A of this section may be referred to as the "tobacco products tax".

C. The tobacco products tax shall be paid by the first purchaser on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

History: 1978 Comp., § 7-12A-3, enacted by Laws 1986, ch. 112, § 4; 1988, ch. 95, § 13; 2009, ch. 197, § 21.

**ANNOTATIONS**

**The 2009 amendment,** effective July 1, 2009, in Subsection A, after "products in New Mexico", deleted "for sale" and added "to be distributed" and after "ordinary course of business", added "and for the consumption of tobacco products of New Mexico".

## 7-12A-4. Exemption; tobacco products tax.

A. Exempted from the tobacco products tax is the product value of tobacco products sold:

(1) to or by the United States or any agency or instrumentality thereof;

(2) to the governing body or any enrolled tribal member licensed by the governing body of an Indian nation, tribe or pueblo to be distributed on the reservation or pueblo grant of that Indian nation, tribe or pueblo; or

(3) the state of New Mexico or any political subdivision thereof.

B. As used in this section, the term "agency or instrumentality" does not include persons who are agents or instrumentalities of the United States for a particular purpose or only when acting in a particular capacity or corporate agencies or instrumentalities.

History: 1978 Comp., § 7-12A-4, enacted by Laws 1986, ch. 112, § 5; 2009, ch. 197, § 22.

**ANNOTATIONS**

**The 2009 amendment,** effective July 1, 2009, added Paragraph (2) of Subsection A.

## 7-12A-5. Deduction; interstate sales.

The product value of tobacco products sold and shipped or given and shipped to a person in another state may be deducted from the product value subject to the tax imposed by the Tobacco Products Tax Act; provided that the department may require the person to submit proof satisfactory to the department that the tobacco products have been sold and shipped or given and shipped to a person in another state.

**History:** 1978 Comp., § 7-12A-5, enacted by Laws 1986, ch. 112, § 6.

## 7-12A-6. Refund or credit of tax.

The department shall allow a claim for refund or credit, as provided in Sections 7-1-26 and 7-1-29 NMSA 1978, for tobacco products tax paid on tobacco products destroyed or returned to the seller by the first purchaser as spoiled or otherwise unfit for sale or consumption; provided that the department may require proof satisfactory to the department that the tobacco products have been destroyed or returned and that the person claiming the refund is the person who paid the tobacco products tax on the destroyed or returned tobacco products.

**History:** 1978 Comp., § 7-12A-6, enacted by Laws 1986, ch. 112, § 7; 1988, ch. 95, § 14.

## 7-12A-7. Registration necessary to engage in business of selling tobacco products in New Mexico.

Each person engaged in the business of selling tobacco products in New Mexico shall register and comply with the provisions of Section 7-1-12 NMSA 1978. Every person selling tobacco products in New Mexico shall furnish such information as may be requested by the department concerning the person's vending machines or other places of business where tobacco products are sold.

**History:** 1978 Comp., § 7-12A-7, enacted by Laws 1986, ch. 112, § 8.

## 7-12A-8. Retention of invoices and records; inspection by department.

A. Each person who sells tobacco products in New Mexico for resale in New Mexico shall maintain a file of copies of the invoices of sale for three years from the end of the year the sale was made. The invoices shall indicate the date of sale of the tobacco products, quantity of tobacco products sold, the price received and the name and address of the purchaser.

B. Each person who sells tobacco products in New Mexico shall maintain a file of copies of invoices under which the person purchased tobacco products for three years from the end of the year during which tobacco products were purchased. The invoices shall indicate the date of purchase, the quantity of tobacco products purchased, the price paid and the name and address of the seller.

C. All invoices required to be kept under this section may be inspected by the department along with any stock of tobacco products in the possession of the purchaser or seller.

**History:** 1978 Comp., § 7-12A-8, enacted by Laws 1986, ch. 112, § 9; 1988, ch. 95, § 15.

## 7-12A-9. Penalties.

Any person selling tobacco products in New Mexico and required by the provisions of Section 7-12A-8 NMSA 1978 to retain invoices who willfully fails to retain the invoices shall, upon conviction thereof, be fined not less than fifty dollars ($50.00) or more than five hundred dollars ($500). Jurisdiction over such actions is hereby granted to the magistrate courts.

**History:** 1978 Comp., § 7-12A-9, enacted by Laws 1986, ch. 112, § 10.

## 7-12A-10. Prohibition.

The provisions of the Tobacco Products Tax Act shall not apply in any case in which New Mexico is prohibited from taxing under the constitution of New Mexico or the constitution or laws of the United States.

**History:** 1978 Comp., § 7-12A-10, enacted by Laws 1986, ch. 112, § 11.

# ARTICLE 13
# Gasoline Tax

## 7-13-1. Gasoline tax; short title.

Chapter 7, Article 13 NMSA 1978 may be cited as the "Gasoline Tax Act".

**History:** 1953 Comp., § 72-27-1, enacted by Laws 1971, ch. 207, § 1; 1983, ch. 204, § 1.

**ANNOTATIONS**

**Cross references.** — For applicability of the Tax Administration Act to the Gasoline Tax Act, *see* 7-1-2 NMSA 1978.

For the Special Fuels Act, *see* 7-16-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 616 to 634.

53 C.J.S. Licenses § 34.

## 7-13-2. Definitions.

As used in the Gasoline Tax Act:

A. "aviation gasoline" means gasoline sold for use in aircraft propelled by engines other than turbo-prop or jet-type engines;

B. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "distributor" means any person, not including the United States of America or any of its agencies except to the extent now or hereafter permitted by the constitution and laws thereof, who receives gasoline in this state. "Distributor" shall be construed so that a person simultaneously may be both a distributor and a retailer or importer;

D. "drip gasoline" means a combustible hydrocarbon liquid formed as a product of condensation from either associated or nonassociated natural or casing head gas and that remains a liquid at room temperature and pressure;

E. "ethanol blended fuel" means gasoline containing a minimum of ten percent by volume of denatured ethanol, of at least one hundred ninety-nine proof, exclusive of denaturants;

F. "fuel supply tank" means any tank or other receptacle in which or by which fuel may be carried and supplied to the fuel-furnishing device or apparatus of the propulsion

mechanism of a motor vehicle when the tank or receptacle either contains gasoline or gasoline is delivered into it;

G. "gallon" means the quantity of liquid necessary to fill a standard United States gallon liquid measure or that same quantity adjusted to a temperature of sixty degrees fahrenheit at the election of any distributor, but a distributor shall report on the same basis for a period of at least one year;

H. "gasoline" means any flammable liquid hydrocarbon used primarily as fuel for the propulsion of motor vehicles, motorboats or aircraft except for diesel engine fuel, kerosene, liquefied petroleum gas, compressed or liquefied natural gas and products specially prepared and sold for use in aircraft propelled by turbo-prop or jet-type engines;

I. "government-licensed vehicle" means a motor vehicle lawfully displaying a registration plate, as defined in the Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978], issued by the United States or any state, identifying the motor vehicle as belonging to the United States or any of its agencies or instrumentalities or an Indian nation, tribe or pueblo or any of its political subdivisions, agencies or instrumentalities;

J. "highway" means every road, highway, thoroughfare, street or way, including toll roads, generally open to the use of the public as a matter of right for the purpose of motor vehicle travel regardless of whether it is temporarily closed for the purpose of construction, reconstruction, maintenance or repair;

K. "motor vehicle" means any self-propelled vehicle or device that is either subject to registration under Section 66-3-1 NMSA 1978 or used or that may be used on the public highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semitrailer;

L. "person" means an individual or any other entity, including, to the extent permitted by law, any federal, state or other government or any department, agency, instrumentality or political subdivision of any federal, state or other government;

M. "rack operator" means the operator of a refinery in this state or the owner of gasoline stored at a pipeline terminal in this state;

N. "registered Indian tribal distributor" means an Indian nation, tribe or pueblo recognized by the United States whose reservation or pueblo grant lies wholly or partly in this state, a corporation or other enterprise wholly owned by that Indian nation, tribe or pueblo or a corporation or other enterprise wholly owned by one or more members of that Indian nation, tribe or pueblo that is registered with the department as a distributor pursuant to the Gasoline Tax Act; provided that the department shall register a corporation or other enterprise as an Indian tribal distributor only upon certification by the Indian nation, tribe or pueblo that the corporation or other enterprise is wholly owned by that nation, tribe or pueblo or wholly owned by one or more of its members;

O. "retailer" means a person who sells gasoline generally in quantities of thirty-five gallons or less and delivers such gasoline into the fuel supply tanks of motor vehicles. "Retailer" shall be construed so that a person simultaneously may be both a retailer and a distributor or wholesaler;

P. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

Q. "taxpayer" means a person required to pay gasoline tax;

R. "unloaded" means removal of gasoline from tank cars, tank trucks, tank wagons or other types of transportation equipment into a nonmobile container at the place at which the unloading takes place; and

S. "wholesaler" means a person who is not a distributor and who sells gasoline in quantities of thirty-five gallons or more and does not deliver such gasoline into the fuel supply tanks of motor vehicles. "Wholesaler" shall be construed so that a person simultaneously may be a wholesaler and a retailer.

**History:** 1953 Comp., § 72-27-2, enacted by Laws 1971, ch. 207, § 2; 1977, ch. 249, § 59; 1979, ch. 166, § 5; 1983, ch. 204, § 2; 1986, ch. 20, § 73; 1987, ch. 46, § 1; 1993, ch. 32, § 1; 1997, ch. 192, § 1; 1999, ch. 190, § 1.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, substituted present Subsection N for former Subsection N which defined "received".

**The 1997 amendment,** effective June 1, 1997, rewrote this section to the extent that a detailed comparison is impracticable.

**The 1993 amendment,** effective June 18, 1993, deleted " 'division' or" at the beginning of Subsection B and " 'director' or" at the beginning of Subsection C; inserted "limited liability company, limited liability partnership," in Paragraph (1) of Subsection J; deleted "manufactured exclusively in New Mexico" following both "fuel" and "ethanol" in Subsection N; and made minor stylistic changes in Subsections D, E, and M.

## 7-13-2.1. When gasoline received and by whom.

A. Gasoline that is produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state by a person is received by that person when it is loaded there into tank cars, tank trucks, tank wagons or other types of transportation equipment, or when it is placed there into a tank or other container from which sales or deliveries not involving transportation are made; however:

(1) when gasoline is delivered at the refinery or pipeline terminal to a person registered as a distributor pursuant to the Gasoline Tax Act, then it is received there by the distributor to whom it is delivered at the time of the delivery;

(2) when gasoline is delivered at the refinery or pipeline terminal to a person not registered as a distributor pursuant to the Gasoline Tax Act for the account of a person that is registered as a distributor, it is received there by the distributor for whose account it is delivered at the time of delivery; and

(3) gasoline is not received when it is shipped from one refinery or pipeline terminal to another refinery or pipeline terminal.

B. Gasoline imported into New Mexico by any means other than in the fuel supply tank of a motor vehicle or by pipeline is received at the time and place it is imported into this state. The person who owns the gasoline at the time of importation receives the gasoline at the time and place of importation unless the gasoline is delivered to a person who is registered as a distributor pursuant to the Gasoline Tax Act, in which case the distributor is deemed to have received the gasoline at the time and place of importation.

C. Any product other than gasoline that is blended in this state to produce gasoline other than at a refinery or pipeline terminal is received by the person who is the owner of the gasoline at the time and place the blending is completed.

D. If gasoline is received within the exterior boundaries of an Indian reservation or pueblo grant and the gasoline tax is not paid with respect to the gasoline by the person receiving the gasoline within the exterior boundaries of the Indian reservation or pueblo grant, the gasoline is also received when the gasoline is transported off the reservation or pueblo grant by any means other than in the fuel supply tank of a motor vehicle. In such a case, the person who owns the gasoline immediately after the time of transportation off the reservation or pueblo grant or, if the gasoline is delivered to a person registered as a distributor pursuant to the Gasoline Tax Act, the distributor receives the gasoline at the time and place the gasoline is transported off the reservation or pueblo grant.

**History:** 1978 Comp., § 7-13-2.1, enacted by Laws 1999, ch. 190, § 2.

## 7-13-3. Imposition and rate of tax; denomination as "gasoline tax".

A. For the privilege of receiving gasoline in this state, there is imposed an excise tax at a rate provided in Subsection B of this section on each gallon of gasoline received in New Mexico.

B. The tax imposed by Subsection A of this section shall be seventeen cents ($.17) per gallon received in New Mexico.

C. The tax imposed by this section may be called the "gasoline tax".

**History:** 1953 Comp., § 72-27-3, enacted by Laws 1971, ch. 207, § 3; 1978, ch. 182, § 23; 1979, ch. 166, § 6; 1985, ch. 35, § 1; 1987, ch. 347, § 12; 1989, ch. 356, § 9; 1993, ch. 32, § 2; 1993, ch. 357, § 9; 1994, ch. 5, § 22; 1995, ch. 6, § 10.

## ANNOTATIONS

**Compiler's notes.** — Subsection B of Laws 1995, ch. 6, § 20 repealed 7-13-3 NMSA 1978, as enacted by Laws 1994, ch. 5, § 23, relating to the imposition and rate of the gasoline tax and which was to become effective August 1, 1997, effective June 16, 1995.

Laws 2003, ch. 289, § 1 repealed the Laws 1995, ch. 6, § 11 repeal and reenactment of this section, effective June 20, 2003.

**Temporary provisions.** — Laws 1997, ch. 192, § 15, effective June 1, 1997, provided that gasoline received by a distributor pursuant to the Gasoline Tax Act or special fuel received by a supplier pursuant to the Special Fuels Supplier Tax Act prior to the effective date of this act shall be subject to gasoline tax or special fuel excise tax, as appropriate, pursuant to the provisions of the Gasoline Tax Act or Special Fuels Supplier Tax Act in effect immediately prior to the effective date of this act.

**The 1995 amendment,** effective July 1, 1995, substituted "seventeen cents ($.17)" for "twenty cents ($.20)" in Subsection B.

**The 1994 amendment,** effective July 1, 1994, substituted "twenty cents ($.20)" for "twenty-two cents ($.22)" in Subsection B.

**The 1993 amendment,** effective July 1, 1993, rewrote this section to the extent that a detailed comparison was impracticable. This section was also amended by Laws 1993, ch. 32, § 2. The section was set out as amended by Laws 1993, ch. 357, § 9. *See* 12-1-8 NMSA 1978.

**The 1989 amendment,** effective July 1, 1989, in Subsection B, substituted "sixteen cents ($.16) per gallon" for "fourteen cents ($.14) per gallon".

**Right to impose tax.** — A state may impose a license tax upon the distribution and sale of gasoline in domestic commerce if it does not make its payment a condition of carrying on interstate or foreign commerce; gasoline imported from another state and used to conduct the business of the distributor may be taxed, for it loses its interstate character and the tax is an excise tax on its use. Bowman v. Cont'l Oil Co., 256 U.S. 642, 41 S. Ct. 606, 65 L. Ed. 1139 (1921).

**Preemption by Self-Determination Act.** — To the extent that the Gasoline Tax Act imposes a tax on Indian entities, where that tax would not be imposed if the gasoline

were sold to a federal agency providing the same services as the Indian entity, the tax imposed is preempted by the Self-Determination Act, 25 U.S.C.S. §§ 450-458. Ramah Navajo Sch. Bd., Inc. v. N.M. Taxation & Revenue Dep't, 1999-NMCA-050, 127 N.M. 101, 977 P.2d 1021, cert. denied, 127 N.M. 389, 981 P.2d 1207.

**Former excise tax on use of gasoline offended commerce clause** of the federal constitution and could not be enforced in the case of one purchasing gasoline in another state and using it in this state as fuel for interstate air commerce. Transcon. & W. Air, Inc. v. Lujan, 1931-NMSC-064, 36 N.M. 64, 8 P.2d 103.

## 7-13-3.1. Gasoline inventory tax; imposition of tax; date payment of tax due.

A. A gasoline inventory tax is imposed measured by the quantity of gallons of gasoline in the possession of a distributor or wholesaler on the day in which an increase in the excise tax imposed by Section 7-13-3 NMSA 1978 is effective. The taxable event is the existence of an inventory in the possession of a distributor or wholesaler on the day prior to the day in which an increase in the excise tax imposed by Section 7-13-3 NMSA 1978 is effective. The rate of the gasoline inventory tax to apply on each gallon of gasoline held in inventory by a distributor or wholesaler, as provided in Section 7-13-3.2 NMSA 1978, shall be the difference between the gasoline excise tax rate imposed on the day prior to the day in which the gasoline excise tax is increased subtracted from the gasoline excise tax rate imposed on the day that the gasoline excise tax rate increase is effective, expressed in cents per gallon.

B. The gasoline inventory tax is to be paid to the department on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

**History:** 1978 Comp., § 7-13-3.1, enacted by Laws 1979, ch. 166, § 7; 1993, ch. 32, § 3.

### ANNOTATIONS

**The 1993 amendment,** effective June 18, 1993, in Subsection A, substituted "the day" for "July 1 of the calendar year" in the first sentence and "the day prior to the day" for "July 1 of the calendar year" in the second sentence, and in the third sentence, substituted "on the day prior to the day" for "through June of the calendar year", deleted "increased" following "subtracted from the", and substituted "the day that the gasoline excise tax rate increase is effective" for "July 1 of that same calendar year"; deleted former Subsection B, pertaining to inclusion in the inventory tax of the selling price of gasoline; redesignated former Subsection C as current Subsection B; and substituted "department" for "division" in current Subsection B.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation § 632.

## 7-13-3.2. Gasoline inventories.

A. On the day prior to the day that the excise tax imposed by Section 7-13-3 NMSA 1978 is increased, each distributor, wholesaler and retailer shall take inventory of the gallons of gasoline on hand.

B. Distributors and wholesalers shall report total gallons of gasoline in inventory on the day prior to the day that an increase in the gasoline tax rate is effective and pay any tax due imposed by Section 7-13-3.1 NMSA 1978.

C. Retailers shall maintain a record of the total gallons of gasoline in inventory on the day prior to the day that an increase in the gasoline tax rate is effective and shall not increase the price of the gasoline sold until the inventory is disposed of in the ordinary course of business.

**History:** 1978 Comp., § 7-13-3.2, enacted by Laws 1979, ch. 166, § 8; 1985, ch. 35, § 2; 1993, ch. 32, § 4; 1994, ch. 5, § 24; 1995, ch. 70, § 16.

**ANNOTATIONS**

**The 1995 amendment,** effective July 1, 1995, deleted Subsection D which read: "The department shall promulgate regulations required to administer this section."

**The 1994 amendment,** effective May 18, 1994, deleted "or decreased" following "increased" in Subsection A, "or decrease" following "increase" and "excise" following "the gasoline" in Subsection B, and "excise" following "in the gasoline" and "or reduce" following "not increase" in Subsection C.

**The 1993 amendment,** effective June 18, 1993, substituted "On the day prior to the day that the excise tax imposed by Section 7-13-3 NMSA 1978 is increased or decreased" for "On July 1 of the calendar year in which the excise tax is imposed by Section 7-13-3 NMSA 1978" in Subsection A, "the day prior to the day that an increase or decrease in the gasoline excise tax rate is effective" for July 1" in Subsections B and C, and "department" for "division" in Subsection D.

## 7-13-3.3, 7-13-3.4. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1994, ch. 5, § 27, repealed 7-13-3.3 NMSA 1978, as amended by Laws 1993, ch. 32 § 5, relating to the gasoline inventory tax rebate, effective May 18, 1994. For provisions of former section, *see* the 1993 NMSA 1978 on *NMOneSource.com.*

Laws 1990, ch. 124, § 23 repealed 7-13-3.4 NMSA 1978, as enacted by Laws 1988, ch. 70, § 10, relating to petroleum storage cleanup fund surcharge, effective July 1, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

## 7-13-3.5. Bond required of taxpayers.

A. Except as provided in Subsection H of this section, every taxpayer shall file with the department a bond on a form approved by the attorney general with a surety company authorized by the state corporation commission [public regulation commission] to transact business in this state as a surety and upon which bond the taxpayer is the principal obligor and the state the obligee. The bond shall be conditioned upon the prompt filing of true reports and the payment by the taxpayer to the department of all taxes levied by the Gasoline Tax Act, together with all applicable penalties and interest thereon.

B. In lieu of the bond, the taxpayer may elect to file with the department cash or bonds of the United States or New Mexico or of any political subdivision of the state.

C. The total amount of the bond, cash or securities required of any taxpayer shall be fixed by the department and may be increased or reduced by the department at any time, subject to the limitations provided in this section.

D. In fixing the total amount of the bond, cash or securities required of any taxpayer required to post bond, the department shall require an equivalent in total amount to at least two times the amount of the department's estimate of the taxpayer's monthly gasoline tax, determined in such manner as the secretary may deem proper; provided, however, the total amount of bond, cash or securities required of a taxpayer shall never be less than one thousand dollars ($1,000).

E. In the event the department decides that the amount of the existing bond, cash or securities is insufficient to insure payment to this state of the amount of the gasoline tax and any penalties and interest for which the taxpayer is or may at any time become liable, then the taxpayer, upon written demand of the department mailed to the last known address of the taxpayer as shown on the records of the department, shall file an additional bond, cash or securities in the manner, form and amount determined by the department to be necessary to secure at all times the payment by the taxpayer of all taxes, penalties and interest due under the Gasoline Tax Act.

F. A surety on a bond furnished by a taxpayer as required by this section shall be released and discharged from all liability accruing on the bond after the expiration of ninety days from the date upon which the surety files with the department a written request to be released and discharged; provided, however, that such request shall not operate to release or discharge the surety from any liability already accrued or that shall accrue before the expiration of the ninety-day period, unless a new bond is filed during the ninety-day period, in which case the previous bond may be canceled as of the effective date of the new bond. On receipt of notice of such request, the department

promptly shall notify the taxpayer who furnished the bond that the taxpayer, on or before the expiration of the ninety-day period, shall file with the department a new bond with a surety satisfactory to the department in the amount and form required in this section.

G. The taxpayer required to file bond with or provide cash or securities to the department in accordance with this section and who is required by another state law to file another bond with or provide cash or securities to the department may elect to file a combined bond or provide cash or securities applicable to the provisions of both this section and the other law, with the approval of the secretary. The amount of the combined bond, cash or securities shall be determined by the department, and the form of the combined bond shall be approved by the attorney general.

H. Every taxpayer who, for the twenty-four month period immediately preceding July 1, 1994, has not been a delinquent taxpayer pursuant to the Gasoline Tax Act is exempt from the requirement pursuant to this section to file a bond. A taxpayer required to file a bond pursuant to the provisions of this section who, for a twenty-four consecutive month period ending after July 1, 1994, has not been a delinquent taxpayer pursuant to the Gasoline Tax Act may request to be exempt from the requirement to file a bond beginning with the first day of the first month following the end of the twenty-four month period. If a taxpayer exempted pursuant to this subsection subsequently becomes a delinquent taxpayer under the Gasoline Tax Act, the department may terminate the exemption and require the filing of a bond in accordance with this section. If the department terminates the exemption, the termination shall not be effective any earlier than ten days after the date the department notifies the taxpayer in writing of the termination.

**History:** Laws 1997, ch. 192, § 3.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law. Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

## 7-13-4. Deductions; gasoline tax.

In computing the gasoline tax due, the following amounts of gasoline may be deducted from the total amount of gasoline received in New Mexico during the tax period, provided satisfactory proof thereof is furnished to the department:

A. gasoline received in New Mexico, but exported from this state by a rack operator, distributor or wholesaler other than in the fuel supply tank of a motor vehicle or sold for export by a rack operator or distributor; provided that, in either case:

(1) the person exporting the gasoline is registered in or licensed by the destination state to pay that state's gasoline or equivalent fuel tax;

(2) proof is submitted that the destination state's gasoline or equivalent fuel tax has been paid or is not due with respect to the gasoline; or

(3) the destination state's gasoline or equivalent fuel tax is paid to New Mexico in accordance with the terms of an agreement entered into pursuant to Section 9-11-12 NMSA 1978 with the destination state;

B. gasoline received in New Mexico sold to the United States or an agency or instrumentality thereof for the exclusive use of the United States or an agency or instrumentality thereof. Gasoline sold to the United States includes gasoline delivered into the supply tank of a government-licensed vehicle of the United States;

C. gasoline received in New Mexico sold to an Indian nation, tribe or pueblo or a political subdivision, agency or instrumentality of that Indian nation, tribe or pueblo for the exclusive use of the Indian nation, tribe or pueblo or a political subdivision, agency or instrumentality thereof. Gasoline sold to an Indian nation, tribe or pueblo includes gasoline delivered into the supply tank of a government-licensed vehicle of the Indian nation, tribe or pueblo;

D. gasoline received in New Mexico, dyed in accordance with department regulations and used in a manner other than for propulsion of motor vehicles on the highways of this state or motorboats or activities ancillary to that propulsion;

E. gasoline received in New Mexico and sold at retail by a registered Indian tribal distributor if:

(1) the sale occurs on the Indian reservation, pueblo grant or trust land of the distributor's Indian nation, tribe or pueblo;

(2) the gasoline is placed into the fuel supply tank of a motor vehicle on that reservation, pueblo grant or trust land; and

(3) the Indian nation, tribe or pueblo has certified to the department that it has in effect an excise, privilege or similar tax on the gasoline; provided that the volume of gasoline deducted pursuant to this subsection shall be the total gallons sold in accordance with the provisions of this subsection multiplied by a fraction the numerator of which is the rate of the tribal tax certified to the department by the Indian nation, tribe or pueblo and the denominator of which is the rate of the gasoline tax imposed pursuant to the Gasoline Tax Act, but if the fraction exceeds one, it shall be one for purposes of determining the deduction;

F. gasoline received in New Mexico and sold by a registered Indian tribal distributor from a nonmobile storage container located within that distributor's Indian reservation,

pueblo grant or trust land for resale outside that distributor's Indian reservation, pueblo grant or trust land; provided the department certifies that the distributor claiming the deduction sold no less than one million gallons of gasoline from a nonmobile storage container located within that distributor's Indian reservation, pueblo grant or trust land for resale outside that distributor's Indian reservation, pueblo grant or trust land during the period of May through August 1998; and provided further that the amount of gasoline deducted by a registered Indian tribal distributor pursuant to this subsection shall not exceed two million five hundred thousand gallons per month, calculated as a monthly average during the calendar year. Volumes deducted pursuant to Subsection E of this section shall not be deducted pursuant to this subsection; and

G. gasoline received in New Mexico on which New Mexico gasoline tax was paid by the out-of-state terminal at which the gasoline was loaded, provided that documentation that the gasoline was to be imported into New Mexico was provided to the terminal operator by the person receiving the fuel.

History: 1978 Comp., § 7-13-4, enacted by Laws 1991, ch. 9, § 32; 1997, ch. 192, § 2; 1998, ch. 44, § 1; 1999, ch. 190, § 3; 2007, ch. 110, § 1.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1991, ch. 9, § 32 repealed 7-13-4 NMSA 1978, as amended by Laws 1991, ch. 9, § 31 and enacted a new section, effective July 1, 1992.

**The 2007 amendment,** effective June 15, 2007, added a new Subsection G to provide a deduction for gasoline received in New Mexico on which New Mexico gasoline tax was paid by the out-of-state terminal at which the gasoline was loaded.

**The 1999 amendment,** effective July 1, 1999, added Subsections E and F and made a related stylistic change.

**The 1998 amendment,** effective May 20, 1998, deleted "that" following "provided" in the introductory language and added Subsection D, making minor punctuation and stylistic changes.

**The 1997 amendment,** effective June 1, 1997, rewrote Subsection A, added the second sentence of Subsection B, and added Subsection C.

**Preemption by Self-Determination Act.** — To the extent that the Gasoline Tax Act imposes a tax on Indian entities, where that tax would not be imposed if the gasoline were sold to a federal agency providing the same services as the Indian entity, the tax imposed is preempted by the Self-Determination Act, 25 U.S.C.S. §§ 450-458. Ramah Navajo Sch. Bd., Inc. v. N.M. Taxation & Revenue Dep't, 1999-NMCA-050, 127 N.M. 101, 977 P.2d 1021, cert. denied, 127 N.M. 389, 981 P.2d 1207.

## 7-13-4.1 to 7-13-4.3. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1993, ch. 32, § 13 repealed 7-13-4.1 through 7-13-4.3 NMSA 1978, as enacted by Laws 1980, ch. 105, § 1, and as last amended by Laws 1983, ch. 225, § 2, and Laws 1988, ch. 165, § 1, relating to deductions for ethanol blended fuels, deductions for ethanol blended fuels using New Mexico agricultural products, and findings and declaration of purpose, effective June 18, 1993. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 7-13-4.4. Additional deduction; certain retail sales on an Indian reservation, pueblo grant or trust land.

In computing the gasoline tax due, a person other than a registered Indian tribal distributor may deduct from the total amount of gasoline received in New Mexico during the tax period, provided satisfactory proof is provided to the department, gasoline received in New Mexico and sold at retail in New Mexico if:

A. the sale occurs on an Indian reservation, pueblo grant or trust land;

B. the gasoline is placed into the fuel supply tank of a motor vehicle on that reservation, pueblo grant or trust land;

C. the Indian nation, tribe or pueblo has certified to the department that it has in effect an excise, privilege or similar tax on gasoline; provided that the gallons of gasoline deducted pursuant to this section shall be the total gallons sold in accordance with the provisions of this section multiplied by a fraction, the numerator of which is the rate of the tribal tax certified to the department by the Indian nation, tribe or pueblo and the denominator of which is the rate of the gasoline tax imposed pursuant to the Gasoline Tax Act, but, if the fraction exceeds one, the fraction shall be deemed to be one for purposes of determining the deduction; and

D. the person is subject to and in compliance with the tax on gasoline imposed by the Indian nation, tribe or pueblo where the sale occurs.

**History:** 1978 Comp., § 7-13-4.4, enacted by Laws 2000, ch. 50, § 1.

### ANNOTATIONS

**Effective dates.** — Laws 2000, ch. 50 § 2 made Laws 2000, ch. 50, § 1 effective April 1, 2000.

## 7-13-5. Tax returns; payment of tax.

Distributors shall file gasoline tax returns in form and content as prescribed by the secretary on or before the twenty-fifth day of the month following the month in which gasoline is received in New Mexico. Such returns shall be accompanied by payment of the amount of gasoline tax due. The department may require that the tax returns be provided through electronic means as long as an exception is provided for distributors with limited amounts of fuel distributed.

History: 1953 Comp., § 72-27-5, enacted by Laws 1971, ch. 207, § 5; 1983, ch. 204, § 5; 1993, ch. 32, § 6; 2005, ch. 109, § 6.

**ANNOTATIONS**

**The 2005 amendment,** effective January 1, 2006, provided that the taxation and revenue department may require that tax returns be provided by electronic means if an exception is given to distributors with limited amounts of fuel distributed.

**The 1993 amendment,** effective June 18, 1993, substituted "secretary" for "director" in the first sentence.

## 7-13-6. Returns by wholesalers; exception.

Wholesalers shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which gasoline is sold in New Mexico. The department may require that the information returns be provided through electronic means as long as an exception is provided for wholesalers with limited amounts of fuel sold. Sales of gasoline in quantities of thirty-five gallons or more delivered into the fuel tanks of aircraft are not wholesale sales for the purposes of this section, and information returns on such sales need not be filed with the department.

History: 1953 Comp., § 72-27-6, enacted by Laws 1971, ch. 207, § 6; 1977, ch. 154, § 1; 1983, ch. 204, § 6; 1993, ch. 32, § 7; 2005, ch. 109, § 7.

**ANNOTATIONS**

**The 2005 amendment,** effective January 1, 2006, provided that the taxation and revenue department may require that information returns be provided by electronic means if an exception is given to wholesalers with limited amounts of fuel sold.

**The 1993 amendment,** effective June 18, 1993, substituted "department" for "director" in two places.

## 7-13-6.1. Returns by retailers; requirements; exception.

Retailers shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which

gasoline is sold in New Mexico. The department may require that the information returns be provided through electronic means if the department provides an exception from that requirement for retailers that purchase limited amounts of fuel.

History: Laws 2005, ch. 109, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 109, § 16 made Laws 2005, ch. 109, § 4 effective January 1, 2006.

## 7-13-6.2. Returns by rack operators; requirements.

Rack operators shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which gasoline is sold in New Mexico. The department may require that an information return be provided through electronic means if the department provides an exception from that requirement for rack operators that distribute limited amounts of fuel.

History: Laws 2005, ch. 109, § 5.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 109, § 16 made Laws 2005, ch. 109, § 5 effective January 1, 2006.

## 7-13-7. Registration necessary to engage in business as distributor, wholesaler or retailer.

Each person engaged in the business of selling gasoline in New Mexico as a distributor, wholesaler or retailer shall register as such under the provisions of Section 7-1-12 NMSA 1978.

**History:** 1953 Comp., § 72-27-7, enacted by Laws 1971, ch. 207, § 7; 1983, ch. 204, § 7.

## 7-13-8. Misdemeanor for anyone other than producer, refiner or pipeline company to transport or store drip gasoline; misdemeanor to use drip gasoline in vehicle operated on highways of this state; enforcement by state police; magistrate court jurisdiction.

A. Any person other than a recognized producer, refiner or pipeline company who transports or stores drip gasoline in New Mexico without having in his possession an instrument in writing issued and signed by a recognized seller of gasoline stating the names and addresses of the seller and purchaser, the date of sale and the amount sold

and price paid therefor shall, upon conviction thereof, be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) or confined in the county jail for a period of not longer than six months, or both, together with costs of prosecution.

B. Whoever uses drip gasoline in a motor vehicle operated on the highways of this state shall, upon conviction thereof, be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) or confined in the county jail for a period of not longer than six months, or both, together with costs of prosecution.

C. The New Mexico state police shall have the responsibility of enforcing the provisions of this section.

D. Jurisdiction over actions brought under this section is granted to magistrate courts.

**History:** 1953 Comp., § 72-27-8, enacted by Laws 1971, ch. 207, § 8; 1974, ch. 14, § 1.

## 7-13-9. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 211, § 42, repealed 7-13-9 NMSA 1978, relating to the distribution of tax revenues, effective July 1, 1983.

## 7-13-10. Validation of pledges.

All prior pledges of any amounts distributed to municipalities and counties pursuant to Section 64-26-19 NMSA 1953 (being Laws 1967, Chapter 170, Section 8 repealed by Laws 1971, Chapter 207, Section 16) which heretofore have been made to the payment of bonds of municipalities and counties pursuant to Sections 3-31-1, 3-33-24, 3-34-1 through 3-34-4 or 3-39-12 NMSA 1978 or any other statute, and all action of the governing bodies of such municipalities and counties preliminary to and in the authorization of such pledges are validated, ratified, approved and confirmed.

**History:** 1953 Comp., § 72-27-9.1, enacted by Laws 1977, ch. 342, § 5; 1983, ch. 204, § 8.

## 7-13-11. Claim for refund or credit of gasoline tax paid; on gasoline destroyed by fire, accident or acts of God before retail sale; on gasoline previously received from a source other than a refiner or pipeline terminal.

A. Upon the submission of proof satisfactory to the department, the department shall allow a claim for refund or credit as provided in Sections 7-1-26 and 7-1-29 NMSA

1978 for tax paid on gasoline destroyed by fire, accident or acts of God while in the possession of a distributor, wholesaler or retailer.

B. Upon the submission of proof satisfactory to the department, a rack operator may submit, and the department may allow, a claim for refund of a New Mexico tax paid on gasoline previously received in New Mexico from a source other than a refiner or pipeline terminal in this state and placed in a terminal from which it will be loaded into tank cars, tank trucks, tank wagons or other types of transportation equipment.

C. No person may submit claims for refund pursuant to the provisions of this section more frequently than quarterly. No claim for refund may be submitted or allowed on less than one hundred gallons.

D. The department may prescribe the documents necessary to support a claim for refund pursuant to the provisions of this section.

History: 1953 Comp., § 72-27-10, enacted by Laws 1971, ch. 207, § 10; 1983, ch. 204, § 9; 1993, ch. 32, § 8; 2015 (1st S.S.), ch. 2, § 19.

**ANNOTATIONS**

**The 2015 (1st S.S.) amendment,** effective January 1, 2016, provided for a refund or credit of a New Mexico tax paid on gasoline previously received from a source other than a refiner or pipeline terminal in this state; in the catchline added "on gasoline previously received from a source other than a refiner or pipeline terminal"; added the subsection designation "A" preceding the previously undesignated language; and added Subsections B, C and D.

**The 1993 amendment,** effective June 18, 1993, substituted "to the department" and "department" for "to him" and "director", respectively.

## 7-13-12. Manifest or bill of lading required when transporting gasoline.

Every person transporting gasoline from a refinery or pipeline terminal in this state, importing gasoline into this state or exporting gasoline from this state, other than by pipeline or in the fuel supply tanks of motor vehicles, shall carry a manifest or bill of lading in form and content as prescribed by or acceptable to the department. The manifest or bill of lading shall be signed by the consignor and by every person accepting the gasoline or any part of it, with a notation as to the amount accepted. If a manifest or bill of lading is not required to be carried by the terms of this section, any person transporting gasoline without such a manifest or bill of lading shall, upon demand, furnish proof acceptable to the department that the gasoline so transported was legally acquired by a registered distributor who assumed liability for payment of the tax imposed by the Gasoline Tax Act.

**History:** 1953 Comp., § 72-27-11, enacted by Laws 1971, ch. 207, § 11; 1983, ch. 204, § 10; 1993, ch. 32, § 9.

**ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, substituted "department" for "director" in the first and last sentences and "shall" for "must" in the last sentence.

## 7-13-13 to 7-13-16. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1998, ch. 44, § 6 repealed 7-13-13 to 7-13-15 NMSA 1978, as amended by Laws 1993, ch. 32, §§ 10 to 12, relating to permit to purchase dyed gasoline or apply for refund not used in motor boats or motor vehicles, claim of refund of gasoline tax, and gasoline wholesalers and distributors, effective July 1, 1998. For provisions of former sections, *see* the 1997 NMSA 1978 on *NMOneSource.com.*

Laws 1983, ch. 211, § 42, repealed 7-13-16 NMSA 1978, relating to the refund gasoline suspense fund, effective July 1, 1983.

## 7-13-17. Permit to purchase undyed gasoline for certain off-road use and to claim refund of tax.

A. Any person using gasoline in the operation of a clothes cleaning establishment, in stoves or other appliances burning gasoline, or operators of aircraft using aviation gasoline exclusively in the operation of aircraft, upon proper showing of the permit provided for in this section, may purchase gasoline to which dye has not been added and may claim a refund thereon under the provisions of this section.

B. Upon submission of proof satisfactory to the department that the requirements of this subsection have been met, the department shall allow a claim for refund of gasoline tax paid on gasoline purchased and used in the manner described in Subsection A of this section by holders of permits issued under this section. The individual purchases of gasoline, other than that used for aviation fuel, must have been made in quantities of fifty gallons or more. Purchasers of aviation fuel may accumulate invoices to reach the fifty gallon minimum. No claim for refund may be presented or allowed on less than one hundred gallons so purchased. The secretary may prescribe by regulation or instruction the documents necessary to support a claim for refund made pursuant to the provisions of this subsection.

C. The department shall create permits, in form and content as the secretary may prescribe, that will allow persons to purchase gasoline to which dye has not been added for the uses specified in Subsection A of this section. The secretary shall prescribe the method by which a person may apply for a permit.

D. The secretary, upon notice and after hearing, may suspend for a period of up to one year or revoke the gasoline tax refund permit of any person who makes any false statement on an application for a permit or on a claim for refund made pursuant to the provisions of this section, who uses the gasoline in a motor boat or in a vehicle registered to operate on the highways of this state or who violates any other provision of the Gasoline Tax Act.

**History:** Laws 1998, ch. 44, § 2.

## 7-13-18. Dyed gasoline; permissible uses; penalties for misuse.

A. Gasoline distributors and wholesalers who are registered as distributors or wholesalers with the department may sell gasoline to be used other than in motor boats or in vehicles licensed to operate on the highways. These distributors and wholesalers shall mix with the gasoline an identifying dye in a manner consistent with state and federal law and regulations. The department shall furnish without charge the dye upon request. Such dyed gasoline may not be used in motor boats or in vehicles registered to be operated upon the highways of this state.

B. Any person who uses dyed gasoline in a motor boat or in a vehicle registered to be operated upon the highways of this state is liable for a civil penalty for each occurrence in an amount equal to the greater of one hundred dollars ($100) or the rate of the gasoline tax multiplied by the capacity in gallons of the fuel supply tank or tanks of the motor boat or vehicle.

**History:** Laws 1998, ch. 44, § 3.

# ARTICLE 13A
# Petroleum Products Loading Fee

## 7-13A-1. Short title.

Chapter 7, Article 13A NMSA 1978 may be cited as the "Petroleum Products Loading Fee Act".

**History:** 1978 Comp., § 7-13A-1, enacted by Laws 1990, ch. 124, § 14.

**ANNOTATIONS**

**Cross references.** — For the Natural Gas and Crude Oil Production Incentive Act, *see* 7-29B-1 NMSA 1978 et seq.

## 7-13A-2. Definitions.

As used in the Petroleum Products Loading Fee Act :

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "distributor" means any person registered or required to be registered as a rack operator or distributor for purposes of the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978] and any person registered or required to be registered as a rack operator or special fuel supplier for purposes of the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978];

C. "gallon" means the quantity of liquid necessary to fill a standard United States gallon liquid measure, which is approximately 3.785 liters, or that same quantity adjusted to a temperature of sixty degrees fahrenheit at the election of any distributor, but a distributor shall report on the same basis for a period of at least one year;

D. "load" means eight thousand gallons of petroleum product;

E. "loading" means the act of placing or causing to be placed any petroleum product that is produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state into tank cars, tank trucks, tank wagons or other types of transportation equipment or into any tank or other container from which sales or deliveries not involving transportation are made;

F. "person" means an individual or any other legal entity, including any gas, water or electric utility owned or operated by a county, municipality or other political subdivision of the state. "Person" also means, to the extent permitted by law, any federal, state or other government or any department, agency or instrumentality of the state, county, municipality or any political subdivision thereof;

G. "petroleum product" means gasoline as defined in the Gasoline Tax Act and special fuel as defined in the Special Fuels Supplier Tax Act; and

H. "secretary" means, unless the context indicates another meaning, the secretary of taxation and revenue or the secretary's delegate; and

I. "unobligated balance of the corrective action fund" means corrective action fund equity less all known or anticipated liabilities against the fund.

**History:** 1978 Comp., § 7-13A-2, enacted by Laws 1990, ch. 124, § 15; 1995, ch. 16, § 13; 1997, ch. 192, § 4.

## ANNOTATIONS

**The 1997 amendment,** effective June 1, 1997, rewrote this section to the extent that a detailed comparison is impracticable.

**The 1995 amendment,** effective January 1, 1996, inserted "which is approximately 3.785 liters" in Subsection C; rewrote Subsection E which read "'highway' means every way or place, including toll roads, generally open to or intended to be used for public travel by motor vehicles, regardless of whether it is temporarily closed"; rewrote Subsection F which read "'motor vehicle' means any self-propelled vehicle suitable for operation on highways"; rewrote Subsection G; and, in Subsection K, added Paragraph (2) and redesignated former Paragraphs (2) and (3) as Paragraphs (3) and (4).

## 7-13A-3. Imposition and rate of fee; denomination as "petroleum products loading fee".

A. For the privilege of loading gasoline or special fuel from a rack at a refinery or pipeline terminal in this state into a cargo tank, there is imposed a fee on the distributor at a rate provided in Subsection C of this section on each gallon of gasoline or special fuel loaded in New Mexico on which the petroleum products loading fee has not been previously paid.

B. For the privilege of importing gasoline or special fuel into this state for resale or consumption in this state there is imposed a fee determined as provided in Subsection C of this section on each load of gasoline or special fuel imported into New Mexico for resale or consumption on which the petroleum products loading fee has not been previously paid. For the purposes of this section, "load" means eight thousand gallons of gasoline or special fuel. To determine how many loads a person is to report under the provisions of this section, the person shall divide by eight thousand the total gallons of gasoline reported for the purposes of Section 7-13-3 NMSA 1978 as adjusted under the provisions of Section 7-13-4 NMSA 1978 and the total gallons of special fuels received in New Mexico less any gallons exempted under Section 7-13A-4 NMSA 1978. Loads shall be calculated to the nearest one-hundredth of a load.

C. The fee imposed by this section is and may be referred to as the "petroleum products loading fee" and shall be one hundred fifty dollars ($150) per load or whichever of the following applies:

(1) in the event the secretary of environment certifies that the unobligated balance of the corrective action fund at the end of the prior fiscal year equals or exceeds eighteen million dollars ($18,000,000) the fee shall be set at forty dollars ($40.00) per load;

(2) in the event the secretary of environment certifies that the unobligated balance of the corrective action fund at the end of the prior fiscal year exceeds twelve million dollars ($12,000,000) but is less than eighteen million dollars ($18,000,000) the fee shall be set at eighty dollars ($80.00) per load;

(3) in the event the secretary of environment certifies that the unobligated balance of the corrective action fund at the end of the prior fiscal year exceeds six

million dollars ($6,000,000) but is less than twelve million dollars ($12,000,000) the fee shall be set at one hundred twenty dollars ($120) per load; and

(4) in the event the secretary of environment certifies that the unobligated balance of the corrective action fund at the end of the prior fiscal year is less than six million dollars ($6,000,000) the fee shall be set at one hundred fifty dollars ($150) per load.

D. The amount of the petroleum products loading fee set pursuant to Paragraph (1), (2), (3) or (4) of Subsection C of this section shall be imposed on the first day of the month following expiration of ninety days after the end of the fiscal year for which the certification was made.

E. As used in this section, "unobligated balance of the corrective action fund" means corrective action fund equity less all known or anticipated liabilities against the fund."

**History:** 1978 Comp., § 7-13A-3, enacted by Laws 1990, ch. 124, § 16; 1996, ch. 82, § 2.

**ANNOTATIONS**

**Cross references. —** For distribution of petroleum products loading fee, *see* 7-1-6.25 NMSA 1978.

For ground water protection corrective action fund, *see* 74-6B-7 NMSA 1978.

**The 1996 amendment,** effective July 1, 1996, rewrote Subsection C and added Subsections D and E.

## 7-13A-4. Exemptions.

A. Petroleum products that are either loaded into cargo tanks in New Mexico and exported for resale and consumption outside of New Mexico or are imported into New Mexico and subsequently exported for resale and consumption outside of New Mexico are exempt from the imposition of the petroleum products loading fee.

B. Petroleum products sold to the United States or any agency or instrumentality thereof for the exclusive use of the United States or any agency or instrumentality thereof are exempt from the imposition of the petroleum products loading fee.

**History:** 1978 Comp., § 7-13A-4, enacted by Laws 1991, ch. 9, § 34.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1991, ch. 9, § 34 repealed 7-13A-4 NMSA 1978, as amended by Laws 1991, ch. 9, § 33 and enacted a new section, effective July 1, 1992.

## 7-13A-5. Deduction; gasoline or special fuels returned; biodiesel for subsequent blending or resale by a rack operator.

A. Refunds and allowances made to buyers for gasoline or special fuels returned to the refiner, pipeline terminal operator or distributor or amounts of gasoline or special fuels, the payment for which has not been collected and has been determined to be uncollectible pursuant to provisions of regulations issued by the secretary may be deducted from gallons used to determine loads for the purposes of calculating the petroleum products loading fee. If such a payment is subsequently collected, the gallons represented shall be included in determining loads. The deduction under the provisions of this section shall not be allowed if the petroleum products loading fee has not been paid previously on the petroleum products that were returned to the seller or the sale of which created an uncollectible debt.

B. Biodiesel, as defined in the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978], loaded in or imported into New Mexico and delivered to a rack operator for subsequent blending or resale by a rack operator may be deducted from gallons used to determine loads for the purposes of calculating the petroleum products loading fee.

C. A taxpayer that deducts an amount of biodiesel pursuant to Subsection B of this section shall report the deducted amount separately with the taxpayer's return in a manner prescribed by the department.

D. The department shall calculate the aggregate amount, in dollars, of the difference between the amount of the petroleum products loading fee that would have been collected in a fiscal year if not for the deduction allowed pursuant to Subsection B of this section and the amount of the petroleum products loading fee actually collected. The department shall compile an annual report that includes the aggregate amount, the number of taxpayers that deducted an amount of biodiesel pursuant to Subsection B of this section and any other information necessary to evaluate the deduction. Beginning in 2019 and every five years thereafter, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the costs and benefits to the state of the deduction.

E. For purposes of this section, "rack operator" means the operator of a refinery in this state or the owner of special fuel stored at a pipeline terminal in this state.

**History:** 1978 Comp., § 7-13A-5, enacted by Laws 1990, ch. 124, § 18; 2014, ch. 18, § 1.

**ANNOTATIONS**

**The 2014 amendment,** effective May 21, 2014, provided a deduction for certain biodiesel for subsequent blending or resale by a rack operator; in the catchline, after "returned", added "biodiesel for subsequent blending or resale by a rack operator; and added Subsections B, C, D and E.

**Applicability.** — Laws 2014, ch. 18, § 2 provided that Laws 2014, ch. 18, § 1 applies to biodiesel loaded in or imported into New Mexico on or after July 1, 2014.

## 7-13A-6. Fee returns; payment of fee.

Any person who either loads gasoline or special fuel in New Mexico and any person who imports gasoline or special fuel into New Mexico for resale or consumption in New Mexico shall file petroleum products loading fee returns in form and content as prescribed by the secretary on or before the twenty-fifth day of the month following the month in which petroleum products are either loaded in New Mexico or imported into New Mexico. Such returns shall be accompanied by payment of the amount of the petroleum products loading fee due.

**History:** 1978 Comp., § 7-13A-6, enacted by Laws 1990, ch. 124, § 19.

## 7-13A-7. Claim for refund of petroleum products loading fee on products previously loaded from a source other than a refiner or pipeline terminal.

A. Upon the submission of proof satisfactory to the department, a distributor may claim, and the department may allow, a claim for refund of the petroleum products loading fee paid on petroleum products previously loaded in New Mexico from a source other than a refiner or pipeline terminal in this state and placed in a terminal from which it will be loaded into tank cars, tank trucks, tank wagons or other types of transportation equipment.

B. No person may submit claims for refund pursuant to this section more frequently than quarterly. No claim for refund may be submitted or allowed on less than one hundred gallons.

C. The department may prescribe the documents necessary to support a claim for refund pursuant to the provisions of this section.

History: Laws 2015 (1st S.S.), ch. 2, § 20.

**ANNOTATIONS**

**Effective dates.** — Laws 2015 (1st S.S.), ch. 2 § 26 makes Laws 2015 (1st S.S.), ch. 2, § 20 effective January 1, 2016.

# ARTICLE 14
# Motor Vehicle Excise Tax

## 7-14-1. Short title.

Chapter 7, Article 14 NMSA 1978 may be cited as the "Motor Vehicle Excise Tax Act".

**History:** 1978 Comp., § 7-14-1, enacted by Laws 1988, ch. 73, § 11.

## 7-14-2. Definitions.

As used in the Motor Vehicle Excise Tax Act:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or an employee of that department exercising authority lawfully delegated to that employee by the secretary;

B. "manufactured home" means a structure that exceeds either a width of eight feet or a length of thirty-two feet, when equipped for the road;

C. "motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from batteries or from overhead trolley wires but not operated upon rails;

D. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture or syndicate; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or an agency, department or instrumentality thereof;

E. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

F. "tax" means the motor vehicle excise tax imposed under the Motor Vehicle Excise Tax Act; and

G. "vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including any frame, chassis or body of any vehicle or motor vehicle, except devices moved by human power or used exclusively upon stationary rails or tracks.

**History:** 1978 Comp., § 7-14-2, enacted by Laws 1988, ch. 73, § 12.

## 7-14-3. Imposition of motor vehicle excise tax.

An excise tax, subject to the credit provided by Section 7-14-7.l, is imposed upon the sale in this state of every vehicle, except as otherwise provided in Section 7-14-7.1 NMSA 1978 and manufactured homes, required under the Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978] to be registered in this state. To prevent evasion of the excise tax imposed by the Motor Vehicle Excise Tax Act and the duty to collect it, it is presumed that the issuance of every original and subsequent certificate of title for vehicles of a type required to be registered under the provisions of the Motor Vehicle Code constitutes a sale for tax purposes, unless specifically exempted by the Motor Vehicle Excise Tax Act or unless there is shown proof satisfactory to the department that the vehicle for which the certificate of title is sought came into the possession of the applicant as a voluntary transfer without consideration or as a transfer by operation of law. The excise tax imposed by this section shall be known as the "motor vehicle excise tax".

**History:** 1978 Comp., § 7-14-3, enacted by Laws 1988, ch. 73, § 13; 1991, ch. 197, § 3.

**ANNOTATIONS**

**The 1991 amendment,** effective July 1, 1991, inserted "subject to the credit provided by Section 7-14-7.1" and "as otherwise provided in Section 7-14-7.1 NMSA 1978" in the first sentence.

## 7-14-4. Determination of amount of motor vehicle excise tax.

The rate of the motor vehicle excise tax is three percent and is applied to the price paid for the vehicle. If the price paid does not represent the value of the vehicle in the condition that existed at the time it was acquired, the tax rate shall be applied to the reasonable value of the vehicle in such condition at such time. However, allowances granted for vehicle trade-ins may be deducted from the price paid or the reasonable value of the vehicle purchased.

**History:** 1978 Comp., § 7-14-4, enacted by Laws 1988, ch. 73, § 14.

## 7-14-5. Time of payment of tax.

The tax shall be paid to the department by the applicant for the certificate of title at the time of application for issuance of the certificate.

**History:** 1978 Comp., § 7-14-5, enacted by Laws 1988, ch. 73, § 15.

## 7-14-6. Exemptions from tax.

A. A person who acquires a vehicle out of state thirty or more days before establishing a domicile in this state is exempt from the tax if the vehicle was acquired for personal use.

B. A person applying for a certificate of title for a vehicle registered in another state is exempt from the tax if the person has previously registered and titled the vehicle in New Mexico and has owned the vehicle continuously since that time.

C. A vehicle with a certificate of title owned by this state or any political subdivision is exempt from the tax.

D. A person is exempt from the tax if the person has a disability at the time the person purchases a vehicle and can prove to the motor vehicle division of the department or its agent that modifications have been made to the vehicle that are:

(1) due to that person's disability; and

(2) necessary to enable that person to drive that vehicle or be transported in that vehicle.

E. A person is exempt from the tax if the person is a bona fide resident of New Mexico who served in the armed forces of the United States and who suffered, while serving in the armed forces or from a service-connected cause, the loss or complete and total loss of use of:

(1) one or both legs at or above the ankle; or

(2) one or both arms at or above the wrist.

F. A person who acquires a vehicle for subsequent lease shall be exempt from the tax if:

(1) the person does not use the vehicle in any manner other than holding it for lease or sale or leasing or selling it in the ordinary course of business;

(2) the lease is for a term of more than six months;

(3) the receipts from the subsequent lease are subject to the gross receipts tax; and

(4) the vehicle does not have a gross vehicle weight of over twenty-six thousand pounds.

G. From July 1, 2004 through June 30, 2009, vehicles that are gasoline-electric hybrid vehicles with a United States environmental protection agency fuel economy rating of at least twenty-seven and one-half miles per gallon are eligible for a one-time

exemption from the tax at the time of the issuance of the original certificate of title for the vehicle.

History: 1978 Comp., § 7-14-6, enacted by Laws 1988, ch. 73, § 16; 1990, ch. 24, § 1; 1994, ch. 139, § 1; 2004, ch. 66, § 3; 2007, ch. 319, § 1.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, rewrote Subsection D and added a new Subsection E.

**The 2004 amendments,** effective July 1, 2004, added Subsection F.

**The 1994 amendment,** effective May 18, 1994, added Subsection E.

**The 1990 amendment,** effective June 1, 1990, deleted former Subsection A relating to the exemption for the person on active duty in the military service or as officers of the public health service and redesignated former Subsections B to E as present Subsections A to D.

## 7-14-7. Credit against tax.

If a vehicle has been acquired through an out-of-state transaction upon which a gross receipts, sales, compensating or similar tax was levied by another state or political subdivision thereof, the amount of the tax paid may be credited against the tax due this state on the same vehicle.

**History:** 1978 Comp., § 7-14-7, enacted by Laws 1988, ch. 73, § 17.

## 7-14-7.1. Credit; vehicles used for short-term leasing; requirements; reports.

A. Upon application of the owner, the secretary shall suspend payment of the tax and issue a certificate of title without payment of the tax for any vehicle the leasing of which is subject to the Leased Vehicle Gross Receipts Tax Act [Chapter 7, Article 14A NMSA 1978], if:

(1) the vehicle is acquired by the owner on or after July 1, 1991;

(2) the vehicle is required to be registered in this state;

(3) the owner presents proof satisfactory to the secretary that the owner is registered with the department to pay the leased vehicle gross receipts tax; and

(4) the owner declares that the vehicle for which issuance of a certificate of title is being applied will be part of a vehicle fleet of at least five vehicles, will be used

primarily as a short-term rental vehicle and that each period of rental or lease will not exceed six months.

B. If an owner has paid the motor vehicle excise tax after July 1, 1991 with respect to a vehicle that qualifies for suspension of the motor vehicle excise tax pursuant to Subsection A of this section, the owner may apply for a refund of the motor vehicle excise tax paid, but the application for refund must be made within one year of the date certificate of title was issued to the owner for the vehicle. If application is made after that time, the claim for refund is not timely and the motor vehicle excise tax paid shall not be refunded.

C. On or before the twenty-fifth day of the month following the close of the calendar year, the owner shall submit to the department in a form prescribed by the secretary a report indicating the total collections of leased vehicle gross receipts tax collected in lieu of the tax. The report shall also indicate the amount of tax that would have been paid in the state of New Mexico for the preceding calendar year.

D. If the total amount of leased vehicle gross receipts tax is less than the amount of tax that would have been collected, the owner shall pay the difference to the department at the time of filing the report required by Subsection B of this section.

E. Once the total amount of leased vehicle gross receipts tax credited with respect to a vehicle for which payment of the motor vehicle excise tax is suspended pursuant to Subsection A of this section equals or exceeds the amount of motor vehicle excise tax due on that vehicle, or the owner has paid the difference pursuant to Subsection D of this section, the secretary shall cause the records of the department to indicate that the motor vehicle excise tax due with respect to that vehicle is paid in full and that payment is no longer suspended.

**History:** 1978 Comp., § 7-14-7.1, enacted by Laws 1991, ch. 197, § 4; 1993, ch. 347, § 1; 1994, ch. 104, § 1.

## ANNOTATIONS

**The 1994 amendment,** effective May 18, 1994, deleted "motor vehicle excise" preceding "tax" twice in Subsection A, deleted former Subsections C, D, E, F and G, concerning reports of suspended taxes, crediting of suspended taxes against taxes due on the vehicle, adjustment of department records to reflect payments, and payments by vehicle owners of amounts due on the vehicles; and added Subsections C, D and E.

**Applicability.** — Laws 1994, ch. 104, § 3 made the provisions of §§ 1 and 2 of the act applicable to vehicle registered on or after January 1, 1994, and to vehicles registered during 1993 and for which the motor vehicle excise tax was suspended during the last six months of the year.

**The 1993 amendment,** effective July 1, 1993, inserted present Subsection B, redesignated former Subsections B to F as present Subsections C to G, and inserted "the vehicle identification number" near the middle of the second sentence of Subsection C.

## 7-14-8. Imposition of penalty for failure to make timely application.

A penalty of fifty percent of the tax is imposed on any person who is:

A. domiciled in this state and accepts transfer in this state, but fails to apply for a certificate of title within ninety days of the date on which ownership of the vehicle was transferred to the person; or

B. domiciled in this state but accepts transfer outside this state and fails to apply for a certificate of title within ninety days of the date on which the vehicle is brought into this state.

**History:** 1978 Comp., § 7-14-8, enacted by Laws 1988, ch. 73, § 18.

## 7-14-9. Refunds; procedures.

A. If any person believes that the person has made payment of any motor vehicle excise tax in excess of that for which the person was liable or has been denied any credit against motor vehicle excise tax, that person may claim a refund by directing to the secretary a claim for refund in accordance with the provisions of Section 7-1-26 NMSA 1978.

B. The department may authorize refunds of the motor vehicle excise tax in accordance with the provisions of Section 7-1-29 NMSA 1978.

**History:** 1978 Comp., § 7-14-9, enacted by Laws 1988, ch. 73, § 19; 1993, ch. 347, § 2.

**ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, deleted "protests" following "Refunds" in the catchline; deleted former Subsection B, pertaining to the procedure for protests of denial of a claim for refund; redesignated former Subsection C as present Subsection B; and made minor stylistic changes in Subsection A.

## 7-14-9.1. Protests.

A. Any person upon whom a penalty is imposed by the Motor Vehicle Excise Tax Act may protest the imposition of the penalty in accordance with the provisions of Sections 7-1-24 and 7-1-25 NMSA 1978.

B. Any person whose claim for refund of motor vehicle excise tax is denied in whole or in part may protest the denial in accordance with the provisions of Sections 7-1-24 and 7-1-25 NMSA 1978.

**History:** Laws 1993, ch. 347, § 4.

## 7-14-9.2. Penalties for failure to submit report or to pay; interest.

A. Any person required to submit the report required by Subsection C of Section 7-14-7.1 NMSA 1978 who does not file the report in the manner and by the date required shall pay a penalty in an amount equal to five percent of the total amount of tax suspended pursuant to Subsection A of Section 7-14-7.1 NMSA 1978 for vehicles required to be included in the report.

B. Any person required to pay any amount pursuant to Subsection D of Section 7-14-7.1 NMSA 1978 who fails to pay the amount by the date required is liable for penalty in an amount equal to the greater of five dollars ($5.00) or two percent per month or any fraction of a month from the date the amount was due multiplied by the amount of tax due but not paid, not to exceed a maximum of ten percent of the tax due but not paid.

C. If any person required to pay any amount pursuant to Subsection D of Section 7-14-7.1 NMSA 1978 fails to pay the amount by the date required, interest shall be paid to the state on such amount in accordance with the provisions of Section 7-1-67 NMSA 1978.

**History:** Laws 1993, ch. 347, § 5; 1994, ch. 104, § 2.

**ANNOTATIONS**

**The 1994 amendment,** effective May 18, 1994, deleted "motor vehicle excise" preceding "tax" in Subsection A; in Subsection B, deleted "of motor vehicle tax" following "any amount," substituted "D" for "F or G," substituted "amount" for "tax" preceding "was due," and deleted "motor vehicle excise" preceding the first occurrence of "tax due"; and in Subsection C, substituted "pursuant to Subsection D" for "of motor vehicle excise tax pursuant to Subsection F or G."

**Applicability.** — Laws 1994, ch. 104, § 3 made the provisions of §§ 1 and 2 of the act applicable to vehicle registered on or after January 1, 1994, and to vehicles registered during 1993 and for which the motor vehicle excise tax was suspended during the last six months of the year.

## 7-14-10. Distribution of proceeds.

The receipts from the tax and any associated interest and penalties shall be deposited in the "motor vehicle suspense fund", hereby created in the state treasury. As

of the end of each month, the net receipts attributable to the tax and associated penalties and interest shall be distributed to the general fund.

**History:** 1978 Comp., § 7-14-10, enacted by Laws 1988, ch. 73, § 20; 1991, ch. 9, § 35; 1993, ch. 347, § 3; 1994, ch. 5, § 25.

**ANNOTATIONS**

**The 1994 amendment,** effective August 1, 1994, deleted former Subsections A and B, relating to distribution of receipts, deleted "motor vehicle excise" preceding "tax" in both sentences, and substituted "to the general fund" for "as follows" in the second sentence.

**The 1993 amendment,** effective July 1, 1993, substituted "governments" for "government's" in Subsection B.

**The 1991 amendment,** effective July 1, 1991, deleted former Subsection A which read "five-twelfths to the state road fund"; redesignated former Subsections B and C as Subsections A and B; substituted "three-fourths" for "one-third" in Subsection A; and substituted "one-fourth" for "the remainder" in Subsection B.

## 7-14-11. Administration by department; authority of department.

A. The department has the authority and duty to administer the Motor Vehicle Excise Tax Act and to impose, collect and enforce the motor vehicle excise tax.

B. The department has the authority to interpret the provisions of the Motor Vehicle Excise Tax Act and to promulgate regulations with respect to that act. The extent to which regulations will have retroactive effect shall be stated and, if no such statement is made, they will be applied prospectively only.

**History:** 1978 Comp., § 7-14-11, enacted by Laws 1988, ch. 73, § 21.

# ARTICLE 14A
# Leased Vehicle Gross Receipts Tax

## 7-14A-1. Short title.

Chapter 7, Article 14A NMSA 1978 may be cited as the "Leased Vehicle Gross Receipts Tax Act".

**History:** Laws 1991, ch. 197, § 5; 1993, ch. 30, § 20.

**ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, substituted "Chapter 7, Article 14A NMSA 1978" for "Sections 5 through 15 of this Act".

## 7-14A-2. Definitions.

As used in the Leased Vehicle Gross Receipts Tax Act:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "engaging in business" means carrying on or causing to be carried on the leasing of vehicles with the purpose of direct or indirect benefit;

C. "gross receipts" means the total amount of money or the value of other consideration received from leasing vehicles used in New Mexico, but excludes cash discounts allowed and taken, leased vehicle gross receipts tax payable on transactions for the reporting period, gross receipts tax payable pursuant to the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] on transactions for the reporting period and taxes imposed pursuant to the provisions of any local option gross receipts tax, as that term is defined in the Tax Administration Act [Chapter 7, Article 1 NMSA 1978], that is payable on transactions for the reporting period and any type of time-price differential. Also excluded from "gross receipts" are any gross receipts or sales taxes imposed by an Indian nation, tribe or pueblo, provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the interior of the United States, and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions. In an exchange in which the money or other consideration received does not represent the value of the lease of the vehicle, "gross receipts" means the reasonable value of the lease of the vehicle. When the leasing of vehicles is made under a leasing contract, the seller or lessor may elect to treat all receipts under those contracts as gross receipts as and when the payments are actually received. "Gross receipts" also includes amounts paid by members of any cooperative association or similar organization for the lease of vehicles by that organization;

D. "leasing" means any arrangement whereby, for a consideration, a vehicle without a driver furnished by the lessor or owner is employed for or by any person other than the owner of the vehicle for a period of not more than six months;

E. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity; and

F. "vehicle" means a passenger automobile designed to accommodate six or fewer adlt [adult] human beings that is part of a fleet of five or more passenger automobiles owned by the same person.

**History:** Laws 1991, ch. 197, § 6; 1995, ch. 70, § 17.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law.

**The 1995 amendment,** effective July 1, 1995, deleted "or 'division'" following "'department'" in Subsection A, and in Subsection C, substituted "any local option gross receipts tax, as that term is defined in the Tax Administration Act" for "the County Fire Protection Excise Tax Act or any municipality or county sales or gross receipts tax" in the first sentence, and inserted "nation" in two places in the second sentence.

## 7-14A-3. Imposition and rate of tax; denomination as "leased vehicle gross receipts tax".

A. For the privilege of engaging in business, an excise tax equal to five percent of gross receipts is imposed on any person engaging in business in New Mexico.

B. The tax imposed by this section shall be referred to as the "leased vehicle gross receipts tax".

**History:** Laws 1991, ch. 197, § 7.

## 7-14A-3.1. Imposition and rate; leased vehicle surcharge.

A. Except as provided in Subsection B of this section, there is imposed a surcharge on the leasing of a vehicle to another person by a person engaging in business in New Mexico if the lease is subject to the leased vehicle gross receipts tax. The amount of this surcharge is two dollars ($2.00) for each day the vehicle is leased by the person. The surcharge may be referred to as the "leased vehicle surcharge".

B. The leased vehicle surcharge imposed in Subsection A of this section shall not apply to the lease of a temporary replacement vehicle if the lessee signs a statement that the temporary replacement vehicle is to be used as a replacement for another vehicle that is being repaired, serviced or replaced. For the purposes of this section, "temporary replacement vehicle" means a vehicle that is:

(1) used by an individual in place of another vehicle that is unavailable for use by the individual due to loss, damage, mechanical breakdown or need for servicing; and

(2) leased temporarily by or on behalf of the individual or loaned temporarily to the individual by a vehicle repair facility or dealer while the other vehicle is being repaired, serviced or replaced.

History: Laws 1993, ch. 359, § 1; 2007, ch. 172, § 22.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, added Subsection B.

## 7-14A-4. Presumption of taxability.

To prevent evasion of the leased vehicle gross receipts tax and the leased vehicle surcharge and to aid in their administration, it is presumed that all receipts of a person engaging in business are subject to the leased vehicle gross receipts tax and that all vehicles leased by that person are subject to the leased vehicle surcharge.

**History:** Laws 1991, ch. 197, § 8; 1993, ch. 359, § 2.

**ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, inserted "and the leased vehicle surcharge", added the language beginning "and that all vehicles" at the end of the section, and made a minor stylistic change.

## 7-14A-5. Separately stating the leased vehicle gross receipts tax.

When the leased vehicle gross receipts tax is stated separately on the books of the lessor and if the total amount of tax that is stated separately on transactions reportable within one reporting period is in excess of the amount of leased vehicle gross receipts tax otherwise payable on the transactions on which the tax was separately stated, the excess amount of tax stated on the transactions within that reporting period shall be included in gross receipts.

**History:** Laws 1991, ch. 197, § 9.

## 7-14A-6. Date payment due.

The tax and the surcharge imposed by the Leased Vehicle Gross Receipts Tax Act are to be paid on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

**History:** Laws 1991, ch. 197, § 10; 1993, ch. 359, § 3.

**ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, inserted "and the surcharge" and made a minor stylistic change.

## 7-14A-7. Deduction; transactions in interstate commerce.

Receipts from transactions in interstate commerce may be deducted from gross receipts to the extent that the imposition of the leased vehicle gross receipts tax would be unlawful under the United States constitution.

**History:** Laws 1991, ch. 197, § 11.

## 7-14A-8. Deduction; trade-in allowance.

Receipts represented by allowances granted for vehicle trade-ins may be deducted from gross receipts.

**History:** Laws 1991, ch. 197, § 12.

## 7-14A-9. Exemption; vehicles titled before July 1, 1991.

The receipts from the leasing by the owner of vehicles that were acquired by the owner prior to July 1, 1991 and with respect to which the excise tax pursuant to Section 7-14-3 NMSA 1978 was paid and a certificate of title issued prior to July 1, 1991 are exempt from the tax imposed by Section 7 [7-14A-3 NMSA 1978] of this act.

**History:** Laws 1991, ch. 197, § 13.

## 7-14A-10. Distribution of proceeds.

At the end of each month, the net receipts attributable to the leased vehicle gross receipts tax and any associated penalties and interest shall be distributed as follows:

A. one-fourth to the local governments road fund; and

B. three-fourths to the highway infrastructure fund.

**History:** Laws 1991, ch. 197, § 14; 1999 (1st S.S.), ch. 9, § 1.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, substituted present Subsections A and B for former Subsections A and B, relating to the manner of distribution of the net receipts.

## 7-14A-11. Administration.

A. The department shall interpret the provisions of the Leased Vehicle Gross Receipts Tax Act.

B. The department shall administer and enforce the collection of the leased vehicle gross receipts tax and the leased vehicle surcharge, and the Tax Administration Act applies to the administration and enforcement of the tax and the surcharge.

**History:** Laws 1991, ch. 197, § 15; 1993, ch. 359, § 4.

**ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, inserted "and the leased vehicle surcharge" near the middle and added "and the surcharge" at the end, in Subsection B.

# ARTICLE 15
# Trip Tax

## 7-15-1. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 1988, ch. 73, § 24 recompiled 7-15-1 NMSA 1978, relating to computation of the trip tax, as 7-15-3.1 NMSA 1978, effective July 1, 1988.

## 7-15-1.1. Short title.

Chapter 7, Article 15 NMSA 1978 may be cited as the "Trip Tax Act".

**History:** 1978 Comp., § 7-15-1.1, enacted by Laws 1988, ch. 73, § 22.

## 7-15-2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1988, ch. 73, § 56A, repealed 7-15-2 NMSA 1978, as enacted by Laws 1943, ch. 125, § 13, relating to exemption from mileage tax of certain vehicles transporting farm products, effective July 1, 1988.

## 7-15-2.1. Definitions.

As used in the Trip Tax Act:

A. "combination gross vehicle weight" means the sum total of the gross vehicle weights of all units of a combination;

B. "commercial motor carrier vehicle" means any motor vehicle with a gross weight of twelve thousand pounds or more used or reserved for use in the transportation of persons, property or merchandise for hire, compensation or profit or in the furtherance of a commercial enterprise or any vehicle used or maintained primarily for the transportation of property or merchandise or for drawing other vehicles so used or maintained;

C. "department" means the department of public safety, the secretary of public safety and any employee of that department exercising authority lawfully delegated to that employee by the secretary;

D. "gross vehicle weight" means the weight of a vehicle without load, plus the weight of any load thereon;

E. "motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from batteries or from overhead trolley wires, but not operated upon rails;

F. "registrant" means the person who has registered the vehicle pursuant to the laws of this state or another state;

G. "trip tax" means the use fee imposed under the Trip Tax Act; and

H. "vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including any frame, chassis or body of any vehicle or motor vehicle, except devices moved by human power or used exclusively upon stationary rails or tracks.

**History:** 1978 Comp., § 7-15-2.1, enacted by Laws 1988, ch. 73, § 23; 1998 (1st S.S.), ch. 10, § 1.

**ANNOTATIONS**

**The 1998 amendment,** effective July 1, 1998, substituted "department of public safety" and "secretary of public safety" for "taxation and revenue department" and "secretary of revenue", respectively, in Subsection C.

## 7-15-3. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1988, ch. 73, § 56A repealed 7-15-3 NMSA 1978, as enacted by Laws 1943, ch. 125, § 14, relating to exemption from mileage tax of retail merchants doing business outside of state when transporting farm products to wholesalers or manufacturers, effective July 1, 1988.

## 7-15-3.1. Trip tax; computation.

A. For the purpose of providing funds for the construction, maintenance, repair and reconstruction of this state's public highways, a use fee, to be known as the "trip tax", is imposed in lieu of registration fees and the weight distance tax on the registrant, owner or operator of any foreign-based commercial motor carrier vehicle that is:

(1) not registered in this state under interstate registration;

(2) not registered in this state under proportional registration;

(3) not subject to a valid reciprocity agreement;

(4) not registered as a foreign commercial motor carrier vehicle under short-term registration;

(5) not registered under an allocation of one-way rental fleet vehicles; and

(6) not exempted from registration and the payment of any registration fees and not exempted from the payment of the trip tax under Section 65-5-3 NMSA 1978.

B. Except as provided otherwise in Subsections C and D of this section, the trip tax shall be computed as follows:

(1) when the gross vehicle weight or combination gross vehicle weight exceeds twelve thousand pounds but does not exceed twenty-six thousand pounds, seven cents ($.07) a mile for mileage to be traveled on the public highways within New Mexico, measured from the point of entering the state to the point of destination or place of leaving the state;

(2) when the gross vehicle weight or combination gross vehicle weight exceeds twenty-six thousand pounds and does not exceed fifty-four thousand pounds, twelve cents ($.12) a mile for mileage to be traveled on the public highways within New Mexico, measured from the point of entering the state to the point of destination or place of leaving the state;

(3) when the gross vehicle weight or combination gross vehicle weight exceeds fifty-four thousand pounds and does not exceed seventy-two thousand pounds, fifteen cents ($.15) a mile for mileage to be traveled on the public highways within New Mexico, measured from the point of entering the state to the point of destination or place of leaving the state; and

(4) when the gross vehicle weight or combination gross vehicle weight exceeds seventy-two thousand pounds, sixteen cents ($.16) a mile for mileage to be traveled on the public highways within New Mexico, measured from the point of entering the state to the point of destination or place of leaving the state.

C. The department, by regulation, shall establish a procedure for the issuance of prepaid trip permits for:

(1) trips by a single vehicle or a fleet of vehicles for the purpose of:

(a) custom harvesting operations; or

(b) the transportation of goods or passengers between the state and Mexico; or

(2) any vehicle that is unable to declare at the time of entering the state the point of destination or place of leaving the state.

D. Prepaid trip permits established pursuant to Subsection C of this section shall be sold in increments of no less than fifty dollars ($50.00). Any portion not used prior to one year from the date of issuance shall not be refundable. Prepaid trip permits shall not be transferable between a registrant, owner or operator and another registrant, owner or operator. Charges against the prepaid trip permit shall be based on the computations specified in Subsection B of this section.

**History:** 1941 Comp., § 68-1531, enacted by Laws 1943, ch. 125, § 12; 1953 Comp., § 64-30-12; Laws 1972, ch. 7, § 30; 1980, ch. 59, § 1; 1987, ch. 347, § 13; 1978 Comp., § 7-15-1, recompiled as 1978 Comp., § 7-15-3.1 by Laws 1988, ch. 73, § 24; 1993, ch. 30, § 21; 1994, ch. 49, § 1; 2005, ch. 258, § 1.

**ANNOTATIONS**

**The 2005 amendment,** effective July 1, 2005, in Subsection B(1), changed the trip tax from five cents to seven cents; in Subsection B(2), changed the trip tax from nine cents to twelve cents; in Subsection B(3), changed the trip tax from eleven cents to fifteen cents; and in Subsection B(4), changed the trip tax from twelve cents to sixteen cents.

**The 1994 amendment,** effective July 1, 1994, substituted "Subsections C and D" for "Subsection C" in the introductory language of Subsection B; and substituted Subsections C and D for former Subsection C, relating to flat fee permits.

**The 1993 amendment,** effective June 18, 1993, substituted "fuel excise tax" for "fuel tax" and "Section 7-16A-3" for "Section 7-16-3" near the end of Subsection C and made a minor stylistic change.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — State taxation of motor carriers as affected by commerce clause, 17 A.L.R.2d 421.

## 7-15-3.2. Exemption from tax.

Exempted from imposition of the trip tax is the use of the highways of this state by commercial motor carrier vehicles while operating exclusively within ten miles of a border with Mexico in conjunction with crossing the border with Mexico.

**History:** Laws 2006, ch. 44, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2006, ch. 44 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

## 7-15-4. Interest; penalties.

A. If any trip tax is not paid when due, interest shall be paid to the state on such amount from the date on which the trip tax becomes due until it is paid. Interest shall be due to the state at the rate of fifteen percent a year, computed at the rate of one and one-quarter percent per month or any fraction thereof, except that, if the amount of interest due at the time payment is made is less than one dollar ($1.00), then no interest shall be due. Nothing in this subsection shall be construed to impose interest on interest or interest on penalty.

B. In the case of failure, due to negligence or disregard of rules and regulations, but without intent to defraud, to pay when due any amount of trip tax required to be paid, there shall be added to the amount as penalty two percent per month, or any fraction thereof, from the date on which the trip tax becomes due until the time payment is made, provided that the total penalty shall not exceed ten percent of the amount nor shall it be less than a minimum of five dollars ($5.00).

C. In the case of failure to pay when due any amount of trip tax required to be paid, with intent to defraud the state, there shall be added to the amount fifty percent thereof or a minimum of twenty-five dollars ($25.00), whichever is greater, as penalty.

**History:** 1978 Comp., § 7-15-4, enacted by Laws 1988, ch. 73, § 25.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 73, § 25 repealed former 7-15-4 NMSA 1978, as enacted by Laws 1943, ch. 125, § 15, relating to exemption from mileage tax of vehicles of public utilities, corporations, companies, or individuals used in regular course of business, and enacted a new section, effective July 1, 1988.

## 7-15-5. Distribution of proceeds.

The receipts from permit fees established pursuant to Subsection C of Section 7-15-3.1 NMSA 1978, the trip tax and any associated interest and penalties shall be

deposited into the "motor vehicle suspense fund", hereby created in the state treasury. As of the end of each month, the net receipts attributable to the permit fees established pursuant to Subsection C of Section 7-15-3.1 NMSA 1978, trip tax and penalties and interest associated with the trip tax shall be distributed to the state road fund.

**History:** 1978 Comp., § 7-15-5, enacted by Laws 1988, ch. 73, § 26.

## 7-15-6. Administration by department; authority of department.

A. The department has the authority and duty to administer the Trip Tax Act and to impose, collect and enforce the trip tax.

B. The department has the authority to interpret the provisions of the Trip Tax Act and to promulgate regulations with respect to the Trip Tax Act. The extent to which regulations will have retroactive effect shall be stated and, if no such statement is made, they will be applied prospectively only.

**History:** 1978 Comp., § 7-15-6, enacted by Laws 1988, ch. 73, § 27.

# ARTICLE 15A
# Weight Distance Tax

## 7-15A-1. Short title.

Chapter 7, Article 15A NMSA 1978 may be cited as the "Weight Distance Tax Act".

**History:** 1978 Comp., § 7-15A-1, enacted by Laws 1988, ch. 73, § 28.

## 7-15A-2. Definitions.

As used in the Weight Distance Tax Act:

A. "bus" means a motor vehicle designed and used for the transportation of a person and a motor vehicle, other than a taxicab, designed and used for the transportation of a person for compensation;

B. "declared gross weight" means the declared gross weight for purposes of the Motor Transportation Act [Chapter 65, Articles 1, 3 and 5 NMSA 1978];

C. "department" means the taxation and revenue department, the secretary of taxation and revenue or an employee of that department exercising authority lawfully delegated to that employee by the secretary;

D. "gross vehicle weight" means the weight of a vehicle without load, plus the weight of a load upon the vehicle;

E. "motor vehicle" means a vehicle that is self-propelled and a vehicle that is propelled by electric power obtained from batteries or from overhead trolley wires, but not operated upon rails;

F. "person" means:

(1) an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other association; and

(2) to the extent permitted by law, a federal, state or other governmental unit or subdivision or an agency, department or instrumentality of the federal, state or other governmental unit;

G. "registrant" means a person who has registered the vehicle pursuant to the laws of this state or another state;

H. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

I. "tax" means the weight distance tax imposed by the Weight Distance Tax Act;

J. "vehicle" means a device in, upon or by which a person or property is or may be transported or drawn upon a highway, including a frame, chassis or body of a vehicle or motor vehicle, except a device moved by human power or used exclusively upon stationary rails or tracks; and

K. "weight distance tax identification permit" means an administrative certificate that is issued by the department and that identifies a specific vehicle as subject to the tax imposed pursuant to the Weight Distance Tax Act.

History: 1978 Comp., § 7-15A-2, enacted by Laws 1988, ch. 73, § 29; 2003 (1st S.S.), ch. 3, § 3.

## ANNOTATIONS

**The 2003 (1st S.S.) amendment,** effective July 1, 2004, substituted "a" for "every" preceding "motor vehicle" twice and "a person" for "persons" twice in Subsection A, "an" for "any" preceding "employee" near the middle of Subsection C, "a load upon the vehicle" for "any load thereon" at the end of Subsection D, "a vehicle that" for "every vehicle which" twice in Subsection E, rewrote Subsection F so as to designate the previously undesignated language as Paragraphs (1) and (2) and substituted "an" for "any" at the beginning of Paragraph (1) and "a" for "any" preceding "federal" near the beginning and "of the federal, state or other governmental unit" for "thereof" at the end of Paragraph (2) of that subsection, "a" for "any" preceding "person" in Subsection G, and "a" for "every" preceding "device" near the beginning, "a" for "any" preceding

"person" near the beginning, preceding "frame" and "vehicle" near the middle and "a device" for "devices" near the end of Subsection J, and added Subsection K.

## 7-15A-3. Imposition of weight distance tax.

A tax is imposed upon the registrants, owners and operators for the use of the highways of this state by all motor vehicles having a declared gross weight or gross vehicle weight in excess of twenty-six thousand pounds and registered in this state, registered under proportional registration or qualified under the provisions of Sections 65-1-32 and 65-1-33 NMSA 1978. This tax shall be known as the "weight distance tax".

**History:** 1978 Comp., § 7-15A-3, enacted by Laws 1988, ch. 73, § 30.

**ANNOTATIONS**

**Burden of proof. —** Where the taxpayer engaged in the intra-state hauling of construction materials; the taxpayer calculated the mileage traveled by taxpayer's trucks based on the amount of fuel purchased as shown on fuel receipts multiplied by the industry average of five miles per gallon, the department's auditor decided that the taxpayer's records were unreliable and used an alternative methodology to calculate mileage; based on the taxpayer's evidence, a hearing officer found that the taxpayer's fuel records were reliable and were not controverted by the department's evidence; and the hearing officer concluded that the taxpayer had overcome the presumption of the correctness of the department's assessment and that the department had failed to meet its burden to prove the correctness of its assessment, the hearing officer correctly determined that the burden had shifted to the department to prove the correctness of its assessment. N.M. Taxation & Revenue Dep't v. Casias Trucking, 2014-NMCA-099.

## 7-15A-4. Responsibility for payment of tax.

The tax shall be paid by the registrant, owner or operator of a motor vehicle registered in this state to which the tax applies.

**History:** 1978 Comp., § 7-15A-4, enacted by Laws 1988, ch. 73, § 31.

## 7-15A-5. Exemption from tax.

Exempted from imposition of the weight distance tax is the use of the highways of this state by:

A. school buses;

B. buses used exclusively for the transportation of agricultural laborers;

C. buses operated by religious or nonprofit charitable organizations; and

D. commercial motor carrier vehicles as defined in Subsection B of Section 7-15-2.1 NMSA 1978 while operating exclusively within ten miles of a border with Mexico in conjunction with crossing the border with Mexico.

**History:** 1978 Comp., § 7-15A-5, enacted by Laws 1988, ch. 73, § 32; 2006, ch. 44, § 2.

**ANNOTATIONS**

**The 2006 amendment,** effective May 17, 2006, added Subsection D to exempt commercial motor carrier vehicles while operating exclusively within ten miles of a border with Mexico in conjunction with crossing the border with Mexico.

## 7-15A-6. Tax rate for motor vehicles other than buses; reduction of rate for one-way hauls.

A. For on-highway operations of motor vehicles other than buses, the weight distance tax shall be computed in accordance with the following schedule:

| Declared Gross Weight (Gross Vehicle Weight) | Tax Rate (Mills per Mile) |
|---|---|
| 26,001 to 28,000 | 11.01 |
| 28,001 to 30,000 | 11.88 |
| 30,001 to 32,000 | 12.77 |
| 32,001 to 34,000 | 13.64 |
| 34,001 to 36,000 | 14.52 |
| 36,001 to 38,000 | 15.39 |
| 38,001 to 40,000 | 16.73 |
| 40,001 to 42,000 | 18.05 |
| 42,001 to 44,000 | 19.36 |
| 44,001 to 46,000 | 20.69 |
| 46,001 to 48,000 | 22.01 |
| 48,001 to 50,000 | 23.33 |
| 50,001 to 52,000 | 24.65 |
| 52,001 to 54,000 | 25.96 |
| 54,001 to 56,000 | 27.29 |
| 56,001 to 58,000 | 28.62 |
| 58,001 to 60,000 | 29.93 |
| 60,001 to 62,000 | 31.24 |
| 62,001 to 64,000 | 32.58 |
| 64,001 to 66,000 | 33.90 |

| | |
|---|---|
| 66,001 to 68,000 | 35.21 |
| 68,001 to 70,000 | 36.52 |
| 70,001 to 72,000 | 37.86 |
| 72,001 to 74,000 | 39.26 |
| 74,001 to 76,000 | 40.71 |
| 76,001 to 78,000 | 42.21 |
| 78,001 and over | 43.78. |

B. All motor vehicles for which the tax is computed under Subsection A of this section shall pay a tax that is two-thirds of the tax computed under Subsection A of this section if:

(1) the motor vehicle is customarily used for one-way haul;

(2) forty-five percent or more of the mileage traveled by the motor vehicle for a registration year is mileage that is traveled empty of all load; and

(3) the registrant, owner or operator of the vehicle attempting to qualify under this subsection has made a sworn application to the department to be classified under this subsection for a registration year and has given whatever information is required by the department to determine the eligibility of the vehicle to be classified under this subsection and the vehicle has been so classified.

History: 1978 Comp., § 7-15A-6, enacted by Laws 1988, ch. 73, § 33; 2003 (1st S.S.), ch. 3, § 4; 2004, ch. 59, § 1.

**ANNOTATIONS**

**The 2004 amendments,** effective July 1, 2004, amended Subsection A to change the gross vehicle weight of "26,000" to "26,001".

**The 2003 (1st S.S.) amendment,** effective July 1, 2004, increased each of the tax rates in Subsection A by approximately 38.2%, except the "46,001 to 48,000" rate which increased by approximately 25.6%, and substituted "that" for "which" in the introductory language and in Paragraph (2) and "year and has given" for "year, has given" in Paragraph (3) of Subsection B.

## 7-15A-7. Tax rate for buses.

For all buses, the weight distance tax shall be computed in accordance with the following schedule:

| Declared Gross Weight (Gross Vehicle Weight) | Tax Rate (Mills per Mile) |
|---|---|

| | |
|---|---|
| 26,001 to 28,000 | 11.01 |
| 28,001 to 30,000 | 11.88 |
| 30,001 to 32,000 | 12.77 |
| 32,001 to 34,000 | 13.64 |
| 34,001 to 36,000 | 14.52 |
| 36,001 to 38,000 | 15.39 |
| 38,001 to 40,000 | 16.73 |
| 40,001 to 42,000 | 18.05 |
| 42,001 to 44,000 | 19.36 |
| 44,001 to 46,000 | 20.69 |
| 46,001 to 48,000 | 22.01 |
| 48,001 to 50,000 | 23.33 |
| 50,001 to 52,000 | 24.65 |
| 52,001 to 54,000 | 25.96 |
| 54,001 and over | 27.29. |

History: 1978 Comp., § 7-15A-7, enacted by Laws 1988, ch. 73, § 34; 2003 (1st S.S.), ch. 3, § 5; 2004, ch. 59, § 2.

**ANNOTATIONS**

**The 2004 amendments,** effective July 1, 2004, amended Subsection A to change the gross vehicle weight of "26,000" to "26,001".

**The 2003 (1st S.S.) amendment,** effective July 1, 2004, increased each of the tax rates by approximately 38%.

## 7-15A-8. Mileage and weights to be used for computing tax.

A. The total number of miles traveled on New Mexico highways during the tax payment period by the motor vehicle subject to the tax shall be used in computing the tax.

B. Registrants, owners and operators of all motor vehicles to which the tax applies shall report to the department, in the manner required by the department, the total mileage traveled in New Mexico and the total mileage traveled in all states during the tax payment period applicable to that registrant, owner or operator.

C. All motor vehicles subject to the tax shall be registered in accordance with law at the highest gross vehicle weight or combined gross vehicle weight at which the vehicle will be operated for that registration year in this state.

D. It is unlawful and a violation of the Weight Distance Tax Act for any motor vehicle to be operated on New Mexico highways at a gross vehicle weight higher than that at which the registrant declared for registration purposes pursuant to either the Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978] or the Motor Transportation Act [Chapter 65, Articles 1, 3 and 5 NMSA 1978]. The operator of a motor vehicle operated on highways of this state at a gross weight or combination gross weight higher than that declared for registration purposes shall be subject to the penalty provisions of Section 66-7-411 NMSA 1978.

**History:** 1978 Comp., § 7-15A-8, enacted by Laws 1988, ch. 73, § 35.

## 7-15A-9. Weight distance tax; payment to department; record-keeping requirements.

A. Except as provided in Subsection B of this section, the weight distance tax shall be paid to the department by April 30 for the first quarterly period of January 1 through March 31, by July 31 for the second quarterly period of April 1 through June 30, by October 31 for the third quarterly period of July 1 through September 30 and by January 31 for the fourth quarterly period of October 1 through December 31 of each year.

B. Any registrant, owner or operator not liable for the special fuel tax whose total weight distance tax for the previous calendar year was less than five hundred dollars ($500) may elect to pay the tax on an annual basis. Any registrant, owner or operator liable for the special fuel tax whose total combined liability for the weight distance tax and the special fuel tax for the previous calendar year was less than five hundred dollars ($500) may elect to pay the weight distance tax on an annual basis. Election shall be made by filing a written statement of such election with the department on or before April 1 of the first year in which the election is made. Upon filing the written election with the department, the total weight distance tax due for the current calendar year shall be paid to the department by January 31 of the following year. If, however, any registrant, owner or operator is or becomes delinquent in excess of thirty days in any payment of the weight distance tax, that person shall make all future payments according to the schedule of Subsection A of this section. If any person who has made an election under this subsection has a liability for total weight distance tax or total combined weight distance tax and special fuel tax, as applicable, of five hundred dollars ($500) or more for any calendar year, that person shall make the succeeding year's payments pursuant to Subsection A of this section.

C. Any registrant, owner or operator not liable for the special fuel tax who has not previously been liable for the weight distance tax and whose liability for the weight distance tax is expected to be less than five hundred dollars ($500) annually may, with the approval of the secretary, pay the weight distance tax as provided in Subsection B of this section. Any registrant, owner or operator liable for the special fuel tax who has not previously been liable for the weight distance tax and whose total combined liability for the special fuel tax and weight distance tax is expected to be less than five hundred dollars ($500) annually may, with the approval of the secretary, pay the weight distance

tax as provided in Subsection B of this section. If, however, the total annual liability or combined liability, as applicable, is expected to be five hundred dollars ($500) or more, the registrant, owner or operator shall make payments pursuant to Subsection A of this section.

D. All registrants, owners or operators required to pay the weight distance tax shall preserve the records upon which the periodic payments required by Subsections A and B of this section are based for four years following the period for which a payment is made. Upon request of the department, the registrant, owner or operator shall make the records available to the department at the owner's office for audit as to accuracy of computations and payments. If the registrant, owner or operator keeps the records at any place outside this state, the department or the department's authorized agent may examine them at the place where they are kept. The department may make arrangements with agencies of other jurisdictions administering motor vehicle laws for joint audits of any such registrants, owners or operators.

**History:** 1953 Comp., § 64-6-30, enacted by Laws 1978, ch. 35, § 365; 1987 Comp., § 66-6-30, recompiled as 1978 Comp., § 7-15A-9 by Laws 1988, ch. 73, § 36; 1989, ch. 148, § 1; 1999, ch. 200, § 1.

**ANNOTATIONS**

**The 1999 amendment,** effective June 18, 1999, substituted "for" for "to" throughout the section; substituted "April 30" for "April 25", "July 31" for "July 25", "October 31" for "October 25", and "January 31" for "January 25" in Subsection A; in Subsection B, substituted "January 31" for "January 25" in the fourth sentence and substituted "has a liability for" for "should pay a" and substituted "pursuant to" for "according to the schedule of" in the fifth sentence; in Subsection C, inserted "for the weight distance tax" in the first sentence and substituted "pursuant to" for "according to the schedule of" in the last sentence.

**The 1989 amendment,** effective July 1, 1990, in Subsection D deleted "and the registrant, owner or operator shall pay all necessary traveling expenses and subsistence incurred" at the end of the third sentence.

## 7-15A-10. Repealed.

**ANNOTATIONS**

**Repeals.** – Laws 2003 (1st S.S.), ch. 3, § 30, repealed 7-15A-10 NMSA 1978, as enacted by Laws 1988, ch. 24, § 9, relating to an annual filing fee for commercial motor carrier vehicles, effective July 1, 2004. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 7-15A-11. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1996, ch. 37, § 10 repealed 7-15A-11 NMSA 1978, as enacted by Laws 1988, ch. 14, § 2, relating to annual safety and training fee and schedule, effective July 1, 1996. For provisions of former section, *see* the 1995 NMSA 1978 on *NMOneSource.com.*

## 7-15A-12. Weight distance tax identification permits; suspension and renewal.

A. An operator of a motor vehicle registered in this state and subject to the weight distance tax shall display a weight distance tax identification permit issued for that vehicle to an enforcement officer of the department of public safety upon demand of that employee and when the vehicle passes through a port of entry.

B. The department may suspend or decline to renew a weight distance tax identification permit for a motor vehicle if the owner or operator of the vehicle does not comply with the provisions of the Weight Distance Tax Act.

History: Laws 2003 (1st S.S.), ch. 3, § 6.

**ANNOTATIONS**

**Effective dates.** – Laws 2003 (1st S.S.), ch. 3, § 31 made Laws 2003 (1st S.S.), ch. 3, § 6 effective July 1, 2004.

## 7-15A-13. Weight distance tax identification permit administrative fee.

A. A person that obtains a weight distance tax identification permit shall pay an administrative fee to the department for the reasonable and necessary expense that the department incurs for processing and issuing a weight distance tax identification permit. The fee shall be paid in addition to a weight distance tax, special fuel excise tax and other use fee imposed for the use of public highways of this state. The department shall determine the amount of the fee pursuant to regulation. The fee shall not exceed ten dollars ($10.00).

B. The department shall deposit to the weight distance tax identification permit administration fund all proceeds from administrative fees collected by the department pursuant to this section.

History: Laws 2003 (1st S.S.), ch. 3, § 7.

**ANNOTATIONS**

**Effective dates.** – Laws 2003 (1st S.S.), ch. 3, § 31 made Laws 2003 (1st S.S.), ch. 3, § 7 effective July 1, 2004.

## 7-15A-14. Weight distance tax identification permit fund.

The "weight distance tax identification permit fund" is created in the state treasury. The purpose of the fund is to provide an account from which the department, the department of public safety and the department of transportation may pay the costs of issuing and administering weight distance tax identification permits and of enforcing weight distance tax compliance. The fund shall consist of administrative fees collected pursuant to the Weight Distance Tax Act. Money in the fund shall be appropriated to the department, the department of public safety and the department of transportation to pay for the cost of issuance and administration of weight distance tax identification permits and of enforcement by the department, the department of public safety and the department of transportation of weight distance tax compliance for motor carriers with the provisions of the Weight Distance Tax Act. Disbursements from the fund shall be by warrant of the secretary of finance and administration upon vouchers signed by the secretary or the secretary's authorized representative. Money in the fund shall not revert to the general fund at the end of a fiscal year.

**History:** Laws 2003 (1st S.S.), ch. 3, § 8; 2006, ch. 33, § 1; 2017, ch. 60, § 1.

**ANNOTATIONS**

**The 2017 amendment,** effective June 16, 2017, included the department of public safety and the department of transportation as eligible recipients of the weight distance tax identification permit fund to pay the costs of administration and compliance enforcement of the Weight Distance Tax Act; after "an account from which the department", added "the department of public safety and the department of transportation", after "enforcing weight distance tax", deleted "identification permit use" and added "compliance", after "appropriated to the department", added "the department of public safety and the department of transportation", after "enforcement by the department", deleted "or the motor transportation division of", after the next occurrence of "department of public safety", added "and the department of transportation", after the next occurrence of "weight distance tax", deleted "identification permit use" and added "compliance", and after "for motor carriers", deleted "that do not comply".

**The 2006 amendment,** effective July 1, 2006, changed the name of the fund from the "weight distance tax identification permit administration fund" to the "weight distance tax identification permit fund"; provided that a purpose of the fund is to enforce weight distance tax identification permit use; and provided for the appropriation of money in the fund for administration and enforcement of the weight distance tax.

## 7-15A-15. Taxpayers of weight distance tax; surety bond required; exceptions.

A. Except as required in Subsection H of this section, every taxpayer with a commercial domicile not located in an International Fuel Tax Agreement jurisdiction shall file with the department a bond on a form approved by the attorney general with a surety company authorized by the public regulation commission to transact business in New Mexico as a surety and upon which bond the taxpayer is the principal obligor and the state the obligee. The bond shall be conditioned upon the prompt filing of true reports and the payment by the taxpayer to the department of all taxes levied by the Weight Distance Tax Act, together with all applicable penalties and interest on the taxes.

B. In lieu of the bond, the taxpayer may elect to file with the department cash or bonds of the United States or New Mexico or of any political subdivision of the state.

C. The total amount of the bond, cash or securities required of a taxpayer shall be fixed by the department and may be increased or reduced by the department at any time, subject to the limitations provided in this section.

D. In fixing the total amount of the bond, cash or securities required of a taxpayer required to post a bond, the department shall require an amount equivalent to the total estimated tax due for two quarters; provided, however, that the total amount of bond, cash or securities required of a taxpayer shall never be less than five hundred dollars ($500) per motor vehicle on which the weight distance tax is imposed.

E. In the event the department determines that the amount of the existing bond, cash or securities is insufficient to ensure payment to New Mexico of the amount of the weight distance tax and penalties and interest for which a taxpayer is or may at any time become liable, the taxpayer, upon written demand from the department mailed to the last known address of the taxpayer as shown on the records of the department, shall file an additional bond, cash or securities in the manner, form and amount determined by the department to be necessary to secure at all times the payment by the taxpayer of all taxes, penalties and interest due pursuant to the Weight Distance Tax Act.

F. A surety on a bond furnished by a taxpayer as required by this section shall be released and discharged from all liability accruing on the bond after the expiration of ninety days from the date upon which the surety files with the department a written request to be released and discharged; provided, however, that the request shall not operate to release or discharge the surety from liability already accrued or that shall accrue before the expiration of the ninety-day period, unless a new bond is filed during the ninety-day period, in which case the previous bond may be canceled as of the effective date of the new bond. On receipt of notice of the request to cancel the bond due to filing of a new bond, the department shall promptly notify the taxpayer who furnished the bond that the taxpayer, on or before the expiration of the ninety-day period, shall file with the department a new bond with a surety satisfactory to the department in the amount and form required in this section.

G. A taxpayer who is required to file a bond with or provide cash or securities to the department in accordance with this section and who is required by another state law to file another bond with or provide cash or securities to the department may elect to file a combined bond or provide cash or securities applicable to the provision of both this section and the other law, with the approval of the secretary. The amount of the combined bond, cash or securities shall be determined by the department, and the form of the combined bond shall be approved by the attorney general.

H. A taxpayer who is required to file a bond pursuant to the provisions of this section and who for the eight consecutive quarters preceding the date of request has not been a delinquent taxpayer pursuant to the Weight Distance Tax Act may request to be exempt from the requirement to file a bond beginning with the first day of the first quarter following the end of the eight-quarter period. If a taxpayer exempted pursuant to this subsection subsequently becomes a delinquent taxpayer, the department may terminate the exemption and require the filing of a bond in accordance with this section. If the department terminates the exemption, the termination shall not be effective any earlier than ten days after the date the department notifies the taxpayer in writing of the termination.

I. As used in this section, "taxpayer" means a registrant, owner or operator of a motor vehicle on whom the weight distance tax is imposed.

History: Laws 2007, ch. 110, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 110, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 7-15A-16. Civil penalties; under-mileage reporters; under-weight reporters.

Any person required to file a report pursuant to Subsection B of Section 7-15A-8 NMSA 1978 that is determined to have reported less than the mileage actually traveled on New Mexico highways during a tax payment period or less than the actual gross vehicle weight traveled during a tax payment period shall, in addition to any other applicable fees, penalties and interest, pay an additional penalty computed in accordance with the following schedule:

| Weight Distance Tax Owed Per Period | Penalty |
|---|---|
| $1 to $99 | $ 100 |
| $100 to $499 | $ 500 |
| $500 to $999 | $1,000 |

| | |
|---|---|
| $1,000 to $1,499 | $1,500 |
| $1,500 to $1,999 | $2,000 |
| $2,000 to $2,499 | $2,500 |
| $2,500 to $2,999 | $3,000 |
| $3,000 and over | $4,000. |

History: Laws 2009, ch. 196, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 196, § 3 made Laws 2009, ch. 196, § 1 effective July 1, 2009.

**Severability.** — Laws 2009, ch. 196, § 2 provided that if any part or application of Laws 2009, ch. 196, § 1 is held invalid, the remainder or its application to other situations or persons shall not be affected.

# ARTICLE 16
# Special Fuels Tax

(Repealed by Laws 1980, ch. 98, § 15; 1988, ch. 73, § 56; 1990, ch. 124, § 23; 1992, ch. 51, § 23.)

## 7-16-1 to 7-16-26. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1992, ch. 51, § 23 repealed 7-16-1 to 7-16-3; 7-16-3.2 to 7-16-7; 7-16-8.1, 7-16-8.2, 7-16-10 to 7-16-13; 7-16-15 and 7-16-18 NMSA 1978, relating to the special fuels tax, effective January 1, 1993. For provisions of former sections, *see* the 1991 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* Chapter 7, Article 16A NMSA 1978.

Laws 1990, ch. 124, § 23 repealed 7-16-3.1, as enacted by Laws 1988, ch. 70, § 11, relating to petroleum storage cleanup fund surcharge, effective July 1, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

Laws 1980, ch. 98, § 15, repealed 7-16-8 and 7-16-9 NMSA 1978, relating to exemptions to temporary user permits and who qualifies to pay special fuel tax, effective July 1, 1980.

Laws 1988, ch. 73, § 56 repealed 7-16-14 NMSA 1978, as amended by Laws 1983, ch. 133, § 5, relating to retention of records by special fuel dealers, effective July 1, 1988.

Laws 1988, ch. 73, § 56 repealed 7-16-16 and 7-16-17 NMSA 1978, as amended by Laws 1977, ch. 250, § 82, and Laws 1987, ch. 347, § 16, relating to falsification of statements, doing business without a license, and distribution of tax and license fee revenue, effective July 1, 1988.

Laws 1988, ch. 73, § 56 repealed 7-16-19 to 7-16-26 NMSA 1978, as amended by Laws 1977, ch. 250, §§ 84, 86; 1978, ch. 56, § 1; 1978, ch. 57, § 1; 1983, ch. 133, §§ 7, 8; 1985, ch. 45, § 1; and as enacted by Laws 1983, ch. 133, § 9, effective July 1, 1988.

# ARTICLE 16A
# Special Fuels Supplier Tax

## 7-16A-1. Short title.

Chapter 7, Article 16A NMSA 1978 may be cited as the "Special Fuels Supplier Tax Act".

**History:** Laws 1992, ch. 51, § 1; 1993, ch. 272, § 3.

**ANNOTATIONS**

**Cross references.** — For the Natural Gas and Crude Oil Production Incentive Act, *see* 7-29B-1 NMSA 1978.

**The 1993 amendment,** substituted "Chapter 7, Article 16A NMSA 1978" for "This act".

**Compiler's notes.** — Laws 1993, ch. 272 included both an emergency clause making the act effective immediately and an effective date provision providing that the act was effective January 1, 1993. *See* N.M. Const., Art. IV, § 23.

## 7-16A-2. Definitions.

As used in the Special Fuels Supplier Tax Act:

A. "biodiesel" means a renewable, biodegradable, mono alkyl ester combustible liquid fuel that is derived from agricultural plant oils or animal fats and that meets the American society for testing and materials specifications for biodiesel fuel, B100 or B99 blend stock for distillate fuels;

B. "blended biodiesel" means a diesel engine fuel that contains at least two percent biodiesel;

C. "bulk storage" means the storage of special fuels in any tank or receptacle, other than a supply tank, for the purpose of sale by a dealer or for use by a user or for any other purpose;

D. "bulk storage user" means a user who operates, owns or maintains bulk storage in this state from which the user places special fuel into the supply tanks of motor vehicles owned or operated by that user;

E. "dealer" means any person who sells and delivers special fuel to a user;

F. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

G. "government-licensed vehicle" means a motor vehicle lawfully displaying a registration plate, as defined in the Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978] issued by:

(1) the United States or any state, identifying the motor vehicle as belonging to the United States or any of its agencies or instrumentalities;

(2) the state of New Mexico, identifying the vehicle as belonging to the state of New Mexico or any of its political subdivisions, agencies or instrumentalities; or

(3) any state, identifying the motor vehicle as belonging to an Indian nation, tribe or pueblo or an agency or instrumentality thereof;

H. "gross vehicle weight" means the weight of a motor vehicle or combination motor vehicle without load, plus the weight of any load on the vehicle;

I. "highway" means every road, highway, thoroughfare, street or way, including toll roads, generally open to the use of the public as a matter of right for the purpose of motor vehicle travel and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair;

J. "motor vehicle" means any self-propelled vehicle or device that is either subject to registration pursuant to Section 66-3-1 NMSA 1978 or is used or may be used on the public highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semitrailer;

K. "person" means an individual or any other entity, including, to the extent permitted by law, any federal, state or other government or any department, agency, instrumentality or political subdivision of any federal, state or other government;

L. "rack operator" means the operator of a refinery in this state, any person who blends special fuel in this state or the owner of special fuel stored at a pipeline terminal in this state;

M. "registrant" means any person who has registered a motor vehicle pursuant to the laws of this state or of another state;

N. "retailer" means a person who sells special fuel generally in quantities of less than two hundred fifty gallons and delivers the special fuel into the supply tanks of motor vehicles;

O. "sale" means any delivery, exchange, gift or other disposition;

P. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

Q. "special fuel" means any diesel-engine fuel, biodiesel, blended biodiesel or kerosene used for the generation of power to propel a motor vehicle, except for gasoline, liquefied petroleum gas, compressed or liquefied natural gas and products specially prepared and sold for use in aircraft propelled by turbo-prop or jet engines;

R. "special fuel user" means any user who is a registrant, owner or operator of a motor vehicle using special fuel and having a gross vehicle weight in excess of twenty-six thousand pounds;

S. "state" or "jurisdiction" means a state, territory or possession of the United States, the District of Columbia, the commonwealth of Puerto Rico, a foreign country or a state or province of a foreign country;

T. "supplier" means any person, but not including a rack operator or the United States or any of its agencies except to the extent now or hereafter permitted by the constitution of the United States and laws thereof, who receives special fuel;

U. "supply tank" means any tank or other receptacle in which or by which fuel may be carried and supplied to the fuel-furnishing device or apparatus of the propulsion mechanism of a motor vehicle when the tank or receptacle either contains special fuel or special fuel is delivered into it;

V. "tax" means the special fuel excise tax imposed pursuant to the Special Fuels Supplier Tax Act, and, with respect to a special fuel user, "tax" includes any special fuel tax paid to another jurisdiction pursuant to a cooperative agreement to which the state is a party pursuant to Section 9-11-12 NMSA 1978;

W. "user" means any person other than the United States government or any of its agencies or instrumentalities; the state of New Mexico or any of its political subdivisions, agencies or instrumentalities; or an Indian nation, tribe or pueblo or any agency or instrumentality of an Indian nation, tribe or pueblo, who uses special fuel to propel a motor vehicle on the highways; and

X. "wholesaler" means a person who is not a supplier and who sells special fuel in quantities of two hundred fifty gallons or more and does not deliver special fuel into the supply tanks of motor vehicles.

**History:** 1978 Comp., § 7-16A-2, enacted by Laws 1992, ch. 51, § 2; 1993, ch. 272, § 4; 1995, ch. 16, § 14; 1997, ch. 192, § 5; 2005, ch. 109, § 8; 2013, ch. 109, § 1.

## ANNOTATIONS

**The 2013 amendment,** effective May 1, 2013, defined "biodiesel" and "blended biodiesel"; clarified the definition of "special fuel"; added Subsections A and B; and in Subsection Q, after "diesel-engine fuel", added "biodiesel, blended biodiesel".

Laws 2013, ch. 109, § 6 provided that Laws 2013, ch. 109 is effective on May 1, 2013, provided that prior to May 1, 2013 the provisions of the act are enacted into law, or July 1, 2013.

Laws 2013, ch. 109, § 7, contained an emergency clause and was approved April 2, 2013.

**Applicability.** — Laws 2013, ch. 109, § 5 provided that the provisions of Laws 2013, ch. 109 apply to special fuel received on or after:

A. May 1, 2013, provided that prior to May 1, 2013, provisions of this act are enacted into law; or

B. July 1, 2013.

**The 2005 amendment,** effective January 1, 2006, added the definition of "retailer" in Subsection L; added an exception in Subsection O to the definition of "special fuel" for fuel used in aircraft propelled by turbo-prop or jet engines; provided in Subsection T that "tax" includes any special fuel tax paid to another jurisdiction pursuant to a cooperative agreement; and added the definition of "wholesaler" in Subsection V.

**The 1997 amendment,** effective June 1, 1997, redesignated former Paragraphs E(1) and (2) as Paragraphs E(1) to (3), inserted "identifying the vehicle as belonging to the state of New Mexico" in Paragraph E(2), inserted "either subject to registration pursuant to Section 66-3-1 NMSA 1978 or is" in Subsection H, rewrote Subsections J and N, inserted "a rack operator or" in Subsection Q, deleted "within the meaning of 'received' as defined in this section" from the end of Subsection Q, deleted former Subsection T defining "use", redesignated former Subsection U as Subsection T, and made minor stylistic changes throughout the section.

**The 1995 amendment,** effective January 1, 1996, substituted "motor vehicle or combination motor vehicle" for "vehicle" in Subsection F; inserted "including toll roads" near the beginning of Subsection G; substituted "or any other legal entity" for "firm, partnership, company, corporation, cooperative association, receiver, estate, joint venture, syndicate, limited liability company or other association" in Subsection I; in Subsection N, deleted "kerosene, all other liquid fuels, including liquified petroleum

gases and natural gas" following "diesel-engine fuel" and added the language beginning "or alternative fuel" at the end; and inserted "vehicle" in Subsection O.

**The 1993 amendment,** inserted "limited liability company" in Subsection I; substituted "twenty-six thousand pounds" for "twelve thousand pounds" in Subsection O; added "and any activity ancillary to that propulsion" at the end of Paragraph (2) of Subsection T; rewrote Subsection U, which read " 'user' means any person other than the United States government or an Indian nation, tribe or pueblo who uses special fuel to propel a motor vehicle on the highways"; and made minor stylistic changes throughout the section.

## 7-16A-2.1. When special fuel received or used; who is required to pay tax.

A. A rack operator receives special fuel at the time and place when the rack operator first loads the special fuel at the refinery or pipeline terminal into tank cars, tank trucks, tank wagons or any other type of transportation equipment or when the rack operator places the special fuel into any tank or other container in this state from which sales or deliveries not involving transportation are made. A rack operator who receives special fuel is required to pay special fuel excise tax on the special fuel received, except as provided otherwise in Subsection B of this section. Special fuel is not received when it is shipped from one refinery or pipeline terminal to another refinery or pipeline terminal.

B. When the rack operator first loads special fuel at the refinery or pipeline terminal into tank cars, tank trucks, tank wagons or any other type of transportation equipment for the account of another person who is registered with the department as a supplier and is taxable under the Special Fuels Supplier Tax Act, however, that person receives the special fuel and is required to pay the special fuel excise tax.

C. Special fuel imported into New Mexico by any means other than in the supply tank of a motor vehicle or by pipeline is received at the time and place it is imported into this state. The person who owns the special fuel at the time of importation receives the special fuel and is required to pay the special fuel excise tax.

D. If special fuel is received within the exterior boundaries of an Indian reservation or pueblo grant and the person required to pay the special fuel excise tax is immune from state taxation, the special fuel is also received when the special fuel is transported off the reservation or pueblo grant by any means other than in the fuel supply tank of a motor vehicle or by pipeline. Any person who owns special fuel after the special fuel is transported off the reservation or pueblo grant receives the special fuel and is the person required to pay the special fuel excise tax, unless the special fuel excise tax has been paid by a previous owner.

E. Special fuel is used in New Mexico when it is put into the supply tank of any motor vehicle registered, owned or operated by a special fuel user, consumed by a

special fuel user in the propulsion of a motor vehicle on the highways of this state or any activity ancillary to that propulsion, or imported into the state in the fuel supply tank of any motor vehicle for the propulsion of the motor vehicle on New Mexico highways.

**History:** 1978 Comp., § 7-16A-2.1, enacted by Laws 1997, ch. 192, § 6.

## 7-16A-3. Imposition and rate of tax; denomination as special fuel excise tax.

A. For the privilege of receiving or using special fuel in this state, there is imposed an excise tax at a rate provided in Subsection B of this section on each gallon of special fuel received in New Mexico.

B. The tax imposed by Subsection A of this section shall be twenty-one cents ($.21) per gallon of special fuel received or used in New Mexico.

C. The tax imposed by this section may be called the "special fuel excise tax".

History: Laws 1992, ch. 51, § 3; 1993, ch. 357, § 10; 2003 (1st S.S.), ch. 3, § 9.

**ANNOTATIONS**

**The 2003 (1st S.S.) amendment,** effective July 1, 2004, substituted "twenty-one cents ($.21)" for "eighteen cents ($.18)" in Subsection B.

## 7-16A-4. Special fuel inventory tax; imposition of tax; date payment of tax due.

A. A "special fuel inventory tax" is imposed measured by the quantity of gallons of special fuel in the possession of a supplier or bulk storage user on the day in which an increase in the special fuel excise tax rate is effective. The taxable event is the existence of an inventory in the possession of a supplier or bulk storage user on the day prior to the day in which an increase in the special fuel excise tax rate is effective. The rate of the special fuel inventory tax applicable to each gallon of special fuel held in inventory by a supplier or bulk storage use, as provided in Section 5 [7-16A-5 NMSA 1978] of the Special Fuels Supplier Tax Act, shall be the difference between the special fuel excise tax rate imposed on the day prior to the day in which the special fuel excise tax rate is increased, subtracted from the special fuel excise tax rate imposed on the day in which the special fuel excise tax rate increase is effective, expressed in cents per gallon.

B. The special fuel inventory tax is to be paid to the department on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

**History:** Laws 1992, ch. 51, § 4.

## 7-16A-5. Special fuel inventories.

A. On the day prior to the day in which the special fuel excise tax rate is increased or decreased, each supplier, dealer and bulk storage user shall take inventory of the gallons of special fuel on hand.

B. Suppliers and bulk storage users shall report total gallons of special fuel in inventory on the day prior to the day in which an increase in the special fuel excise tax rate is effective and pay any special fuel inventory tax due.

History: Laws 1992, ch. 51, § 5; 2005, ch. 109, § 9.

**ANNOTATIONS**

**The 2005 amendment,** effective January 1, 2006, deleted Subsection C, which required dealers to maintain a record of total gallons of fuel in inventory prior the day on which an the special fuel excise tax rate changes and which prohibited dealers from changing the price of special fuel sold until the inventory was sold.

## 7-16A-5.1. Manifest or bill of lading required when transporting special fuels.

Every person transporting special fuels from a refinery or other facility at which special fuel is produced, refined, manufactured, blended or compounded or from a pipeline terminal in this state, importing special fuels into this state or exporting special fuels from this state, other than by pipeline or in the fuel supply tanks of motor vehicles, shall carry a manifest or bill of lading in form and content as prescribed by or acceptable to the department. The manifest or bill of lading shall be signed by the consignor and by every person accepting the special fuel or any part of it, with a notation as to the amount accepted. If a manifest or bill of lading is not required to be carried by the terms of this section, any person transporting special fuels without such a manifest or bill of lading shall, upon demand, furnish proof acceptable to the department that the special fuels so transported were legally acquired by a registered supplier who assumed liability for payment of the tax imposed by the Special Fuels Supplier Tax Act.

**History:** Laws 1997, ch. 192, § 14.

## 7-16A-6. Special fuel inventory tax refund.

A "special fuel inventory tax refund" is established measured by the quantity of gallons of special fuel in the possession of a supplier or bulk storage user on the day in which a decrease in the special fuel excise tax rate is effective. The refund event is the existence of an inventory in the possession of a supplier or bulk storage user on the day prior to the day in which a decrease in the special fuel excise tax rate is effective. The refund is to be calculated by determining the difference between the special fuel excise

tax rate imposed on the day prior to the day in which the special fuel excise tax rate is decreased, subtracted from the special fuel excise tax rate imposed on the day in which the special fuel excise tax rate decrease is effective, expressed in cents per gallon. The refund rate so determined is then multiplied by each gallon in inventory as determined under Section 5 [7-16A-5 NMSA 1978] of the Special Fuels Supplier Tax Act.

**History:** Laws 1992, ch. 51, § 6.

## 7-16A-7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 16, § 16 repealed 7-16A-7 NMSA 1978, as enacted by Laws 1992, ch. 51, § 7, relating to flat tax for liquefied petroleum gas-powered and natural gas-powered vehicles, effective January 1, 1996. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 7-16B-4 NMSA 1978.

## 7-16A-8. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2006, ch. 74, § 3, repealed 7-16A-8 NMSA 1978, as enacted by Laws 1992, ch. 51, § 3, relating to special bulk storage user permits, effective May 17, 2006. For provisions of former section, *see* the 2005 NMSA 1978 on *NMOneSource.com.*

## 7-16A-9. Tax returns; payment of tax.

Rack operators and special fuel suppliers shall file tax returns in form and content as prescribed by the secretary on or before the twenty-fifth day of the month following the month in which special fuel is received in New Mexico. Payment of the tax shall be made with or prior to filing of the return. The department may require that the tax returns be provided through electronic means as long as an exception is provided for rack operators with limited amounts of fuel sold and for suppliers with limited amounts of fuel received.

**History:** Laws 1992, ch. 51, § 9; 1997, ch. 192, § 8; 2005, ch. 109, § 10.

**ANNOTATIONS**

**The 2005 amendment,** effective January 1, 2006, provided that the taxation and revenue department may require that tax returns be provided by electronic means if an exception is given to rack operator with limited amounts of fuel sold and for suppliers with limited amount of fuel received.

**The 1997 amendment,** effective June 1, 1997, deleted "special fuel suppliers" from the end of the section heading and inserted "Rack operators and" at the beginning of the section.

## 7-16A-9.1. Returns by retailers; requirements.

Retailers shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which special fuel is purchased in New Mexico. The department may require that the information returns be provided through electronic means if the department provides an exception from that requirement for retailers that purchase limited amounts of fuel.

History: Laws 2005, ch. 109, § 12.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 109, § 16 made Laws 2005, ch. 109, § 12 effective January 1, 2006.

## 7-16A-9.2. Returns by wholesalers.

Wholesalers shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which special fuel is sold in New Mexico. The department may require that the information returns be provided through electronic means as long as an exception is provided for wholesalers with limited amounts of fuel sold.

History: Laws 2005, ch. 109, § 13.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 109, § 16 made Laws 2005, ch. 109, § 13 effective January 1, 2006.

## 7-16A-9.3. Returns by rack operators; requirements.

Rack operators shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which special fuel is distributed in New Mexico. The department may require that the information returns be provided through electronic means if the department provides an exception from that requirement for rack operators that distribute limited amounts of fuel.

History: Laws 2005, ch. 109, § 14.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 109, § 16 made Laws 2005, ch. 109, § 14 effective January 1, 2006.

## 7-16A-9.4. Reporting requirements; special fuel deduction; biodiesel.

A. A taxpayer that deducts an amount of special fuel that is biodiesel from the total amount of special fuel received in New Mexico pursuant to Paragraph (2) of Subsection H of Section 7-16A-10 NMSA 1978 shall report the deducted amount separately with the taxpayer's return in a manner prescribed by the department.

B. The department shall calculate the aggregate amount, in dollars, of the difference between the amount of special fuel excise tax that would have been collected in a fiscal year if not for the deduction allowed pursuant to Paragraph (2) of Subsection H of Section 7-16A-10 NMSA 1978 and the amount of special fuel excise tax actually collected. The department shall compile an annual report that includes the aggregate amount, the number of taxpayers that deducted an amount of special fuel pursuant to Paragraph (2) of Subsection H of Section 7-16A-10 NMSA 1978 and any other information necessary to evaluate the deduction. Beginning in 2017 and every five years thereafter, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the costs and benefits of the deduction to the state.

History: Laws 2013, ch. 109, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 109, § 6 provided that Laws 2013, ch. 109 was effective May 1, 2013, provided that prior to May 1, 2013 the provisions of the act are enacted into law, or July 1, 2013.

Laws 2013, ch. 109, § 7, contained an emergency clause and was approved April 2, 2013.

**Applicability.** — Laws 2013, ch. 109, § 5 provided that the provisions of Laws 2013, ch. 109 apply to special fuel received on or after:

A. May 1, 2013, provided that prior to May 1, 2013, provisions of this act are enacted into law; or

B. July 1, 2013.

## 7-16A-10. Deductions; special fuel excise tax; special fuel suppliers.

In computing the tax due, the following amounts of special fuel may be deducted from the total amount of special fuel received in New Mexico during the tax period, provided that satisfactory proof thereof is furnished to the department:

A. special fuel received in New Mexico, but exported from this state by a rack operator, special fuel supplier or dealer, other than in the fuel supply tank of a motor vehicle or sold for export by a rack operator or distributor; provided that, in either case:

(1) the person exporting the special fuel is registered in or licensed by the destination state to pay that state's special fuel or equivalent fuel tax;

(2) proof is submitted that the destination state's special fuel or equivalent fuel tax has been paid or is not due with respect to the special fuel; or

(3) the destination state's special fuel or equivalent fuel tax is paid to New Mexico in accordance with the terms of an agreement entered into pursuant to Section 9-11-12 NMSA 1978 with the destination state;

B. special fuel sold to the United States or any agency or instrumentality thereof for the exclusive use of the United States or any agency or instrumentality thereof. Special fuel sold to the United States includes special fuel delivered into the supply tank of a government-licensed vehicle;

C. special fuel sold to the state of New Mexico or any political subdivision, agency or instrumentality thereof for the exclusive use of the state of New Mexico or any political subdivision, agency or instrumentality thereof. Special fuel sold to the state of New Mexico includes special fuel delivered into the supply tank of a government-licensed vehicle;

D. special fuel sold to an Indian nation, tribe or pueblo or any agency or instrumentality thereof for the exclusive use of the Indian nation, tribe or pueblo or any agency or instrumentality thereof. Special fuel sold to an Indian nation, tribe or pueblo includes special fuel delivered into the supply tank of a government-licensed vehicle;

E. special fuel dyed in accordance with federal regulations;

F. special fuel that is number 2 diesel fuel sold for the generation of power to propel a vehicle authorized by contract with the public education department as a school bus; provided that the fuel has a distillation temperature of five hundred degrees Fahrenheit at a ten percent recovery point and six hundred forty degrees Fahrenheit at a ninety percent recovery point;

G. special fuel received in New Mexico on which New Mexico special fuel excise tax was paid by the out-of-state terminal at which the special fuel was loaded, provided that documentation that the special fuel was to be imported into New Mexico was provided to the terminal operator by the person receiving the fuel; and

H. special fuel received in New Mexico that:

(1) prior to July 1, 2014, consists of at least ninety-nine percent vegetable oil or animal fat; provided that the use is restricted to an auxiliary fuel system that is subject to a certificate of conformity pursuant to the federal Clean Air Act; or

(2) is biodiesel received or manufactured and delivered to a rack operator that is within the state for blending or resale.

History: Laws 1992, ch. 51, § 10; 1993, ch. 272, § 6; 1997, ch. 192, § 9; 1998, ch. 44, § 4; 2001, ch. 43, § 1; 2005, ch. 232, § 1; 2006, ch. 74, § 1; 2007, ch. 110, § 3; 2009, ch. 99, § 2; 2009, ch. 99, § 3; 2013, ch. 109, § 2.

## ANNOTATIONS

**Repeals.** — Laws 2013, ch. 109, § 4, effective April 2, 2013, repealed Laws 2009, ch. 99, § 3, which would have become effective July 1, 2014.

**The 2013 amendment,** effective May 1, 2013, provided a deduction for receipt of biodiesel fuel to rack operators for blending and resale; in Paragraph (1) of Subsection H, at the beginning of the sentence, added "prior to July 1, 2014"; and added Paragraph (2) of Subsection H.

Laws 2013, ch. 109, § 6 provided that Laws 2013, ch. 109 is effective on May 1, 2013, provided that prior to May 1, 2013 the provisions of the act are enacted into law, or July 1, 2013.

Laws 2013, ch. 109, § 7, contained an emergency clause and was approved April 2, 2013.

**Applicability.** — Laws 2013, ch. 109, § 5 provided that the provisions of Laws 2013, ch. 109 apply to special fuel received on or after:

A. May 1, 2013, provided that prior to May 1, 2013, provisions of this act are enacted into law; or

B. July 1, 2013.

**The 2009 amendment,** effective July 1, 2009, added Subsection H.

**The 2007 amendment,** effective June 15, 2007, added a new Subsection G to provide a deduction for special fuel received in New Mexico on which New Mexico special fuel tax was paid by the out-of-state terminal at which the special fuel was loaded.

**The 2006 amendment,** effective May 17, 2006, deleted former Subsection E, which provided a deduction for special fuel sold to the holder of a special bulk storage user

permit and delivered in to special bulk storage pursuant to Section 7-16A-8 NMSA 1978.

**The 2005 amendment,** effective July 1, 2005, added Subsection G to provide a deduction for number 2 diesel fuel sold for the generation of power to propel a school bus.

**The 2001 amendment,** effective June 15, 2000, deleted "and used in any manner other than for propulsion of motor vehicles on the highways of this state or activities ancillary to that propulsion" from Subsection F.

**The 1998 amendment,** effective July 1, 1998, in the introductory language deleted "special fuel excise" preceding "tax" and in Subsection F, inserted "dyed in accordance with federal regulations and".

**The 1997 amendment,** effective June 1, 1997, rewrote Subsections A and F, and made a minor stylistic change in Subsection E.

**The 1993 amendment,** added current Subsection C and Subsections E and F; redesignated former Subsection C as Subsection D; and made a minor stylistic change.

## 7-16A-11. Tax returns; payment of tax; special fuel users.

A. Except as otherwise provided in this section, a special fuel user shall file a special fuel excise tax return in form and content as prescribed by the secretary to conform to the due date for the special fuel excise tax return required by an interstate agreement to which the state is a party.

B. A special fuel user may elect to file and pay the special fuel excise tax annually by conforming to the annual filing requirements of an international fuel tax agreement to which the state is a party.

C. A special fuel user shall file a return in accordance with the conditions and terms of the international fuel tax agreement to which the state is a party.

History: Laws 1992, ch. 51, § 11; 2005, ch. 109, § 11.

**ANNOTATIONS**

**The 2005 amendment,** effective January 1, 2006, modified former Subsections A through D to require a special fuel user to file a special fuel excise tax return in form and content prescribed by the secretary of taxation and revenue to conform to the due date for the return required by an interstate agreement; added Subsection B to provide that a special fuel user may elect to file and pay the special fuel excise tax annually by conforming to an international fuel tax agreement; and added Subsection C to provide

that a special fuel user shall file a return in accordance with the conditions and terms of an international fuel tax agreement.

## 7-16A-12. Credit; special fuel excise tax; special fuel users.

In computing any special fuel excise tax due, all special fuel excise tax paid on special fuel used during the reporting period may be credited against the calculated special fuel excise tax due for that reporting period, provided that satisfactory proof of the special fuel excise tax paid is furnished to the department.

**History:** Laws 1992, ch. 51, § 12; 1997, ch. 192, § 10.

**ANNOTATIONS**

**The 1997 amendment,** effective June 1, 1997, deleted "or weight distance tax due" preceding "for that reporting period, provided".

## 7-16A-13. Claim for refund or credit of special fuel excise tax paid; on special fuel destroyed by fire, accident or acts of God before retail sale; on special fuel previously received from a source other than a refiner or pipeline terminal.

A. Upon the submission of proof satisfactory to the department, the department shall allow a claim for refund or credit of any special fuel excise tax or special fuel inventory tax paid on special fuel destroyed by fire, accident or acts of God while in the possession of a supplier, bulk storage user or dealer.

B. Upon the submission of proof satisfactory to the department, a rack operator may submit, and the department may allow, a claim for refund of a New Mexico tax paid on special fuel previously received in New Mexico from a source other than a refiner or pipeline terminal in this state and placed in a terminal from which it will be loaded into tank cars, tank trucks, tank wagons or other types of transportation equipment.

C. No person may submit claims for refund pursuant to the provisions of this section more frequently than quarterly. No claim for refund may be submitted or allowed on less than one hundred gallons.

D. The department may prescribe the documents necessary to support a claim for refund pursuant to the provisions of this section.

History: Laws 1992, ch. 51, § 13; 2015 (1st S.S.), ch. 2, § 21.

**ANNOTATIONS**

**The 2015 (1st S.S.) amendment,** effective January 1, 2016, provided for a refund or credit of a New Mexico tax paid on special fuel previously received in New Mexico from a source other than a refiner or pipeline terminal in this state; in the catchline added "on special fuel previously received form a source other than a refiner or pipeline terminal"; added the subsection designation "A" preceding the previously undesignated language; and added Subsections B, C and D.

## 7-16A-13.1. Claim for refund of special fuel excise tax paid on special fuel.

A. Upon the submission of proof satisfactory to the department, a user of special fuel may submit and the department may allow a claim for refund of tax paid on special fuel used to propel a vehicle authorized by contract with the public education department or with a public school district as a school bus, to propel a vehicle off-road, to operate auxiliary equipment by a power take-off from the main engine or transmission of a vehicle or to operate a non-automotive apparatus mounted on a vehicle when the special fuel used for such purposes and the special fuel used to propel the vehicle on the highways are drawn from a common supply tank. The vehicle must be registered with the department. The user must be registered with the department for purposes of reporting and paying gross receipts tax.

B. No person may submit claims for refund pursuant to the provisions of this section more frequently than quarterly. No claim for refund may be submitted or allowed on less than one hundred gallons.

C. The department may prescribe the documents necessary to support a claim for refund pursuant to the provisions of this section. The department may prescribe the use of types of monitoring or measuring equipment.

D. This section applies to special fuel purchased on or after July 1, 2001, except for the refund for special fuel used to propel a school bus, which applies to special fuel purchased on or after July 1, 2005.

**History:** 1978 Comp., § 7-16A-13.1, enacted by Laws 2001, ch. 43, § 2; 2005, ch. 232, § 2; 2006, ch. 73, § 1; 2006, ch. 74, § 2.

**ANNOTATIONS**

**2006 Multiple Amendments.** — Laws 2006, ch. 73, § 1 and Laws 2006, ch. 74, § 2 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2006, ch. 74, § 2, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2006, ch. 73, § 1 and Laws 2006, ch. 74, § 2 are described below. To view the session laws in their entirety, *see* the 2006 session laws on *NMOneSource.com*.

**Laws 2006, ch. 74, § 2,** effective May 17, 2006, deleted the exception relating to a holder of a bulk storage user permit.

**Laws 2006, ch. 73, § 1,** effective July 1, 2006, added "or with a public school district" in Subsection A.

**The 2005 amendment,** effective July 1, 2005, in Subsection A, provided that the department may allow a claim for refund of tax paid on special fuel used to propel a vehicle authorized by contract with the public education department as a school bus; and in Subsection D, provided that the section applies to special fuel to propel a school bus that is purchased on or after July 1, 2005.

## 7-16A-14. Registration necessary to engage in business as rack operator, special fuel supplier or dealer.

Each person engaged in the business of selling special fuel in New Mexico as a rack operator, special fuel supplier or dealer shall register as such under the provisions of Section 7-1-12 NMSA 1978.

**History:** Laws 1992, ch. 51, § 14; 1997, ch. 192, § 11.

**ANNOTATIONS**

**The 1997 amendment,** effective June 1, 1997, inserted "rack operator" in the section heading, and near the middle of the section.

## 7-16A-15. Bond required of supplier.

A. Except as provided in Subsection H of this section, every supplier shall file with the department a bond on a form approved by the attorney general with a surety company authorized by the state corporation commission [public regulation commission] to transact business in this state as a surety and upon which bond the supplier is the principal obligor and the state the obligee. The bond shall be conditioned upon the prompt filing of true reports and the payment by the supplier to the department of all taxes levied by the Special Fuels Supplier Tax Act, together with all applicable penalties and interest thereon.

B. In lieu of the bond, the supplier may elect to file with the department cash or bonds of the United States or New Mexico or of any political subdivision of the state.

C. The total amount of the bond, cash or securities required of any supplier shall be fixed by the department and may be increased or reduced by the department at any time, subject to the limitations provided in this section.

D. In fixing the total amount of the bond, cash or securities required of any supplier required to post bond, the department shall require an equivalent in total amount to at

least two times the amount of the department's estimate of the supplier's monthly special fuel excise tax, determined in such manner as the secretary may deem proper; provided, however, the total amount of bond, cash or securities required of a supplier shall never be less than one thousand dollars ($1,000).

E. In the event the department decides that the amount of the existing bond, cash or securities is insufficient to insure payment to this state of the amount of the special fuel excise tax and any penalties and interest for which the supplier is or may at any time become liable, then the supplier shall forthwith, upon written demand of the department mailed to the last known address of the supplier as shown on the records of the department, file an additional bond, cash or securities in the manner, form and amount determined by the department to be necessary to secure at all times the payment by the supplier of all taxes, penalties and interest due pursuant to the Special Fuels Supplier Tax Act.

F. Any surety on any bond furnished by any supplier as required by this section shall be released and discharged from all liability accruing on the bond after the expiration of ninety days from the date upon which the surety files with the department a written request to be released and discharged; provided, however, the request shall not operate to release or discharge the surety from any liability already accrued or that shall accrue before the expiration of the ninety-day period, unless a new bond is filed during the ninety-day period, in which case the previous bond may be canceled as of the effective date of the new bond. On receipt of notice of such request, the department shall notify promptly the supplier who furnished the bond that the supplier shall, on or before the expiration of the ninety-day period, file with the department a new bond with a surety satisfactory to the department in the amount and form required in this section.

G. The supplier required to file bond with or provide cash or securities to the department in accordance with this section and who is required by any other state law to file another bond with or provide cash or securities to the department may elect to file a combined bond or provide cash or securities applicable to the provisions of both this section and the other law, with the approval of the secretary. The amount of the combined bond, cash or securities shall be determined by the department, and the form of the combined bond shall be approved by the attorney general.

H. On July 1, 1994, every supplier who, for the twenty-four month period immediately preceding that date, has not been a delinquent taxpayer under the Special Fuels Supplier Tax Act or the Special Fuels Tax Act [repealed] is exempt from the requirement pursuant to this section to file a bond. A supplier required to file a bond pursuant to the provisions of this section who, for a twenty-four consecutive month period ending after July 1, 1994, has not been a delinquent taxpayer pursuant to either the Special Fuels Supplier Tax Act or the Special Fuels Tax Act [repealed] may request to be exempt from the requirement to file a bond beginning with the first day of the first month following the end of the twenty-four month period. If a supplier exempted pursuant to this subsection subsequently becomes a delinquent taxpayer pursuant to the Special Fuels Supplier Tax Act, the department may terminate the exemption and

require the filing of a bond in accordance with this section. If the department terminates the exemption, the termination shall not be effective any earlier than ten days after the date the department notifies the supplier in writing of the termination.

**History:** Laws 1992, ch. 51, § 15; 1994, ch. 7, § 1; 1997, ch. 192, § 12.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law. Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

The Special Fuels Tax Act was formerly compiled as Chapter 7, Article 16 NMSA 1978 prior to its repeal in 1993.

**The 1997 amendment,** effective June 1, 1997, deleted "or dealer" following "supplier" in the section heading and throughout the section, substituted "supplier's monthly special fuel excise tax" for "supplier's or dealer's quarterly special fuel excise tax" in Subsection D and rewrote the first three sentences in Subsection H.

**The 1994 amendment,** effective July 1, 1994, added the exception clause at the beginning of the first sentence in Subsection A; in Subsection D, inserted "required to post bond", and substituted "two times" for "one and one-half times" and "quarterly" for "monthly"; deleted "any any" preceding "and all" near the beginning of the first sentence in Subsection F; and added Subsection H.

## 7-16A-15.1. Special fuel users; surety bond required; exceptions.

A. Except as required in Subsection H of this section, every special fuel user with a commercial domicile not located in an International Fuel Tax Agreement jurisdiction shall file with the department a bond on a form approved by the attorney general with a surety company authorized by the public regulation commission to transact business in New Mexico as a surety and upon which bond the special fuel user is the principal obligor and the state the obligee. The bond shall be conditioned upon the prompt filing of true reports and the payment by the special fuel user to the department of all taxes levied by the Special Fuels Supplier Tax Act, together with all applicable penalties and interest on the taxes.

B. In lieu of the bond, the special fuel user may elect to file with the department cash or bonds of the United States or New Mexico or of any political subdivision of the state.

C. The total amount of the bond, cash or securities required of a special fuel user shall be fixed by the department and may be increased or reduced by the department at any time, subject to the limitations provided in this section.

D. In fixing the total amount of the bond, cash or securities required of a special fuel user required to post a bond, the department shall require an amount equivalent to the total estimated tax due for two quarters; provided, however, that the total amount of bond, cash or securities required of a special fuel user shall never be less than five hundred dollars ($500).

E. In the event the department determines that the amount of the existing bond, cash or securities is insufficient to ensure payment to New Mexico of the amount of the special fuel excise tax and penalties and interest for which a special fuel user is or may at any time become liable, the special fuel user, upon written demand from the department mailed to the last known address of the special fuel user as shown on the records of the department, shall file an additional bond, cash or securities in the manner, form and amount determined by the department to be necessary to secure at all times the payment by the special fuel user of all taxes, penalties and interest due pursuant to the Special Fuels Supplier Tax Act.

F. A surety on a bond furnished by a special fuel user as required by this section shall be released and discharged from all liability accruing on the bond after the expiration of ninety days from the date upon which the surety files with the department a written request to be released and discharged; provided, however, that the request shall not operate to release or discharge the surety from liability already accrued or that shall accrue before the expiration of the ninety-day period, unless a new bond is filed during the ninety-day period, in which case the previous bond may be canceled as of the effective date of the new bond. On receipt of notice of the request to cancel the bond due to filing of a new bond, the department shall promptly notify the special fuel user who furnished the bond that the special fuel user, on or before the expiration of the ninety-day period, shall file with the department a new bond with a surety satisfactory to the department in the amount and form required in this section.

G. A special fuel user who is required to file a bond with or provide cash or securities to the department in accordance with this section and who is required by another state law to file another bond with or provide cash or securities to the department may elect to file a combined bond or provide cash or securities applicable to the provision of both this section and the other law, with the approval of the secretary. The amount of the combined bond, cash or securities shall be determined by the department, and the form of the combined bond shall be approved by the attorney general.

H. A special fuel user who is required to file a bond pursuant to the provisions of this section and who for the eight consecutive quarters preceding the date of request has not been delinquent filing reports or paying special fuel excise taxes pursuant to the Special Fuels Supplier Tax Act may request to be exempt from the requirement to file a bond beginning with the first day of the first quarter following the end of the eight-quarter period. If a special fuel user exempted pursuant to this subsection subsequently becomes delinquent, the department may terminate the exemption and require the filing of a bond in accordance with this section. If the department terminates the exemption,

the termination shall not be effective any earlier than ten days after the date the department notifies the special fuel user in writing of the termination.

History: Laws 2007, ch. 110, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 110, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 7-16A-16. Delivery and use of special fuel prohibited in certain cases.

It is a violation of the Special Fuels Supplier Tax Act to do any of the following acts:

A. operate any motor vehicle upon the highways of this state with a connection between a cargo or other tank or container, not considered in the Special Fuels Supplier Tax Act as being the motor vehicle's fuel supply tank, and a carburetor or other fuel supplying device; fuel supply tanks, including auxiliary fuel supply tanks, shall be separate and apart from cargo tanks or other containers, with no connection by pipe, tube, valve or otherwise;

B. sell or deliver to any person or motor vehicle special fuel from any special fuel supply tank or auxiliary special fuel supply tank; or

C. deliver special fuel from a cargo tank into the special fuel supply tank of a motor vehicle; provided, however, delivery of liquefied petroleum gases may be made into the special fuel supply tank of a motor vehicle carrying a valid permit under the Special Fuels Supplier Tax Act by a registered and licensed liquefied petroleum gas dealer who is also a special fuel dealer when made by that dealer from the cargo tank of a vehicle operated by that dealer, which tank is specially designed to make this type of special fuel delivery.

**History:** Laws 1992, ch. 51, § 16.

## 7-16A-17, 7-16A-18. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 272, § 8 repealed 7-16A-17 and 7-16A-18 NMSA 1978, as enacted by Laws 1992, ch. 51, §§ 17 and 18, concerning violations of the Special Fuels Supplier Tax Act. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

Laws 1993, ch. 272 contained both an emergency clause making the act effective immediately and an effective date provision providing that the act is effective on January 1, 1993. *See* N.M. Const., Art. IV, § 23.

## 7-16A-19. Temporary special fuel user permits.

A. To prevent evasion of the special fuel excise tax, special fuel users whose vehicles are not registered with the department shall acquire a temporary special fuel user permit from the department before operating the unregistered motor vehicle on the highways of New Mexico. The temporary special fuel user permit shall be valid for one entrance and one exit of the state, within a period that shall not exceed forty-eight hours from the time of issuance.

B. The fee for a temporary special fuel user permit is five dollars ($5.00) for each motor vehicle.

C. It is a violation of the Special Fuels Supplier Tax Act for any person to act as a temporary special fuel user without obtaining a valid temporary special fuel user permit from the department.

**History:** Laws 1992, ch. 51, § 19; 1993, ch. 272, § 7; 1997, ch. 192, § 13.

**ANNOTATIONS**

**The 1997 amendment,** effective June 1, 1997, rewrote the first sentence in Subsection A, deleted Subsection B, and redesignated former Subsections C and D as Subsections B and C.

**The 1993 amendment,** deleted "temporary highway user permits" at the end of the catchline and deleted former Subsections E to G, pertaining to issuance, use and requirements for temporary highway user permits.

**Compiler's notes.** — Laws 1993, ch. 272 contained both an emergency clause making the act effective immediately and an effective date provision providing that the act was effective January 1, 1993. *See* N.M. Const., Art. IV, § 23.

## 7-16A-20. Administration and enforcement of act.

The department shall interpret the provisions of the Special Fuels Supplier Tax Act. The department shall administer and enforce the collection of the special fuel excise tax, the special fuel inventory taxes and the tax on liquefied petroleum gas, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of those taxes.

**History:** Laws 1992, ch. 51, § 20.

## 7-16A-20.1. Special fuels; authority of secretary to terminate interstate agreements.

The secretary may terminate:

A. a cooperative agreement involving the taxation of special fuels into which the secretary enters with another state, the District of Columbia, the commonwealth of Puerto Rico or any territory or possession of the United States; or

B. a multistate agreement involving the taxation of special fuels into which the secretary enters.

History: Laws 2005, ch. 109, § 15.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 109, § 16 made Laws 2005, ch. 109, § 15 effective January 1, 2006.

## 7-16A-21. Temporary provision; continuity of actions.

A. All taxes due but not paid on liquefied petroleum gas or natural gas or on motor vehicles propelled by such a fuel under the Special Fuels Supplier Tax Act on the effective date of the Alternative Fuel Tax Act [Chapter 7, Article 16B NMSA 1978] remain due until paid or until a final determination is made that the taxes are not due.

B. Any protests, claims for refund, court proceedings or other actions ongoing with respect to liquefied petroleum gas or natural gas or to motor vehicles propelled by such a fuel pursuant to the provisions of the Special Fuels Supplier Tax Act on the effective date of the Alternative Fuel Tax Act shall be finally determined with respect to the applicable provisions of the Special Fuels Supplier Tax Act.

**History:** Laws 1995, ch. 16, § 15.

**ANNOTATIONS**

**Cross references.** — For provisions regarding the alternative fuel excise tax, *see* 7-16B-6 NMSA 1978.

For provisions regarding alternative fuel user permits, *see* 7-16B-7 NMSA 1978.

**Effective dates.** — The effective date of the Alternative Fuel Tax Act is January 1, 1996, the effective date of Laws 1995, Chapter 16.

# ARTICLE 16B
# Alternative Fuel Tax

## 7-16B-1. Short title.

Chapter 7, Article 16B NMSA 1978 may be cited as the "Alternative Fuel Tax Act".

History: Laws 1995, ch. 16, § 1; 2014, ch. 34, § 1.

**ANNOTATIONS**

**Cross references.** — For the Petroleum Products Loading Fee Act, *see* 7-13A-1 NMSA 1978 et seq.

For the Special Fuel Suppliers Tax Act, *see* 7-16A-1 NMSA 1978 et seq.

**The 2014 amendment,** effective July 1, 2014, added the NMSA 1978 chapter and article for the Alternative Fuel Tax Act; and at the beginning of the sentence, deleted "Sections 1 through 10 of this act" and added "Chapter 7, Article 16B NMSA 1978".

## 7-16B-2. Purpose.

To encourage the use of alternative fuel for the propulsion of motor vehicles on the roads of New Mexico, thereby increasing the market for supplies of New Mexico natural gas and reducing harmful environmental emissions, it is the purpose of the Alternative Fuel Tax Act to provide for fair taxation of alternative fuel used for such purposes.

**History:** Laws 1995, ch. 16, § 2.

## 7-16B-3. Definitions.

As used in the Alternative Fuel Tax Act:

A. "alternative fuel" means liquefied petroleum gas, compressed natural gas, liquefied natural gas or a water-phased hydrocarbon fuel emulsion consisting of a hydrocarbon base and water in an amount not less than twenty percent by volume of the total water-phased fuel emulsion, all of which may be used for the generation of power to propel a motor vehicle on the highways;

B. "alternative fuel user" means any user who is a registrant, owner or operator of a motor vehicle propelled by alternative fuel;

C. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

D. "distributor" means any person who delivers or dispenses alternative fuel into the supply tank of a motor vehicle;

E. "gallon" means:

(1) for liquid alternative fuel, the quantity of liquid necessary to fill a standard United States gallon liquid measure, which is approximately 3.785 liters; provided that:

(a) in the case of a water-phased hydrocarbon fuel emulsion, a gallon shall be measured only with respect to the hydrocarbon base portion of the emulsion and not to the water base portion; and

(b) in the case of liquefied natural gas, a gallon shall be 6.06 pounds of liquefied natural gas; or

(2) for nonliquid alternative fuel, one hundred fourteen cubic feet; provided that in the case of compressed natural gas, a gallon shall be 5.66 pounds or 126.67 standard cubic feet of compressed natural gas;

F. "gross vehicle weight" means the weight of a motor vehicle or a combination motor vehicle without load, plus the weight of any load on the motor vehicle;

G. "highway" means every road, highway, thoroughfare, street or way, including toll roads, generally open to the use of the public as a matter of right for the purpose of motor vehicle travel and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair;

H. "motor vehicle" means any self-propelled vehicle or device subject to registration under Section 66-3-1 NMSA 1978 that is used or may be used on the public highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semitrailer;

I. "person" means an individual or any other legal entity; "person" also means, to the extent permitted by law, any federal, state or other government or any department, agency or instrumentality of the state, county, municipality or any political subdivision thereof;

J. "registrant" means any person who has registered a motor vehicle pursuant to the laws of this state or of another state;

K. "sale" means any delivery, exchange, gift or other disposition;

L. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

M. "supply tank" means any tank or other receptacle in which or by which fuel may be carried and supplied to the fuel-furnishing device or apparatus of the propulsion mechanism of a motor vehicle when the tank or receptacle either contains alternative fuel or alternative fuel is delivered into it;

N. "use" means:

(1) the receipt or placing of alternative fuel by an alternative fuel user into the fuel supply tank of any motor vehicle registered, owned or operated by the alternative fuel user;

(2) the consumption by an alternative fuel user of alternative fuel in the propulsion of a motor vehicle on the highways of this state and any activity ancillary to that propulsion; or

(3) the importation of alternative fuel in the fuel supply tank of any motor vehicle as fuel for the propulsion of the motor vehicle on the highways;

O. "user" means any person other than the United States government or any of its agencies or instrumentalities; the state of New Mexico or any of its political subdivisions, agencies or instrumentalities; or an Indian nation, tribe or pueblo or any agency or instrumentality of an Indian nation, tribe or pueblo who uses alternative fuel to propel a motor vehicle on the highways; and

P. the definitions of "alternative fuel user" and "distributor" shall be construed so that a person may at the same time be an alternative fuel user and a distributor.

History: Laws 1995, ch. 16, § 3; 1997, ch. 24, § 1; 2014, ch. 34, § 2.

**ANNOTATIONS**

**The 2014 amendment,** effective July 1, 2014, changed the definition of "gallon" with respect to liquid and nonliquid alternative fuel; in Subsection E, Paragraph (1), added "for liquid alternative fuel", and after "3.785 liters", deleted "for liquid alternative fuel" and added Subparagraph (b); and in Subsection E, Paragraph (2), at the beginning of the sentence, added "for nonliquid alternative fuel", and after "cubic feet", deleted "for nonliquid alternative fuel", and added the remainder of the sentence.

**The 1997 amendment,** effective June 20, 1997, in Subsection A, added the language beginning "or a water-phased hydrocarbon" and ending "which may be", and in Subsection B added the language beginning "provided, however," and ending "water base portion" and made minor stylistic changes.

## 7-16B-4. Imposition and rate of tax; denomination as alternative fuel excise tax.

A. For the privilege of distributing alternative fuel in this state, there is imposed an excise tax at a rate provided in Subsection C of this section on each gallon of alternative fuel distributed in New Mexico.

B. The tax imposed by this section may be called the "alternative fuel excise tax".

C. For each gallon of alternative fuel distributed in New Mexico, the tax imposed by Subsection A of this section shall be:

(1) for the period beginning January 1, 1996 and ending December 31, 1997, three cents ($0.03) per gallon;

(2) for the period beginning January 1, 1998 and ending December 31, 1999, six cents ($0.06) per gallon;

(3) for the period beginning January 1, 2000 and ending December 31, 2001, nine cents ($0.09) per gallon;

(4) for the period beginning January 1, 2002 and ending June 30, 2014, twelve cents ($0.12) per gallon; and

(5) for the period beginning July 1, 2014 and thereafter:

(a) for alternative fuel that is compressed natural gas, thirteen and three-tenths cents ($.133) per gallon;

(b) for alternative fuel that is liquefied natural gas, twenty and six-tenths cents ($.206) per gallon; and

(c) for alternative fuel not described in Subparagraph (a) or (b) of this paragraph, twelve cents ($.12) per gallon.

D. Alternative fuel purchased for distribution shall not be subject to the alternative fuel excise tax at the time of purchase or acquisition, but the tax shall be due on any alternative fuel at the time it is dispensed or delivered into the supply tank of a motor vehicle that is operated on the highways of this state.

History: Laws 1995, ch. 16, § 4; 2014, ch. 34, § 3.

## ANNOTATIONS

**The 2014 amendment,** effective July 1, 2014, added tax rates for the period beginning July 1, 2014; eliminated the option to pay the alternative fuel excise tax on an annual basis; in Subsection C, in Paragraph (4), after "January 1, 2002 and", deleted "thereafter" and added "ending June 30, 2014", in Subsection C, added Paragraph (5); deleted former Subsection D, which gave taxpayers the option of paying the excise tax

on an annual basis; and deleted former Subsection E, which provided that the annual excise tax could be prorated for periods of less than one year if approved by the secretary of taxation and revenue.

## 7-16B-5. Exemptions; alternative fuel excise tax.

A. Alternative fuel distributed to or used by the United States or any agency or instrumentality thereof for the exclusive use of the United States or any agency or instrumentality thereof is exempt from the imposition of the alternative fuel excise tax.

B. Alternative fuel distributed to or used by the state of New Mexico or any political subdivision, agency or instrumentality thereof for the exclusive use of the state of New Mexico or any political subdivision, agency or instrumentality thereof is exempt from the imposition of the alternative fuel excise tax.

C. Alternative fuel distributed to or used by an Indian nation, tribe or pueblo or any agency or instrumentality thereof for the exclusive use of the Indian nation, tribe or pueblo or any agency or instrumentality thereof is exempt from the imposition of the alternative fuel excise tax.

**History:** Laws 1995, ch. 16, § 5.

## 7-16B-6. Tax returns; payment of tax; alternative fuel distributors.

A. Alternative fuel distributors shall file alternative fuel excise tax returns in form and content as prescribed by the secretary on or before the twenty-fifth day of the month following the month in which alternative fuel is distributed in New Mexico. Payment of the alternative fuel excise tax shall be made with or prior to filing of the return.

B. In computing the alternative fuel excise tax due, amounts of alternative fuel distributed to an alternative fuel user may be deducted from the total amount of alternative fuel distributed in New Mexico during the tax period provided the alternative fuel user can establish proof of compliance with the provisions of Section 7 [7-16B-7 NMSA 1978] of the Alternative Fuel Tax Act.

**History:** Laws 1995, ch. 16, § 6.

**ANNOTATIONS**

**Cross references.** — For provisions regarding continuity of actions brought under the Special Fuels Supplier Tax Act, *see* 7-16A-21 NMSA 1978.

## 7-16B-7. Tax returns; payment of tax; alternative fuel user permit.

A. Alternative fuel users who elect to be subject to the provisions of Subsection D of Section 4 [7-16B-4 NMSA 1978] of the Alternative Fuel Tax Act shall pay the annual tax concurrent with vehicle registration.

B. The department shall issue an alternative fuel user permit in a form designed by the department valid for one year from the month of issuance to each alternative fuel user upon the filing of an application by the alternative fuel user acceptable to the department.

C. The department may revoke, after due notice and hearing, the alternative fuel user permit of any alternative fuel user found to be in violation of any provision of the Alternative Fuel Tax Act.

**History:** Laws 1995, ch. 16, § 7.

**ANNOTATIONS**

**Cross references.** — For provisions regarding continuity of actions brought under the Special Fuels Supplier Tax Act, *see* 7-16A-21 NMSA 1978.

## 7-16B-8. Alternative fuel distributor license required.

A. The department shall issue a license valid for up to three years to each alternative fuel distributor upon the filing of an application by the alternative fuel distributor acceptable to the department.

B. To secure an alternative fuel distributor license, an applicant shall:

(1) register as an alternative fuel distributor under the provisions of Section 7-1-12 NMSA 1978;

(2) file with the department on a form furnished by the department an application for an alternative fuel distributor license; and

(3) accompany the application with payment of an alternative fuel distributor fee in the amount of twenty-five dollars ($25.00).

C. The department may revoke, after due notice and hearing, the alternative fuel distributor license of any alternative fuel distributor found to be in violation of any provision of the Alternative Fuel Tax Act.

**History:** Laws 1995, ch. 16, § 8.

## 7-16B-9. Delivery and use of alternative fuel; prohibited acts.

It is a violation of the Alternative Fuel Tax Act to:

A. operate a motor vehicle upon the highways of this state with a connection between a cargo or other tank or container, not considered in the Alternative Fuel Tax Act as being the motor vehicle's fuel supply tank, and a carburetor or other fuel supply device. Fuel supply tanks, including auxiliary fuel supply tanks, shall be separate and apart from cargo tanks or other containers, with no connection by pipe, tube, valve or otherwise;

B. sell or deliver to any person alternative fuel from any alternative fuel supply tank or auxiliary alternative fuel supply tank;

C. deliver alternative fuel from a cargo tank into the alternative fuel supply tank of a motor vehicle; provided, however, delivery of liquefied alternative fuels may be made into the alternative fuel supply tank of a motor vehicle by a registered and licensed alternative fuel distributor when made by that distributor from the cargo tank of a vehicle operated by that distributor, which tank is specially designed to make this type of alternative fuel delivery; or

D. engage in the business of distributing alternative fuel in New Mexico without obtaining an alternative fuel distributor license under the provisions of Section 8 [7-16B-8 NMSA 1978] of the Alternative Fuel Tax Act.

**History:** Laws 1995, ch. 16, § 9.

## 7-16B-10. Administration and enforcement of act.

The department shall interpret the provisions of the Alternative Fuel Tax Act. The department shall administer and enforce the collection of the alternative fuel excise tax, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of the tax.

**History:** Laws 1995, ch. 16, § 10.

# ARTICLE 17
# Liquor Excise Tax

## 7-17-1. Short title.

Chapter 7, Article 17 NMSA 1978 may be cited as the "Liquor Excise Tax Act".

**History:** 1953 Comp., § 46-7-15, enacted by Laws 1966, ch. 49, § 1; recompiled as 1953 Comp., § 72-32-1, by Laws 1973, ch. 166, § 2; 1984, ch. 85, § 1.

**ANNOTATIONS**

**Cross references.** — For duty of successor in business, *see* 7-1-61 NMSA 1978 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 45 Am. Jur. 2d Intoxicating Liquors §§ 203 to 219.

48 C.J.S. Intoxicating Liquors §§ 199 to 212.

## 7-17-2. Definitions.

As used in the Liquor Excise Tax Act:

A. "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin, aromatic bitters or any similar beverage, including blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one percent alcohol by volume, but "alcoholic beverages" does not include medicinal bitters;

B. "beer" means an alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt and hops or other cereals in water and includes porter, beer, ale and stout;

C. "cider" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe apples that contains not less than one-half of one percent of alcohol by volume and not more than seven percent of alcohol by volume;

D. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "fortified wine" means wine containing more than fourteen percent alcohol by volume when bottled or packaged by the manufacturer, but "fortified wine" does not include:

(1) wine that is sealed or capped by cork closure and aged two years or more;

(2) wine that contains more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that has not been produced with the addition of wine spirits, brandy or alcohol; or

(3) vermouth and sherry;

F. "microbrewer" means:

(1) for years prior to 2014, a person who produces fewer than five thousand barrels of beer in a year;

(2) for years 2014 through 2023, a person who produces fewer than fifteen thousand barrels of beer in a year; and

(3) for year 2024 and subsequent years, a person who produces fewer than five thousand barrels of beer in a year;

G. "person" includes, to the extent permitted by law, a federal, state or other governmental unit or subdivision or an agency, department, institution or instrumentality thereof;

H. "small winegrower" means a winegrower who produces less than one million five hundred thousand liters of wine in a year;

I. "spirituous liquor" means alcoholic beverages, except fermented beverages such as wine, beer, cider and ale;

J. "wholesaler" means a person holding a license issued under Section 60-6A-1 NMSA 1978 or a person selling alcoholic beverages that were not purchased from a person holding a license issued under Section 60-6A-1 NMSA 1978;

K. "wine" means an alcoholic beverage other than cider that is obtained by the fermentation of the natural sugar contained in fruit or other agricultural products, with or without the addition of sugar or other products, and that does not contain more than twenty-one percent alcohol by volume; and

L. "winegrower" means a person licensed pursuant to Section 60-6A-11 NMSA 1978.

History: 1953 Comp., § 46-7-16, enacted by Laws 1966, ch. 49, § 2; recompiled as 1953 Comp., § 72-32-2, by Laws 1973, ch. 166, § 2; 1984, ch. 85, § 2; 1986, ch. 20, § 74; 1991, ch. 161, § 1; 1993, ch. 65, § 6; 1994, ch. 52, § 1; 1995, ch. 70, § 18; 1995, ch. 74, § 1; 1996, ch. 49, § 1; 1997, ch. 143, § 1; 2000 (2nd S.S.), ch. 8, § 1; 2008, ch. 82, § 1; 2013, ch. 94, § 1; 2013, ch. 95, § 1.

## ANNOTATIONS

**2013 Multiple Amendments.** — Laws 2013, ch. 94, § 1 and Laws 2013, ch. 95, § 1 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2013, ch. 95, § 1, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2013, ch. 94, § 1 and Laws 2013, ch. 95, § 1 are described below. To view the session laws in their entirety, *see* the 2013 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2013, ch. 94, § 1 increased the volume limit for microbrewers for the years 2014 through 2023 and Laws 2013, ch. 95, § 1 increased the volume limit for small wine growers.

**Laws 2013, ch. 95, § 1,** effective January 1, 2014, increased the volume limit for small wine growers; and in Subsection H, after "winegrower who produces", deleted "fewer than nine hundred fifty thousand" and added "less than one million five hundred thousand".

**Laws 2013, ch. 94, § 1,** effective January 1, 2014, deleted former Subsection F and added a new Subsection F.

**The 2008 amendment,** effective July 1, 2008, deleted the former definitions of "spirituous liquor", "fortified wine" and "wine"; in Subsection H, increased the maximum production of wine from five hundred sixty thousand liters to nine hundred fifty thousand liters; and added Subsections E, I, K and L.

**The 2000 amendment,** effective July 1, 2000, substituted "five hundred sixty thousand liters" for "three hundred seventy-five thousand liters" in Subsection E.

**The 1997 amendment,** effective July 1, 1997, made several stylistic changes throughout the section and substituted "three hundred seventy-five thousand" for "two hundred twenty thousand" in Subsection E.

**The 1996 amendment,** effective July 1, 1996, inserted "cider" in Paragraph A(1), added Paragraph A(3) and redesignated the following paragraphs accordingly, and inserted "other than cider" near the beginning of Paragraph A(5).

**The 1995 amendment,** effective July 1, 1995, deleted former Subsection B, redesignated the remaining sections appropriately, and deleted "'director' or 'division'" following "'department'" in Subsection B. This section was also amended by Laws 1995, ch. 70, § 18. The section was set out as amended by Laws 1995, ch. 74, § 1. *See* 12-1-8 NMSA 1978.

**The 1994 amendment,** effective July 1, 1994, in Paragraph A(3), substituted "and aged two years of more" for "aged two years or more and sold only in 750 milliliter bottles or" in Subparagraph (a) and "or" for "and" at the end of Subparagraph (b), and added Subparagraph (c).

**The 1993 amendment,** effective July 1, 1993, in Subsection A, added Paragraph (3) and redesignated former Paragraph (3) as Paragraph (4); added Subsection D and redesignated former Subsections D through F as Subsections E through G; and deleted provisions in Subsection F, pertaining to persons designated as small domestic producers for purposes of Section 5041 of the Internal Revenue Code.

**The 1991 amendment,** effective July 1, 1987, added Subsection E; redesignated former Subsection E as Subsection F; and made minor stylistic changes in Subsections A and B.

## 7-17-3. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1982, ch. 111, § 2, repealed 7-17-3 NMSA 1978, relating to the imposition of a wholesaler's tax and the rate thereof.

Laws 1982, ch. 111, § 3, provided that § 2 of the act would become effective on the day when the supreme court found the tax credit provisions of 7-9-80.1 NMSA 1978 to be less than fully enforceable and effective.

Laws 1983, ch. 213, § 38, repealed 7-17-3 NMSA 1978, relating to the imposition and rate of the wholesalers tax, and Laws 1982, ch. 111, § 2, effective July 1, 1983.

## 7-17-4. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1984, ch. 85, § 12, repealed 7-17-4 NMSA 1978, as enacted by Laws 1966, ch. 49, § 4, and recompiled by Laws 1973, ch. 166, § 2, relating to presumption of taxability under the Liquor Control Act, effective July 1, 1984.

## 7-17-5. Imposition and rate of liquor excise tax.

A. There is imposed on a wholesaler who sells alcoholic beverages on which the tax imposed by this section has not been paid an excise tax, to be referred to as the "liquor excise tax", at the following rates on alcoholic beverages sold:

(1) on spirituous liquors, one dollar sixty cents ($1.60) per liter;

(2) on beer, except as provided in Paragraph (5) of this subsection, forty-one cents ($.41) per gallon;

(3) on wine, except as provided in Paragraphs (4) and (6) of this subsection, forty-five cents ($.45) per liter;

(4) on fortified wine, one dollar fifty cents ($1.50) per liter;

(5) on beer manufactured or produced by a microbrewer and sold in this state, provided that proof is furnished to the department that the beer was manufactured or produced by a microbrewer, eight cents ($.08) per gallon on the first ten thousand

barrels sold and twenty-eight cents ($.28) per gallon for all barrels sold over ten thousand barrels but fewer than fifteen thousand barrels;

(6) on wine manufactured or produced by a small winegrower and sold in this state, provided that proof is furnished to the department that the wine was manufactured or produced by a small winegrower:

(a) ten cents ($.10) per liter on the first eighty thousand liters sold;

(b) twenty cents ($.20) per liter on each liter sold over eighty thousand liters but not over nine hundred fifty thousand liters; and

(c) thirty cents ($.30) per liter on each liter sold over nine hundred fifty thousand liters but not over one million five hundred thousand liters; and

(7) on cider, forty-one cents ($.41) per gallon.

B. The volume of wine transferred from one winegrower to another winegrower for processing, bottling or storage and subsequent return to the transferor shall be excluded pursuant to Section 7-17-6 NMSA 1978 from the taxable volume of wine of the transferee. Wine transferred from an initial winegrower to a second winegrower remains a tax liability of the transferor, provided that if the wine is transferred to the transferee for the transferee's use or for resale, the transferee then assumes the liability for the tax due pursuant to this section.

C. A transfer of wine from a winegrower to a wholesaler for distribution of the wine transfers the liability for payment of the liquor excise tax to the wholesaler upon the sale of the wine by the wholesaler.

History: 1978 Comp., § 7-17-5, enacted by Laws 1993, ch. 65, § 8; 1994, ch. 52, § 2; 1995, ch. 74, § 2; 1996, ch. 49, § 2; 1997, ch. 143, § 2; 2000, ch. 43, § 1; 2000 (2nd S.S.), ch. 8, § 2; 2008, ch. 82, § 2; 2013, ch. 94, § 2; 2013, ch. 95, § 2.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1993, ch. 65, § 8 repealed former 7-17-5 NMSA 1978, as amended by Laws 1993, ch. 65, § 7, and enacted a new section, effective July 1, 1994.

**2013 Multiple Amendments.** — Laws 2013, ch. 94, § 2 and Laws 2013, ch. 95, § 2 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2013, ch. 95, § 2, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2013, ch. 94, § 2 and Laws 2013, ch. 95, § 2 are described below. To view the session laws in their entirety, *see* the 2013 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2013, ch. 94, § 2 increased the liquor excise tax rate for microbrewers and Laws 2013, ch. 95, § 2 increased the liquor excise tax rate for small wine growers.

**Laws 2013, ch. 95, § 2,** effective January 1, 2014, increased the liquor excise tax rate for small winegrowers; and added Subparagraph (c) of Paragraph (6) of Subsection A.

**Laws 2013, ch. 94, § 2,** effective January 1, 2014, added a new tax rate for all barrels sold over ten thousand barrels, but fewer than fifteen thousand barrels; and in Paragraph (5), Subsection A, added the language after "eight cents ($.08) per gallon".

**The 2008 amendment,** effective July 1, 2008, increased the minimum production of wine from five hundred sixty thousand liters to nine hundred fifty thousand liters and added Subsections B and C.

**The 2000 (2nd S.S.) amendment,** effective July 1, 2000, substituted "five hundred sixty thousand liters" for "three hundred seventy-five thousand liters" at the end of Subsection F.

**The 2000 amendment,** effective July 1, 2000, in Subsection E, changed the excise tax on beer produced by a microbrewer from twenty-five cents per gallon to eight cents per gallon.

**The 1997 amendment,** effective July 1, 1997, substituted "three hundred seventy-five thousand" for "two hundred twenty thousand" in Subsection F.

**The 1996 amendment,** effective July 1, 1996, added Subsection G.

**The 1995 amendment,** effective June 16, 1995, deleted "or distributes" following "sells" and "or distributed" following "sold" in the introductory paragraph.

**The 1994 amendment,** effective July 1, 1994, substituted "one dollar sixty cents ($1.60)" for "one dollars sixty cents ($1.60)" in Subsection A; inserted "except as provided in Subsection E of this section" in Subsection B; substituted "a micro brewer and" and "each micro brewer" in Subsection E; and, in Subsection F, deleted former Paragraph (2), which read: 'after June 30, 1994, twenty-five cents ($.25) per liter on all liters sold", combined together the former introductory language and former Paragraph (1) into one present paragraph, substituted "a small winer or winegrower and" for "each small winer or winegrower", and deleted "from July 1, 1992 to June 30, 1994" preceding "ten cents" and "and" at the end.

## 7-17-5.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 213, § 38, repealed 7-17-5.1 NMSA 1978, relating to the effective date of Laws 1982, ch. 111, §§ 1 and 2, effective July 1, 1983.

## 7-17-6. Deduction; interstate sales; winegrower-to-winegrower transfers.

A. A wholesaler may deduct the liters of spirituous liquors, gallons of beer and liters of wine sold and shipped to a person in another state from the units of alcoholic beverages subject to the tax imposed by the Liquor Excise Tax Act; provided that the department may require the wholesaler to submit evidence satisfactory to the department that the units have been sold and shipped to a person in another state.

B. A winegrower may deduct the liters of wine transferred to the winegrower from another winegrower for processing, bottling or storage and subsequent return to the transferor from the units of wine subject to the liquor excise tax on the licensed premises of the winegrower.

History: 1978 Comp., § 7-17-6, enacted by Laws 1984, ch. 85, § 4; 1995, ch. 70, § 19; 2008, ch. 82, § 3.

### ANNOTATIONS

**Repeals and reenactments.** — Laws 1984, ch. 85, § 4, repealed former 7-17-6 NMSA 1978, as amended by Laws 1973, ch. 166, § 2, relating to a deduction from gross receipts of receipts from selling beer to certain instrumentalities of the armed forces of the United States, and enacted a new section. For present comparable provisions, *see* 7-17-9 NMSA 1978.

**The 2008 amendment,** effective July 1, 2008, added Subsection B.

**The 1995 amendment,** effective July 1, 1995, substituted "department" for "director" in two places.

## 7-17-7, 7-17-8. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1984, ch. 85, § 12, repealed 7-17-7 and 7-17-8 NMSA 1978, as enacted by Laws 1971, ch. 22, §§ 1 and 2, and recompiled by Laws 1973, ch. 166, § 2, relating to deductions from gross receipts for uncollectible debts and for sales to wholesalers, effective July 1, 1984.

## 7-17-9. Exemption; certain sales to or by instrumentalities of armed forces.

Exempted from the tax imposed by Section 7-17-5 NMSA 1978 are alcoholic beverages sold to or by any instrumentality of the armed forces of the United States engaged in resale activities.

**History:** 1953 Comp., § 46-7-21, enacted by Laws 1966, ch. 49, § 7; recompiled as 1953 Comp., § 72-32-9, by Laws 1973, ch. 166, § 2; 1984, ch. 85, § 5; 1985, ch. 57, § 1.

## 7-17-10. Date payment due.

The tax imposed by the Liquor Excise Tax Act is to be paid on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

**History:** 1953 Comp., § 46-7-22, enacted by Laws 1966, ch. 49, § 8; 1971, ch. 22, § 3; recompiled as 1953 Comp., § 72-32-10, by Laws 1973, ch. 166, § 2; 1984, ch. 85, § 6.

## 7-17-11. Refund or credit of tax.

The department shall allow a claim for refund or credit as provided in Sections 7-1-26 and 7-1-29 NMSA 1978 for the tax imposed by Section 7-17-5 NMSA 1978 and paid on alcoholic beverages destroyed in shipment, spoiled or otherwise damaged as to be unfit for sale or consumption upon submission of proof satisfactory to the department of such destruction, spoilage or damage.

**History:** Laws 1968, ch. 22, § 1; 1953 Comp., § 46-7-23; reenacted by Laws 1969, ch. 80, § 1; 1971, ch. 22, § 4; recompiled as 1953 Comp., § 72-32-11 and amended by Laws 1973, ch. 166, § 1; 1977, ch. 249, § 62; 1984, ch. 85, § 7; 1995, ch. 70, § 20.

**ANNOTATIONS**

**The 1995 amendment,** effective July 1, 1995, substituted "department" for "director" in two places.

## 7-17-12. Interpretation of act; administration and enforcement of tax.

A. The department shall interpret the provisions of the Liquor Excise Tax Act.

B. The department shall administer and enforce the collection of the liquor excise tax, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of the tax.

**History:** 1978 Comp., § 71-7-12, enacted by Laws 1984, ch. 85, § 8; 1995, ch. 70, § 21.

**ANNOTATIONS**

**The 1995 amendment,** effective July 1, 1995, substituted "department" for "division" in Subsections A and B.

# ARTICLE 18
# Electrical Energy Tax

(Repealed by Laws 1982, ch. 18, § 27.)

## 7-18-1 to 7-18-6. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1982, ch. 18, § 27, repealed 7-18-1 to 7-18-6 NMSA 1978, relating to imposition and rate of tax on generation of electricity and reports or remittances required of persons subject to such a tax, effective July 1, 1982.

# ARTICLE 18A
# Controlled Substance Tax

(Repealed by Laws 1994, ch. 101, § 1.)

## 7-18A-1 to 7-18A-7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 101, § 1 repealed former 7-18A-1 through 7-18A-7 NMSA 1978, as enacted by Laws 1989, ch. 327, §§ 3 through 8 and as last amended by Laws 1993, ch. 30, § 2, relating to the taxation of controlled substances, effective July 1, 1995. For provisions of former sections, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

# ARTICLE 19
# Supplemental Municipal Gross Receipts Tax

## 7-19-1 to 7-19-3. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 346, § 12A repealed 7-19-1 and 7-19-2 NMSA 1978, as amended by Laws 1983, ch. 211, § 29 and Laws 1986, ch. 20, § 75, relating to short title and defining terms, effective July 1, 1993. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

Laws 1981, ch. 37, § 95, repealed 7-19-3 NMSA 1978, relating to the authority to impose a municipal gross receipts tax and establishing its initial rate, effective July 1, 1981.

## 7-19-4. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 1993, ch. 346, § 9 recompiled 7-19-4 NMSA 1978 as amended by Laws 1988, ch. 120, § 1, relating to authority to impose rate, as 7-19D-9 NMSA 1978, effective July 1, 1993.

## 7-19-4.1 to 7-19-9. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 346, § 12A repealed 7-19-4.1 to 7-19-9 NMSA 1978, as enacted by Laws 1975 (S.S.), ch. 16, § 8 and Laws 1979, ch. 397, §§ 4 and 7 and as amended by Laws 1979, ch. 155, § 3, Laws 1981, ch. 37, § 12, Laws 1983, ch. 211, §§ 30 and 32 to 34, Laws 1983, ch. 213, § 20, Laws 1986, ch. 6, §§ 2 and 3, and Laws 1986, ch. 20, §§ 77, 79, and 80, relating to municipal gross receipts tax and supplemental municipal gross receipts tax, effective July 1, 1993. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 7-19-10. Short title.

Sections 7-19-10 through 7-19-18 NMSA 1978 may be cited as the "Supplemental Municipal Gross Receipts Tax Act".

**History:** Laws 1979, ch. 397, § 1; 1983, ch. 211, § 32.

## 7-19-11. Definitions.

As used in the Supplemental Municipal Gross Receipts Tax Act:

A. "department" or "division" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "governing body" means the city council or city commission of a municipality;

C. "municipality" means any incorporated city, town or village having previously qualified to impose and did impose the tax pursuant to the provisions of the Supplemental Municipal Gross Receipts Tax Act in effect prior to this 1997 act;

D. "person" means an individual or any other legal entity;

E. "refunding bonds" means bonds issued pursuant to the provisions of the Supplemental Municipal Gross Receipts Tax Act to refund supplemental municipal gross receipts tax bonds issued pursuant to the provisions of that act;

F. "state gross receipts tax" means the gross receipts tax imposed under the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978]; and

G. "supplemental municipal gross receipts tax" means the tax authorized to be imposed under the Supplemental Municipal Gross Receipts Tax Act.

**History:** Laws 1979, ch. 397, § 2; 1980, ch. 106, § 1; 1986, ch. 20, § 79; 1997, ch. 219, § 1.

**ANNOTATIONS**

**Compiler's notes.** — The phrase "this 1997 act" in Subsection C refers to Laws 1997, ch. 219, which amended this section.

**The 1997 amendment,** effective June 20, 1997, rewrote Subsection C, added Subsection E, and redesignated the remaining subsections accordingly.

## 7-19-12. Authorization to impose supplemental municipal gross receipts tax; authorization for issuance of supplemental municipal gross receipts bonds; election required.

A. The majority of the members elected to the governing body of a municipality may enact an ordinance imposing an excise tax on any person engaging in business in the municipality for the privilege of engaging in business in the municipality. This tax is to be referred to as the "supplemental municipal gross receipts tax". The rate of the tax shall not exceed one percent of the gross receipts of the person engaging in business and shall be imposed in one-fourth percent increments if less than one percent.

B. The governing body of a municipality enacting an ordinance imposing the tax authorized in Subsection A of this section shall submit the question of imposing such tax and the question of the issuance of supplemental municipal gross receipts bonds in an amount not to exceed nine million dollars ($9,000,000), for which the revenue from the supplemental municipal gross receipts tax is dedicated, to the qualified electors of the municipality at a regular or special election.

C. The questions referred to in Subsection B of this section shall be submitted to a vote of the qualified electors of the municipality as two separate ballot questions which shall be substantially in the following form:

(1) "Shall the municipality be authorized to issue supplemental municipal gross receipts bonds in an amount of not exceeding _____ dollars for the purpose of constructing and equipping and otherwise acquiring a municipal water supply system?

For _____ Against _____"; and

(2) "Shall the municipality impose an excise tax for the privilege of engaging in business in the municipality which shall be known as the "supplemental municipal gross receipts tax" and which shall be imposed at a rate of _____ percent of the gross receipts of the person engaging in business, the proceeds of which are dedicated to the payment of supplemental municipal gross receipts bonds?

For _____ Against _____".

D. Only those voters who are registered electors who reside within the municipality shall be permitted to vote on these two questions. The procedures for conducting the election shall be substantially the same as the applicable provisions in Sections 3-30-1, 3-30-6 and 3-30-7 NMSA 1978 relating to municipal debt.

E. If at an election called pursuant to this section a majority of the voters voting on each of the two questions vote in the affirmative on each such question, then the ordinance imposing the supplemental municipal gross receipts tax shall be approved. If at such election a majority of the voters voting on such questions fail to approve any of the questions, then the ordinance imposing the tax shall be disapproved and the questions required to be submitted by Subsection B of this section shall not be submitted to the voters for a period of one year from the date of the election.

F. Any ordinance enacted under the provisions of this section shall include an effective date of either July 1 or January 1, whichever date occurs first after the expiration of at least five months from the date of the election. A certified copy of any ordinance imposing a supplemental municipal gross receipts tax shall be mailed to the division within five days after the ordinance is adopted by the approval by the electorate. Any ordinance repealing the imposition of a tax under the provisions of the Supplemental Municipal Gross Receipts Tax Act shall become effective on either July 1 or January 1, after the expiration of at least five months from the date the ordinance is repealed by the governing body.

G. Nothing in this section is intended to or does alter the effectiveness or validity of any actions taken in accordance with Subsection G of Section 80 of Chapter 20 of Laws 1986.

**History:** Laws 1979, ch. 397, § 3; 1980, ch. 106, § 2; 1986, ch. 6, § 1; 1986, ch. 20, § 80; 1997, ch. 219, § 2.

## ANNOTATIONS

**Compiler's notes.** — Laws 1986, ch. 20, § 80, referred to in Subsection G, amended this section. The reference to Subsection G of that law is a reference to Subsection G of this section as it read prior to the 1997 amendment by Laws 1997, ch. 219, § 2, when Subsection G provided that no ordinance would be effective under this article unless the ordinance is enacted and the required election is held prior to February 1, 1986.

**The 1997 amendment,** effective June 20, 1997, deleted "authorization removed" at the end of the section heading, deleted "registered" preceding "electors" near the end of Subsection B and in the introductory paragraph of Subsection C, and made a minor stylistic change in Subsection C, inserted "municipal" preceding "gross receipts tax" in the first sentence of Subsection E, and rewrote Subsection G.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 68 Am. Jur. 2d Sales and Use Taxes § 1 et seq.

## 7-19-13. Ordinance must conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the division.

A. Any ordinance imposing a supplemental municipal gross receipts tax shall adopt by reference the same definitions and the same provisions relating to exemptions and deductions as are contained in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] then in effect and as it may be amended from time to time.

B. The governing body of any municipality imposing or increasing the supplemental municipal gross receipts tax must adopt the language of the model ordinance furnished to the municipality by the division for the portion of the ordinance relating to the tax.

**History:** Laws 1979, ch. 397, § 4.

## 7-19-14. Specific exemptions.

No supplemental municipal gross receipts tax shall be imposed on the gross receipts arising from:

A. transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the municipality to another point outside the municipality; or

B. a business located outside the boundaries of a municipality on land owned by that municipality for which a gross receipts tax distribution is made pursuant to Section 7-1-6.4 NMSA 1978.

**History:** Laws 1979, ch. 397, § 5; 1983, ch. 211, § 33; 1994, ch. 101, § 1.

**ANNOTATIONS**

**The 1994 amendment,** effective July 1, 1994, deleted former Subsection A, which read: "the transmission of messages by wire or other means from one point within the municipality to another point outside the municipality;" and redesignated former Subsections B and C as Subsections A and B; and in Subsection B, deleted "Subsection C of" following "pursuant to."

## 7-19-15. Collection by department; transfer of proceeds; deductions.

A. The department shall collect the supplemental municipal gross receipts tax in the same manner and at the same time it collects the state gross receipts tax.

B. The department shall withhold an administrative fee pursuant to Section 1 [7-1-6.41 NMSA 1978] of this 1997 act. The department shall transfer to each municipality for which it is collecting a supplemental municipal gross receipts tax the amount of the tax collected less the administrative fee withheld and less any disbursements for tax credits, refunds and the payment of interest applicable to the supplemental municipal gross receipts tax. Transfer of the tax to a municipality shall be made within the month following the month in which the tax is collected.

**History:** Laws 1979, ch. 397, § 6; 1983, ch. 211, § 34; 1997, ch. 125, § 6.

**ANNOTATIONS**

**Compiler's notes.** — The phrase "this 1997 act" in Subsection B refers to Laws 1997, ch. 125, which amended this section.

**The 1997 amendment,** effective July 1, 1997, substituted "department" for "division" throughout the section and in the section heading, and in Subsection B, substituted "shall withhold an administrative fee pursuant to Section 1 of this 1997 act" for "may deduct an amount not to exceed three percent of the suppplemental municipal gross receipts tax collected as a charge for the administrative costs of collection, which amount shall be remitted to the state treasurer for deposit in the state general fund each month" in the first sentence, and substituted "less the administrative fee withheld" for "less any deduction for administrative cost" in the second sentence.

## 7-19-16. Interpretation of act; administration and enforcement of tax.

A. The division shall interpret the provisions of the Supplemental Municipal Gross Receipts Tax Act.

B. The division shall administer and enforce the collection of the supplemental municipal gross receipts tax, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of the tax.

**History:** Laws 1979, ch. 397, § 7.

## 7-19-17. Issuance of bonds; purposes.

A. If the ordinance imposing the supplemental municipal gross receipts tax is approved as provided in Subsection E of Section 7-19-12 NMSA 1978, the governing body of a municipality may issue bonds pursuant to the Supplemental Municipal Gross Receipts Tax Act in an amount not to exceed nine million dollars ($9,000,000). The supplemental municipal gross receipts bonds shall be issued for the purpose of constructing and equipping and otherwise acquiring a municipal water supply system, including the purchase of water rights and easements, equipment and professional fees related thereto, to be paid back from the proceeds of the supplemental municipal gross receipts tax imposed.

B. Supplemental municipal gross receipts bonds shall be issued and sold as provided in the Supplemental Municipal Gross Receipts Tax Act. The governing body of the municipality shall determine at its discretion the terms, covenants and conditions of the supplemental municipal gross receipts bonds, including but not limited to, date of issuance, denomination, maturity, coupon rates, call features, premium, registration, refundability and other matters covering the general and technical aspects of their issuance. These bonds may be either serial or term and may be sold by the governing body of the municipality at the time and in the manner as the governing body may elect, at either public or private sale. The supplemental municipal gross receipts bonds shall not be considered or held to be general obligations of the municipality issuing them and are payable solely from the revenue accruing from the revenue of the supplemental municipal gross receipts tax. The ordinance authorizing the tax shall be irrepealable until these bonds are fully paid.

**History:** Laws 1979, ch. 397, § 8; 1980, ch. 106, § 3; 1986, ch. 6, § 2.

## 7-19-17.1. Refunding bonds; authorization.

A. Any municipality may issue refunding bonds for the purpose of refinancing, paying and discharging all or any part of outstanding supplemental municipal gross receipts tax bonds of any one or more or all outstanding issues:

(1) for the acceleration, deceleration or other modification of the payment of such obligations, including without limitation any capitalization of any interest thereon in arrears or about to become due for any period not exceeding one year from the date of the refunding bonds;

(2) for the purpose of reducing interest costs or affecting other economies;

(3) for the purpose of modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds, otherwise concerning the outstanding bonds or to any facilities relating thereto; or

(4) for any combination of such purposes.

B. The municipality may pledge irrevocably for the payment of interest and principal on refunding bonds the appropriate pledged revenues, which may be pledged to an original issue of bonds as provided in the Supplemental Municipal Gross Receipts Tax Act. Nothing in this section shall permit the pledge of the gross receipts tax revenue to the payment of bonds that refund bonds issued under any other provision of law.

C. Refunding bonds may be issued separately or issued in combination in one series or more.

D. Refunding bonds issued pursuant to the Supplemental Municipal Gross Receipts Tax Act shall be authorized by ordinance. Any bonds that are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of the refunded bonds, or otherwise appertaining thereto, except for any such bond that is voluntarily surrendered for exchange or payment by the holder or owner.

E. Provision shall be made for paying the bonds refunded at the time or places provided in Subsection D of this section. The principal amount of the refunding bonds shall not exceed, but may be less than or be the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds.

F. The proceeds of refunding bonds, including any accrued interest and premium appertaining to the sale of refunding bonds, shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company that possesses and is exercising trust powers and that is a member of the federal deposit insurance corporation, to be applied to the payment of the principal of, interest on and any prior redemption premium due in connection with the bonds being refunded; provided that such refunding bond proceeds, including any accrued interest and any premium appertaining to a sale of refunding bonds, may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest on the refunding bonds and the principal of the refunding bonds or both interest and principal as the municipality may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other

money available for its escrow purpose. Any proceeds in escrow pending such use may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of or the principal and interest of which obligations are unconditionally guaranteed by the United States or in certificates of deposit of banks that are members of the federal deposit insurance corporation, the par value of which certificates of deposit is collateralized by a pledge of obligations of or the payment of which is unconditionally guaranteed by the United States, the par value of which obligations is [at] least seventy-five percent of the par value of the certificates of deposit. Such proceeds and investments in escrow together with any interest or other income to be derived from any such investment shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date in connection with which the municipality shall exercise a prior redemption option. Any purchaser of any refunding bond issued pursuant to the provisions of the Supplemental Municipal Gross Receipts Tax Act is in no manner responsible for the application of the proceeds thereof by the municipality or any of its officers, agents or employees.

G. Refunding bonds may be sold at a public or negotiated sale and may bear such additional terms and provisions as may be determined by the municipality subject to limitations in the Supplemental Municipal Gross Receipts Tax Act. The terms, provisions and authorization of the refunding bonds are not subject to the provisions of any other statute, provided that the Public Securities Limitation of Action Act [6-14-4 through 6-14-7 NMSA 1978] shall be fully applicable to the issuance of refunding bonds.

H. The municipality shall receive from the department of finance and administration written approval of any refunding bonds issued pursuant to the provisions of this section.

**History:** Laws 1997, ch. 219, § 4.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law.

## 7-19-18. Supplemental municipal gross receipts tax; use of proceeds; restriction.

A. The proceeds from the supplemental municipal gross receipts tax shall be deposited in a special improvement account of the municipality and shall be used only for:

(1) the payment of the principal of, interest on, any prior redemption premiums due in connection with and other expenses related to the supplemental

municipal gross receipts bonds issued pursuant to the Supplemental Municipal Gross Receipts Tax Act;

(2) the funding of any reserves and other accounts in connection with such bonds;

(3) refunding bonds; and

(4) to the extent not needed for those purposes, the improvement of the municipality's water system.

B. When any issue of supplemental municipal gross receipts bonds is fully paid, the supplemental municipal gross receipts tax shall cease to be imposed for that issue, but may continue to be imposed for bonds enacted and approved pursuant to Section 7-19-12 NMSA 1978 and thereafter issued, or for refunding bonds issued pursuant to Section 4 [7-19-17.1 NMSA 1978] of this 1997 act. Any money remaining in a special improvement account after the obligations for supplemental municipal gross receipts bonds and refunding bonds, are fully paid may be transferred to any other fund of the municipality.

**History:** Laws 1979, ch. 397, § 9; 1980, ch. 106, § 4; 1986, ch. 6, § 3; 1997, ch. 219, § 3.

**ANNOTATIONS**

**Compiler's notes.** — The phrase "this 1997 act" in Subsection B refers to Laws 1997, ch. 219, which amended this section.

**The 1997 amendment,** June 20, 1997, designated the former first sentence as Paragraphs A(1), (2) and (4), and added Paragraph A(3); designated the former second and third sentences as Subsection B, and in Subsection B, inserted "any issue of" near the beginning of the subsection, added the language beginning "for that issue, but may continue to be imposed for bonds" at the end of the first sentence, inserted "and refunding bonds," in the second sentence, and made minor stylistic changes throughout the section.

# ARTICLE 19A
# Special Municipal Gross Receipts Tax

(Repealed by Laws 1986, ch. 20, § 136E.)

## 7-19A-1 to 7-19A-7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1986, ch. 20, § 136E repealed 7-19A-1 to 7-19A-7 NMSA 1978, as enacted by Laws 1984, ch. 3, §§ 1 to 7, the Special Municipal Gross Receipts Tax Act, effective July 1, 1996. For provisions of the former section, *see* the 1995 NMSA 1978 on *NMOneSource.com.*

# ARTICLE 19B
# Municipal Environmental Services Gross Receipts Tax

(Repealed and Recompiled by Laws 1993, ch. 346, §§ 10 and 12.)

## 7-19B-1, 7-19B-2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 346, § 12B repealed 7-19B-1 and 7-19B-2 NMSA 1978, as enacted by Laws 1990, ch. 99, §§ 49 and 50, relating to short title and defining terms, effective July 1, 1993. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 7-19B-3. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 1993, ch. 346, § 10 recompiled 7-19B-3 NMSA 1978 as enacted by Laws 1990, ch. 99, § 51, relating to authority to impose tax, as 7-19D-10 NMSA 1978, effective July 1, 1993.

## 7-19B-4 to 7-19B-7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 346, § 12B repealed 7-19B-4 to 7-19B-7 NMSA 1978, as enacted by Laws 1990, ch. 99, §§ 52 to 55, relating to municipal environmental services gross receipts tax, effective July 1, 1993. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

# ARTICLE 19C
# Municipal Infrastructure Gross Receipts Tax

(Repealed and Recompiled by Laws 1993, ch. 346, §§ 11 and 12.)

## 7-19C-1, 7-19C-2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 346, § 12C repealed 7-19C-1 and 7-19C-2 NMSA 1978, as enacted by Laws 1991, ch. 9, §§ 1 and 2, relating to short title and defining terms, effective July 1, 1993. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 7-19C-3. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 1993, ch. 346, § 11 recompiled 7-19C-3 NMSA 1978, as amended by Laws 1992, ch. 98, § 2, relating to authority to impose tax, as 7-19D-11 NMSA 1978, effective July 1, 1993.

## 7-19C-4 to 7-19C-7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 346, § 12C repealed 7-19C-4 to 7-19C-7 NMSA 1978, as enacted by Laws 1991, ch. 9, §§ 4 to 7, relating to municipal infrastructure gross receipts tax, effective July 1, 1993. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

# ARTICLE 19D
# Municipal Local Option Gross Receipts Taxes

## 7-19D-1. Short title.

Chapter 7, Article 19D NMSA 1978 may be cited as the "Municipal Local Option Gross Receipts Taxes Act".

**History:** 1978 Comp., § 7-19D-1, enacted by Laws 1993, ch. 346, § 1.

**ANNOTATIONS**

**Law reviews.** — For article, "New Mexico Taxes: Taking Another Look," see 32 N.M.L. Rev. 351 (2002).

## 7-19D-2. Definitions.

As used in the Municipal Local Option Gross Receipts Taxes Act:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "governing body" means the city council or city commission of a city, the board of trustees of a town or village and the board of county commissioners of H-class counties;

C. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, and an H-class county;

D. "person" means an individual or any other legal entity; and

E. "state gross receipts tax" means the gross receipts tax imposed under the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978].

**History:** 1978 Comp., § 7-19D-2, enacted by Laws 1993, ch. 346, § 2.

## 7-19D-3. Effective date of ordinance.

An ordinance imposing, amending or repealing a tax or an increment of tax authorized by the Municipal Local Option Gross Receipts Taxes Act shall be effective on July 1 or January 1, whichever date occurs first after the expiration of at least three months from the date the adopted ordinance is mailed or delivered to the department. The ordinance shall include that effective date.

**History:** 1978 Comp., § 7-19D-3, enacted by Laws 1993, ch. 346, § 3.

## 7-19D-4. Ordinance shall conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the department.

A. An ordinance imposing a tax under the provisions of the Municipal Local Option Gross Receipts Taxes Act shall adopt by reference the same definitions and the same provisions relating to exemptions and deductions as are contained in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] then in effect and as it may be amended from time to time.

B. The governing body of any municipality imposing a tax under the Municipal Local Option Gross Receipts Taxes Act shall impose the tax by adopting the model ordinance with respect to the tax furnished to the municipality by the department. An ordinance that does not conform substantially to the model ordinance of the department is not valid.

**History:** 1978 Comp., § 7-19D-4, enacted by Laws 1993, ch. 346, § 4.

## 7-19D-5. Specific exemptions.

No tax authorized by the provisions of the Municipal Local Option Gross Receipts Taxes Act shall be imposed on the gross receipts arising from:

A. transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the municipality to another point outside the municipality; or

B. a business located outside the boundaries of a municipality on land owned by that municipality for which a state gross receipts tax distribution is made pursuant to Section 7-1-6.4 NMSA 1978.

**History:** 1978 Comp., § 7-19D-5, enacted by Laws 1993, ch. 346, § 5; 1994, ch. 101, § 3.

**ANNOTATIONS**

**The 1994 amendment,** effective July 1, 1994, substituted "by" for "under" in the undesignated paragraph; deleted former Subsection A, which read: "the transmission of messages by wire or other means from one point within the municipality to another point outside the municipality;" and redesignated former Subsections B and C as Subsections A and B; and in Subsection B, deleted "Subsection C of" following "pursuant to".

## 7-19D-6. Copy of ordinance to be submitted to department.

A certified copy of the ordinance imposing or repealing a tax authorized under the Municipal Local Option Gross Receipts Taxes Act or changing the tax rate imposed shall be mailed or delivered to the department within five days after the later of the date the ordinance is adopted or the date the results of any election held with respect to the ordinance are certified to be in favor of the ordinance.

**History:** 1978 Comp., § 7-19D-6, enacted by Laws 1993, ch. 346, § 6.

## 7-19D-7. Collection by department; transfer of proceeds; deductions.

A. The department shall collect each tax imposed pursuant to the provisions of the Municipal Local Option Gross Receipts Taxes Act in the same manner and at the same time it collects the state gross receipts tax.

B. Except as provided in Subsection C of this section, the department shall withhold an administrative fee pursuant to Section 1 [7-1-6.41 NMSA 1978] of this 1997 act. The department shall transfer to each municipality for which it is collecting a tax pursuant to the provisions of the Municipal Local Option Gross Receipts Taxes Act the amount of

each tax collected for that municipality, less the administrative fee withheld and less any disbursements for tax credits, refunds and the payment of interest applicable to the tax. The transfer to the municipality shall be made within the month following the month in which the tax is collected.

C. With respect to the municipal gross receipts tax imposed by a municipality pursuant to Section 7-19D-9 NMSA 1978, the department shall withhold the administrative fee pursuant to Section 1 [7-1-6.41 NMSA 1978] of this 1997 act only on that portion of the municipal gross receipts tax arising from a municipal gross receipts tax rate in excess of one-half of one percent.

**History:** 1978 Comp., § 7-19D-7, enacted by Laws 1993, ch. 346, § 7; 1997, ch. 125, § 7.

**ANNOTATIONS**

**Compiler's notes.** — The phrase "this 1997 act" in Subsection B and C refers to Laws 1997, ch. 125, which amended this section.

**The 1997 amendment,** effective July 1, 1997, substituted "pursuant to" for "under" in Subsection A; in Subsection B, substituted "shall withhold an administrative fee pursuant to Section 1 of this 1997 act" for "may deduct an amount not to exceed three percent of each tax collected under the provisions of the Municipal Local Option Gross Receipts Taxes Act as a charge for the administrative costs of collection, which amount shall be remitted to the state treasurer for deposit in the state general fund each month", and in the second sentence, substituted "pursuant" for "under" and substituted "the administrative fee withheld and less any disbursements for" for "any disbursement for administrative charges made pursuant to this section"; and substituted "shall withhold the administrative fee pursuant to Section 1 of this 1997 act only on that" for "may deduct as a charge for administration an amount equal to three percent of the" in Subsection C.

## 7-19D-8. Interpretation of act; administration and enforcement of act.

A. The department shall interpret the provisions of the Municipal Local Option Gross Receipts Taxes Act.

B. The department shall administer and enforce the collection of each tax authorized under the provisions of the Municipal Local Option Gross Receipts Taxes Act, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of each tax.

**History:** 1978 Comp., § 7-19D-8, enacted by Laws 1993, ch. 346, § 8.

## 7-19D-9. Municipal gross receipts tax; authority to impose rate.

A. The majority of the members of the governing body of any municipality may impose by ordinance an excise tax not to exceed a rate of one and one-half percent of the gross receipts of any person engaging in business in the municipality for the privilege of engaging in business in the municipality. A tax imposed pursuant to this section shall be imposed by the enactment of one or more ordinances, each imposing any number of municipal gross receipts tax rate increments, but the total municipal gross receipts tax rate imposed by all ordinances shall not exceed an aggregate rate of one and one-half percent of the gross receipts of a person engaging in business. Municipalities may impose increments of one-eighth of one percent.

B. The tax imposed pursuant to Subsection A of this section may be referred to as the "municipal gross receipts tax".

C. The governing body of a municipality may, at the time of enacting an ordinance imposing the tax authorized in Subsection A of this section, dedicate the revenue for a specific purpose or area of municipal government services, including but not limited to police protection, fire protection, public transportation or street repair and maintenance. If the governing body proposes to dedicate such revenue, the ordinance and, if any election is held, the ballot shall clearly state the purpose to which the revenue will be dedicated, and any revenue so dedicated shall be used by the municipality for that purpose unless a subsequent ordinance is adopted to change the purpose to which dedicated or to place the revenue in the general fund of the municipality.

D. An election shall be called on the questions of disapproval or approval of any ordinance enacted pursuant to Subsection A of this section or any ordinance amending such ordinance:

(1) if the governing body chooses to provide in the ordinance that it shall not be effective until the ordinance is approved by the majority of the registered voters voting on the question at an election to be held pursuant to the provisions of a home-rule charter or on a date set by the governing body and pursuant to the provisions of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] governing special elections; or

(2) if the ordinance does not contain a mandatory election provision as provided in Paragraph (1) of this subsection, upon the filing of a petition requesting such an election if the petition is filed:

(a) pursuant to the requirements of a referendum provision contained in a municipal home-rule charter and signed by the number of registered voters in the municipality equal to the number of registered voters required in its charter to seek a referendum; or

(b) in all other municipalities, with the municipal clerk within thirty days after the adoption of such ordinance and the petition has been signed by a number of registered voters in the municipality equal to at least five percent of the number of the

voters in the municipality who were registered to vote in the most recent regular municipal election.

E. The signatures on the petition filed in accordance with Subsection D of this section shall be verified by the municipal clerk. If the petition is verified by the municipal clerk as containing the required number of signatures of registered voters, the governing body shall adopt an election resolution calling for the holding of a special election on the question of approving or disapproving the ordinance unless the ordinance is repealed before the adoption of the election resolution. An election held pursuant to Subparagraph (a) or (b) of Paragraph (2) of Subsection D of this section shall be called, conducted and canvassed as provided in the Municipal Election Code for special elections, and the election shall be held within seventy-five days after the date the petition is verified by the municipal clerk or it may be held in conjunction with a regular municipal election if such election occurs within seventy-five days after the date of verification by the municipal clerk.

F. If at an election called pursuant to Subsection D of this section a majority of the registered voters voting on the question approves the ordinance imposing the tax, the ordinance shall become effective in accordance with the provisions of the Municipal Local Option Gross Receipts Taxes Act. If at such an election a majority of the registered voters voting on the question disapproves the ordinance, the ordinance imposing the tax shall be deemed repealed and the question of imposing any increment of the municipal gross receipts tax authorized in this section shall not be considered again by the governing body for a period of one year from the date of the election.

G. Any municipality that has lawfully imposed by the requirements of the Special Municipal Gross Receipts Tax Act a rate of at least one-fourth of one percent shall be deemed to have imposed one-fourth of one percent municipal gross receipts tax pursuant to this section. Any rate of tax deemed to be imposed pursuant to this subsection shall continue to be dedicated to the payment of outstanding bonds issued by the municipality that pledged the tax revenues by ordinance until such time as the bonds are fully paid. A municipality may by ordinance change the purpose for any rate of tax deemed to be imposed at any time the revenues are not committed to payment of bonds.

H. Any law that imposes or authorizes the imposition of a municipal gross receipts tax or that affects the municipal gross receipts tax, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any outstanding revenue bonds that may be secured by a pledge of such municipal gross receipts tax unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor.

History: Laws 1978, ch. 151, § 1; 1979, ch. 155, § 1; 1981, ch. 37, § 11; 1982, ch. 3, § 2; 1983, ch. 213, § 18; 1985, ch. 208, § 121; 1986, ch. 20, § 76; 1987, ch. 323, § 26;

1988, ch. 120, § 1; 1978, Comp., § 7-19-4, amended and recompiled as 1978 Comp., § 7-19D-9 by Laws 1993, ch. 346, § 9; 2007, ch. 331, § 5.

**ANNOTATIONS**

**Compiler's note. —** The Special Municipal Gross Receipts Tax Act referred to in this section was repealed by Laws 1986, ch. 20, § 136.

**The 2007 amendment,** effective July 1, 2007, increased the maximum aggregate gross receipts tax rate to one-half percent of gross receipts and provided that all municipalities may impose increments of one-eighth of one percent.

**The 1993 amendment,** effective July 1, 1993, renumbered this section and rewrote it to the extent that a detailed comparison is impracticable.

## 7-19D-10. Municipal environmental services gross receipts tax; authority to impose; ordinance requirements.

A. Except as otherwise provided in this section, the majority of the members of the governing body of a municipality may enact an ordinance imposing an excise tax on any person engaging in business in the municipality for the privilege of engaging in business. The rate of the tax shall be one-sixteenth of one percent of the gross receipts of the person engaging in business.

B. The tax imposed in accordance with Subsection A of this section may be referred to as the "municipal environmental services gross receipts tax". The imposition of a municipal environmental services gross receipts tax is not subject to referendum.

C. The governing body of a municipality shall, at the time of enacting an ordinance imposing the rate of the tax authorized in Subsection A of this section, dedicate the revenue for acquisition, construction, operation and maintenance of solid waste facilities, water facilities, wastewater facilities, sewer systems and related facilities.

D. The governing body of a municipality in a class B county with a net taxable value used for rate-setting purposes for the 2008 property tax year of greater than seven hundred fifty million dollars ($750,000,000) and a population in the entire county according to the most recent federal decennial census of less than twenty-five thousand may enact an ordinance imposing an excise tax on any person engaging in business in the municipality for the privilege of engaging in business; provided that:

(1) the rate of the tax imposed shall not exceed one-half of one percent of the gross receipts of the person engaging in business;

(2) the tax is imposed in one-fourth of one percent increments; and

(3) the population of the municipality imposing the municipal environmental services gross receipts tax according to the most recent federal decennial census is:

(a) more than seven thousand five hundred but less than seven thousand eight hundred; or

(b) more than one thousand five hundred but less than two thousand.

History: Laws 1990, ch. 99, § 51; 1978 Comp., § 7-19B-3, amended and recompiled as 1978 Comp., § 7-19D-10 by Laws 1993, ch. 346, § 10; 2009, ch. 284, § 1.

**ANNOTATIONS**

**The 2009 amendment,** effective June 19, 2009, in Subsection A, at the beginning of the sentence, added “Except as otherwise provided in this section” and deleted the former last sentence which provided that tax is not subject to referendum; in Subsection B, added the last sentence; and added Subsection D.

**The 1993 amendment,** effective July 1, 1993, renumbered this section, deleted "authorization removed" at the end of the catchline; deleted the former second sentence of Subsection A which read "This tax is to be referred to as the 'municipal environmental services gross receipts tax'"; added current Subsection B; redesignated former Subsection B as Subsection C; and deleted former Subsections C to E, pertaining to the effective dates of enactments or repeals of ordinances and the time for mailing ordinances to the department.

## 7-19D-11. Municipal infrastructure gross receipts tax; authority by municipality to impose; ordinance requirements; election.

A. A majority of the members of the governing body of a municipality may enact an ordinance imposing an excise tax on any person engaging in business in the municipality for the privilege of engaging in business. The rate of the tax shall not exceed one-fourth of one percent of the gross receipts of the person engaging in business and may be imposed in one-sixteenth of one percent increments by separate ordinances. Any ordinance enacting any increment of the first one-eighth of one percent of the tax is not subject to a referendum of any kind, notwithstanding any requirement of any charter municipality, except that an increment that is imposed after July 1, 1998 for economic development purposes set forth in Paragraph (5) of Subsection C of this section shall be subject to a referendum as provided in Subsection D of this section.

B. The tax imposed pursuant to Subsection A of this section may be referred to as the "municipal infrastructure gross receipts tax".

C. The governing body of a municipality, at the time of enacting any ordinance imposing the rate of the tax authorized in Subsection A of this section, may dedicate the revenue for:

(1) payment of special obligation bonds issued pursuant to a revenue bond act;

(2) repair, replacement, construction or acquisition of infrastructure improvements, including sanitary sewer lines, storm sewers and other drainage improvements, water, water rights, water lines and utilities, streets, alleys, rights of way, easements, international ports of entry and land within the municipality or within the extraterritorial zone of the municipality;

(3) municipal general purposes;

(4) acquiring, constructing, extending, bettering, repairing or otherwise improving or operating or maintaining public transit systems or regional transit systems or authorities; and

(5) furthering or implementing economic development plans and projects as defined in the Local Economic Development Act [5-10-1 through 5-10-13 NMSA 1978] or projects as defined in the Statewide Economic Development Finance Act [Chapter 6, Article 25 NMSA 1978], and use of not more than the greater of fifty thousand dollars ($50,000) or ten percent of the revenue collected for promotion and administration of or professional services contracts related to implementation of an economic development plan adopted by the governing body pursuant to the Local Economic Development Act and in accordance with law.

D. An ordinance imposing any increment of the municipal infrastructure gross receipts tax in excess of the first one-eighth of one percent or any increment imposed after July 1, 1998 for economic development purposes set forth in Paragraph (5) of Subsection C of this section shall not go into effect until after an election is held and a majority of the voters of the municipality voting in the election votes in favor of imposing the tax. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax. The question shall be submitted to the voters of the municipality as a separate question at a regular municipal election or at a special election called for that purpose by the governing body. A special municipal election shall be called, conducted and canvassed as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978]. If a majority of the voters voting on the question approves the ordinance imposing the municipal infrastructure gross receipts tax, then the ordinance shall become effective in accordance with the provisions of the Municipal Local Option Gross Receipts Taxes Act. If the question of imposing the municipal infrastructure gross receipts tax fails, the governing body shall not again propose the imposition of any increment of the tax in excess of the first one-eighth of one percent for a period of one year from the date of the election.

**History:** Laws 1991, ch. 9, § 3; 1992, ch. 98, § 2; 1978 Comp., § 7-19C-3, amended and recompiled as 1978 Comp., § 7-19D-11 by Laws 1993, ch. 346, § 11; 1998, ch. 90, § 6; 2003, ch. 349, § 18.

**ANNOTATIONS**

**The 2003 amendment,** effective June 20, 2003, inserted "or projects as defined in the Statewide Economic Development Finance Act" in Paragraph C(5).

**The 1998 amendment,** effective May 20, 1998, added "election" to the end of the section heading; in Subsection A, substituted "one-fourth" for "one-eighth" and deleted "prior to July 1, 1993" in the second sentence, and in the last sentence, substituted "enacting any increment of the first one-eighth of one percent of the tax" for "enacted" and added the provisio at the end; in Subscection C, deleted "either" near the end of the introductory language, designated Paragraphs C(1) to (3), deleted "or for" at the end of Paragraph C(1) and " or may use the revenue for" at the end of Paragraph C(2), and added Paragraphs C(4) and (5); and added Subsection D.

**The 1993 amendment,** effective July 1, 1993, renumbered this section, inserted "prior to July 1, 1993" in the first sentence of Subsection A; substituted "may be referred" for "shall be referred" in Subsection B; deleted former Subsections D to F, pertaining to the effective dates of enactments or repeals of ordinances and the time for mailing ordinances to the department; and made minor stylistic changes.

**The 1992 amendment,** effective July 1, 1992, in Subsection A, deleted "Subject to the provisions of Subsection C of this section" at the beginning of the first sentence and substituted "may be imposed in one-sixteenth of one percent increments" for "shall be imposed in one-sixteenth increments" in the second sentence; deleted former Subsection C, relating to enactment of ordinance imposing a second one-sixteenth of one percent tax; redesignated former Subsections D through G as Subsections C through F; and substituted "may" for "shall" near the beginning of Subsection C, while adding "or may use the revenue for municipal general purposes" at the end of that subsection.

## 7-19D-12. Municipal capital outlay gross receipts tax; purposes; referendum.

A. The majority of the members of the governing body of a municipality may enact an ordinance imposing an excise tax at a rate not to exceed one-fourth of one percent of the gross receipts of any person engaging in business in the municipality for the privilege of engaging in business. The tax may be imposed in increments of one-sixteenth of one percent not to exceed an aggregate rate of one-fourth of one percent.

B. The tax imposed pursuant to Subsection A of this section may be referred to as the "municipal capital outlay gross receipts tax".

C. The governing body, at the time of enacting an ordinance imposing a rate of tax authorized in Subsection A of this section, may dedicate the revenue for any municipal infrastructure purpose, including:

(1) the design, construction, acquisition, improvement, renovation, rehabilitation, equipping or furnishing of public buildings or facilities, including parking facilities, the acquisition of land for the public buildings or facilities and the acquisition or improvement of the grounds surrounding public buildings or facilities;

(2) acquisition, construction or improvement of water, wastewater or solid waste systems or facilities and related facilities, including water or sewer lines and storm sewers and other drainage improvements;

(3) acquisition, rehabilitation or improvement of firefighting equipment;

(4) construction, reconstruction or improvement of municipal streets, alleys, roads or bridges, including acquisition of rights of way;

(5) design, construction, acquisition, improvement or equipping of airport facilities, including acquisition of land, easements or rights of way for airport facilities;

(6) acquisition of land for open space, public parks or public recreational facilities and the design, acquisition, construction, improvement or equipping of parks and recreational facilities; and

(7) payment of gross receipts tax revenue bonds issued pursuant to Chapter 3, Article 31 NMSA 1978 for infrastructure purposes.

D. An ordinance imposing the municipal capital outlay gross receipts tax shall not go into effect until after an election is held on the question of imposing the tax for the purpose for which the revenue is dedicated and a majority of the voters in the municipality voting in the election votes in favor of imposing the tax. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax. The question shall be submitted to the voters of the municipality as a separate question at a general election or at a special election called for that purpose by the governing body. A special election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. If a majority of the voters voting on the question approves the question of imposing the municipal capital outlay gross receipts tax, then the ordinance shall become effective in accordance with the provisions of the Municipal Local Option Gross Receipts Taxes Act. If the question of imposing the municipal capital outlay gross receipts tax fails, the governing body shall not again propose the imposition of the tax for a period of one year from the date of the election.

History: Laws 2001, ch. 172, § 1; 2005, ch. 129, § 1; 2010, ch. 44, § 1.

## ANNOTATIONS

## ANNOTATIONS

**The 2010 amendment,** effective July 1, 2010, in Subsection A, in the first sentence, after "governing body of", deleted "an eligible" and added "a"; and deleted former Subsection E, which defined "eligible municipality" to mean a municipality that has imposed all increments of municipal gross receipts tax and all increments of municipal infrastructure gross receipts tax and has not imposed after January 1, 2001 any increment of the supplemental municipal gross receipts tax.

**The 2005 amendment,** effective April 5, 2005, removed the deadline in Subsection A for the enactment of an ordinance imposing the municipal capital outlay gross receipts tax.

## 7-19D-13. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 199, § 2 repealed 7-19D-13 NMSA 1978, as enacted by Laws 2004, ch. 17, § 1, providing for the effective date of an ordinance imposing a municipal local option gross receipts tax, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

## 7-19D-14. Quality of life gross receipts tax; authority to impose; ordinance requirements; use of revenue; election.

A. Prior to January 1, 2016, the majority of the members of the governing body of a municipality may enact an ordinance imposing an excise tax at a rate not to exceed one-fourth percent of the gross receipts of a person engaging in business in the municipality for the privilege of engaging in business. The tax may be imposed in one or more increments of one-sixteenth percent not to exceed an aggregate rate of one-fourth percent. The tax shall be imposed for a period of not more than ten years from the effective date of the ordinance imposing the tax. Having enacted an ordinance imposing the tax prior to January 1, 2016 pursuant to the provisions of this section, the governing body may enact subsequent ordinances for succeeding periods of not more than ten years; provided that each ordinance meets the requirements of this section and of the Municipal Local Option Gross Receipts Taxes Act. The tax imposed pursuant to the provisions of this section may be referred to as the "quality of life gross receipts tax".

B. The governing body, at the time of enacting an ordinance imposing the quality of life gross receipts tax, shall dedicate the revenue to cultural programs and activities provided by a local government and to cultural programs, events and activities provided by contract or operating agreement with nonprofit or publicly owned cultural organizations and institutions.

C. An ordinance imposing any increment of the quality of life gross receipts tax shall not go into effect until after an election is held and a majority of the voters in the municipality voting in the election votes in favor of imposing the tax. The governing body shall adopt a resolution calling for an election within ninety days of the date the

ordinance is adopted on the question of imposing the tax. The question may be submitted to the voters as a separate question at a general election or at a special election called for that purpose by the governing body. A special election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. In any election held, the ballot shall clearly state the purpose to which the revenue will be dedicated pursuant to this section. If a majority of the voters voting on the question approves the ordinance imposing the quality of life gross receipts tax, the ordinance shall become effective in accordance with the provisions of the Municipal Local Option Gross Receipts Taxes Act. If the question of imposing the quality of life gross receipts tax fails, the governing body shall not again propose the imposition of the tax for a period of one year from the date of the election.

D. The quality of life gross receipts tax revenue shall be used to meet the following goals: promoting and preserving cultural diversity; enhancing the quality of cultural programs and activities; fostering greater access to cultural opportunities; promoting culture in order to further economic development within the municipality; and supporting programs, events and organizations with direct, identifiable and measurable public benefit to residents of the municipality. It is the objective of the quality of life gross receipts tax that the revenue from the tax be used to expand and sustain existing programs and to develop new programs, events and activities, rather than to replace other funding sources for existing programs, events and activities.

E. The governing body of a municipality that imposes the quality of life gross receipts tax shall, within sixty days of the election approving the imposition of the tax, appoint a municipal cultural advisory board consisting of between nine and fifteen members. Persons appointed to the board shall be residents of the municipality who are knowledgeable about the activities eligible for quality of life tax funding. The members of the board shall be appointed for fixed terms and shall not be removed during their terms except for malfeasance. The terms of the initial board members shall be staggered so that one-third of the members are appointed for one-year terms, one-third are appointed for two-year terms and one-third are appointed for three-year terms. Subsequent appointments to the board shall be for three-year terms. If a vacancy on the board occurs, the governing body shall appoint a replacement member for the remainder of the unexpired term. A board member shall not serve for more than two consecutive terms.

F. The municipal cultural advisory board shall have the responsibility of overseeing the distribution of the quality of life gross receipts tax revenue for the goals listed in Subsection D of this section. The board shall:

(1) biennially submit recommendations to the governing body for expenditures of revenue from the quality of life gross receipts tax that are allocated pursuant to this section through contracts for services with appropriate organizations and institutions;

(2) establish and publicize the necessary qualifications for organizations and institutions to receive quality of life gross receipts tax funding; and

(3) develop guidelines and procedures for applying for funding through a request for proposals process and the criteria by which contracts will be awarded. The evaluation process shall include a public review component.

G. The municipal cultural advisory board shall establish reporting requirements for recipients of the quality of life gross receipts tax revenue. The board shall provide to the governing body an annual evaluation of the use of revenue from the quality of life gross receipts tax to ensure that it is meeting the goals listed in Subsection D of this section.

H. Every four years, the municipal cultural advisory board shall review and revise as necessary:

(1) the guidelines and procedures for applying for funding; and

(2) the criteria by which applications for funding will be evaluated.

I. As used in this section:

(1) "cultural organizations and institutions" means organizations or institutions that have as a primary purpose the advancement or preservation of zoology, museums, library sciences, art, music, theater, dance, literature or the humanities; and

(2) "municipality" means an incorporated municipality except for an incorporated municipality with a population in excess of two hundred fifty thousand according to the most recent federal decennial census.

History: Laws 2005, ch. 212, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 212, § 3 made Laws 2005, ch. 212, § 2 effective July 1, 2005.

## 7-19D-15. Municipal regional spaceport gross receipts tax; authority to impose; rate; election required.

A. A majority of the members of the governing body of a municipality that desires to become a member of a regional spaceport district pursuant to the Regional Spaceport District Act [5-16-1 through 5-16-13 NMSA 1978] shall impose by ordinance an excise tax at a rate not to exceed one-half percent of the gross receipts of a person engaging in business in the municipality for the privilege of engaging in business. A tax imposed pursuant to this section may be imposed by one or more ordinances, each imposing any number of tax rate increments, but an increment shall not be less than one-sixteenth percent of the gross receipts of a person engaging in business in the municipality, and the aggregate of all rates shall not exceed one-half percent of the gross receipts of a

person engaging in business in the municipality. The tax may be referred to as the "municipal regional spaceport gross receipts tax".

B. A governing body, at the time of enacting an ordinance imposing a tax authorized in Subsection A of this section, shall dedicate a minimum of seventy-five percent of the revenue to a regional spaceport district for the financing, planning, designing, engineering and construction of a regional spaceport pursuant to the Regional Spaceport District Act and may dedicate no more than twenty-five percent of the revenue for spaceport-related projects as approved by resolution of the governing body of the municipality.

C. An ordinance imposing a municipal regional spaceport gross receipts tax shall not go into effect until after an election is held and a majority of the voters of the municipality voting in the election votes in favor of imposing the tax. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax. The question shall be submitted to the voters of the municipality as a separate question at a regular municipal election or at a special election called for that purpose by the governing body. A special municipal election shall be called, conducted and canvassed as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978]. If a majority of the voters voting on the question approves the ordinance imposing the municipal regional spaceport gross receipts tax, the ordinance shall become effective in accordance with the provisions of the Municipal Local Option Gross Receipts Taxes Act. If the question of imposing the municipal regional spaceport gross receipts tax fails, the governing body shall not again propose the imposition of an increment of the tax for a period of one year from the date of the election.

D. The governing body of a municipality imposing the municipal regional spaceport gross receipts tax shall transfer a minimum of seventy-five percent of all proceeds from the tax to the regional spaceport district of which it is a member for regional spaceport purposes in accordance with the provisions of the Regional Spaceport District Act. The governing body of a municipality imposing the municipal regional spaceport gross receipts tax may retain no more than twenty-five percent of the municipal regional spaceport gross receipts tax for spaceport-related projects as approved by resolution of the governing body.

**History:** Laws 2006, ch. 15, § 14.

**ANNOTATIONS**

**Effective dates.** — Laws 2006, ch. 15 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

## 7-19D-16. Municipal higher education facilities gross receipts tax.

A. The majority of the members of the governing body of an eligible municipality may impose by ordinance an excise tax at a rate not to exceed one-fourth of one percent of the gross receipts of a person engaging in business in the municipality for the privilege of engaging in business. The tax may be imposed in increments of one-sixteenth of one percent not to exceed an aggregate rate of one-fourth of one percent. The tax shall be imposed for a period of not more than twenty years from the effective date of the ordinance imposing the tax.

B. The tax imposed pursuant to this section may be referred to as the "municipal higher education facilities gross receipts tax".

C. The governing body, at the time of enacting an ordinance imposing a rate of tax authorized in Subsection A of this section, shall dedicate the revenue only for:

(1) acquisition, construction, renovation or improvement of facilities of a four-year post-secondary public educational institution located in the municipality and acquisition of or improvements to land for those facilities; or

(2) payment of municipal higher education facilities gross receipts tax revenue bonds issued pursuant to Chapter 3, Article 31 NMSA 1978.

D. An ordinance imposing any increment of the municipal higher education facilities gross receipts tax shall not go into effect until after an election is held and a majority of the voters of the municipality voting in the election votes in favor of imposing the tax. The governing body shall adopt a resolution calling for an election on the question of imposing the tax at the next regular municipal election. The question shall be submitted to the voters of the municipality as a separate question. If a majority of the voters voting on the question approves the ordinance imposing the municipal higher education facilities gross receipts tax, the ordinance shall become effective in accordance with the provisions of the Municipal Local Option Gross Receipts Taxes Act. If the question of imposing the municipal higher education facilities gross receipts tax fails, the governing body shall not again propose the imposition of any increment of the tax for a period of one year from the date of the election.

E. For the purposes of this section, "eligible municipality" means a municipality that has a population greater than fifty thousand according to the most recent federal decennial census and that is located in a class B county having a net taxable value for rate-setting purposes for the 2006 property tax year or any subsequent year of more than two billion dollars ($2,000,000,000).

History: Laws 2007, ch. 148, § 1.

## ANNOTATIONS

**Effective dates.** — Laws 2007, ch. 148, § 3 made Laws 2007, ch. 148, § 1 effective July 1, 2007.

## 7-19D-17. Federal water project gross receipts tax; authorization; use of revenue; referendum.

A. A majority of the members of the governing body of a municipality may enact an ordinance imposing an excise tax on any person engaging in business in the municipality for the privilege of engaging in business. The rate of the tax shall not exceed one-fourth percent of the gross receipts of the person engaging in business. An ordinance enacting the tax authorized by this section is subject to a positive referendum.

B. The tax imposed pursuant to this section may be referred to as the "federal water project gross receipts tax".

C. The governing body of a municipality, at the time of enacting an ordinance imposing the rate of the tax authorized in this section, shall dedicate the revenue for the repayment of loan obligations to the federal government for the construction, expansion, operation and maintenance of a water delivery system and for the expansion, operation and maintenance of that water delivery system after the loan obligation to the federal government is retired or repaid. The revenue from the federal water project gross receipts tax shall not be dedicated to repay revenue bonds or any other form of bonds.

D. An ordinance imposing the federal water project gross receipts tax shall not go into effect until an election is held and a majority of the voters of the municipality voting in the election votes in favor of imposing the tax. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax. The question shall be submitted to the voters of the municipality as a separate question at a regular municipal election or at a special election called for that purpose by the governing body. A special municipal election shall be called, conducted and canvassed as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978]. If a majority of the voters voting on the question approves the ordinance imposing the federal water project gross receipts tax, then the ordinance shall become effective on January 1 or July 1 in accordance with the provisions of the Municipal Local Option Gross Receipts Taxes Act. If the question of imposing the federal water project gross receipts tax fails, the governing body shall not again propose the imposition of the tax for a period of one year from the date of the election.

E. A municipality that imposed a federal water project gross receipts tax pursuant to this section shall not also impose a municipal capital outlay gross receipts tax.

F. As used in this section, "municipality" means an incorporated municipality that has a population pursuant to the most recent federal decennial census of greater than twenty thousand but less than twenty-five thousand and is located in a class B county.

History: Laws 2012, ch. 58, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2012, ch. 58, § 2 made Laws 2012, ch. 58, § 1 effective July 1, 2012.

## 7-19D-18. Municipal hold harmless gross receipts tax.

A. The majority of the members of the governing body of any municipality may impose by ordinance an excise tax not to exceed a rate of three-eighths percent of the gross receipts of any person engaging in business in the municipality for the privilege of engaging in business in the municipality. A tax imposed pursuant to this section shall be imposed by the enactment of one or more ordinances, each imposing any number of gross receipts tax rate increments, but the total gross receipts tax rate imposed by all ordinances pursuant to this section shall not exceed an aggregate rate of three-eighths percent of the gross receipts of a person engaging in business. Municipalities may impose increments of one-eighth of one percent.

B. The tax imposed pursuant to Subsection A of this section may be referred to as the "municipal hold harmless gross receipts tax". The imposition of a municipal hold harmless gross receipts tax is not subject to referendum.

C. The governing body of a municipality may, at the time of enacting an ordinance imposing the tax authorized in Subsection A of this section, dedicate the revenue for a specific purpose or area of municipal government services, including but not limited to police protection, fire protection, public transportation or street repair and maintenance. If the governing body proposes to dedicate such revenue, the ordinance and any revenue so dedicated shall be used by the municipality for that purpose unless a subsequent ordinance is adopted to change the purpose to which the revenue is dedicated or to place the revenue in the general fund of the municipality.

D. Any law that imposes or authorizes the imposition of a municipal hold harmless gross receipts tax or that affects the municipal hold harmless gross receipts tax, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any outstanding revenue bonds that may be secured by a pledge of such municipal hold harmless gross receipts tax unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor.

History: Laws 2013, ch. 160, § 11.

**ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 160, § 14 provided that Laws 2013, ch. 160, § 11 was effective July 1, 2013.

# ARTICLE 20
# County Gross Receipts Tax

(Repealed and Recompiled by Laws 1979, ch. 88, § 1 and by Laws 1993, ch. 354, §§ 9 to 14 and 19.)

## 7-20-1, 7-20-2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 354, § 19A repealed 7-20-1 and 7-20-2 NMSA 1978, as enacted by Laws 1983, ch. 213, § 28, containing the title of the County Gross Receipts Tax Act and definitions, effective July 1, 1993. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 7-20-3, 7-20-3.1. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 1993, ch. 354, § 9 recompiled 7-20-3 NMSA 1978 as amended by Laws 1991, ch. 212, § 16, relating to authority to impose tax, as 7-20E-9 NMSA 1978, effective July 1, 1993.

Laws 1993, ch. 354, § 12 recompiled 7-20-3.1 NMSA 1978, as enacted by Laws 1989, ch. 239, § 1, relating to authority to impose additional rate in lieu of property tax, as 7-20E-12 NMSA 1978, effective July 1, 1993.

## 7-20-4. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 354, § 19A repealed 7-20-4 NMSA 1978, as enacted by Laws 1983, ch. 213, § 31, requiring an ordinance imposing a county gross receipts tax to conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the division, effective July 1, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 7-20-5. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 1993, ch. 354, § 10 recompiled 7-20-5 NMSA 1978, as enacted by Laws 1983, ch. 213, § 32, relating to referendum requirements, as 7-20E-10 NMSA 1978, effective July 1, 1993.

## 7-20-6, 7-20-7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 354, § 19A repealed 7-20-6 and 7-20-7 NMSA 1978, as enacted by Laws 1983, ch. 213, §§ 33 and 34, containing exemptions from the county gross receipts tax and providing for collection of the tax and distribution of proceeds, effective July 1, 1993. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 7-20-8. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 1993, ch. 354, § 11 recompiled 7-20-8 NMSA 1978, as enacted by Laws 1983, ch. 213, § 35, relating to use of tax, as 7-20E-11 NMSA 1978, effective July 1, 1993.

## 7-20-9. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 354, § 19A repealed 7-20-9 NMSA 1978, as enacted by Laws 1983, ch. 213, § 36, concerning interpretation of the County Gross Receipts Tax Act and administration and enforcement of the tax, effective July 1, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 7-20-10 to 7-20-18. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 88, § 1, repealed 7-20-10 to 7-20-18 NMSA 1978, relating to the county gross receipts tax, effective June 15, 1979.

## 7-20-19, 7-20-20. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 354, § 19B repealed 7-20-19 and 7-20-20 NMSA 1978, as enacted by Laws 1987, ch. 45, § 1, the title of the Special County Hospital Gross Receipts Tax Act and definitions, effective July 1, 1993. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 7-20-21. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 1993, ch. 354, § 13 recompiled 7-20-21 NMSA 1978 as amended by Laws 1992, ch. 80, § 2, relating to special county hospital gross receipts tax, as 7-20E-13, effective July 1, 1993.

## 7-20-22 to 7-20-25. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 354, § 19B repealed 7-20-22 to 7-20-25 NMSA 1978, as enacted by Laws 1987, ch. 45, §§ 4 to 7, requiring an ordinance imposing a special hospital gross receipts tax to conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the department; providing exemptions from the act; providing for collection of the tax and distribution of proceeds; and concerning interpretation of the act and administration and enforcement of the tax, effective July 1, 1993. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 7-20-26. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 1993, ch. 354, § 14 recompiled 7-20-26 NMSA 1978, as enacted by Laws 1987, ch. 45, § 8, relating to distribution, as 7-20E-14, effective July 1, 1993.

# ARTICLE 20A
# County Fire Protection Excise Tax

(Repealed and Recompiled by Laws 1993, ch. 354, §§ 15, 16, and 19.)

## 7-20A-1, 7-20A-2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 354, § 19C repealed 7-20A-1 and 7-20A-2 NMSA 1978, as enacted by Laws 1979, ch. 398, § 1, containing the title of the County Fire Protection Excise Tax Act and definitions, effective July 1, 1993. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 7-20A-3. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 1993, ch. 354, § 15 recompiled 7-20A-3 NMSA 1978, as enacted by Laws 1979, ch. 398, § 3, relating to authority to impose tax, as 7-20E-15, effective July 1, 1993.

## 7-20A-4 to 7-20A-7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 354, § 19C repealed 7-20A-4 to 7-20A-7 NMSA 1978, as enacted by Laws 1979, ch. 398, §§ 4, 5 and 7, requiring an ordinance imposing a county fire protection excise tax to conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the division; providing exemptions from the act; providing for collection of the tax and transfer of proceeds; and concerning interpretation of the act and administration and enforcement of the tax, effective July 1, 1993. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 7-20A-8. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 1993, ch. 354, § 16 recompiled 7-20A-8 NMSA 1978, as enacted by Laws 1978, ch. 398, § 8, relating to distribution, as 7-20E-16, effective July 1, 1993.

## 7-20A-9. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 354, § 19C repealed 7-20A-9 NMSA 1978, as enacted by Laws 1978, ch. 398, § 9, containing a budgetary limitation, effective July 1, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

# ARTICLE 20B
# County Environmental Services Gross Receipts Tax

(Repealed and Recompiled by Laws 1993, ch. 354, §§ 17 and 19.)

## 7-20B-1, 7-20B-2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 354, § 19D repealed 7-20B-1 and 7-20B-2 NMSA 1978, as enacted by Laws 1990, ch. 99, §§ 56 and 57, containing the title of the County

Environmental Services Gross Receipts Tax Act and definitions, effective July 1, 1993. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 7-20B-3. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 1993, ch. 354, § 17 recompiled 7-20B-3 NMSA 1978, as enacted by Laws 1990, ch. 99, § 58, relating to authority to impose tax, as 7-20E-17, effective July 1, 1993.

## 7-20B-4 to 7-20B-7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 354, § 19D repealed 7-20B-4 to 7-20B-7 NMSA 1978, as enacted by Laws 1990, ch. 99, §§ 59 to 62, requiring an ordinance imposing a county environmental services gross receipts tax to conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the department; providing for collection of the tax and transfer of proceeds; providing exemptions from the tax; and concerning interpretation of the act and administration and enforcement of the tax, effective July 1, 1993. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

# ARTICLE 20C
# Local Hospital Gross Receipts Tax

## 7-20C-1. Short title.

Sections 1 through 15 [7-20C-1 through 7-20C-17 NMSA 1978] of this act may be cited as the "Local Hospital Gross Receipts Tax Act".

**History:** Laws 1991, ch. 176, § 1.

**ANNOTATIONS**

**Compiler's notes.** — Sections 7-20C-16 and 7-20C-17 NMSA 1978 were enacted as part of the Local Hospital Gross Receipts Tax Act in 1996.

## 7-20C-2. Definitions.

As used in the Local Hospital Gross Receipts Tax Act:

A. "county" means:

(1) a class B county having a population of less than twenty-five thousand according to the most recent federal decennial census and having a net taxable value for rate-setting purposes for the 1990 property tax year or any subsequent year of more than two hundred fifty million dollars ($250,000,000);

(2) a class B county having a population of less than forty-seven thousand but more than forty-four thousand according to the 1990 federal decennial census and having a net taxable value for rate-setting purposes for the 1992 property tax year of more than three hundred million dollars ($300,000,000) but less than six hundred million dollars ($600,000,000);

(3) a class B county having a population of less than ten thousand according to the most recent federal decennial census and having a net taxable value for rate-setting purposes for the 1990 property tax year or any subsequent year of more than one hundred million dollars ($100,000,000);

(4) a class B county having a population of less than twenty-five thousand according to the 1990 federal decennial census and having a net taxable value for rate-setting purposes for the 1993 property tax year of more than ninety-one million dollars ($91,000,000) but less than one hundred twenty-five million dollars ($125,000,000);

(5) a class B county having a population of more than seventeen thousand but less than twenty thousand according to the 1990 federal decennial census and having a net taxable value for rate-setting purposes for the 1993 property tax year of more than one hundred fifty-three million dollars ($153,000,000) but less than one hundred fifty-six million dollars ($156,000,000);

(6) a class B county having a population of more than fifteen thousand according to the 1990 federal decennial census and having a net taxable value for rate-setting purposes for the 1996 property tax year of more than one hundred fifty million dollars ($150,000,000) but less than one hundred seventy-five million dollars ($175,000,000);

(7) an H class county;

(8) a class A county having a population of less than one hundred fifteen thousand according to the 2000 federal decennial census or any subsequent federal decennial census and having a net taxable value for rate-setting purposes for the 2001 property tax year or any subsequent year of more than three billion dollars ($3,000,000,000); or

(9) a class B county having a population of more than three thousand five hundred but less than ten thousand five hundred according to the 2000 federal decennial census or any subsequent federal decennial census and having a net taxable value for rate-setting purposes for the 2005 property tax year or any subsequent year of

more than one hundred million dollars ($100,000,000) and less than one hundred sixteen million five hundred thousand dollars ($116,500,000);

B. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "governing body" means the board of county commissioners of a county;

D. "health care facilities contract" means an agreement between a hospital or health clinic not owned by the county and a county imposing the tax authorized by the Local Hospital Gross Receipts Tax Act that obligates the county to pay to the hospital revenue generated by the tax authorized in that act as consideration for the agreement by the hospital or health clinic to use the funds only for nonsectarian purposes and to make health care services available for the benefit of the county;

E. "hospital facility revenues" means all or a portion of the revenues derived from a lease of a hospital facility acquired, constructed or equipped pursuant to and operated in accordance with the Local Hospital Gross Receipts Tax Act;

F. "local hospital gross receipts tax" means the tax authorized to be imposed under the Local Hospital Gross Receipts Tax Act;

G. "person" means an individual or any other legal entity; and

H. "state gross receipts tax" means the gross receipts tax imposed under the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978].

History: Laws 1991, ch. 176, § 2; 1993, ch. 306, § 1; 1996, ch. 18, § 1; 1996 (1st S.S.), ch. 6, § 1; 1997, ch. 54, § 1; 1997, ch. 129, § 1; 2000, ch. 33, § 6; 2002, ch. 17, § 1; 2003, ch. 50, § 1; 2007, ch. 80, § 1.

## ANNOTATIONS

**The 2007 amendment,** effective June 15, 2007, amended Subsection A to include class B counties having a population of more than three thousand five hundred, but less than ten thousand five hundred, and having a net taxable value of more than $100,000,000 and less than $116,500,000 in the definition of "county".

**The 2003 amendment,** effective March 19, 2003, added Paragraph A(8).

**The 2002 amendment,** effective July 1, 2002, added Paragraph A(7).

**The 2000 amendment,** effective May 17, 2000, added Subsections A(6) and D and redesignated the remaining subsections accordingly.

**The 1997 amendment,** effective July 1, 1997, added Subsection D and redesignated the remaining subsections accordingly. This section was also amended by Laws 1997, ch. 54, § 1. The section was set out as amended by Laws 1997, ch. 129, § 1. *See* 12-1-8 NMSA 1978.

**The 1996 amendment,** effective June 21, 1996, added Paragraphs A(4) and A(5) and made minor stylistic changes throughout Subsection AThis section was also amended by Laws 1996, ch. 18, § 1. The section was set out as amended by Laws 1996 (1st S.S.), ch. 6, § 1. *See* 12-1-8 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, in Subsection A, inserted the paragraph designation "(1)", added Paragraphs (2) and (3), and made a minor stylistic change.

## 7-20C-3. Local hospital gross receipts tax; authority to impose; ordinance requirements.

A. A majority of the members elected to the governing body of a county may enact an ordinance imposing an excise tax on a person engaging in business in the county for the privilege of engaging in business. This tax is to be referred to as the "local hospital gross receipts tax". The rate of the tax shall be:

(1) one-half percent of the gross receipts of the person engaging in business if the tax is initially imposed before January 1, 1993;

(2) one-eighth percent of the gross receipts of the person engaging in business if the tax is initially imposed after January 1, 1993; and

(3) a rate not to exceed one-half percent of the gross receipts of the person engaging in business if the tax is imposed after July 1, 1996 in a county described in Paragraph (4), (6), (7) or (8) of Subsection A of Section 7-20C-2 NMSA 1978; provided the tax may be imposed in any number of increments of one-eighth percent not to exceed an aggregate rate of one-half percent of gross receipts.

B. The local hospital gross receipts tax imposed:

(1) initially before January 1, 1993 shall be imposed only once for the period necessary for payment of the principal and interest on revenue bonds issued to accomplish the purpose for which the revenue is dedicated, but the period shall not exceed ten years from the effective date of the ordinance imposing the tax; or

(2) after July 1, 1996 in a county described in Paragraph (4) or (8) of Subsection A of Section 7-20C-2 NMSA 1978 shall be imposed for the period necessary for payment of the principal and interest on revenue bonds issued to accomplish the purpose for which the revenue is dedicated, but the period shall not exceed forty years from the effective date of the ordinance imposing the tax; provided, however, that the governing body of a county described in Paragraph (8) of Subsection A of Section 7-

20C-2 NMSA 1978 that has enacted an ordinance imposing an increment of the local hospital gross receipts tax pursuant to the provisions of this paragraph may, prior to the date of the delayed repeal of the ordinance, enact an ordinance to modify the period of imposition of the tax and modify the purposes for which the revenue from the tax is dedicated, consistent with one or more of the purposes permitted pursuant to Paragraph (6) of Subsection D of this section. The ordinance shall be subject to the election requirement of Subsection E of this section.

C. No local hospital gross receipts tax authorized in Subsection A of this section shall be imposed initially after January 1, 1993 in a county described in Paragraph (2), (3) or (5) of Subsection A of Section 7-20C-2 NMSA 1978 unless:

(1) in a county described in Paragraph (2) of Subsection A of Section 7-20C-2 NMSA 1978, the voters of the county have approved the issuance of general obligation bonds of the county sufficient to pay at least one-half of the costs of the county hospital facility or county twenty-four-hour urgent care or emergency facility for which the local hospital gross receipts tax revenues are dedicated, including the costs of all acquisition, renovation and equipping of the facility; or

(2) in a county described in Paragraph (3) or (5) of Subsection A of Section 7-20C-2 NMSA 1978, the county will not have in effect at the same time a county hospital emergency gross receipts tax and the voters of the county have approved the imposition of a property tax at a rate of one dollar ($1.00) on each one thousand dollars ($1,000) of taxable value of property in the county for the purpose of operation and maintenance of a hospital owned by the county and operated and maintained either by the county or by another party pursuant to a lease with the county.

D. The governing body of a county enacting an ordinance imposing a local hospital gross receipts tax shall dedicate the revenue from the tax as provided in this subsection. In any election held, the ballot shall clearly state the purpose to which the revenue will be dedicated and the revenue shall be used by the county for that purpose. The revenue shall be dedicated as follows:

(1) prior to January 1, 1993, the governing body, at the time of enacting an ordinance imposing the rate of the tax authorized in Subsection A of this section, shall dedicate the revenue for acquisition of land for and the design, construction, equipping and furnishing of a county hospital facility to be operated by the county or operated and maintained by another party pursuant to a lease with the county;

(2) if the governing body of a county described in Paragraph (2), (3) or (5) of Subsection A of Section 7-20C-2 NMSA 1978 is enacting the ordinance imposing the tax after July 1, 1993, the governing body shall dedicate the revenue for acquisition, renovation and equipping of a building for a county hospital facility or a county twenty-four-hour urgent care or emergency facility or for operation and maintenance of that facility, whether operated and maintained by the county or by another party pursuant to

a lease or management contract with the county, for the period of time the tax is imposed not to exceed ten years;

(3) if the governing body of a county described in Paragraph (4) or (8) of Subsection A of Section 7-20C-2 NMSA 1978 is enacting the ordinance imposing the tax after July 1, 1995, the governing body shall dedicate the revenue for acquisition of land or buildings for and the renovation, design, construction, equipping or furnishing of a county hospital facility or health clinic to be operated by the county or operated and maintained by another party pursuant to a health care facilities contract, lease or management contract with the county; provided, however, that the governing body of a county described in Paragraph (8) of Subsection A of Section 7-20C-2 NMSA 1978 that has imposed an increment of the local hospital gross receipts tax prior to January 1, 2009 and dedicated the revenue from that imposition pursuant to the provisions of this paragraph may, prior to the date of the delayed repeal of the ordinance imposing the increment of the tax, enact an ordinance to modify the period of imposition of the tax and modify the purposes for which the revenue from the tax is dedicated, consistent with one or more of the purposes permitted pursuant to Paragraph (6) of this subsection. The ordinance shall be subject to the election requirement of Subsection E of this section;

(4) if the governing body of a county described in Paragraph (6) or (9) of Subsection A of Section 7-20C-2 NMSA 1978 is enacting the ordinance imposing the tax after July 1, 1997, the governing body shall dedicate the revenue for either or a combination of the following:

(a) acquisition of land or buildings for and the design, construction, renovation, equipping or furnishing of a hospital facility or health clinic owned by the county or a hospital or health clinic with which the county has entered into a health care facilities contract lease or management contract; or

(b) operations and maintenance of a hospital or health clinic owned by the county or a hospital or a health clinic with which the county has entered into a health care facilities contract;

(5) if the governing body of a county described in Paragraph (7) of Subsection A of Section 7-20C-2 NMSA 1978 is enacting the ordinance imposing the tax after January 1, 2002, the governing body shall dedicate the revenue for acquisition, lease, renovation or equipping of a hospital facility or for operation and maintenance of that facility, whether operated and maintained by the county or by another party pursuant to a health care facilities contract, lease or management contract with the county; and

(6) if the governing body of a county described in Paragraph (8) of Subsection A of Section 7-20C-2 NMSA 1978 is enacting the ordinance imposing one or more increments of the tax after January 1, 2009, the governing body shall dedicate the revenue for either or both of the following:

(a) payment of the principal and interest on revenue bonds, including refunding bonds, issued for acquisition of land or buildings for and the renovation, design, construction, equipping or furnishing of hospital facilities or health care clinic facilities to be operated by the county or operated and maintained by another party pursuant to a health care facilities contract, lease or management contract with the county; and

(b) use as matching funds for state or federal programs benefiting the facilities.

E. The ordinance shall not go into effect until after an election is held and a simple majority of the qualified electors of the county voting in the election vote in favor of imposing the local hospital gross receipts tax and, in the case of a county described in Paragraph (3) or (5) of Subsection A of Section 7-20C-2 NMSA 1978, also vote in favor of a property tax at a rate of one dollar ($1.00) for each one thousand dollars ($1,000) of taxable value of property in the county. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax. The question may be submitted to the qualified electors and voted on as a separate question in a general election or in any special election called for that purpose by the governing body. A special election on the question shall be called, held, conducted and canvassed in substantially the same manner as provided by law for general elections. If the question of imposing a local hospital gross receipts tax fails or if the question of imposing both a local hospital gross receipts tax and a property tax fails, the governing body shall not again propose a local hospital gross receipts tax for a period of one year after the election. A certified copy of any ordinance imposing a local hospital gross receipts tax shall be mailed to the department within five days after the ordinance is adopted in an election called for that purpose.

F. An ordinance enacted pursuant to the provisions of Subsection A of this section shall include an effective date of either July 1 or January 1, whichever date occurs first after the expiration of at least three months from the date the ordinance is approved by the electorate.

G. An ordinance repealed under the provisions of the Local Hospital Gross Receipts Tax Act shall be repealed effective on either July 1 or January 1.

H. As used in this section, "taxable value of property" means the sum of:

(1) the net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978], of property subject to taxation under the Property Tax Code;

(2) the assessed value of products, as those terms are defined in the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978];

(3) the assessed value of equipment, as those terms are defined in the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978]; and

(4) the taxable value of copper mineral property, as those terms are defined in the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978], subject to taxation under the Copper Production Ad Valorem Tax Act.

History: Laws 1991, ch. 176, § 3; 1993, ch. 306, § 2; 1994, ch. 14, § 2; 1994, ch. 101, § 4; 1995, ch. 70, § 22; 1996 (1st S.S.), ch. 6, § 2; 1997, ch. 54, § 2; 2002, ch. 17, § 2; 2003, ch. 50, § 2; 2007, ch. 80, § 2; 2009, ch. 16, § 1.

## ANNOTATIONS

**The 2009 amendment,** effective July 1, 2009, in Paragraph (2) of Subsection B and in Paragraph (3) of Subsection D, permitted certain counties to extend the period for which the tax is imposed and to dedicate the tax as matching funds or to payment of principal and interest on revenue bonds; and added Paragraph (6) of Subsection D.

**The 2007 amendment,** effective June 15, 2007, permitted class B counties included in the definition of "county" to impose the local hospital gross receipts tax and permitted the local hospital gross receipts tax to be used for the acquisition or operation of a hospital or health clinic with which the county has a lease or management contract.

**The 2003 amendment,** effective March 19, 2003, inserted "or (8)" in Subsections A(3), B, and D(3) and inserted "in a county described in Paragraph (2), (3) or (5) Subsection A of Section 7-20C-2 NMSA 1978" near the end of Subsection C.

**The 2002 amendment,** effective July 1, 2002, updated the internal section reference in Paragraph A(3); substituted "forty" for "twenty" in the last sentence of Subsection B; added "health care facilities contract" near the end of Paragraph D(3); inserted Paragraph D(5); and made minor stylistic changes in Subsections E, F and G.

**The 1997 amendment,** effective July 1, 1997, in Paragraph A(3), inserted "or (6)" following "Paragraph (4)", and added Paragraph D(4) and made related stylistic changes.

**The 1996 amendment,** in Subsection A, divided the subsection into paragraphs, deleted "The rate of the tax shall be" at the end of Paragraph (1), and added Paragraph (3); in Subsection B, added the second sentence; in Subsection D, added the introductory language, inserted "of a county described in Paragraph (2), (3), or (5) of Subsection A of Section 7-20C-2 NMSA 1978" and deleted the last sentence which provided that the ballot should clearly state the purpose of the revenue in Paragraph (2), and added Paragraph (3); and made minor stylistic changes throughout the section. Laws 1996 (1st S.S.), ch. 6 contains no effective date provision, but, pursuant to N.M.

Const., art. IV, § 23, is effective June 21, 1996, 90 days after adjournment of the legislature.

**The 1995 amendment,** effective July 1, 1995, rewrote the section to such an extent that a detailed comparison would be impracticable.

## 7-20C-4. Ordinance shall conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the department.

A. Any ordinance imposing the local hospital gross receipts tax shall adopt by reference the same definitions and the same provisions relating to exemptions and deductions as are contained in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] then in effect and as it may be amended from time to time.

B. The governing body of any county imposing the tax shall adopt the model ordinances furnished to the county by the department.

**History:** Laws 1991, ch. 176, § 4.

## 7-20C-5. Specific exemptions.

No local hospital gross receipts tax shall be imposed on the gross receipts arising from transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the county to another point outside the county.

**History:** Laws 1991, ch. 176, § 5; 1994, ch. 101, § 5.

**ANNOTATIONS**

**The 1994 amendment,** effective July 1, 1994, deleted former Subsection A, which read: "the transmission of messages by wire or other means from one point within the county to another point outside the county;" and deleted the subsection designation "B," appending that subsection to the end of the undesignated paragraph.

## 7-20C-6. Collection by department; transfer of proceeds; deductions.

A. The department shall collect the local hospital gross receipts tax in the same manner and at the same time it collects the state gross receipts tax.

B. The department shall withhold an administrative fee pursuant to Section 7-1-6.41 NMSA 1978. The department shall transfer to each county for which it is collecting such tax the amount of the tax collected less the administrative fee withheld and less any

disbursements for tax credits, refunds and the payment of interest applicable to the tax. Transfer of the tax to a county shall be made within the month following the month in which the tax is collected.

**History:** Laws 1991, ch. 176, § 6; 1997, ch. 125, § 8; 2003, ch. 205, § 2; 2005, ch. 338, § 2.

**ANNOTATIONS**

**The 2005 amendment,** effective July 1, 2005, deleted former Subsection C, which provided for a distribution of local hospital gross receipt tax to the largest municipality in certain class B counties for hospital purposes.

**The 2003 amendment,** effective July 1, 2003, substituted "7-1-6.41 NMSA 1978. Except as provided in Subsection C of this section" for "1 of this 1997 act" following "pursuant to Section" in Subsection B and added Subsection C.

**Temporary provisions.** — Laws 2003, ch. 205, § 4 provided that on July 1, 2003, no changes in distribution, otherwise required by the provisions of this act, shall be made if the change will impair any outstanding bonds or other debt obligations of a county. In such a case, notwithstanding the provisions of this act, the distribution shall continue to be made pursuant to the terms of the bonds or other obligations until the debt is fully satisfied, at which time the distribution shall be made pursuant to the provisions of this act.

**The 1997 amendment,** effective July 1, 1997, in Subsection B, substituted "shall withhold an administrative fee pursuant to Section 1 of this 1997 act" for "may deduct an amount not to exceed three percent of the local hospital gross receipts tax collected as a charge for the administrative costs of collection, which amount shall be remitted to the state treasurer for deposit in the state general fund each month" in the first sentence, and in the second sentence, substituted "the" for "any deduction for" and substituted "fee withheld" for "costs".

## 7-20C-7. Interpretation of act; administration and enforcement of tax.

A. The department shall interpret the provisions of the Local Hospital Gross Receipts Tax Act.

B. The department shall administer and enforce the collection of the local hospital gross receipts tax, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of the tax.

**History:** Laws 1991, ch. 176, § 7.

## 7-20C-8. Distribution.

The net receipts from the local hospital gross receipts tax shall be administered by the governing body and disbursed by the county treasurer subject to the approval by the governing body in accordance with the provisions of the Local Hospital Gross Receipts Tax Act.

**History:** Laws 1991, ch. 176, § 8.

## 7-20C-9. Local hospital revenue bonds; authority to issue; pledge of revenues.

A. A county, other than a county described in Paragraph (2) of Subsection A of Section 7-20C-2 NMSA 1978, may issue local hospital revenue bonds pursuant to the Local Hospital Gross Receipts Tax Act for the purpose of acquiring land for and designing, constructing, equipping and furnishing a county hospital facility or health clinic to be operated by the county or by another party pursuant to a lease or management contract with the county, or a hospital facility or health clinic with whom the county has entered into a health care facilities contract.

B. The county issuing the local hospital revenue bonds pursuant to the Local Hospital Gross Receipts Tax Act shall pledge irrevocably all of the net receipts derived from the imposition of the local hospital gross receipts tax and may pledge irrevocably any combination of hospital facility revenues and any other revenues as necessary for the payment of principal and interest on the revenue bonds.

**History:** Laws 1991, ch. 176, § 9; 1993, ch. 306, § 3; 1996, ch. 18, § 2; 1996 (1st S.S.), ch. 6, § 3; 1997, ch. 54, § 3.

**ANNOTATIONS**

**The 1997 amendment,** effective July 1, 1997, in Subsection A, inserted "or health care clinic" following "county hospital facility", and added "or a hospital facility or health clinic with whom the county has entered into a health care facilities contract" at the end of the section.

**The 1996 amendment,** effective June 21, 1996, inserted "or management contract" preceding "with the county" at the end of Subsection A. This section was also amended by Laws 1996, ch. 18, § 2. The section was set out as amended by Laws 1996 (1st S.S.), ch. 6, § 3. *See* 12-1-8 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, inserted ", other than a county described in Paragraph (2) of Section 7-20C-2 NMSA 1978" near the beginning of Subsection A.

## 7-20C-9.1. New Mexico finance authority; revenue bonds.

A. For a county described in Paragraph (2) of Subsection A of Section 7-20C-2 NMSA 1978, the provisions of this section shall govern the financing of the acquisition,

renovation or equipping of a building for a county hospital facility or a county twenty-four-hour urgent care or emergency facility.

B. Upon approval of the voters pursuant to Section 7-20C-3 NMSA 1978, the county shall determine if the issuance of revenue bonds is necessary to finance that portion of the local hospital facility that will not otherwise be financed with general obligation bonds and local revenues. Upon a determination that the issuance of revenue bonds is necessary, the county shall enter into an agreement with the New Mexico finance authority for issuance and sale of New Mexico finance authority revenue bonds for the purpose of the acquisition, renovation or equipping of a county hospital facility or twenty-four-hour urgent care or emergency care facility in that county and for transfer of local hospital gross receipts tax proceeds to the authority in the amount necessary for that purpose.

C. Local hospital gross receipts tax proceeds transferred to the authority shall be pledged irrevocably for the payment of principal, interest, any premiums and the expenses related to issuance and sale of the bonds and shall be deposited into a special bond fund or account of the authority. To the extent such revenues are not needed to meet current debt service requirements, including any reserve fund requirements, the authority shall transfer such excess to the county to be used for the purpose for which the local hospital gross receipts tax is dedicated. The legislature shall not repeal, amend or otherwise modify any law that affects or impairs any revenue bonds of the New Mexico finance authority secured by a pledge of local hospital gross receipts tax revenues.

**History:** 1978 Comp., § 7-20C-9.1, enacted by Laws 1993, ch. 306, § 4.

## 7-20C-10. Ordinance authorizing revenue bonds.

At a regular or special meeting called for the purpose of issuing revenue bonds as authorized pursuant to the Local Hospital Gross Receipts Tax Act, the governing body may adopt an ordinance that:

A. declares the necessity for issuing revenue bonds;

B. authorizes the issuance of revenue bonds by an affirmative vote of a majority of the governing body; and

C. designates the source of the pledged revenues.

**History:** Laws 1991, ch. 176, § 10.

## 7-20C-11. Revenue bonds; terms.

Local hospital revenue bonds:

A. may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as may be determined by the governing body in the ordinance;

B. may be subject to a prior redemption at the option of the county at such times and upon such terms and conditions, with or without the payment of such premiums, as may be provided by the ordinance authorizing the bonds;

C. may mature at any time not exceeding twenty years after the date of issuance;

D. may be serial in form and maturity or may consist of one bond payable at one time or in installments or may be in any other form as may be provided in the ordinance authorizing the bonds;

E. shall be sold for cash at, above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act [6-14-1 through 6-14-3 NMSA 1978]; and

F. may be sold at a public or negotiated sale.

**History:** Laws 1991, ch. 176, § 11; 1994, ch. 4, § 1; 1996 (1st S.S.), ch. 6, § 4.

**ANNOTATIONS**

**The 1996 amendment,** effective June 21, 1996, in Subsection B, deleted "time or" preceding "times" and deleted "premium or" preceding "premiums"; and in Subsection C, substituted "twenty years" for "ten years".

**The 1994 amendment,** effective February 9, 1994, rewrote Subsection A, which formerly related to payment of interest, and substituted "the ordinance authorizing the bonds" for "resolution" in Subsection B, "ordinance" for "resolution" in Subsection D and "negotiated" for "private" in Subsection F.

## 7-20C-12. Local hospital revenue bonds not general county obligations.

Revenue bonds issued by a county under the authority of the Local Hospital Gross Receipts Tax Act shall not be the general obligation of the county within the meaning of Article 9, Sections 10 and 13 of the constitution of New Mexico. The bonds shall be payable solely out of all or a portion of the net revenues derived from the imposition of the local hospital gross receipts tax. Revenue bonds and interest coupons issued under authority of that act shall never constitute an indebtedness of the county within the meaning of any state constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the county or a charge against its general credit or taxing powers, and this fact shall be plainly stated on the face of each bond.

**History:** Laws 1991, ch. 176, § 12.

## 7-20C-13. Revenue bonds; exemption from taxation.

The local hospital revenue bonds issued under authority of the Local Hospital Gross Receipts Tax Act and the income from the bonds shall be exempt from all taxation by the state or any political subdivision of the state.

**History:** Laws 1991, ch. 176, § 13.

## 7-20C-14. Use of proceeds of bond issue.

It is unlawful to divert, use or expend any money received from the issuance of local hospital revenue bonds for any purpose other than the purpose for which the bonds were issued.

**History:** Laws 1991, ch. 176, § 14.

## 7-20C-15. No notice or publication required.

No notice, consent or approval by any governmental body or public officer shall be required as a prerequisite to the sale or issuance of any local hospital revenue bonds under the authority of the Local Hospital Gross Receipts Tax Act, except as provided in that act.

**History:** Laws 1991, ch. 176, § 15.

## 7-20C-16. Revenue bonds; refunding authorization.

A. Any county having issued revenue bonds as authorized in the Local Hospital Gross Receipts Tax Act may issue refunding revenue bonds pursuant to an ordinance adopted by majority vote of the governing body for the purpose of refinancing, paying and discharging all or any part of such outstanding revenue bonds of any one or more or all outstanding issues:

(1) for the acceleration, deceleration or other modification of the payment of such obligations, including without limitation any capitalization of any interest thereon in arrears or about to become due for any period not exceeding one year from the date of the refunding bonds;

(2) for the purpose of reducing interest costs or effecting other economies;

(3) for the purpose of modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds, otherwise concerning the outstanding bonds or to any facilities relating thereto; or

(4) for any combination of such purposes.

B. To pay the principal and interest on refunding bonds, the county may pledge irrevocably revenues authorized to be pledged to revenue bonds issued pursuant to the Local Hospital Gross Receipts Tax Act.

C. Bonds for refunding and bonds for any purpose permitted by the Local Hospital Gross Receipts Tax Act may be issued separately or issued in combination in one series or more.

**History:** Laws 1996, ch. 18, § 3.

## 7-20C-17. Refunding bonds; escrow; detail.

A. Refunding bonds issued pursuant to the provisions of the Local Hospital Gross Receipts Tax Act shall be authorized by ordinance. Any revenue bonds that are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places, and if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of the refunded bonds or otherwise appertaining thereto, except for any such bond that is voluntarily surrendered for exchange or payment by the holder or owner.

B. Provision shall be made for paying the bonds refunded at the time or places provided in Subsection A of this section. The principal amount of the refunding bonds may exceed, be less than or be the same as the principal amount of the bonds being refunded as long as provision is duly and sufficiently made for the payment of the refunded bonds.

C. The proceeds of refunding bonds, including any accrued interest and premium appertaining to the sale of refunding bonds, shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company that possesses and is exercising trust powers and that is a member of the federal deposit insurance corporation, to be applied to the payment of the principal of, interest on and any prior redemption premium due in connection with the bonds being refunded; provided that such refunding bond proceeds, including any accrued interest and any premium appertaining to a sale of refunding bonds, may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest on the refunding bonds and the principal of the refunding bonds or both interest and principal as the county may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other money available to retire the refunded bonds. Any proceeds in escrow pending such

use may be invested in bills, certificates of indebtedness, notes or bonds that are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by the United States of America or in certificates of deposit of banks that are members of the federal deposit insurance corporation, the par value of which certificates of deposit is collateralized by a pledge of obligations of, or the payment of which is unconditionally guaranteed by, the United States of America, the par value of which obligations is at least seventy-five percent of the par value of the certificates of deposit. Such proceeds and investments in escrow together with any interest or other income to be derived from any such investment shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date or dates in connection with which the county shall exercise a prior redemption option. Any purchaser of any refunding bond issued pursuant to the provisions of the Local Hospital Gross Receipts Tax Act is in no manner responsible for the application of the proceeds thereof by the county or any of its officers, agents or employees.

D. Refunding bonds may be sold at a public or negotiated sale and may bear such additional terms and provisions as may be determined by the county subject to the limitations in the Local Hospital Gross Receipts Tax Act. The terms, provisions and authorization of the refunding bonds are not subject to the provisions of any other statute, provided that the Public Securities Limitation of Action Act [6-14-4 through 6-14-7 NMSA 1978] shall be fully applicable to the issuance of refunding bonds.

**History:** Laws 1996, ch. 18, § 4.

# ARTICLE 20D
# County Health Care Gross Receipts Tax

## 7-20D-1, 7-20D-2. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1993, ch. 354, § 19E repealed 7-20D-1 and 7-20D-2 NMSA 1978, as enacted by Laws 1991, ch. 212, §§ 5 and 6, containing the title of the County Health Care Gross Receipts Tax Act and definitions, effective July 1, 1993. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 7-20D-3. Recompiled.

### ANNOTATIONS

**Recompilations.** — Laws 1993, ch. 354, § 18 recompiled 7-20D-3 NMSA 1978 as enacted by Laws 1991, ch. 212, § 7, relating to authority to impose tax, as 7-20E-18 NMSA 1978, effective July 1, 1993.

## 7-20D-4 to 7-20D-7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 354, § 19E repealed 7-20D-4 to 7-20D-7 NMSA 1978, as enacted by Laws 1991, ch. 212, §§ 8 to 11, requiring an ordinance imposing a county health care gross receipts tax to conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the department; providing exemptions from the act; providing for collection of the tax and distribution of proceeds; and concerning interpretation of the act and administration and enforcement of the tax, effective July 1, 1993. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

# ARTICLE 20E
# County Local Option Gross Receipts Taxes

## 7-20E-1. Short title.

Chapter 7, Article 20E NMSA 1978 may be cited as the "County Local Option Gross Receipts Taxes Act".

**History:** 1978 Comp., § 7-20E-1, enacted by Laws 1993, ch. 354, § 1.

## 7-20E-2. Definitions.

As used in the County Local Option Gross Receipts Taxes Act:

A. "county" means, unless specifically defined otherwise in the County Local Option Gross Receipts Taxes Act, a county, including an H class county;

B. "county area" means that portion of a county located outside the boundaries of any municipality, except that for H class counties, "county area" means the entire county;

C. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

D. "governing body" means the county commission of the county or the county council of an H class county;

E. "person" means an individual or any other legal entity; and

F. "state gross receipts tax" means the gross receipts tax imposed under the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978].

**History:** 1978 Comp., § 7-20E-2, enacted by Laws 1993, ch. 354, § 2; 1994, ch. 93, § 1; 1994, ch. 97, § 1.

**ANNOTATIONS**

**The 1994 amendment,** effective July 1, 1994, added the language following "municipality" in Subsection B and added "or the county council of an H class county" in Subsection D. Laws 1994, ch. 93, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 1994, ch. 97, § 1. *See* 12-1-8 NMSA 1978.

## 7-20E-3. Optional referendum selection; effective date of ordinance.

A. The governing body of a county imposing a tax or an increment of tax authorized by the County Local Option Gross Receipts Taxes Act or any other county local option gross receipts tax act that is subject to optional referendum selection shall select, when enacting the ordinance imposing the tax, one of the following referendum options:

(1) the ordinance imposing the tax or increment of tax shall go into effect on July 1 or January 1 in accordance with the provisions of the County Local Option Gross Receipts Taxes Act, but an election may be called in the county on the question of approving or disapproving that ordinance as follows:

(a) an election shall be called when: 1) in a county having a referendum provision in its charter, a petition requesting such an election is filed pursuant to the requirements of that provision in the charter and signed by the number of registered voters in the county equal to the number of registered voters required in its charter to seek a referendum; and 2) in all other counties, a petition requesting such an election is filed with the county clerk within sixty days of enactment of the ordinance by the governing body and the petition has been signed by a number of registered voters in the county equal to at least five percent of the number of the voters in the county who were registered to vote in the most recent general election;

(b) the signatures on the petition requesting an election shall be verified by the county clerk. If the petition is verified by the county clerk as containing the required number of signatures of registered voters, the governing body shall adopt a resolution calling an election on the question of approving or disapproving the ordinance. The election shall be held within sixty days after the date the petition is verified by the county clerk, or it may be held in conjunction with a general election if that election occurs within sixty days after the date of the verification. The election shall be called, held, conducted and canvassed in substantially the same manner as provided by law for general elections; and

(c) if a majority of the registered voters voting on the question approves the ordinance, the ordinance shall go into effect on July 1 or January 1 in accordance with the provisions of the County Local Option Gross Receipts Taxes Act. If at such an

election a majority of the registered voters voting on the question disapproves the ordinance, the ordinance imposing the tax shall be deemed repealed and the question of imposing the tax or increment of tax shall not be considered again by the governing body for a period of one year from the date of the election; or

(2) the ordinance imposing the tax or increment of tax shall not go into effect until after an election is held and a simple majority of the registered voters of the county voting on the question votes in favor of imposing the tax or increment of tax. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax or increment of tax. Such question may be submitted to the voters and voted upon as a separate question at any general election or at any special election called for that purpose by the governing body. The election upon the question shall be called, held, conducted and canvassed in substantially the same manner as may be provided by law for general elections. If the question of imposing the tax or increment of tax fails, the governing body shall not again propose the tax or increment of tax for a period of one year after the election.

B. An ordinance imposing, amending or repealing a tax or an increment of tax authorized by the County Local Option Gross Receipts Taxes Act shall be effective on July 1 or January 1, whichever date occurs first after the expiration of at least three months from the date the adopted ordinance is mailed or delivered to the department. The ordinance shall include that effective date.

History: 1978 Comp., § 7-20E-3, enacted by Laws 1993, ch. 354, § 3; 2004, ch. 110, § 1.

**ANNOTATIONS**

**The 2004 amendment,** effective July 1, 2004, added new Subsection A and redesignated the previously undesignated provisions as Subsection B.

## 7-20E-4. Ordinance shall conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the department.

A. An ordinance imposing a tax under the provisions of the County Local Option Gross Receipts Taxes Act shall adopt by reference the same definitions and the same provisions relating to exemptions and deductions as are contained in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] then in effect and as it may be amended from time to time.

B. The governing body of any county imposing a tax under the County Local Option Gross Receipts Taxes Act shall impose the tax by adopting the model ordinance with respect to the tax furnished to the county by the department. An ordinance that does not conform substantially to the model ordinance of the department is not valid.

**History:** 1978 Comp., § 7-20E-4, enacted by Laws 1993, ch. 354, § 4.

## 7-20E-5. Specific exemptions.

No tax authorized under the provisions of the County Local Option Gross Receipts Taxes Act shall be imposed on the gross receipts arising from transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the county to another point outside the county.

**History:** 1978 Comp., § 7-20E-5, enacted by Laws 1993, ch. 354, § 5; 1994, ch. 101, § 6.

**ANNOTATIONS**

**The 1994 amendment,** effective July 1, 1994, rewrote the section to delete former Subsection A, which read: "the transmission of messages by wire or other means from one point within the county to another point outside the county".

## 7-20E-6. Copy of ordinance to be submitted to department.

A certified copy of any ordinance imposing or repealing a tax or an increment of a tax authorized under the County Local Option Gross Receipts Taxes Act or changing the tax rate imposed shall be mailed or delivered to the department within five days after the later of the date the ordinance is adopted or the date the results of any election held with respect to the ordinance are certified to be in favor of the ordinance.

**History:** 1978 Comp., § 7-20E-6, enacted by Laws 1993, ch. 354, § 6.

## 7-20E-7. Collection by department; transfer of proceeds; deductions.

A. The department shall collect each tax imposed pursuant to the provisions of the County Local Option Gross Receipts Taxes Act in the same manner and at the same time it collects the state gross receipts tax.

B. The department shall withhold an administrative fee pursuant to Section 7-1-6.41 NMSA 1978. The department shall transfer to each county for which it is collecting a tax pursuant to the provisions of the County Local Option Gross Receipts Taxes Act the amount of each tax collected for that county, less the administrative fee withheld and less any disbursements for tax credits, refunds and the payment of interest applicable to the tax. The transfer to the county shall be made within the month following the month in which the tax is collected.

History: 1978 Comp., § 7-20E-7, enacted by Laws 1993, ch. 354, § 7; 1997, ch. 125, § 9; 2008, ch. 51, § 2; 2014, ch. 79, § 2.

**ANNOTATIONS**

**The 2014 amendment,** effective March 12, 2014, eliminated the distribution to the sole community provider fund; in Subsection B, in the second sentence, deleted "Except as provided in Subsection C of this section"; and deleted former Subsection C, which provided for a distribution to the sole community provider fund from the county gross receipts tax through June 30, 2009.

**The 2008 amendment,** effective February 28, 2008, added Subsection C.

**The 1997 amendment,** effective July 1, 1997, substituted "pursuant to" for "under" in Subsection A, and in Subsection B, substituted "shall withhold an administrative fee pursuant to Section 1 of this 1997 act" for "may deduct an amount not to exceed three percent of the local hospital gross receipts tax collected as a charge for the administrative costs of collection, which amount shall be remitted to the state treasurer for deposit in the state general fund each month" in the first sentence, and in the second sentence, substituted "pursuant to" for "under" and substituted "the administrative fee withheld and less any disbursements for" for "any disbursement for the administrative charge provided by this section".

## 7-20E-8. Interpretation of act; administration and enforcement of act.

A. The department shall interpret the provisions of the County Local Option Gross Receipts Taxes Act.

B. The department shall administer and enforce the collection of each tax authorized under the provisions of the County Local Option Gross Receipts Taxes Act, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of each tax.

**History:** 1978 Comp., § 7-20E-8, enacted by Laws 1993, ch. 354, § 8.

## 7-20E-9. County gross receipts tax; authority to impose rate; county health care assistance fund requirements.

A. Except as provided in Subsection E of this section, a majority of the members of the governing body of a county may enact an ordinance imposing an excise tax not to exceed a rate of seven-sixteenths percent of the gross receipts of any person engaging in business in the county for the privilege of engaging in business in the county. An ordinance imposing an excise tax pursuant to this subsection shall impose the tax in three independent increments of one-eighth percent and one independent increment of one-sixteenth percent, which shall be separately denominated as "the first one-eighth increment", "the second one-eighth increment", "the third one-eighth increment" and

"the one-sixteenth increment", respectively, not to exceed an aggregate amount of seven-sixteenths percent.

B. The tax authorized by this section is to be referred to as the "county gross receipts tax".

C. A class A county with a county hospital operated and maintained pursuant to a lease or operating agreement with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico enacting the second one-eighth increment of county gross receipts tax shall provide, each year that the tax is in effect, not less than one million dollars ($1,000,000) in funds, and that amount shall be dedicated to the support of indigent patients who are residents of that county. Funds for indigent care shall be made available each month of each year the tax is in effect in an amount not less than eighty-three thousand three hundred thirty-three dollars thirty-three cents ($83,333.33). The interest from the investment of county funds for indigent care may be used for other assistance to indigent persons, not to exceed twenty thousand dollars ($20,000) for all other assistance in any year.

D. A county, except a class A county with a county hospital operated and maintained pursuant to a lease or operating agreement with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico, imposing the second one-eighth increment of county gross receipts tax shall be required to dedicate the entire amount of revenue produced by the imposition of the second one-eighth increment for the support of indigent patients who are residents of that county. The revenue produced by the imposition of the third one-eighth increment and the one-sixteenth increment may be used for general purposes. Any county that has imposed the second one-eighth increment or the third one-eighth increment, or both, on January 1, 1996 for support of indigent patients in the county or, after January 1, 1996, imposes the second one-eighth increment or imposes the third one-eighth increment and dedicates one-half of that increment for county indigent patient purposes shall deposit the revenue dedicated for county indigent purposes that is transferred to the county in the county health care assistance fund, and such revenues shall be expended pursuant to the Indigent Hospital and County Health Care Act.

E. Until June 30, 2017, in addition to the increments authorized pursuant to Subsection A of this section, the majority of the members of the governing body of a county, except a class A county with a hospital that is operated and maintained pursuant to a lease or operating agreement with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico, may enact an ordinance imposing an excise tax of one-sixteenth percent or one-twelfth percent of the gross receipts of any person engaging in business in the county for the privilege of engaging in business in the county.

History: Laws 1983, ch. 213, § 30; 1986, ch. 20, § 84; 1989, ch. 169, § 1; 1991, ch. 212, § 16; 1978 Comp., § 7-20-3, amended and recompiled as 1978 Comp., § 7-20E-9 by

Laws 1993, ch. 354, § 9; 1996, ch. 29, § 1; 1998, ch. 90, § 8; 2004, ch. 110, § 2; 2008, ch. 51, § 3; 2014, ch. 79, § 3.

## ANNOTATIONS

**Cross references. —** For class B county property tax levy for providing health care to sick and indigent persons, *see* 4-38-17.1 NMSA 1978.

**The 2014 amendment,** effective March 12, 2014, authorized a county, except a class A county with a state educational institution, to impose an additional increment of county gross receipts tax for three years; in the catchline, after "rate", deleted "indigent" and added "county health care assistance"; in Subsection A, in the first sentence, added "Except as provided in Subsection E of this section", in the second sentence, after "pursuant to this", deleted "section" and added "subsection"; in Subsection B, after "authorized", deleted "in Subsection A of" and added "by"; in Subsection C, in the first sentence, after "pursuant to a lease", added "or operating agreement"; in Subsection D, in the first sentence, after "pursuant to a lease", added "or operating agreement", and in the third sentence, after "transferred to the county", deleted "after the distribution pursuant to Subsection C of Section 7-1-6.13 and Subsection C of Section 7-20E-7 NMSA 1978", and after "in the county", deleted "indigent hospital claims" and added "health care assistance"; and added Subsection E.

**The 2008 amendment,** effective February 28, 2008, in Subsection D, required counties to deposit into the county indigent hospital claims fund revenue dedicated for county indigent purposes that is transferred to the county after the distribution pursuant to Subsection C of 7-1-6.13 NMSA 1978 and Subsection C of 7-20E-7 NMSA 1978.

**The 2004 amendment,** effective July 1, 2004, amended Subsection A to change "three-eighths of one percent" to "seven-sixteenths percent" and to provide for an increment of one-sixteenth and amended Subsection D to add "one-sixteenth increment" after "one-eighth increment".

**The 1998 amendment,** effective May 20, 1998, in Subsection B, inserted "authorized in Subsection A of this section" at the beginning; in Subsection C in the first sentence, deleted 'or third" following "second" and "for each additional increment of one-eighth percent enacted" following "in funds"; in Subsection D, deleted "Fifty percent of" at the beginning of the second sentence, deleted the former third sentence, rewrote the last sentence and made minor stylistic changes throughout the section.

**The 1996 amendment,** effective May 15, 1996, made a stylistic change in Subsection A, rewrote the second sentence and added the fourth sentence in Subsection D, and deleted former Subsection E relating to counties that provided for indigent care in an amount equal to or greater than the amount anticipated in Subsection D.

**The 1993 amendment,** effective July 1, 1993, renumbered this section, deleted "percent" following "one-eighth" throughout the section; designated the former final

sentence of Subsection A as Subsection B; redesignated former Subsection B as Subsection C; deleted former Subsection C, stating that imposition of the county gross receipts tax shall not be subject to referendum; and deleted former Subsection F, pertaining to the effective date of any ordinance enacted under the provisions of Subsection A.

**The 1991 amendment,** effective July 1, 1991, substituted "independent increments of one-eighth percent which shall be separately denominated as 'first one-eighth', 'second one-eighth' and 'third one-eighth', respectively" for "any number of increments of one-eighth percent" in the second sentence in Subsection A; in Subsections B and D, inserted "with a county hospital operated and maintained pursuant to a lease with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico" and deleted "in excess of one-eighth percent" following "gross receipts tax" in the first sentence; in Subsection B, inserted "the second or third one-eighth percent increment of " in the first sentence, inserted "county" preceeding "funds" in the final sentence and made a related stylistic change; in Subsection D, substituted "the second one-eighth percent increment" for "an increment" in the first sentence, inserted "one-eighth percent" in the final sentence and made a minor stylistic change; in Subsection E, substituted "the first one-eighth percent increment" for "one-eighth percent" in three places; and deleted former Subsection G, relating to counties that had lawfully imposed a county sales tax pursuant to the County Sales Tax Act prior to the effective date of the 1986 act.

## 7-20E-10. County gross receipts tax; referendum requirements.

A. An ordinance enacting the first or third one-eighth increment or the one-sixteenth increment of county gross receipts tax pursuant to Section 7-20E-9 NMSA 1978 shall be subject to optional referendum selection by the governing body, pursuant to Subsection A of Section 7-20E-3 NMSA 1978.

B. Imposition by any county of the second one-eighth increment of county gross receipts tax shall not be subject to a referendum of any kind unless prescribed by the county charter or the governing body of the county.

History: Laws 1983, ch. 213, § 32; 1986, ch. 20, § 85; 1978 Comp., § 7-20-5, amended and recompiled as 1978 Comp., § 7-20E-10 by Laws 1993, ch. 354, § 10; 1994, ch. 101, § 7; 2004, ch. 110, § 3.

**ANNOTATIONS**

**The 2004 amendment,** effective July 1, 2004, amended Subsection A to add "or third" after "first", to add "or the one-sixteenth increment" and to delete "go into effect on July 1 or January 1 in accordance with the provisions of the County Local Option Gross Receipts Taxes Act, but an election may be called in the county on the question of approving or disapproving that ordinance as follows" and all of Paragraphs (1) to (3) and

inserted in its place: "be subject to optional referendum selection by the governing body, pursuant to Subsection A of Section 7-20E-3 NMSA 1978" and deleted Subsection C.

**Applicability.** — Laws 2004, ch. 110, § 8, effective May 19, 2004, provided that "An ordinance imposing the county fire protection excise tax that has an effective date on or after July 1, 2004 shall not be subject to the time limit on tax imposition specified in that version of Section 7-20E-15 NMSA 1978 that was in effect prior to the effective date of this 2004 act, and any delayed repeal provision included in that ordinance shall be ineffective."

**The 1994 amendment,** effective July 1, 1994, substituted "votes" for "vote" in the first sentence in Subsection C; and in the second sentence in Subsection C, substituted language from "adopt" to the end of the sentence for "provide for an election on the question of imposing a county gross receipts tax within sixty days after the date the ordinance is adopted".

**The 1993 amendment,** effective July 1, 1993, renumbered this section and rewrote it to the extent that a detailed comparison is impracticable.

## 7-20E-11. County gross receipts tax; use of proceeds from first one-eighth increment.

A. Each county shall establish a reserve fund to be known as the "county reserve fund". From the net receipts from the county gross receipts tax attributable to the first one-eighth increment imposed pursuant to Subsection A of Section 7-20E-9 NMSA 1978, one-fourth of the net receipts each month shall be deposited in the county reserve fund. The balance of the monthly net receipts shall be placed in either the general fund or road fund, or both, of the county. Except as provided in Subsections B through D of this section, the portions of the net receipts deposited in the county reserve fund shall remain on deposit in that fund until the sixteenth day of the month following the end of the state fiscal year in which the deposits were made, at which time the amount deposited from net receipts for the previous fiscal year shall be placed in either the general fund or road fund, or both, of the county.

B. If the actual amount of the distribution to a county in any state fiscal year of federal in lieu of taxes payments under the provisions of Sections 6901 through 6906 of Title 31 of the United States Code, as amended or renumbered, is less than the actual distribution to that county in the seventy-first state fiscal year or is no longer available to that county, the county may transfer from its reserve fund to its general fund or road fund, or both, an amount equal to the difference between the actual federal in lieu of taxes payments received in the seventy-first fiscal year and the payments received in the year in which the reduction occurred. The local government division of the department of finance and administration shall certify the amount to be transferred from the reserve fund.

C. If the actual amount of the distribution to a county in any state fiscal year of national forest reserves receipts under the provisions of Section 500 of Title 16 of the United States Code, as amended or renumbered, is less than the actual amount distributed to that county in the seventy-first state fiscal year, the county may transfer from its reserve fund to its general fund or road fund, or both, an amount equal to the difference between the actual national forest reserves receipts distributed to the county in the seventy-first fiscal year and the receipts distributed in the year in which the reduction occurred. The local government division of the department of finance and administration shall certify the amount to be transferred from the reserve fund.

D. If the actual amount of any quarterly distribution to a county in any state fiscal year of federal revenue sharing entitlement payments made under the provisions of Sections 6701 through 6724 of Title 31 of the United States Code, as amended or renumbered, is less than the actual quarterly amount distributed to that county in the first federal quarter of the federal 1982-83 fiscal year, the county may transfer from its reserve fund to its general fund or road fund, or both, an amount equal to the difference between the actual federal revenue sharing quarterly entitlement payment distributed to the county in the first federal quarter of the federal 1982-83 fiscal year and the entitlement payment distributed to the county in the quarter in which the reduction occurred. The local government division of the department of finance and administration shall certify the amount to be transferred from the reserve fund.

**History:** Laws 1983, ch. 213, § 35; 1986, ch. 20, § 87; 1978 Comp., § 7-20-8, amended and recompiled as 1978 Comp., § 7-20E-11 by Laws 1993, ch. 354, § 11.

**ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, renumbered this section, rewrote the section heading, which read "Use of county gross receipts tax" and, in the second sentence of Subsection A, deleted "percent" following "one-eighth" and substituted "7-20E-9" for "7-20-3".

## 7-20E-12. County emergency gross receipts tax; authority to impose in lieu of property tax.

A. The majority of the members of the governing body of any county may enact an ordinance or ordinances imposing an excise tax not to exceed a rate of three-eighths of one percent of the gross receipts of any person engaging in business in the county for the privilege of engaging in business in the county. Any ordinance imposing an excise tax pursuant to this section shall impose the tax in any number of increments of one-eighth percent not to exceed an aggregate amount of three-eighths of one percent. Any ordinance adopted under this section shall be in effect only for the twelve-month period beginning with the effective date of the ordinance and shall expire on the date one year after its effective date.

B. The tax imposed by this section may be referred to as the "county emergency gross receipts tax".

C. The tax authorized by this section may be imposed only in a property tax year for which the property taxes not admitted to be due in the aggregate claims for refund filed under the provisions of Section 7-38-40 NMSA 1978 for property taxes imposed in the county under the provisions of Paragraph (1) of Subsection B of Section 7-37-7 NMSA 1978 for that property tax year are more than ten percent of property taxes imposed in the county under the cited provisions for that property tax year.

D. As used in this section, "county" means a class B county of the state with:

(1) a population of not less than thirty thousand and not more than thirty thousand seven hundred according to the most recent federal decennial census and a net taxable value for rate-setting purposes for the 1988 property tax year or any subsequent year of more than ninety-two million dollars ($92,000,000) but less than one hundred twenty-five million dollars ($125,000,000);

(2) a population of not less than fifty-six thousand and not more than fifty-six thousand seven hundred according to the most recent federal decennial census and a net taxable value for rate-setting purposes for the 1988 property tax year or any subsequent year of more than five hundred million dollars ($500,000,000) but less than five hundred fifty million dollars ($550,000,000); and

(3) a population of not less than eighty-one thousand and not more than eighty-one thousand seven hundred according to the most recent federal decennial census and a net taxable value for rate-setting purposes for the 1988 property tax year or any subsequent year of more than one billion five hundred million dollars ($1,500,000,000) but less than two billion dollars ($2,000,000,000).

E. The governing body prior to the month in which the proceeds of this tax will first be distributed may request the department to make an advance distribution. Upon concurrence of the department of finance and administration, the department shall make the advance distribution. An advance distribution is an amount equal to the product of the net receipts with respect to the gross receipts tax reported from business locations in the county for the month multiplied by a fraction the numerator of which is the rate imposed by the county under this section and the denominator of which is the rate imposed for the month by Section 7-9-4 NMSA 1978. The aggregate amount of advance distributions made to the county shall be recovered by the department by reducing the monthly amount transferable to the county as a result of the imposition of a tax under this section by one-twelfth of the aggregate amount of advance distributions made.

**History:** 1978 Comp., § 7-20-3.1, enacted by Laws 1989, ch. 239, § 1; 1978 Comp., § 7-20-3.1, amended and recompiled as 1978 Comp., § 7-20E-12 by Laws 1993, ch. 354, § 12.

**ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, renumbered this section and rewrote it to the extent that a detailed comparison is impracticable.

## 7-20E-12.1. County hospital emergency gross receipts tax; authority to impose; use of proceeds.

A. A majority of the members of a governing body may enact an ordinance imposing an excise tax on a person engaging in business in the county for the privilege of engaging in business. The rate of the tax shall be one-fourth of one percent of the gross receipts of the person engaging in business. The tax shall be imposed for a period of not more than two years from the effective date of the ordinance imposing the tax. The tax may be imposed for an additional period not to exceed three years from the date of the ordinance imposing the tax for that period. On or after July 1, 1997:

(1) in a county described in Paragraph (1) of Subsection D of this section, the tax may be imposed for the period necessary for payment of bonds or a loan for acquisition of land or buildings for and the design, construction, equipping, remodeling or improvement of a county hospital facility, but the period shall not exceed twenty years from the effective date of the ordinance imposing the tax for that period; provided, however, that a majority of the members of a governing body that has enacted an ordinance imposing the tax pursuant to the provisions of this paragraph may, prior to the date of the delayed repeal of the ordinance, enact an ordinance to extend the period of imposition of the previously imposed tax for an additional twenty years and modify the purposes for which the revenue from the tax is dedicated, consistent with one or more of the purposes permitted pursuant to this paragraph; and

(2) in a county described in Paragraph (2) of Subsection D of this section, the tax may be imposed for the period necessary for payment of bonds or a loan for acquisition, equipping, remodeling or improvement of a county health facility, but the period shall not exceed twenty years from the effective date of the ordinance imposing the tax for that period.

B. The tax imposed by this section may be referred to as the "county hospital emergency gross receipts tax".

C. At the time of enacting the ordinance imposing the tax authorized in this section:

(1) if the effective date of the tax is prior to July 1, 1997, the governing body shall dedicate the revenue for current operations and maintenance of a hospital owned by the county or a hospital with which the county has entered into a health care facilities contract; provided that a majority of the members of a governing body may enact an ordinance to change the purposes for which the revenue from a previously imposed tax is dedicated and to dedicate that revenue during the remainder of the tax imposition period to payment of bonds or a loan for acquisition of land or buildings for, and the

design, construction, equipping, remodeling or improvement of, a county hospital facility; and

(2) if the effective date of the tax is on or after July 1, 1997:

(a) the governing body of a county described in Paragraph (1) of Subsection D of this section shall dedicate the revenue for the period of time the tax is imposed to payment of a bond or loan for acquisition, equipping, remodeling and improvement of a county hospital facility; provided, however, that a majority of the members of a governing body that has imposed the tax and dedicated the revenue from that imposition pursuant to the provisions of this paragraph may, prior to the date of the delayed repeal of the ordinance imposing the tax, enact an ordinance to extend the period of imposition of the tax as provided in Paragraph (1) of Subsection A of this section and modify the purposes for which the revenue from the previously imposed tax is dedicated, and dedicate that revenue to payment of bonds or a loan for acquisition of land or buildings for, and the design, construction, equipping, remodeling or improvement of, a county hospital facility; and

(b) the governing body of a county described in Paragraph (2) of Subsection D of this section shall dedicate the revenue for the period of time the tax is imposed to payment of a bond or loan for acquisition, equipping, remodeling and improvement of a county health facility.

D. As used in this section, "county" means:

(1) a class B county with a population of less than ten thousand according to the 1990 federal decennial census and with a net taxable value for rate-setting purposes for the 1993 property tax year in excess of one hundred million dollars ($100,000,000); or

(2) a class B county with a population of less than ten thousand according to the 1990 federal decennial census and with a net taxable value for rate-setting purposes for the 1997 property tax year of more than one hundred million dollars ($100,000,000) but less than one hundred twenty million dollars ($120,000,000).

History: Laws 1994, ch. 14, § 1; 1996, ch. 34, § 1; 1997, ch. 20, § 2; 2000, ch. 69, § 2; 2010, ch. 75, § 1.

## ANNOTATIONS

**The 2010 amendment,** effective July 1, 2010, in Subsection A(1), after "bonds or a loan for acquisition", added "or land or buildings for and the design, construction" and after "imposing the tax for that period;", added the remainder of the sentence; in Subsection C(1), after "bonds or a loan for acquisition", added "of land or buildings for, and the design, construction"; and in Subsection C(2)(a), after "county hospital facility;", added the remainder of the sentence.

**The 2000 amendment,** effective March 6, 2000, rewrote Subsections A, C(2) and D.

**The 1997 amendment,** effective July 1, 1997, added the fifth sentence of Subsection A, divided former Subsection C and added the Paragraph C(1) designation, inserted "if the effective date of the tax is prior to July 1, 1997," at the beginning of Paragraph C(1), added the language beginning "provided that" at the end of Paragraph C(1), and added Paragraph C(2).

**The 1996 amendment,** effective March 4, 1996, in Subsection A deleted "only once" in the third sentence and added the last sentence.

## 7-20E-13. Special county hospital gross receipts tax; authority to impose; ordinance requirements.

A. The majority of the members of the governing body may enact an ordinance imposing an excise tax on any person engaging in business in the county for the privilege of engaging in business. The rate of the tax shall be one-eighth of one percent of the gross receipts of the person engaging in business. The tax shall be imposed for a period of not more than five years from the effective date of the ordinance imposing the tax. Having once enacted an ordinance under this section, the governing body may enact subsequent ordinances for succeeding periods of not more than five years; provided that each such ordinance meets the requirements of the County Local Option Gross Receipts Taxes Act with respect to the tax imposed by this section.

B. The tax imposed by this section may be referred to as the "special county hospital gross receipts tax".

C. For the purposes of this section, "county" means:

(1) a county:

(a) having a population of more than ten thousand but less than ten thousand six hundred, according to the last federal decennial census or any subsequent decennial census, and having a net taxable value for rate-setting purposes for the 1986 property tax year or any subsequent year of more than eighty-two million dollars ($82,000,000) but less than eighty-two million three hundred thousand dollars ($82,300,000);

(b) that has imposed a rate of one dollar fifty cents ($1.50) to each one thousand dollars ($1,000) of net taxable value of property as defined in the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978] for property taxation purposes in the county and to each one thousand dollars ($1,000) of the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978] and the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978] or has made an appropriation of funds or has imposed another tax that produces an amount not less

than the revenue that would be produced by applying a rate of one dollar fifty cents ($1.50) to each one thousand dollars ($1,000) of net taxable value of property as defined in the Property Tax Code for property taxation purposes in the school district and to each one thousand dollars ($1,000) of the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act and the Oil and Gas Production Equipment Ad Valorem Tax Act. The proceeds of any tax imposed or appropriation made shall be dedicated for current operations and maintenance of a hospital owned and operated by the county or operated and maintained by another party pursuant to a lease with the county; and

(c) having qualified at any time under this definition shall continue to be qualified as a county and authorized to implement the provisions of this section; and

(2) a class B county having a population of more than seventeen thousand five hundred but less than nineteen thousand according to the 1990 federal decennial census and having a net taxable value for property tax rate-setting purposes of under three hundred million dollars ($300,000,000).

D. The governing body of a county described in Paragraph (1) of Subsection C of this section shall, at the time of enacting an ordinance imposing the rate of the tax authorized in Subsection A of this section, dedicate the revenue for current operations and maintenance of a hospital owned and operated by the county or operated and maintained by another party pursuant to a lease with the county, and the use of these proceeds shall be for the care and maintenance of sick and indigent persons and shall be an expenditure for a public purpose. In any election held, the ballot shall clearly state the purpose to which the revenue will be dedicated, and the revenue shall be used by the county for that purpose.

E. The governing body of a county described in Paragraph (2) of Subsection C of this section shall, at the time of enacting an ordinance imposing the rate of the tax authorized in Subsection A of this section, dedicate the revenue for county ambulance transport costs or for operation of a rural health clinic. In any election held, the ballot shall clearly state the purposes to which the revenue will be dedicated, and the revenue shall be used by the county for those purposes.

F. Any ordinance enacted under the provisions of Subsection A of this section shall include an effective date of either July 1 or January 1 in accordance with the provisions of the County Local Option Gross Receipts Taxes Act.

G. The ordinance shall not go into effect until after an election is held and a simple majority of the qualified electors of the county voting in the election votes in favor of imposing the special county hospital gross receipts tax. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax. The question may be submitted to the qualified electors and voted upon as a separate question in a general election or in any special election called for that purpose by the governing body. A special election upon

the question shall be called, held, conducted and canvassed in substantially the same manner as provided by law for general elections. If the question of imposing a special county hospital gross receipts tax fails, the governing body shall not again propose a special county hospital gross receipts tax for a period of one year after the election. A certified copy of any ordinance imposing a special county hospital gross receipts tax shall be mailed to the department within five days after the ordinance is adopted in any election called for that purpose.

H. A single election may be held on the question of imposing a special county hospital gross receipts tax as authorized in this section on the question of imposing a special county hospital gasoline tax as authorized in the Special County Hospital Gasoline Tax Act [Chapter 7, Article 24B NMSA 1978] and on the question of imposing a mill levy pursuant to the Hospital Funding Act [Chapter 4, Article 48B NMSA 1978].

**History:** Laws 1987, ch. 45, § 3; 1992, ch. 80, § 2; 1978 Comp., § 7-20-21, amended and recompiled as 1978 Comp., § 7-20E-13 by Laws 1993, ch. 354, § 13; 1994, ch. 101, § 8; 2000, ch. 68, § 1.

**ANNOTATIONS**

**The 2000 amendment,** effective March 6, 2000, in Subsection C(2), substituted "1990" for "most recent" and substituted "three hundred million dollars ($300,000,000)" for "two hundred million dollars ($200,000,000)"; added the internal reference near the beginning of Subsection D; and added Subsection E, redesignating the remaining subsections accordingly.

**The 1994 amendment,** effective July 1, 1994, substituted "votes" for "vote" in the first sentence in Subsection F; and in the second sentence in Subsection F, substituted language from "adopt" to the end of the sentence for "provide for an election on the question of imposing the tax within sixty days after the date the ordinance is adopted".

**The 1993 amendment,** effective July 1, 1993, renumbered this section and rewrote it to the extent that a detailed comparison is impracticable.

## 7-20E-14. Special county hospital gross receipts tax; use of proceeds.

The funds provided through the special county hospital gross receipts tax shall be administered by the governing body of the county. In a county described in Paragraph (1) of Subsection C of Section 7-20E-13 NMSA 1978, the funds shall be disbursed by the county treasurer to a hospital within the county, subject to the approval by the governing body of a budget or plan for use of the funds submitted by that hospital's governing board.

**History:** Laws 1987, ch. 45, § 8; 1978 Comp., § 7-20-26, amended and recompiled as 1978 Comp., § 7-20E-14 by Laws 1993, ch. 354, § 14; 2000, ch. 68, § 2.

**ANNOTATIONS**

**The 2000 amendment,** effective March 6, 2000, divided the section into two sentences and added the internal reference at the beginning of the second sentence.

**The 1993 amendment,** effective July 1, 1993, renumbered this section, rewrote the section heading which read "Distribution", and inserted "of the county" near the middle of the section.

## 7-20E-15. County fire protection excise tax; authority to impose; ordinance requirements.

A. The majority of the members of the governing body may enact an ordinance imposing an excise tax on any person engaging in business in the county area for the privilege of engaging in business. The rate of the tax shall be one-fourth percent or one-eighth percent of the gross receipts of the person engaging in business.

B. This tax is to be referred to as the "county fire protection excise tax".

C. The governing body of a county shall, at the time of enacting an ordinance imposing the rate of the tax authorized in Subsection A of this section, dedicate the revenue for the purpose of financing the operational expenses, ambulance services or capital outlay costs of independent fire districts or ambulance services provided by the county. In any election held, the ballot shall clearly state the purpose to which the revenue will be dedicated and shall be used by the county for that purpose.

D. Any ordinance enacted under the provisions of Subsection A of this section shall include an effective date of either July 1 or January 1 in accordance with the provisions of the County Local Option Gross Receipts Taxes Act.

E. The ordinance shall not go into effect until after an election is held and a simple majority of the qualified electors of the county area voting in the election votes in favor of imposing the county fire protection excise tax. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax. Such question may be submitted to the qualified electors and voted upon as a separate question at any special election called for that purpose by the governing body. The election upon the question shall be called, held, conducted and canvassed in substantially the same manner as provided by law for general elections. If the question of imposing a county fire protection excise tax fails, the governing body shall not again propose a county fire protection excise tax for a period of one year after the election.

History: Laws 1979, ch. 398, § 3; 1983, ch. 222, § 2; 1993, ch. 302, § 1; 1978 Comp., § 7-20A-3, amended and recompiled as 1978 Comp., § 7-20E-15 by Laws 1993, ch. 354, § 15; 1994, ch. 101, § 9; 2004, ch. 110, § 4.

**ANNOTATIONS**

**The 2004 amendment,** effective May 19, 2004, amended Subsection A to delete the ten-year limit on the tax.

**Applicability.** — Laws 2004, ch. 110, § 8, effective May 19, 2004, provided that "An ordinance imposing the county fire protection excise tax that has an effective date on or after July 1, 2004 shall not be subject to the time limit on tax imposition specified in that version of Section 7-20E-15 NMSA 1978 that was in effect prior to the effective date of this 2004 act, and any delayed repeal provision included in that ordinance shall be ineffective."

**The 1994 amendment,** effective July 1, 1994, substituted "votes" for "vote" in the first sentence in Subsection E; and in the second sentence in Subsection E, substituted language from "adopt" to the end of the sentence for "provide for an election on the question of imposing a county fire protection excise tax within sixty days after the date the ordinance is adopted".

**The 1993 amendment,** effective July 1, 1993, rewrote this section to the extent that a detailed comparison was impracticable. This section was also amended by Laws 1993, ch. 302, § 1. The section was set out as amended by Laws 1993, ch. 354, § 15. *See* 12-1-8 NMSA 1978.

## 7-20E-16. County fire protection excise tax; use of proceeds; budget limitation.

A. The money provided through passage of the county fire protection excise tax shall be disbursed and allotted through the governing body to the county fire districts within the county; provided that no part of any distribution shall be used to pay any salary, compensation or remuneration to any employee of the state, the county or the independent fire district.

B. The governing body of any county adopting a county fire protection excise tax shall not reduce the level of funding of any independent fire district more than ten percent from the approved budget of such fire district for the prior year. The department of finance and administration shall not approve the budget of any county which violates the provisions of this subsection.

**History:** Laws 1979, ch. 398, § 8; 1983, ch. 222, § 3; 1978 Comp., § 7-20A-8, amended and recompiled as 1978 Comp., § 7-20E-16 by Laws 1993, ch. 354, § 16.

**ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, renumbered this section, rewrote the section heading, which read "Distribution"; designated the formerly undesignated provisions as Subsection A; and added Subsection B.

## 7-20E-17. County environmental services gross receipts tax; authority to impose rate; use of funds.

A. The majority of the members of the governing body of any county may enact an ordinance imposing an excise tax at a rate of one-eighth of one percent of the gross receipts of any person engaging in business in the county area for the privilege of engaging in business.

B. This tax is to be referred to as the "county environmental services gross receipts tax".

C. Imposition by any county of the county environmental services gross receipts tax shall not be subject to a referendum of any kind unless prescribed by the county charter.

D. Any county, at the time of enacting an ordinance imposing a county environmental services gross receipts tax, shall dedicate the entire amount of revenue produced by the tax for the acquisition, construction, operation and maintenance of solid waste facilities, water facilities, wastewater facilities, sewer systems and related facilities.

E. Any ordinance enacted under the provisions of Subsection A of this section shall include an effective date of either July 1 or January 1 in accordance with the provisions of the County Local Option Gross Receipts Taxes Act.

**History:** Laws 1990, ch. 99, § 58; 1978 Comp., § 7-20B-3, amended and recompiled as 1978 Comp., § 7-20E-17 by Laws 1993, ch. 354, § 17.

**ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, renumbered this section and rewrote it to the extent that a detailed comparison is impracticable.

## 7-20E-18. County health care gross receipts tax; authority to impose rate.

A. The majority of the members of the governing body of any county may enact an ordinance imposing an excise tax at a rate of one-sixteenth percent of the gross receipts of any person engaging in business in the county for the privilege of engaging in business in the county. Any ordinance imposing an excise tax pursuant to this section shall not be subject to a referendum. The governing body of a county shall, at the time of enacting an ordinance imposing the tax, dedicate the revenue to the county-supported medicaid fund. This tax is to be referred to as the "county health care gross receipts tax".

B. In addition to the imposition of the county health care gross receipts tax authorized by Subsection A of this section, the majority of the members of the governing body of a county having a population of more than five hundred thousand persons according to the most recent federal decennial census may enact an ordinance imposing an additional one-sixteenth percent increment of county health care gross receipts tax; provided that the imposition of the additional increment shall be for a period that ends no later than June 30, 2009. To continue an increment after June 30, 2009 or beyond any five-year period for which the increment has been imposed, the members of the governing body shall review the need for the increment and if the majority of the members vote in favor of continuing the increment imposed pursuant to this subsection, the increment shall be imposed for an additional period of five years. The governing body of the county shall, at the time of enacting an ordinance imposing the additional increment of county health care gross receipts tax, dedicate the revenue to the support of indigent patients.

C. Any ordinance enacted pursuant to the provisions of Subsection A or B of this section shall include an effective date of either July 1 or January 1 in accordance with the provisions of the County Local Option Gross Receipts Taxes Act.

History: Laws 1991, ch. 212, § 7; 1978 Comp., § 7-20D-3, amended and recompiled as 1978 Comp., § 7-20E-18 by Laws 1993, ch. 354, § 18; 2006, ch. 9, § 1.; 2009, ch. 61, § 1.

**ANNOTATIONS**

**The 2009 amendment,** effective April 2, 2009, in Subsection B, added the second sentence to provide for the continuation of the tax increment after June 30, 2009.

**The 2006 amendment,** effective July 1, 2006, moved former Subsection B to make it the last sentence of Subsection A; added a new Subsection B, which authorized the imposition, in counties having a population of more than 500,000 persons, of an additional one-sixteenth percent increment of county gross receipts tax for the support of indigent patients for a period that ended no later than June 30, 2009.

**The 1993 amendment,** effective July 1, 1993, renumbered this section and rewrote it to the extent that a detailed comparison is impracticable.

## 7-20E-19. County infrastructure gross receipts tax; authority to impose rate; use of funds; election.

A. The majority of the members of the governing body of a county may enact an ordinance imposing an excise tax at a rate not to exceed one-eighth of one percent of the gross receipts of any person engaging in business in the county area for the privilege of engaging in business. The tax may be imposed in increments of one-sixteenth of one percent not to exceed an aggregate rate of one-eighth of one percent.

B. The tax imposed pursuant to Subsection A of this section may be referred to as the "county infrastructure gross receipts tax".

C. The governing body, at the time of enacting an ordinance imposing a rate of tax authorized in Subsection A of this section, may dedicate the revenue for:

(1) county general purposes;

(2) payment of gross receipts tax revenue bonds issued pursuant to Chapter 4, Article 62 NMSA 1978;

(3) repair, replacement, construction or acquisition of any county infrastructure improvements;

(4) acquisition, construction, operation or maintenance of solid waste facilities, water facilities, wastewater facilities, sewer systems and related facilities;

(5) acquiring, constructing, extending, bettering, repairing or otherwise improving or operating or maintaining public transit systems or regional transit systems or authorities;

(6) planning, design, construction, equipping, maintenance or operation of a county jail or juvenile detention facility; planning, assessment, design or operation of a regional system of juvenile services, including secure detention and nonsecure alternatives, that serves multiple contiguous counties; planning, design, construction, maintenance or operation of multipurpose regional adult jails or juvenile detention facilities; housing of county prisoners or juvenile offenders in any county jail or detention facility; or substance abuse, mental health or other programs for county prisoners or other inmates in county jails or for juvenile offenders in county or regional detention facilities; and

(7) furthering or implementing economic development plans and projects as defined in the Local Economic Development Act [5-10-1 through 5-10-13 NMSA 1978] or projects as defined in the Statewide Economic Development Finance Act [Chapter 6, Article 25 NMSA 1978], and use of not more than the greater of fifty thousand dollars ($50,000) or ten percent of the revenue collected for promotion and administration of or professional services contracts related to implementation of an economic development plan adopted by the governing body pursuant to the Local Economic Development Act and in accordance with law.

D. An ordinance imposing the county infrastructure gross receipts tax shall not go into effect until after an election is held and a majority of the voters in the county area voting in the election votes in favor of imposing the tax. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax. The question shall be submitted to the voters of the county area as a separate question at a general election or at a special

election called for that purpose by the governing body. A special election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. If a majority of the voters voting on the question approves the ordinance imposing the county infrastructure gross receipts tax, then the ordinance shall become effective in accordance with the provisions of the County Local Option Gross Receipts Taxes Act. If the question of imposing the county infrastructure gross receipts tax fails, the governing body shall not again propose the imposition of the tax for a period of one year from the date of the election.

**History:** Laws 1998, ch. 90, § 7; 2003, ch. 349, § 19.

**ANNOTATIONS**

**The 2003 amendment,** effective June 20, 2003, inserted "or projects as defined in the Statewide Economic Development Finance Act" in Paragraph C(7).

## 7-20E-20. County education gross receipts tax; authority to impose; rate; election; use of revenue.

A. Upon submission of a resolution to the governing body pursuant to Subsection D of this section, the governing body of a county shall enact an ordinance imposing or reimposing an excise tax at a rate of one-half of one percent on any person engaging in business in the county for the privilege of engaging in business in the county. The tax imposed pursuant to this section may be referred to as the "county education gross receipts tax".

B. The governing body, at the time of enacting an ordinance imposing a county education gross receipts tax pursuant to this section shall dedicate the revenue only for the payment of county education gross receipts tax bonds for public school capital projects and off-campus instruction program capital projects, if any, in the county. The tax shall be imposed for the period necessary for payment of the principal and interest on the county education gross receipts tax revenue bonds issued to accomplish the purpose for which the revenue is dedicated, but the period shall not exceed ten years from the effective date of the ordinance imposing the tax.

C. The governing body may reimpose a county education gross receipts tax to be effective upon termination of a previously imposed county education gross receipts tax by following the procedures set forth in this section.

D. Upon a finding of need, the boards of every school district in a county that is either located wholly within the exterior boundaries of the county or that has a student membership no more than ten percent of whom reside outside the exterior boundaries of the county may enter into a joint agreement to submit a resolution to the governing body of the county requiring the governing body to impose a county education gross receipts tax and to issue county education gross receipts tax revenue bonds for funding public school capital projects and, if applicable, off-campus instruction program capital

projects. The boards must agree to provide at least one-fourth of the bond proceeds for capital projects for an off-campus instruction program, if one of the school districts in the county has established such a program. The remaining revenues shall be distributed proportionately to each school district for public school capital outlay projects, including capital projects at charter schools and state-chartered charter schools within the district, based on the ratio that the population of each school district, according to the 2010 federal decennial census, bears to the population of all of the school districts in the county that are parties to the agreement.

E. An ordinance imposing the county education gross receipts tax shall not go into effect until after an election is held and a majority of the voters in the county voting in the election votes in favor of imposing the tax. The governing body shall adopt a resolution calling for an election within sixty days of the date the ordinance is adopted on the question of imposing the tax. The question shall be submitted to the voters of the county as a separate question at a general election or at a special election called for that purpose by the governing body. A special election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. If a majority of the voters voting on the question approves the ordinance imposing the county education gross receipts tax, then the ordinance shall become effective in accordance with the provisions of the County Local Option Gross Receipts Taxes Act. If the question of imposing the county education gross receipts tax fails, a resolution from the boards of school districts in the county may not again be proposed to the governing body requesting imposition of the tax for a period of one year from the date of the election.

F. The proceeds from county education gross receipts tax revenue bonds shall be administered by the governing body and disbursed by the county treasurer to the respective school districts in the amounts and for the purposes authorized in this section and as set out in the resolution submitted by the boards to the governing body.

G. As used in this section:

(1) "board" means the governing body of a school district;

(2) "capital projects" means the designing, constructing and equipping of new buildings; the remodeling, renovating or making additions to and equipping existing buildings; or the improving or equipping of the grounds surrounding buildings;

(3) "county" means:

(a) a class B county with a population of less than twenty-five thousand according to the 1990 federal decennial census and a net taxable value for property tax purposes for the 1999 property tax year of more than five hundred million dollars ($500,000,000);

(b) a county that has imposed a local hospital gross receipts tax pursuant to the Local Hospital Gross Receipts Tax Act [Chapter 7, Article 20C NMSA 1978], which tax will expire on December 31, 2001; and

(c) a county that has previously imposed a county education gross receipts tax; and

(4) "off-campus instruction program" means a program established by a school district pursuant to the Off-Campus Instruction Act [21-14A-1 through 21-14A-10 NMSA 1978].

History: 1978 Comp., § 7-20E-20, enacted by Laws 2001, ch. 328, § 1; 2012, ch. 39, § 1.

**ANNOTATIONS**

**The 2012 amendment,** effective July 1, 2012, provided authority to reimpose the county education gross receipts tax; required public school capital outlay projects to include charter school and state-chartered school capital projects; in Subsection A, in the first sentence, after "Subsection", deleted the letter "C" and added the letter "D" and after "an ordinance imposing", added "or reimposing" and in the second sentence, after "imposed pursuant to this", deleted "subsection" and added "section"; in Subsection B, in the first sentence, after "gross receipts tax pursuant to", deleted "Subsection A of"; added Subsection C; in Subsection D, in the third sentence, after "public school capital outlay projects", added "including capital projects at charter schools and state-chartered schools within the district" and after "according to the", deleted "2000" and added "2010"; and in Subsection G, in Paragraph (3), deleted former Subparagraph (c), which defined "county" to include counties in which the question of imposing general obligation debt for public school capital outlay projects has failed to pass twice in at least two school districts in the county in a six-year period, and added Subparagraph (c).

## 7-20E-21. County capital outlay gross receipts tax; purposes; referendum.

A. The majority of the members of the governing body of a county may enact an ordinance imposing an excise tax at a rate not to exceed one-fourth of one percent of the gross receipts of any person engaging in business in the county for the privilege of engaging in business. The tax may be imposed in increments of one-sixteenth of one percent not to exceed an aggregate rate of one-fourth of one percent.

B. The tax imposed pursuant to Subsection A of this section may be referred to as the "county capital outlay gross receipts tax".

C. The governing body, at the time of enacting an ordinance imposing a rate of tax authorized in Subsection A of this section, may dedicate the revenue for any county infrastructure purpose, including:

(1) the design, construction, acquisition, improvement, renovation, rehabilitation, equipping or furnishing of public buildings or facilities, including parking facilities, the acquisition of land for the public buildings or facilities and the acquisition or improvement of the grounds surrounding public buildings or facilities;

(2) acquisition, construction or improvement of water, wastewater or solid waste systems or facilities and related facilities, including water or sewer lines and storm sewers and other drainage improvements;

(3) design, construction, acquisition, improvement or equipping of a county jail, juvenile detention facility or other county correctional facility or multipurpose regional adult jail or juvenile detention facility;

(4) construction, reconstruction or improvement of roads, streets or bridges, including acquisition of rights of way;

(5) design, construction, acquisition, improvement or equipping of airport facilities, including acquisition of land, easements or rights of way for airport facilities;

(6) acquisition of land for open space, public parks or public recreational facilities and the design, acquisition, construction, improvement or equipping of parks and recreational facilities; and

(7) payment of gross receipts tax revenue bonds issued pursuant to Chapter 4, Article 62 NMSA 1978 for infrastructure purposes.

D. An ordinance imposing the county capital outlay gross receipts tax shall not go into effect until after an election is held on the question of imposing the tax for the purpose for which the revenue is dedicated and a majority of the voters in the county voting in the election votes in favor of imposing the tax. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax. The question shall be submitted to the voters of the county as a separate question at a general election or at a special election called for that purpose by the governing body. A special election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. If a majority of the voters voting on the question approves the question of imposing the county capital outlay gross receipts tax, then the ordinance shall become effective in accordance with the provisions of the County Local Option Gross Receipts Taxes Act. If the question of imposing the county capital outlay gross receipts tax fails, the governing body shall not again propose the imposition of the tax for a period of one year from the date of the election.

History: Laws 2001, ch. 172, § 2; 2005, ch. 129, § 2; 2010, ch. 44, § 2.

## ANNOTATIONS

## ANNOTATIONS

**The 2010 amendment,** effective July 1, 2010, in Subsection A, in the first sentence, after "governing body of", deleted "an eligible" and added "a"; in Subsection C, after "dedicate the revenue for", added the remainder of the sentence; and deleted former Subsection E, which defined "eligible county" to mean a county that has imposed all increments of county gross receipts tax and all increments of county infrastructure gross receipts tax.

**The 2005 amendment,** effective April 5, 2005, removed the deadline in Subsection A for the enactment of an ordinance imposing the county capital outlay gross receipts tax.

# 7-20E-22. County emergency communications and emergency medical and behavioral health services tax; authority to impose countywide or only in the county area; ordinance requirements; use of revenue; election.

A. The majority of the members of the governing body of an eligible county that does not have in effect a tax imposed pursuant to Subsection B of this section may enact an ordinance imposing an excise tax at a rate not to exceed one-fourth percent of the gross receipts of a person engaging in business in the county for the privilege of engaging in business. The tax imposed by this subsection may be referred to as the "countywide emergency communications and emergency medical and behavioral health services tax".

B. The majority of the members of the governing body of an eligible county that does not have in effect a tax imposed pursuant to Subsection A of this section may enact an ordinance imposing an excise tax at a rate not to exceed one-fourth percent of the gross receipts of a person engaging in business in the county area for the privilege of engaging in business. The tax imposed by this subsection may be referred to as the "county area emergency communications and emergency medical and behavioral health services tax".

C. The taxes authorized in Subsections A and B of this section may be imposed in one or more increments of one-sixteenth percent not to exceed an aggregate rate of one-fourth percent.

D. The governing body, at the time of enacting an ordinance imposing a rate of tax authorized in Subsection A or B of this section, shall dedicate the revenue to one or more of the following purposes:

(1) operation of an emergency communications center that has been determined by the local government division of the department of finance and administration to be a consolidated public safety answering point. That operation may include the purchase of emergency communications equipment for the center;

(2) operation of emergency medical services provided by the county; or

(3) provision of behavioral health services, including alcohol abuse and substance abuse treatment.

E. An ordinance imposing any increment of the countywide emergency communications and emergency medical and behavioral health services tax or the county area emergency communications and emergency medical and behavioral health services tax shall not go into effect until after an election is held and a majority of the voters voting in the election votes in favor of imposing the tax. In the case of an ordinance imposing an increment of the countywide emergency communications and emergency medical and behavioral health services tax, the election shall be conducted countywide. In the case of an ordinance imposing the county area emergency communications and emergency medical and behavioral health services tax, the election shall be conducted only in the county area. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax. The question may be submitted to the voters as a separate question at a general election or at a special election called for that purpose by the governing body. A special election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. In any election held, the ballot shall clearly state the purpose to which the revenue will be dedicated pursuant to Subsection D of this section. If a majority of the voters voting on the question approves the imposition of the countywide emergency communications and emergency medical and behavioral health services tax or the county area emergency communications and emergency medical and behavioral health services tax, the ordinance shall become effective in accordance with the provisions of the County Local Option Gross Receipts Taxes Act. If the question of imposing the tax fails, the governing body shall not again propose the imposition of any increment of either tax for a period of one year from the date of the election.

F. For the purposes of this section, "eligible county" means:

(1) a county that operates or, pursuant to a joint powers agreement, is served by an emergency communications center that has been determined by the local government division of the department of finance and administration to be a consolidated public safety answering point; or

(2) in the case of a county imposing the tax for the purposes provided in Paragraph (3) of Subsection D of this section, a county that operates or contracts for the operation of a behavioral health services facility providing alcohol abuse, substance abuse and inpatient and outpatient behavioral health treatment.

**History:** Laws 2002, ch. 14, § 1; 2003, ch. 70, § 1; 2004, ch. 110, § 5; 2007, ch. 230, § 1; 2017, ch. 47, § 2.

## ANNOTATIONS

**The 2017 amendment,** effective April 6, 2017, authorized the purchase of emergency communications equipment for certain emergency communications centers; in Subsection C, after "The", deleted "tax" and added "taxes"; and in Subsection D, Paragraph D(1), added the last sentence.

**The 2007 amendment,** effective July 1, 2007, allowed the use of the tax for behavioral health services.

**The 2004 amendment,** effective July 1, 2004, in Subsection A, deleted the ten-year limit on the tax.

**Applicability. —** Laws 2004, ch. 110, § 8, effective May 19, 2004, provided that "An ordinance imposing the county fire protection excise tax that has an effective date on or after July 1, 2004 shall not be subject to the time limit on tax imposition specified in that version of Section 7-20E-15 NMSA 1978 that was in effect prior to the effective date of this 2004 act, and any delayed repeal provision included in that ordinance shall be ineffective."

**The 2003 amendment,** effective June 20, 2003, rewrote the section.

## 7-20E-23. County regional transit gross receipts tax; authority to impose; rate; election required.

A. Upon a request by resolution of the board of directors of a regional transit district, a majority of the members of the governing body of each county that is within the district shall impose by identical ordinances an excise tax at the rate specified in the resolution, but not to exceed one-half percent of the gross receipts of any person engaging in business in the district for the privilege of engaging in business. A tax imposed pursuant to this section may be imposed by one or more ordinances, each imposing any number of tax rate increments, but an increment shall not be less than one-sixteenth percent of the gross receipts of any person engaging in business in the district and the aggregate of all rates shall not exceed one-half percent of the gross receipts of any person engaging in business in the district. The tax may be referred to as the "county regional transit gross receipts tax".

B. Each governing body, at the time of enacting an ordinance imposing the tax authorized in Subsection A of this section, shall dedicate the revenue for the purposes authorized by the Regional Transit District Act [Chapter 73, Article 25 NMSA 1978].

C. An ordinance imposing a county regional transit gross receipts tax shall not go into effect until after a joint election is held by all counties within the district and a majority of the voters of the district voting in the election votes in favor of imposing the tax. Each governing body shall adopt an ordinance calling for a joint election within seventy-five days of the date the resolution is adopted on the question of imposing the tax. The question shall be submitted to the voters of the district as a separate question at a general election or at a joint special election called for that purpose by each

governing body. A joint special election shall be called, conducted and canvassed substantially in the same manner as provided by law for general elections. If a majority of the voters in the district voting on the question approves the ordinance imposing the county regional transit gross receipts tax, the ordinance shall become effective in accordance with the provisions of the County Local Option Gross Receipts Taxes Act. If the question of imposing the county regional transit gross receipts tax fails, the governing bodies shall not again propose the imposition of any increment of the tax for a period of one year from the date of the election.

D. The governing body of a county imposing a county regional transit gross receipts tax shall transfer all proceeds from the tax to the regional transit district for the purposes specified in the ordinance and in accordance with the provisions of the Regional Transit District Act [Chapter 73, Article 25 NMSA 1978].

E. As used in this section, "county within the district" means a county within which lies any portion of a regional transit district.

History: Laws 2004, ch. 17, § 2; 2007, ch. 199, § 1.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, revised the definition in Subsection E.

## 7-20E-24. Quality of life gross receipts tax; authority to impose; ordinance requirements; use of revenue; election.

A. Prior to January 1, 2016, the majority of the members of the governing body of a county may enact an ordinance imposing an excise tax at a rate not to exceed one-fourth percent of the gross receipts of a person engaging in business in the county area for the privilege of engaging in business. The tax may be imposed in one or more increments of one-sixteenth percent not to exceed an aggregate rate of one-fourth percent. The tax shall be imposed for a period of not more than ten years from the effective date of the ordinance imposing the tax. Having enacted an ordinance imposing the tax prior to January 1, 2016 pursuant to the provisions of this section, the governing body may enact subsequent ordinances for succeeding periods of not more than ten years; provided that each ordinance meets the requirements of this section and of the County Local Option Gross Receipts Taxes Act. The tax imposed pursuant to the provisions of this section may be referred to as the "quality of life gross receipts tax".

B. The governing body, at the time of enacting an ordinance imposing the quality of life gross receipts tax, shall dedicate the revenue to cultural programs and activities provided by a local government and to cultural programs, events and activities provided by contract or operating agreement with nonprofit or publicly owned cultural organizations and institutions.

C. The governing body of a class A county with a population of more than two hundred fifty thousand according to the most recent federal decennial census, when dedicating revenue pursuant to Subsection B of this section, shall specify that:

(1) the revenue may not be used for capital expenditures, endowments or fundraising;

(2) at least one percent but not more than three percent of the revenue shall be used for public education on the use of the revenue;

(3) at least three percent but not more than five percent of the revenue shall be dedicated to administration of the revenue; and

(4) at least one percent but not more than three percent of the revenue shall be used for implementation of the goals of the cultural plan for the county and the largest municipality located within the exterior boundaries of the county.

D. An ordinance imposing any increment of the quality of life gross receipts tax shall not go into effect until after an election is held and a majority of the voters in the county voting in the election vote in favor of imposing the tax. The governing body shall adopt a resolution calling for an election within ninety days of the date the ordinance is adopted on the question of imposing the tax. The question may be submitted to the voters as a separate question at a general election or at a special election called for that purpose by the governing body. A special election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. In any election held, the ballot shall clearly state the purpose to which the revenue will be dedicated pursuant to this section. If a majority of the voters voting on the question approves the ordinance imposing the quality of life gross receipts tax, the ordinance shall become effective in accordance with the provisions of the County Local Option Gross Receipts Taxes Act. If the question of imposing the quality of life gross receipts tax fails, the governing body shall not again propose the imposition of the tax for a period of one year from the date of the election.

E. The quality of life gross receipts tax revenue shall be used to meet the following goals: promoting and preserving cultural diversity; enhancing the quality of cultural programs and activities; fostering greater access to cultural opportunities; promoting culture in order to further economic development within the county; and supporting programs, events and organizations with direct, identifiable and measurable public benefit to residents of the county. It is the objective of the quality of life gross receipts tax that the revenue from the tax be used to expand and sustain existing programs and to develop new programs, events and activities, rather than to replace other funding sources for existing programs, events and activities.

F. The governing body of a county that imposes the quality of life gross receipts tax shall, within sixty days of the election approving the imposition of the tax, appoint a county cultural advisory board consisting of between nine and fifteen members. Persons

appointed to the board shall be residents of the county who are knowledgeable about the activities eligible for quality of life tax funding. At least one member of the board shall be appointed by the governing body of the most populous municipality within the county. The members of the board shall be appointed for fixed terms and shall not be removed during their terms except for malfeasance. The terms of the initial board members shall be staggered so that one-third of the members are appointed for one-year terms, one-third are appointed for two-year terms and one-third are appointed for three-year terms. Subsequent appointments to the board shall be for three-year terms. If a vacancy on the board occurs, the governing body shall appoint a replacement member for the remainder of the unexpired term. A board member shall not serve for more than two consecutive terms.

G. The county cultural advisory board shall have the responsibility of overseeing the distribution of the quality of life gross receipts tax revenue for the goals listed in Subsection E of this section. The board shall:

(1) biennially submit recommendations to the governing body for expenditures of revenue from the quality of life gross receipts tax that are allocated pursuant to this section through contracts for services with appropriate organizations and institutions;

(2) establish and publicize the necessary qualifications for organizations and institutions to receive quality of life gross receipts tax funding; and

(3) develop guidelines and procedures for applying for funding through a request for proposals process and the criteria by which contracts will be awarded. The evaluation process shall include a public review component.

H. The cultural advisory board shall establish reporting requirements for recipients of the quality of life gross receipts tax revenue. The board shall provide to the governing body an annual evaluation of the use of revenue from the quality of life gross receipts tax to ensure that it is meeting the goals listed in Subsection E of this section.

I. If the quality of life gross receipts tax is enacted in a class A county with a population of more than two hundred fifty thousand according to the most recent federal decennial census, the net revenue from the tax remaining after distributions pursuant to Subsection C of this section shall be distributed as follows subject to the recommendations of the county cultural advisory board pursuant to Subsection G of this section:

(1) for the purpose of enhancing cultural programs and activities, sixty-five percent to a municipality for cultural programs and activities within the exterior boundaries of the county and five percent to the county for cultural programs and activities within the unincorporated areas of the county; provided that:

(a) the funds are distributed according to a plan that takes into consideration progress indicators that include current budgets, fiscal responsibility and attendance;

(b) educational institutions serving kindergarten through twelfth grade are not eligible for distributions pursuant to this paragraph; and

(c) a portion of the funds may be expended by the municipality pursuant to an operating agreement with an organization that operates a facility owned by the municipality;

(2) for the purpose of providing cultural programs and services to the residents of the county, sixteen percent may be distributed through contracts for services with private nonprofit organizations with an annual operating budget of more than one hundred thousand dollars ($100,000) and two percent may be distributed through contracts for services with private nonprofit organizations with an annual operating budget of one hundred thousand dollars ($100,000) or less. To be eligible for a distribution pursuant to this paragraph, an organization shall have:

(a) been granted for the prior three consecutive years exemption from the federal income tax by the United States commissioner of the internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986;

(b) as its primary purpose cultural programs; and

(c) its principal office located within the exterior boundaries of the county; and

(3) for the purpose of providing cultural programs to residents of the county, twelve percent to:

(a) organizations that have a strong cultural program but do not have culture as their primary purpose; or

(b) foundations that are affiliated with state or federally owned institutions and that do not otherwise qualify for funding pursuant to this section but that offer cultural programs to the general public.

J. Every four years, the cultural advisory board shall review and revise as necessary:

(1) the guidelines and procedures for applying for funding;

(2) the criteria by which applications for funding will be evaluated; and

(3) the percentages specified in Paragraph (1) of Subsection I of this section for distribution of net revenue to municipally owned or county-owned institutions.

K. As used in this section:

(1) "county area" means that portion of a county located outside the boundaries of any municipality, except that for H class counties and class A counties with a population in excess of two hundred fifty thousand, according to the most recent federal decennial census, "county area" means the entire county; and

(2) "cultural organizations and institutions" means organizations and institutions that have as a primary purpose the advancement or preservation of zoology, museums, library sciences, art, music, theater, dance, literature or the humanities.

History: Laws 2005, ch. 212, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 212, § 3 made Laws 2005, ch. 212, § 1 effective July 1, 2005.

## 7-20E-25. County regional spaceport gross receipts tax; authority to impose; rate; election required.

A. A majority of the members of the governing body of a county that desires to become a member of a regional spaceport district pursuant to the Regional Spaceport District Act [5-16-1 through 5-16-13 NMSA 1978] shall impose by ordinance an excise tax at a rate not to exceed one-half percent of the gross receipts of a person engaging in business in the district area of the county for the privilege of engaging in business. A tax imposed pursuant to this section may be imposed by one or more ordinances, each imposing any number of tax rate increments, but an increment shall not be less than one-sixteenth percent of the gross receipts of a person engaging in business in the district area of the county, and the aggregate of all rates shall not exceed one-half percent of the gross receipts of a person engaging in business in the district area of the county. The tax may be referred to as the "county regional spaceport gross receipts tax".

B. A governing body, at the time of enacting an ordinance imposing the tax authorized in Subsection A of this section, shall dedicate a minimum of seventy-five percent of the proceeds of the revenue to the regional spaceport district for the financing, planning, designing and engineering and construction of a spaceport or for projects or services of the district pursuant to the Regional Spaceport District Act and may dedicate no more than twenty-five percent of the revenue for spaceport-related projects as approved by resolution of the governing body of the county.

C. An ordinance imposing a county regional spaceport gross receipts tax shall not go into effect until after an election is held and a majority of the voters of the district area of the county voting in the election votes in favor of imposing the tax. The governing body shall adopt an ordinance calling for an election within seventy-five days of the date the resolution is adopted on the question of imposing the tax. The question shall be submitted to the voters of the district area of the county as a separate question at a

general election or at a special election called for that purpose by the governing body. A special election shall be called, conducted and canvassed substantially in the same manner as provided by law for general elections. If a majority of the voters voting on the question approves the ordinance imposing the county regional spaceport gross receipts tax, the ordinance shall become effective in accordance with the provisions of the County Local Option Gross Receipts Taxes Act. If the question of imposing the county regional spaceport gross receipts tax fails, the governing body shall not again propose the imposition of an increment of the tax for a period of one year from the date of the election.

D. The governing body of a county imposing a county regional spaceport gross receipts tax shall transfer a minimum of seventy-five percent of all proceeds from the tax to the regional spaceport district of which it is a member for the purposes in accordance with the provisions of the Regional Spaceport District Act. The governing body of a county imposing a county regional spaceport gross receipts tax may retain no more than twenty-five percent of the county regional spaceport gross receipts tax for spaceport-related projects as approved by the resolution of the governing body of the county.

E. As used in this section, "district area of the county" means that portion of a county that is outside the boundaries of a municipality and that is within the boundaries of a regional spaceport district of which the county is a member; provided that if no municipality within the county has imposed a municipal regional spaceport gross receipts tax, "district area of the county" may mean the area within the boundaries of the county that is within the boundaries of a regional spaceport district of which the county is a member.

**History:** Laws 2006, ch. 15, § 15.

**ANNOTATIONS**

**Cross references.** — For the Election Code, *see* 1-1-1 NMSA 1978.

**Effective dates.** — Laws 2006, ch. 15 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

## 7-20E-26. Water and sanitation gross receipts tax; authority to impose; rate; election; use of revenue.

A. An excise tax imposed by a governing body pursuant to this section may be referred to as the "water and sanitation gross receipts tax". The water and sanitation gross receipts tax shall be imposed by a governing body as set forth in this section, contingent upon a majority of the voters voting in an election on the question of whether to impose a water and sanitation gross receipts tax voting in favor of the imposition.

B. Upon receipt of a resolution adopted and submitted by the board of directors of a water and sanitation district that requests the governing body to impose a water and sanitation gross receipts tax on behalf of the water and sanitation district, a governing body shall enact an ordinance imposing a water and sanitation gross receipts tax in that water and sanitation district. The ordinance shall impose the tax at a rate of one-fourth percent on a person engaging in business within the area of the county located within the water and sanitation district for the privilege of engaging in business within that water and sanitation district within the county.

C. The governing body, at the time of enacting an ordinance imposing a water and sanitation gross receipts tax authorized pursuant to Subsection A of this section, shall dedicate the revenue only for the operation of the water and sanitation district for which the tax is imposed. The tax shall be imposed for six years from the date on which the water and sanitation gross receipts tax goes into effect.

D. Within sixty days of the date the ordinance is adopted by the governing body, the governing body shall adopt a resolution calling for an election on the question of whether to impose a water and sanitation gross receipts tax. The question shall be submitted to the voters of the water and sanitation district requesting the county to impose the tax. A special election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. If a majority of the voters voting on the question approves the ordinance imposing the water and sanitation gross receipts tax, then the ordinance shall become effective in accordance with the provisions of the County Local Option Gross Receipts Taxes Act on either January 1 or July 1 following the election approving the imposition of the tax. If the question of imposing the water and sanitation gross receipts tax fails, a resolution from the board of directors of the water and sanitation district initiating the request to the county to impose a water and sanitation gross receipts tax may not again be submitted to the governing body for a period of one year from the date of the election.

E. The proceeds from the water and sanitation gross receipts tax shall be administered by the governing body and disbursed by the county treasurer to the appropriate water and sanitation district in amounts and for the purposes authorized in this section and as set out in the resolution submitted by the board of directors to the governing body. An agreement shall be entered into between the water and sanitation district and the governing body that sets out the responsibilities of both parties regarding administration, distribution and use of the revenue from the water and sanitation gross receipts tax.

History: Laws 2007, ch. 346, § 1.

## ANNOTATIONS

**Effective dates.** — Laws 2007, ch. 346, § 2 made Laws 2007, ch. 346, § 1 effective July 1, 2007.

## 7-20E-27. County business retention gross receipts tax; imposition; rate.

A. A majority of the members of a governing body may enact an ordinance imposing an excise tax on a person engaging in business in the county for the privilege of engaging in business in the county to provide funds to retain local businesses in the county. The maximum rate of the tax shall be one-fourth percent of the gross receipts of the person engaging in business. The tax may be imposed in its entirety or in increments of one-sixteenth percent not to exceed an aggregate rate of one-fourth percent.

B. The tax imposed pursuant to this section may be referred to as the "county business retention gross receipts tax".

C. An ordinance imposing the county business retention gross receipts tax shall not go into effect until after an election is held and a majority of the voters in the county voting in the election vote in favor of imposing the tax. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax. The question may be submitted to the voters of the county as a separate question at a general election or at a special election called for that purpose by the governing body. A special election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. If a majority of the voters voting on the question approves the ordinance imposing the county business retention gross receipts tax, then the ordinance shall become effective in accordance with the provisions of the County Local Option Gross Receipts Taxes Act. If the question of imposing the county business retention gross receipts tax fails, the governing body shall not again propose the imposition of the tax for a period of one year from the date of the election.

D. The governing body shall include in the ordinance that:

(1) an amount not to exceed seven hundred fifty thousand dollars ($750,000) of the money from the county business retention gross receipts tax shall be distributed to the state to reduce the impact to the general fund of gaming tax lost to the state from the county from reduced gaming tax revenue due to decreased economic activity in the county; and

(2) the remainder of the revenue from the county business retention gross receipts tax shall be distributed back to the county for use for promotion or administration of the county, instructional or general purposes for a public post-secondary educational institution in the county, capital outlay to expand or relocate a public post-secondary educational institution in the county or funding professional services contracts related to implementing an economic development plan adopted by the governing body that shall be updated on an annual basis during the period in which the tax is imposed.

E. The county shall notify the department within thirty days of adopting an ordinance and inform the department of the date on which the tax will be imposed for collection purposes.

F. The governing body of a county that has imposed a county business retention gross receipts tax pursuant to this section may adopt by a majority vote an ordinance repealing that tax as of either July 1 or January 1, as stated in the ordinance. If the county business retention gross receipts tax is repealed, the governing body shall notify the department within thirty days of the repeal and of the date on which the repeal becomes effective.

G. An ordinance enacted pursuant to the provisions of this section shall include an effective date of either July 1 or January 1 as required by the County Local Option Gross Receipts Taxes Act.

H. A county business retention gross receipts tax imposed pursuant to this section shall be in effect for no more than five years from the effective date of the tax as stated in the county ordinance.

I. As used in this section, "county" means a county containing gaming operator licensees that are racetracks.

History: Laws 2010, ch. 31, § 1.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2010, ch. 31, § 4 contained an emergency clause and was approved March 3, 2010.

## 7-20E-28. County hold harmless gross receipts tax.

A. The majority of the members of the governing body of any county may impose by ordinance an excise tax not to exceed a rate of three-eighths percent of the gross receipts of any person engaging in business in the county for the privilege of engaging in business in the county. A tax imposed pursuant to this section shall be imposed by the enactment of one or more ordinances, each imposing any number of gross receipts tax rate increments, but the total gross receipts tax rate imposed by all ordinances pursuant to this section shall not exceed an aggregate rate of three-eighths percent of the gross receipts of a person engaging in business. Counties may impose increments of one-eighth of one percent.

B. The tax imposed pursuant to Subsection A of this section may be referred to as the "county hold harmless gross receipts tax". The imposition of a county hold harmless gross receipts tax is not subject to referendum.

C. The governing body of a county may, at the time of enacting an ordinance imposing the tax authorized in Subsection A of this section, dedicate the revenue for a specific purpose or area of county government services, including but not limited to police protection, fire protection, public transportation or street repair and maintenance. If the governing body proposes to dedicate such revenue, the ordinance and any revenue so dedicated shall be used by the county for that purpose unless a subsequent ordinance is adopted to change the purpose to which the revenue is dedicated or to place the revenue in the general fund of the county.

D. Any law that imposes or authorizes the imposition of a county hold harmless gross receipts tax or that affects the county hold harmless gross receipts tax, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any outstanding revenue bonds that may be secured by a pledge of such county hold harmless gross receipts tax unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor.

History: Laws 2013, ch. 160, § 12.

**ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 160, § 14 provided that Laws 2013, ch. 160, § 12 was effective July 1, 2013.

# ARTICLE 20F
# County Correctional Facility Gross Receipts Tax

## 7-20F-1. Short title.

Sections 3 through 14 [7-20F-3 through 7-20F-12 NMSA 1978] of this act may be cited as the "County Correctional Facility Gross Receipts Tax Act".

**History:** Laws 1993, ch. 303, § 1.

**ANNOTATIONS**

**Compiler's notes.** — Notwithstanding the language "Sections 3 through 14" in this section, Chapter 303 of Laws 1993 contained only twelve sections; thus the last section of the County Correctional Facility Gross Receipts Tax Act is compiled as 7-20F-12 NMSA 1978.

## 7-20F-2. Definitions.

As used in the County Correctional Facility Gross Receipts Tax Act:

A. "county" means a county of New Mexico;

B. "county board" means the board of county commissioners of a county;

C. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

D. "judicial-correctional facility" means a facility for housing and use by judicial and corrections agencies, including housing for persons confined in county correctional facilities; however, none of the facilities are required to be located on the same or contiguous parcels of land;

E. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter;

F. "person" means an individual or any other legal entity;

G. "pledged revenues" means the revenue, net income or net revenues authorized to be pledged to the payment of revenue bonds issued pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act;

H. "refunding bond" means a refunding revenue bond issued pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act to refund revenue bonds issued pursuant to the provisions of that act; and

I. "revenue bond" means a county correctional facility gross receipts tax revenue bond.

History: Laws 1993, ch. 303, § 2; 1998, ch. 65, § 2; 2004, ch. 110, § 6.

**ANNOTATIONS**

**The 2004 amendment,** effective July 1, 2004, amended Subsection A to delete the limitation of the term "county" to certain class A and class B counties and to make the term "county" apply to all counties.

**The 1998 amendment,** effective March 9, 1998, in Paragraph A(1), inserted "people" following "thousand" and "federal" following "1990"; in Paragraph A(2), inserted "people" following "thousand" and substituted "as deremined by" for "according to"; added Paragraph A(3), and made minor stylistic changes.

## 7-20F-3. County correctional facility gross receipts tax; authority to impose; rate; ordinance requirements; referendum.

A. The majority of the members elected to the county board may enact an ordinance imposing on a countywide basis an excise tax not to exceed a rate of one-eighth percent of the gross receipts of any person engaging in business in the county, including all municipalities within the county.

B. The tax imposed pursuant to Subsection A of this section may be referred to as the "county correctional facility gross receipts tax".

C. Any ordinance imposing a county correctional facility gross receipts tax pursuant to this section shall:

(1) impose the tax in any number of increments of one-sixteenth percent not to exceed an aggregate amount of one-eighth percent;

(2) specify that the imposition of the tax will begin on either July 1 or January 1, whichever occurs first after the expiration of at least three months from the date that the department is notified personally or by mail by the county of adoption of the ordinance; and

(3) dedicate the revenue from the county correctional facility gross receipts tax:

(a) for the purpose of operating, maintaining, constructing, purchasing, furnishing, equipping, rehabilitating, expanding or improving a judicial-correctional or a county correctional facility or the grounds of a judicial-correctional or county correctional facility, including acquiring and improving parking lots, landscaping or any combination of the foregoing;

(b) for the purpose of transporting or extraditing prisoners; or

(c) to payment of principal and interest on revenue bonds or refunding bonds issued pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act.

D. An ordinance imposing a county correctional facility gross receipts tax pursuant to this section shall be subject to optional referendum selection by the governing body, as provided in Subsection A of Section 7-20E-3 NMSA 1978.

E. If the county has pledged the revenue from imposition of the county correctional facilities gross receipts tax to the repayment of bonds or other indebtedness, revenue produced by the imposition of a county correctional facility gross receipts tax that is in excess of the annual principal and interest due on bonds secured by a pledge of the county correctional facility gross receipts tax may be accumulated in a debt service reserve account until an amount equal to the maximum amount permitted pursuant to the provisions of the United States treasury regulations is accumulated in the debt service reserve account. After the debt service reserve account requirements have

been met, the excess revenue shall be accumulated in an extraordinary mandatory redemption fund and annually used to redeem the bonds prior to their stated maturity date.

F. If the county has pledged the revenue from imposition of the county correctional facilities gross receipts tax to the repayment of bonds or other indebtedness, when all outstanding bonds have been paid, whether from the debt service reserve, the redemption fund or maturity, the ordinance shall be repealed if the county correctional facility gross receipts tax revenue is no longer required for the purposes for which it may be used pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act.

G. The repeal of an ordinance imposing a county correctional facility gross receipts tax shall state that the repeal shall be effective on January 1 or July 1, whichever occurs first following the date the department is notified personally or by mail by the county of the repeal.

History: Laws 1993, ch. 303, § 3; 1994, ch. 101, § 10; 1998, ch. 65, § 3; 2004, ch. 110, § 7.

## ANNOTATIONS

**The 2004 amendment,** effective July 1, 2004, deleted language in Subsection A that previously limited the section to certain class A and class B counties, amended Subsection B to delete language that limited the tax to one ten-year imposition for payment of principal and interest, amended Subsection C to permit expenditure of the county correctional facility gross receipts tax for operations and maintenance and for transporting or extraditing prisoners, amended or deleted former Subsections D through H to eliminate the requirement that the imposition of the tax be approved by the voters at a general or special election, added to Subsection D a provision making the tax subject to an optional referendum, added to the beginning of Subsections E and F, "If the county has pledged the revenue from imposition of the county correctional facilities gross receipts tax to the repayment of bonds or other indebtedness," and redesignated former Subsections I through K as Subsections E through G.

**The 1998 amendment,** effective March 9, 1998, deleted "'the county" at the end of the introductory language of Subsection A; designated Paragraph A(1) and added the language "a class A county described in Paragraph (1) of Subsection A of Section 7-20F-2 NMSA 1978 or a class B county described in Paragraph (2) of Subsection A of Section 7-20F-2 NMSA 1978" at the beginning; added Paragraph A(2); designated Subsection B and inserted "imposed pursuant to Subsection A of this section" in the first sentence; redesignated former Subsections B and C as Subsections C and D; in Paragraph C(3), inserted "or a county correctional" preceding "facility", twice; designated Subsection E; in Paragraph E(1), inserted "in a class A county described in" preceding ", if a property tax" at the beginning; added Paragraph E(2); designated

Subsections F, G and H; and redesignated former Subsections D, E and F as Subsections I, J and K.

**The 1994 amendment,** effective July 1, 1994, in the first sentence in Subsection C, substituted language from "after" to the end of the sentence for "approved by a majority of the registered voters in the county voting on the question at an election to be held within sixty days after the date that the ordinance is adopted by the board" and added the second sentence in Subsection C.

## 7-20F-4. Ordinance shall conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the department.

A. Any ordinance imposing the county correctional facility gross receipts tax shall adopt by reference the same definitions and the same provisions relating to exemptions and deductions as are contained in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] then in effect and as it may be amended from time to time.

B. The governing body of any county imposing the county correctional facility gross receipts tax shall adopt the model ordinances furnished to the county by the department.

**History:** Laws 1993, ch. 303, § 4.

## 7-20F-5. Collection by department; transfer of proceeds; deductions.

A. The department shall collect the county correctional facility gross receipts tax in the same manner and at the same time it collects the state gross receipts tax.

B. The department shall remit to each county for which it is collecting a county correctional facility gross receipts tax the amount of the tax collected, less any disbursement for tax credits, refunds and the payment of interest applicable to the county correctional facility gross receipts tax. Transfer of the tax to a county shall be made within the month following the month in which the tax is collected.

**History:** Laws 1993, ch. 303, § 5.

## 7-20F-6. Specific exemptions.

No county correctional facility gross receipts tax shall be imposed on the gross receipts arising from transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the county to another point outside the county.

**History:** Laws 1993, ch. 303, § 6; 1994, ch. 101, § 11.

**ANNOTATIONS**

**The 1994 amendment,** effective July 1, 1994, deleted former Subsection A, and deleted the subsection designation "B" appending that subsection to the end of the undesignated paragraph.

## 7-20F-7. Revenue bonds; authority to issue; ordinance authorizing issue; pledge of revenue.

A. In addition to any other law authorizing a county to issue revenue bonds, a county may issue revenue bonds pursuant to the County Correctional Facility Gross Receipts Tax Act, for the purposes specified in that act. Revenue bonds issued pursuant to the County Correctional Facility Gross Receipts Tax Act may be referred to as "county correctional facility gross receipts tax revenue bonds".

B. A county board, by majority vote, may adopt an ordinance providing for issuance of revenue bonds pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act, the principal and interest of which shall be paid from the revenue derived by the county from the county correctional facility gross receipts tax and any other revenue that the county may dedicate to the payment of the revenue bonds.

C. Revenue bonds or refunding revenue bonds issued as authorized pursuant to the County Correctional Facility Gross Receipts Tax Act are:

(1) not general obligations of the county; and

(2) collectible only from the county correctional facility gross receipts tax and, if authorized, other properly pledged revenues, and each bond shall be payable solely from the properly pledged revenues and the bondholders shall not look to any other county fund for the payment of the interest and principal of the bonds.

**History:** Laws 1993, ch. 303, § 7.

## 7-20F-8. Revenue bonds; execution; nonrepealable; issuance time limitation.

A. The revenue bonds authorized pursuant to the County Correctional Facility Gross Receipts Tax Act shall be executed by the chairman of the county board and either the county treasurer or the county clerk and may be authenticated by any public or private transfer agent or registrar, or its successor, named or otherwise designated by the governing body. The bonds may be executed as provided under the Uniform Facsimile Signature of Public Officials Act [6-9-1 through 6-9-6 NMSA 1978], and the coupons, if any, shall bear the facsimile signature of the county treasurer.

B. Any law that authorizes the pledge of any or all of the pledged revenues to the payment of any revenue bonds issued pursuant to the County Correctional Facility Gross Receipts Tax Act or that affects the pledged revenues, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding revenue bonds, unless such outstanding revenue bonds have been discharged in full or provision for full discharge has been made.

C. Except for the purpose of refunding previous revenue bond issues, no county shall sell revenue bonds payable from pledged revenues after the expiration of two years from the date of the ordinance authorizing the issuance of the bonds. However, any period of time during which a particular revenue bond issue is in litigation shall not be counted in determining the expiration date of that issue.

**History:** Laws 1993, ch. 303, § 8.

## 7-20F-9. Revenue bonds; purpose of issue; use of proceeds.

A. Revenue bonds may be issued pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act for the purposes of constructing, purchasing, furnishing, equipping, rehabilitating, expanding or improving a judicial-correctional facility or the grounds of a judicial-correctional facility, including but not limited to acquiring and improving parking lots, landscaping or any combination of the foregoing.

B. No county shall divert, use or expend any money received from the issuance of bonds for any purpose other than the purpose for which the bonds were issued.

**History:** Laws 1993, ch. 303, § 9.

## 7-20F-10. Revenue bonds; terms.

Revenue bonds issued pursuant to provisions of the County Correctional Facility Gross Receipts Tax Act:

A. may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as may be determined by the county board in the ordinance;

B. shall be subject to a prior redemption at the county's option at such time or times and upon such terms and conditions without the payment of premiums;

C. may mature at any time or times not exceeding twenty-five years after the date of issuance;

D. may be serial in form and maturity or may consist of one bond payable at one time or in installments or may be in such other form as may be determined by the county board;

E. shall be sold for cash at above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act [6-14-1 through 6-14-3 NMSA 1978]; and

F. may be sold at public or negotiated sale.

**History:** Laws 1993, ch. 303, § 10; 2006, ch. 66, § 1.

**ANNOTATIONS**

**The 2006 amendment,** effective May 17, 2006, added a reference to revenue bonds issued pursuant to the County Correctional Facility Gross Receipts Tax Act and in Subsection C, changed the maturity from ten years to twenty-five years.

## 7-20F-11. Revenue bonds; refunding authorization.

A. Any county having issued revenue bonds as authorized in the County Correctional Facility Gross Receipts Tax Act may issue refunding revenue bonds pursuant to an ordinance adopted by majority vote of the county board for the purpose of refinancing, paying and discharging all or any part of such outstanding revenue bonds of any one or more or all outstanding issues:

(1) for the acceleration, deceleration or other modification of the payment of such obligations, including without limitation any capitalization of any interest thereon in arrears or about to become due for any period not exceeding one year from the date of the refunding bonds;

(2) for the purpose of reducing interest costs or effecting other economies;

(3) for the purpose of modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds, otherwise concerning the outstanding bonds or to any facilities relating thereto; or

(4) for any combination of such purposes.

B. To pay the principal and interest on refunding bonds, the county may pledge irrevocably the pledged revenues from the revenue bonds originally issued pursuant to the County Correctional Facility Gross Receipts Tax Act.

C. Bonds for refunding and bonds for any purpose permitted by the County Correctional Facility Gross Receipts Tax Act may be issued separately or issued in combination in one series or more.

**History:** Laws 1993, ch. 303, § 11.

## 7-20F-12. Refunding bonds; escrow; detail.

A. Refunding bonds issued pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act shall be authorized by ordinance. Any revenue bonds that are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of the refunded bonds or otherwise appertaining thereto, except for any such bond that is voluntarily surrendered for exchange or payment by the holder or owner.

B. Provision shall be made for paying the bonds refunded at the time or times provided in Subsection A of this section. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds and may also be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds.

C. The proceeds of refunding bonds, including any accrued interest and premium appertaining to the sale of refunding bonds, shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company that possesses and is exercising trust powers and that is a member of the federal deposit insurance corporation, to be applied to the payment of the principal of, interest on and any prior redemption premium due in connection with the bonds being refunded; provided that such refunding bond proceeds including any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest on the refunding bonds and the principal of the refunding bonds or both interest and principal as the county may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other money available to retire the refunded bonds. Any proceeds in escrow pending such use may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of or the principal and interest of which obligations are unconditionally guaranteed by the United States of America or in certificates of deposit of banks that are members of the federal deposit insurance corporation, the par value of which certificates of deposit is collateralized by a pledge of obligations of or the payment of which is unconditionally guaranteed by the United States of America, the par value of which obligations is at least seventy-five percent of the par value of the certificates of deposit. Such proceeds and investments in escrow together with any interest or other income to be derived from any such investment shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any

charges of the escrow agent payable therefrom to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date or dates in connection with which the county shall exercise a prior redemption option. Any purchaser of any refunding bond issued pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act is in no manner responsible for the application of the proceeds thereof by the county or any of its officers, agents or employees.

D. Refunding bonds may be sold at a public or private sale and may bear such additional terms and provisions as may be determined by the county subject to the limitations in the County Correctional Facility Gross Receipts Tax Act. Refunding bonds are not subject to the provisions of any other statute.

**History:** Laws 1993, ch. 303, § 12.

# ARTICLE 21
# County Sales Tax

(Repealed by Laws 1986, ch. 20, § 136A.)

## 7-21-1 to 7-21-7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1986, ch. 20, § 136A repealed former 7-21-1 through 7-21-7, relating to the county sales tax, effective July 1, 1986.

# ARTICLE 22
# Occupational Licenses

(Repealed by Laws 1979, ch. 161, § 1.)

## 7-22-1 to 7-22-14. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 161, § 1, repealed 7-22-1 to 7-22-14 NMSA 1978, relating to occupational licenses, effective June 30, 1979.

# ARTICLE 23
# Exemption of Producers from Licenses

## 7-23-1. [Producers exempt from license or occupation tax; sellers of meat; keeping of hides; notification of intent to slaughter.]

That any resident of this state, selling wood, fruits, farm and garden produce of his own raising, exclusively, or fresh meats, butchered from animals of his own raising only, shall not be required to pay an occupation tax or to obtain a peddler's or itinerant vendor's license to engage in such sales; provided, that when beef, veal or mutton is offered for sale the person so offering such beef, veal or mutton for sale shall have in his immediate possession at the time and place of offering such meat for sale the hide or pelt of the slaughtered animal, the meat of which is being offered for sale, so that such hide may be examined and inspected by any authorized cattle inspector, peace officer, or any other person demanding to inspect the same. The provisions of this section, relative to the sale of fresh meat shall apply only to owners of livestock who do not make a business of peddling; provided that any person desiring to slaughter any meat animal for the purpose of selling the meat thereof, shall before slaughtering notify in writing the nearest justice of the peace [magistrate] or brand inspector of the New Mexico cattle sanitary board [livestock board] of such intent, giving descriptions of brand, sex, color and age of such animal.

**History:** Laws 1915, ch. 83, § 1; 1927, ch. 58, § 1; C.S. 1929, § 81-116; Laws 1933, ch. 90, § 1; 1941 Comp., § 62-301; 1953 Comp., § 60-3-1.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1967, ch. 213, § 2 provided that references to the cattle sanitary board shall be references to the livestock board.

Laws 1968, ch. 62, § 40 provided that references to "justice of the peace" shall be construed as references to the magistrate courts. *See* 35-1-38 NMSA 1978.

**Cross references.** — For Livestock Code, *see* 77-2-1 NMSA 1978 et seq.

For inspection of slaughterhouses and hides, *see* 77-9-33 NMSA 1978.

For licensing of butchers and slaughterers, *see* 77-17-1 NMSA 1978 et seq.

For retention of hides for inspection, *see* 77-17-10 and 77-17-12 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Exemption of agricultural activities or occupations from business or occupation license or tax, 38 A.L.R.4th 1074.

## 7-23-2. [Penalty for violation.]

The penalty for the violation of this act [7-23-1, 7-23-2 NMSA 1978] shall be a fine of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00), or not

more than six (6) months in jail, or both such fine and imprisonment in the discretion of the court.

**History:** Laws 1927, ch. 58, § 2; C.S. 1929, § 81-117; 1941 Comp., § 62-302; 1953 Comp., § 60-3-2.

# ARTICLE 24
# Municipal and County Gross Receipts Tax on Liquor

## 7-24-1. License tax imposed by municipalities.

Municipalities within or composing local option districts may, by duly adopted ordinance, impose an annual, nonprohibitive municipal license tax upon the privilege of persons holding state licenses under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978 et seq.] to operate within such municipalities as retailers, dispensers, canopy licensees, restaurant licensees or club licensees. The amount of the license tax, which shall not exceed two hundred fifty dollars ($250), and the dates and manner of payment shall be fixed on or before June 1 of each year by the ordinance imposing the tax. In case any municipality permits the payment in installments, no bond shall be required to secure the payment of the deferred installments, but the remedy for the collection shall be that provided in Section 7-24-3 NMSA 1978.

**History:** Laws 1939, ch. 236, § 1103; 1941 Comp., § 61-402; 1953 Comp., § 46-4-2; Laws 1969, ch. 163; 1981, ch. 39, § 124; 1990, ch. 76, § 1; 1993, ch. 68, § 1.

**ANNOTATIONS**

**Cross references.** — For municipal local option gross receipts tax generally, *see* 7-19D-1 NMSA 1978 et seq.

For state licensing requirements relating to alcoholic beverages generally, *see* 60-3A-1 NMSA 1978 et seq.

**The 1993 amendment,** effective July 1, 1993, deleted the Subsection A designation; deleted "Except as provided in Subsection B of this section" at the beginning; substituted "two hundred fifty dollars ($250)" for "one thousand dollars ($1,000)" in the second sentence; and deleted former Subsection B, pertaining to allocation of a portion of the license tax for purposes of funding a home free program to provide free rides home when requested by intoxicated persons.

**The 1990 amendment,** effective March 2, 1990, designated the existing language as Subsection A; added Subsection B; and, in Subsection A, added "Except as provided in Subsection B of this section" at the beginning and made minor stylistic changes.

**Section empowers municipalities** by ordinance to impose an annual license tax upon the privilege of persons holding state licenses to operate within a municipality as retailers, dispensers or clubs. Sunset Package Store, Inc. v. City of Carlsbad, 1968-NMSC-105, 79 N.M. 260, 442 P.2d 572.

**Tax imposed by the ordinance is a privilege tax** imposed on a certain class of persons for the privilege of carrying on businesses for which a license is required. Sunset Package Store, Inc. v. City of Carlsbad, 1968-NMSC-105, 79 N.M. 260, 442 P.2d 572.

**Section does not require adoption of new ordinance** each year in order to impose a valid license tax. Eddie's Inferno, Inc. v. City of Albuquerque, 1968-NMSC-155, 79 N.M. 512, 445 P.2d 389.

**Amount, date and manner of payment fixed by ordinance** remain from year to year until such time as ordinance is modified or repealed by an ordinance of the legislative body enacting the same. Sunset Package Store, Inc. v. City of Carlsbad, 1968-NMSC-105, 79 N.M. 260, 442 P.2d 572.

**Maximum tax rate applicable to preexisting ordinances.** — The City of Albuquerque was without authority to impose or collect any liquor license tax over $1,000 (now $250) after July 1, 1981, the effective date of the amendment of this section limiting such license taxes, notwithstanding the fact that an ordinance providing for a higher tax was enacted prior to July 1, 1981. Waksman v. City of Albuquerque, 1984-NMSC-114, 102 N.M. 41, 690 P.2d 1035.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 45 Am. Jur. 2d Intoxicating Liquors § 208.

Effect of state regulation of liquor sales on municipal power to impose occupation license or tax for revenue, 6 A.L.R.2d 737.

48 C.J.S. Intoxicating Liquors § 91.

## 7-24-2. License tax imposed by boards of county commissioners.

The boards of county commissioners of counties composing local option districts are empowered, by resolution duly adopted, on or before the first day of June of each year to impose an annual, nonprohibitive license tax upon the privileges of persons holding state licenses under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978 et seq.] to operate within such counties, outside of the municipalities that are local option districts, as retailers, dispensers, canopy licensees, restaurant licensees or club licensees. The amount of the license tax, which shall not exceed two hundred fifty dollars ($250), and the dates and manner of the payment shall be fixed by the resolution imposing the tax; provided, that in case the county permits the payment in installments,

no bond shall be required to secure the payment of the deferred installments, but the remedy for the collection shall be that provided in Section 7-24-3 NMSA 1978.

**History:** Laws 1939, ch. 236, § 1104; 1941 Comp., § 61-403; 1953 Comp., § 46-4-3; Laws 1981, ch. 39, § 125; 1994, ch. 46, § 1.

**ANNOTATIONS**

**The 1994 amendment,** effective July 1, 1994, in the first sentence, deleted "hereby" preceding "empowered", and substituted "the Liquor Control Act" for "this act" and "that are local option districts" for "contemplated by Section 60-6-1 NMSA 1978"; and, in the second sentence, substituted "the license tax, which shall not exceed two hundred fifty dollars ($250)" for "such license tax, which shall not exceed one thousand dollars ($1,000)" and "the tax" for "the same", and made a series of minor stylistic changes throughout.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 48 C.J.S. Intoxicating Liquors § 91.

## 7-24-3. [Payment of municipal or county tax required; closing establishment.]

This act shall not be construed as permitting any retailer, dispenser or club to operate in any county or municipality without having paid the municipality or county, whichever the case may be, the license tax according to the provisions of the ordinance or resolution imposing the same; and the sheriff of any county upon the written order of the board of county commissioners, duly entered of record, shall close up the place of business of any retailer, dispenser or club who has not paid or tendered the county license tax according to the resolution imposing the same; and any police officer of any municipality, upon the written order of the city council or city commissioners, duly entered, shall forthwith close up the place of business of any retailer, dispenser or club who has not paid or tendered the municipal license tax according to the terms of the ordinance imposing the same.

**History:** Laws 1939, ch. 236, § 1105; 1941 Comp., § 61-404; 1953 Comp., § 46-4-4.

**ANNOTATIONS**

**Meaning of "this act".** — The phrase "this act" refers to Laws 1939, ch. 236, which enacted 7-24-1 to 7-24-5 NMSA 1978. Laws 1939, ch. 236 also enacted the former statutes relating to alcohol, compiled mainly at Chapter 60 NMSA 1978. Those sections were repealed by Laws 1981, ch. 39, § 128.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 48 C.J.S. Intoxicating Liquors §§ 205, 206.

## 7-24-4. [License tax period; revocation or suspension of license; effect.]

The license tax period contemplated by Sections 1102 and 1103 shall begin July first of each year and end June thirtieth of the following year, and such tax may not be prorated except in the manner and for the periods set out in Section 704 as applicable to state licenses; and the revocation or suspension of any retail, dispensary or club license shall not entitle the licensee to the refund of any portion of any municipal or county license tax which such licensee has paid or relieve such licensee of the obligation for the payment of any deferred installment thereof.

**History:** Laws 1939, ch. 236, § 1106; 1941 Comp., § 61-405; 1953 Comp., § 46-4-5.

**ANNOTATIONS**

**Compiler's notes.** — The reference to "Sections 1102 and 1103" in this section may be intended as references to Sections 1103 and 1104 of Laws 1939, ch. 236, compiled as 7-24-1 and 7-24-2 NMSA 1978; Section 1102, compiled as 60-6-1 NMSA 1978, was repealed by Laws 1981, ch. 39, § 128.

Section 704, compiled as 60-7-22 NMSA 1978, was repealed by Laws 1981, ch. 39, § 128.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 48 C.J.S. Intoxicating Liquors § 193.

## 7-24-5. [Assignment and transfer of license; effect.]

In case of the assignment and transfer of any license under the provisions of Section 702 (c) or 702 (f) of this act, no refund shall be made by any municipality or county to the original licensee for the unexpired portion of such license, but such assignment and transfer shall vest in the assignee and transferee the right to operate under the license tax so paid by the original licensee for the period covered by the paid license tax and to pay the balance of such license tax upon the same terms and conditions as if such assignee or transferee were the original licensee.

**History:** Laws 1939, ch. 236, § 1108; 1941 Comp., § 61-406; 1953 Comp., § 46-4-6.

**ANNOTATIONS**

**Compiler's notes.** — The reference to sections 702 (c) and 702 (f) in this section are apparently to Section 702 of Laws 1939, ch. 236, which was compiled as 60-7-18 NMSA 1978, and was repealed by Laws 1981, ch. 39, § 128.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 45 Am. Jur. 2d Intoxicating Liquors §§ 177, 178.

## 7-24-6, 7-24-7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 201, § 6, repealed 7-24-6 and 7-24-7 NMSA 1978, relating to hearings and procedures for hearings upon application for liquor licenses, effective June 15, 1979.

## 7-24-8. Short title.

Sections 7-24-8 through 7-24-16 NMSA 1978 may be cited as the "Local Liquor Excise Tax Act".

**History:** Laws 1989, ch. 326, § 1; 1993, ch. 30, § 23.

**ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, substituted "Sections 7-24-8 through 7-24-16 NMSA 1978" for "Sections 1 through 9 of this act".

## 7-24-9. Definitions.

As used in the Local Liquor Excise Tax Act [7-24-8 through 7-24-16 NMSA 1978]:

A. "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin and aromatic bitters or any similar alcoholic beverage, including blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one percent alcohol, but excluding medicinal bitters;

B. "county" means a class B county having a population of more than fifty-six thousand but less than seventy-five thousand, according to the most recent federal decennial census or any subsequent decennial census and having a net taxable value for rate-setting purposes for the 1988 or any subsequent property tax year of more than five hundred million dollars ($500,000,000) but less than seven hundred million dollars ($700,000,000);

C. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

D. "governing body" means the board of county commissioners of a county;

E. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other association; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or agency, department or instrumentality thereof;

F. "price" means the total amount of money or the reasonable value of other consideration or both paid for alcoholic beverages, inclusive of the amount of any tax paid pursuant to the Liquor Excise Tax Act [Chapter 7, Article 17 NMSA 1978]; and

G. "retailer" means any person having a place of business within the county who sells, offers for sale or possesses for the purpose of selling alcoholic beverages within the county.

**History:** Laws 1989, ch. 326, § 2.

**ANNOTATIONS**

**Cross references.** — For the Liquor Control Act, *see* 60-3A-1 NMSA 1978 et seq.

## 7-24-10. Authorization to impose local liquor excise tax; rate; use of proceeds; election required.

A. The majority of the members elected to the governing body may enact an ordinance imposing on any retailer an excise tax on the price paid by the retailer for alcoholic beverages purchased by the retailer upon which the tax imposed by this section has not been paid. The tax may be imposed at a rate not to exceed six percent, provided that any lower rate shall be an even multiple of one percent. The tax imposed under this section may be referred to as the "local liquor excise tax". Any tax imposed under this section shall be for a period of not more than three years from the effective date of the ordinance imposing the tax.

B. The governing body at the time of enacting an ordinance imposing the tax authorized in Subsection A of this section shall dedicate the revenue to fund educational programs and prevention and treatment, including social detoxification, of alcoholism and drug abuse within the county and for no other purpose. After approval of the imposition of a local liquor excise tax by the voters but before the effective date of the ordinance, the governing body shall hold a public meeting for the purpose of inviting comment on and suggestions for the most appropriate programs on which to expend the revenue produced by the tax. The governing body shall invite representatives from the appropriate Indian tribes, nations and pueblos to the meeting. If the governing body awards any contract using funds derived from the local liquor excise tax, it shall do so only through a selection process requiring submission of sealed bids or proposals after public notice of the opportunity to submit the sealed bids or proposals.

C. The governing body enacting an ordinance imposing the local liquor excise tax shall submit the question of imposing the tax to the qualified voters of the county at a regular or special election.

D. Only those voters who are registered within the county shall be permitted to vote. The election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections.

E. If at an election called pursuant to this section the majority of the voters voting on the question vote in the affirmative on the question, then the ordinance imposing the local liquor excise tax shall be approved. If at such an election the majority of the voters voting on the question fail to approve the question, then the ordinance shall be disapproved and the question required to be submitted by Subsection B of this section shall not be submitted to the voters for a period of at least one year from the date of the election.

F. Any ordinance enacted under the provisions of this section that imposes a local liquor excise tax or changes the rate of tax imposed shall include an effective date that is the first day of any month that begins no earlier than ninety days after the date of the election. A certified copy of any ordinance imposing a local liquor excise tax shall be mailed or personally delivered to the department within five days after the ordinance is certified to have been approved by the voters.

G. Any ordinance repealing the imposition of a tax under the provisions of this section shall contain an effective date that is the first day of any month beginning no earlier than sixty days from the date the ordinance repealing the tax is adopted by the governing body. A certified copy of any ordinance repealing a local liquor excise tax shall be mailed or personally delivered to the department within five days of the date the ordinance is adopted.

**History:** Laws 1989, ch. 326, § 3; 2013, ch. 218, § 1.

**ANNOTATIONS**

**The 2013 amendment,** effective July 1, 2013, increased the local liquor excise tax rate; permitted local liquor excise tax proceeds to be used for social detoxification; in Subsection A, in the second sentence, after "not to exceed", deleted "five" and added "six"; and in Subsection B, in the first sentence, after "prevention and treatment", added "including social detoxification".

## 7-24-10.1. Use of tax proceeds; local liquor excise tax committee; joint powers agreement; community participation.

A. Prior to an election on the question of imposing a local liquor excise tax pursuant to the provisions of the Local Liquor Excise Tax Act [7-24-8 through 7-24-16 NMSA 1978], the governing body of a county shall enter into a joint powers agreement with the governing body of the most populated municipality and the governing bodies of any other municipalities in the county that choose to be parties to the agreement to provide for the use and administration of the tax proceeds. The agreement shall provide for the establishment and appointment of a local liquor excise tax committee to provide advice, assist in preventing duplication and supplanting of program funding and make recommendations to the governing body of the county and the municipal governing bodies that are parties to the agreement on the use of the tax proceeds. The agreement shall:

(1) clearly specify the use of the proceeds of the proposed local liquor excise tax, including the identification of specific local programs, agencies or entities that will be funded from the tax proceeds;

(2) determine the allocation of election expenses among the parties to the agreement;

(3) clearly specify that the detoxification center located within a municipality with a population of not less than fifteen thousand and not more than thirty-five thousand according to the most recent federal decennial census providing social detoxification treatment with the greatest numbers of adult clients shall receive the funding necessary to provide social detoxification of alcohol and drug treatment for adults;

(4) provide that the remaining proceeds of the proposed local liquor excise tax shall be used to fund social detoxification of alcohol and drugs for juveniles and other prevention and treatment programs as recommended by the local liquor excise tax committee; and

(5) clearly specify that each specific local program, agency or entity that is funded from the tax proceeds shall be audited at its own expense and provide accountability reports to the governing body of the county and municipal governing bodies that are parties to the agreement within thirty days of the end of each quarter of the calendar year, including an itemized breakdown of program services and expenditures.

B. Prior to the agreement by the governing body of a county and the municipal governing bodies for use of the proposed local liquor excise tax proceeds, the local liquor excise tax committee established pursuant to the provisions of Subsection A of this section shall conduct a public hearing for the purpose of inviting public comment on use of the proposed local liquor excise tax proceeds. The committee shall make every effort to provide public notice of the hearing and to invite a broad cross-section of community representatives and groups to comment on community needs. Following the hearing, the committee shall make its funding recommendations to the governing body of the county and the municipal governing bodies.

C. On or before April 1 of each calendar year, the governing body of a county or municipality that has entered into an agreement pursuant to Subsection A of this section shall submit to the department of finance and administration a report itemizing the receipts, expenditures and number of clients served pursuant to any such agreement for the preceding calendar year. On or before July 1 of each year, the department of finance and administration shall complete an audit of the county's report submitted pursuant to this section and shall report its findings to the appropriate interim legislative committee before September 1 of that year.

D. If a local program, agency or entity receiving funds from local liquor excise tax proceeds fails to timely submit an accountability report pursuant to Paragraph (5) of Subsection A of this section, the county or municipality shall be immediately prohibited from disbursing any further funds to such local program, agency or entity until the delinquent accountability report has been submitted to and accepted by the governing board of the county and the municipal governing bodies.

**History:** 1978 Comp., § 7-24-10.1, enacted by Laws 1992, ch. 35, § 1; 2013, ch. 218, § 2.

**ANNOTATIONS**

**Cross references.** — For the Joint Powers Agreements Act, *see* 11-1-1 NMSA 1978 et seq.

**The 2013 amendment,** effective July 1, 2013, permitted local liquor excise tax proceeds to be used for social detoxification; in Subsection A, in the introductory paragraph, in the second sentence, after "the county and the", added "municipal" and after "tax proceeds", deleted "and may include agreements that", and at the beginning of the third sentence, added "The agreement shall"; in Paragraph (1) of Subsection A, after "specify the use", added "of the proceeds"; added Paragraphs (3) through (5) of Subsection A; in Subsection B, in the first sentence, after "use of the", added "proposed local liquor excise" and after "pursuant to", deleted "joint powers agreement in" and added "provisions of"; and added Subsections C and D.

## 7-24-11. Date payment due.

The tax imposed by the Local Liquor Excise Tax Act [7-24-8 through 7-24-16 NMSA 1978] is to be paid on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

**History:** Laws 1989, ch. 326, § 4.

## 7-24-12. Exemption.

Exempted from the local liquor excise tax is the purchase of alcoholic beverages by any instrumentality of the armed forces of the United States engaged in resale activities.

**History:** Laws 1989, ch. 326, § 5.

## 7-24-13. Exemption; purchases for resale.

Exempted from any local liquor excise tax are purchases for sale to retailers for resale.

**History:** Laws 1989, ch. 326, § 6.

## 7-24-14. Refund or credit of tax.

An ordinance imposing a local liquor excise tax shall provide for and the department shall allow a claim for refund, in accordance with the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978], for the local liquor excise tax paid on alcoholic beverages destroyed in shipment, or otherwise damaged so as to be unfit for sale or consumption, or shipped out of the county, upon submission of proof satisfactory to the department of such destruction, damage or out-of-county shipment.

**History:** Laws 1989, ch. 326, § 7.

## 7-24-15. Administrative charge.

The department may deduct an amount not to exceed five percent of the proceeds of a local liquor excise tax as a charge for the administrative costs of collection, which amount shall be retained by the department for use in administration of the Local Liquor Excise Tax Act [7-24-8 through 7-24-16 NMSA 1978].

**History:** Laws 1989, ch. 326, § 8.

## 7-24-16. Interpretation of act; administration and enforcement of the tax.

A. The department shall interpret the provisions of the Local Liquor Excise Tax Act [7-24-8 through 7-24-16 NMSA 1978].

B. The department shall administer and enforce the Local Liquor Excise Tax Act, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the collection and enforcement of the local liquor excise tax.

**History:** Laws 1989, ch. 326, § 9.

# ARTICLE 24A
# County and Municipal Gasoline Tax

## 7-24A-1. Short title.

Chapter 7, Article 24A NMSA 1978 may be cited as the "County and Municipal Gasoline Tax Act".

**History:** 1978 Comp., § 7-24A-1, enacted by Laws 1978, ch. 182, § 1; 1990, ch. 88, § 2.

**ANNOTATIONS**

**The 1990 amendment,** effective May 16, 1990, substituted "Chapter 7, Article 24A NMSA 1978" for "Sections 1 through 21 of this act".

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation §§ 616 to 634.

## 7-24A-2. Definitions.

As used in the County and Municipal Gasoline Tax Act:

A. "county" means a class A county or an H class county;

B. "governing body" means the city council or city commission of a city, the board of trustees of a town or village or the board of county commissioners of a class A county or an H class county;

C. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter located within a class A county or an H class county;

D. "person" means:

(1) any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity, including any utility owned or operated by a county, municipality or other political subdivision of the state; or

(2) to the extent permitted by law, the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof;

E. "transit route" means a road, highway or street normally used in the operation of a public transportation system; and

F. "vehicle emission inspection program" means a vehicle emission inspection program designed to reduce pollutants emitted by motor vehicles of less than ten thousand pounds pursuant to a county or municipal ordinance.

**History:** 1978 Comp., § 7-24A-2, enacted by Laws 1991, ch. 156, § 2.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1991, ch. 156, § 2 repealed 7-24A-2 NMSA 1978, as amended by Laws 1991, ch. 156, § 1, relating to definitions in the County and Municipal Gasoline Tax Act, and enacted a new section, effective July 1, 1996.

**Cross references.** — For county classifications, *see* 4-44-1 NMSA 1978.

For local authority as to the Air Quality Control Act, *see* 74-2-4 NMSA 1978 et seq.

## 7-24A-3. Use of proceeds.

A. The proceeds of a county or municipal gasoline tax shall be used for bridge and road projects or public transportation related trails and for expenses of purchasing, maintaining and operating transit operations and facilities, for the operation of a transit authority established by the Municipal Transit Law [3-52-1 through 3-52-13 NMSA 1978] or as provided in the County and Municipal Gasoline Tax Act, for operation of a vehicle emission inspection program or for road, street or highway construction, repair or maintenance in the county or municipality. The proceeds of a county or municipal gasoline tax may be pledged for the payment of bonds issued pursuant to the County and Municipal Gasoline Tax Act. A county or municipality may engage in the business of transportation of passengers and property within the political subdivision by whatever means it may decide and may acquire cars, motor buses and other equipment necessary for carrying on the business. It may acquire land and erect buildings and equip them with all necessary machinery and facilities for operation, maintenance, modification, repair and storage of any buses, cars, trucks or other equipment needed. It may do all things necessary for the acquisition and conduct of the business of public transportation.

B. A governing body may enact ordinances and resolutions and promulgate rules as it may deem necessary and proper for the conduct of the business of transportation and for fixing and collecting all fares, rates and charges for services rendered.

C. Any county or municipality engaging in the business of transportation may extend any system of transportation to points outside its boundaries where necessary and incidental to furnishing efficient transportation to points within the county or municipality.

D. A governing body may lease any system of transportation in whole or in part to any person who will contract to operate it according to the rules, time tables and other requirements established by the governing body.

E. Any county or municipality may furnish transportation service to areas located outside its boundaries, provided that prior contracts have been entered into with the county or municipality in which the areas are located covering the schedules, rates, service and other pertinent matters before initiation of such service.

F. The power of eminent domain is granted to a participating county or municipality for the purpose of acquiring lands and buildings necessary to provide efficient public transit or a vehicle emission inspection program to be exercised in the manner provided by law.

G. A county or municipality, as an operating entity, may enter into contracts for special transportation service, charter buses, advertising and any other function that a private enterprise operating a public transit facility could do or perform for revenue.

H. A governing body may spend any public funds to pay the costs of operation of public transit or a vehicle emission inspection program if revenues of the system prove to be insufficient.

I. A county or municipality is authorized to enter into binding agreements with the United States or any of its officers or agencies or the state or any of its officers or agencies or any combination of agencies, departments or officers of both the United States and the state for planning, developing, modernizing, studying, improving, financing, operating or otherwise affecting public transit; to accept any loans, grants or payments from any of these agencies; and to make any commitments or assume any obligations required by any of these agencies as a condition of receiving the benefits thereof.

**History:** 1978 Comp., § 7-24A-3, enacted by Laws 1978, ch. 182, § 3; 1985, ch. 196, § 2; 1993, ch. 190, § 1; 1999, ch. 226, § 1.

**ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, inserted "or public transportation related trails" near the beginning of the first sentence of Subsection A and made a minor stylistic change in Subsection G.

**The 1999 amendment,** effective July 1, 1999, in Subsection A, inserted the second sentence, and made stylistic changes throughout.

## 7-24A-4. Limitations on power.

A. All contracts for work, material or labor in connection with such transportation shall be let in the manner provided by law for the letting of other contracts by the county or municipality.

B. Transit service may not be extended to points outside the county in which a city is located or outside the boundaries of the county unless prior approval is obtained from the state corporation commission [public regulation commission] and other regulatory bodies having jurisdiction in the matter.

**History:** 1978 Comp., § 7-24A-4, enacted by Laws 1978, ch. 182, § 4.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

## 7-24A-5. County gasoline tax; authorization; imposition; rate.

A. The majority of the members of the governing body of a county may adopt an ordinance imposing a tax of up to two cents ($.02) a gallon on all gasoline sold at retail within the boundaries of the county on all property not lying within the boundaries of a municipality and upon which gasoline taxes are imposed in accordance with the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978]. The tax imposed by this section is to be referred to as the "county gasoline tax" and is in addition to the tax imposed in the Gasoline Tax Act.

B. If the governing body of a county adopts an ordinance imposing a county gasoline tax, the governing body shall submit the question of levying the tax to the qualified electors in the county residing outside the boundaries of a municipality.

C. The gasoline tax may be imposed in increments of one cent ($.01) per gallon up to a maximum of two cents ($.02) per gallon. The amount of the tax and the specific purposes for which the proceeds shall be used shall be stated in the ordinance adopted by the governing body of the county as provided in Subsection A of this section. The gasoline tax shall not be imposed for the purpose of funding a vehicle emissions inspection program if a re-registration fee that funds a vehicle emissions inspection and maintenance program has been imposed pursuant to Subsection C of Section 74-2-4 NMSA 1978.

**History:** 1978 Comp., § 7-24A-5, enacted by Laws 1978, ch. 182, § 5; 1985, ch. 196, § 3; 1990, ch. 88, § 4.

**ANNOTATIONS**

**The 1990 amendment,** effective May 16, 1990, substituted "sold at retail" for "received in New Mexico and distributed" in the first sentence of Subsection A and made a minor stylistic change in Subsection C.

## 7-24A-6. County gasoline tax; procedure for adoption of ordinance; election.

A. The ordinance imposing a county gasoline tax shall not go into effect until after an election is held and a simple majority of the qualified electors of the county residing outside the boundaries of a municipality vote in favor of imposing the county gasoline tax. The governing body of the county shall provide for an election on the question of imposing a county gasoline tax within sixty days after the day the ordinance is adopted. Such question may be submitted to the electors and voted upon as a separate question at any general election or at any special election called for that purpose by the governing body. The election upon the question shall be called, held, conducted and canvassed in substantially the same manner as provided by law for general elections. If the question of imposing a county gasoline tax fails, the governing body shall not again propose a county gasoline tax ordinance for a period of one year after the election.

B. Within five days after passage of a county gasoline tax ordinance, the governing body of the county shall submit a certified copy of the ordinance to the taxation and revenue department.

**History:** 1978 Comp., § 7-24A-6, enacted by Laws 1978, ch. 182, § 6; 1985, ch. 196, § 4; 1990, ch. 88, § 5.

**ANNOTATIONS**

**The 1990 amendment,** effective May 16, 1990, added "County gasoline tax" at the beginning and deleted "effective date" at the end of the section heading; deleted former Subsection A, relating to notice to and action by the division on a proposed ordinance; designated former Subsection B as Subsection A and inserted "imposing a county gasoline tax" in the first sentence thereof; deleted former Subsection C, relating to the effective date of the ordinance; and redesignated former Subsection D as Subsection B, adding "Within five days" at the beginning, and substituted "taxation and revenue department" for "division" at the end thereof.

## 7-24A-6.1. County-wide gasoline tax; authorization; imposition; rate; election.

A. A county-wide gasoline tax may be imposed on each gallon of gasoline sold at retail within the county in increments of one cent ($.01) per gallon up to a maximum of two cents ($.02) per gallon for the purpose of funding a vehicle emissions inspection program and other programs as specified in Subsection D of this section when the governing bodies of a county and a municipality adopt identical ordinances submitting the question to the qualified electors in the county in a joint election.

B. The procedures of the County and Municipal Gasoline Tax Act shall apply unless otherwise provided in this section.

C. The ordinance shall not go into effect until after a joint election is held pursuant to Section 7-24A-21 NMSA 1978 and a simple majority of the qualified electors of the county voting on the issue vote in favor of imposing a county-wide gasoline tax. If the ordinance is approved by a majority of the qualified electors of the county voting on the issue, the gasoline tax shall be imposed county-wide, both within and outside the boundaries of any municipality within the county.

D. If the qualified electors of the county vote in favor of an ordinance imposing a county-wide gasoline tax pursuant to Subsection C of Section 7-24A-21 NMSA 1978 and any proceeds of the tax are dedicated by the ordinance to a vehicle emissions inspection program, then the proceeds of the tax imposed shall be used first for the vehicle emissions inspection program and the balance shall be used for other environmental programs such as water quality or air quality programs. That balance shall be distributed to the municipality and the county based on the proportions that the population of the municipality and the population of the county outside the boundaries of

the municipality bear to the total population of the county. The municipality and county shall reimburse the motor vehicle division of the taxation and revenue department for actual costs incurred in administering any plan that involves the motor vehicle division in the enforcement of denial of motor vehicle registration for noncompliance with a vehicle emissions inspection program. The costs reimbursed are appropriated to the motor vehicle division for that purpose.

**History:** 1978 Comp., § 7-24A-6.1, enacted by Laws 1986, ch. 74, § 1; 1990, ch. 88, § 6.

**ANNOTATIONS**

**The 1990 amendment,** effective May 16, 1990, added "imposition," "rate" and "election" in the section heading, inserted "on each gallon of gasoline sold at retail within the county" near the beginning of Subsection A and, in Subsection D, inserted "of the taxation and revenue department" in the second sentence and made a minor stylistic change.

## 7-24A-7. Ordinance must conform to certain provisions of the Gasoline Tax Act.

Any ordinance imposing a county, county-wide or municipal gasoline tax shall contain or adopt by reference the same definitions and the same provisions relating to deductions, refunds and credits as are contained in the Gasoline Tax Act 7-13-1 NMSA 1978].

**History:** 1978 Comp., § 7-24A-7, enacted by Laws 1978, ch. 182, § 7; 1990, ch. 88, § 7.

**ANNOTATIONS**

**The 1990 amendment,** effective May 16, 1990, inserted "county-wide" and "or adopt by reference".

## 7-24A-7.1. Registration required.

Each person selling gasoline at retail in a county which imposes a county or county-wide gasoline tax or in a municipality which imposes a municipal gasoline tax shall register with the county or the municipality, as appropriate, as a seller of gasoline at retail.

**History:** 1978 Comp., § 7-24A-7.1, enacted by Laws 1990, ch. 88, § 8.

## 7-24A-8. Collection of county gasoline tax.

The county shall collect the county gasoline tax imposed by the County and Municipal Gasoline Tax Act. Every person subject to the imposition of the county gasoline tax shall file a return on forms provided by and with the information required by the county and shall pay the tax due on or before the twenty-fifth day of the month following the month in which the gasoline is sold at retail within the boundaries of the county.

**History:** 1978 Comp., § 7-24A-8, enacted by Laws 1978, ch. 182, § 8; 1983, ch. 211, § 36; 1990, ch. 88, § 9.

**ANNOTATIONS**

**The 1990 amendment,** effective May 16, 1990, deleted "by division" following "gasoline tax" and "Transfer of proceeds" at the end of the section heading; deleted the subsection designation "A" and former Subsection B, relating to the deduction of administrative costs of collection and the transfer of tax proceeds by the division; in the present section, substituted "county" for "division" in two places, and, in the second sentence, deleted "second" preceding "month following" and substituted "sold at retail" for "received in New Mexico and distributed".

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation § 632.

## 7-24A-9. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 88, § 21 repealed 7-24A-9 NMSA 1978, as enacted by Laws 1978, ch. 182, § 9, relating to interpretation of County and Municipal Gasoline Tax Act, effective May 16, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

## 7-24A-10. Municipal gasoline tax; authorization; imposition; rate.

A. The majority of the members of the governing body of a municipality may adopt an ordinance imposing a tax of up to two cents ($.02) a gallon on all gasoline sold at retail within the boundaries of the municipality and upon which gasoline taxes are imposed in accordance with the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978]. The tax imposed by this section is to be referred to as the "municipal gasoline tax" and is in addition to the tax imposed in the Gasoline Tax Act.

B. If the governing body of a municipality adopts an ordinance imposing a municipal gasoline tax, the governing body shall submit the question of levying the tax to the qualified electors in the municipality.

C. The gasoline tax may be imposed in increments of one cent ($.01) per gallon up to a maximum of two cents ($.02) per gallon. The amount of the tax and the specific purposes for which the proceeds shall be used shall be stated in the ordinance adopted by the governing body of the municipality as provided in Subsection A of this section. The gasoline tax shall not be imposed for the purpose of funding a vehicle emissions inspection program if a re-registration fee that funds a vehicle emissions inspection and maintenance program has been imposed pursuant to Subsection C of Section 74-2-4 NMSA 1978.

**History:** 1978 Comp., § 7-24A-10, enacted by Laws 1978, ch. 182, § 10; 1985, ch. 196, § 5; 1990, ch. 88, § 10.

**ANNOTATIONS**

**The 1990 amendment,** effective May 16, 1990, substituted "sold at retail" for "received in New Mexico and distributed" in the first sentence of Subsection A and made a minor stylistic change in Subsection C.

## 7-24A-11. Municipal gasoline tax; procedure for adoption of ordinance; election.

A. The ordinance imposing a municipal gasoline tax shall not go into effect until after an election is held and a simple majority of the qualified electors of the municipality voting on the question vote in favor of imposing the municipal gasoline tax. The governing body of the municipality shall provide for an election on the question of imposing the municipal gasoline tax within sixty days after the day the ordinance is adopted. Such question may be submitted to the electors and voted upon as a separate question at any regular or special election or at any special election called for that purpose by the governing body. The election upon the question shall be called, held, conducted and canvassed in substantially the same manner as provided by law for special municipal elections as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978]. If the question of imposing a municipal gasoline tax fails, the governing body shall not again propose a municipal gasoline tax ordinance for a period of one year after the election.

B. After passage of a municipal gasoline tax ordinance, the governing body of the municipality shall submit a certified copy of the ordinance to the taxation and revenue department.

**History:** 1978 Comp., § 7-24A-11, enacted by Laws 1978, ch. 182, § 11; 1985, ch. 196, § 6; 1985, ch. 208, § 123; 1986, ch. 74, § 2; 1990, ch. 88, § 11.

**ANNOTATIONS**

**The 1990 amendment,** effective May 16, 1990, added "Municipal gasoline tax" at the beginning and deleted "effective date" at the end of the section heading; deleted former

Subsection A, relating to notice to and approval by the division of the proposed ordinance; designated former Subsection A as present Subsection B and inserted "imposing a municipal gasoline tax" in the first sentence thereof; deleted former Subsection C, relating to the effective date of the ordinance; and designated former Subsection D as present Subsection B, substituting "taxation and revenue department" for "division" at the end thereof.

## 7-24A-12. Collection of municipal gasoline tax.

The municipality shall collect the municipal gasoline tax imposed by the County and Municipal Gasoline Tax Act. Every person subject to the imposition of the municipal gasoline tax shall file a return on forms provided by and with the information required by the municipality and shall pay the tax due on or before the twenty-fifth day of the month following the month in which the gasoline is sold at retail within the boundaries of the municipality.

**History:** 1978 Comp., § 7-24A-12, enacted by Laws 1978, ch 182, § 12; 1983, ch. 211, § 37; 1990, ch. 88, § 12.

**ANNOTATIONS**

**The 1990 amendment,** effective May 16, 1990, deleted "by division" following "gasoline tax" and "Transfer of proceeds" at the end of the section heading; deleted the subsection designation "A" and former Subsection B, relating to the charge for costs of collection and the transfer of proceeds of the tax by the division; and, in the present section, substituted "municipality" for "division" in two places and, in the second sentence, deleted "second" preceding "month following" and substituted "sold at retail" for "received in New Mexico and distributed".

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation § 632.

## 7-24A-13. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 88, § 21 repealed 7-24A-13 NMSA 1978, as enacted by Laws 1978, ch. 182, § 13, relating to imposition of federal regulations, effective May 16, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

## 7-24A-14. Bond ordinance.

A. The governing body may adopt an ordinance providing for issuance of bonds to enable the county or municipality to acquire land, buildings, buses or other equipment required for public transit, a vehicle emission inspection program or for road, street or

highway construction, repair or maintenance or for refunding bonds previously issued for such purpose or any such purposes.

B. The bonds are payable solely from a pledge of:

(1) gross income derived by the county or municipality from the transit facilities or vehicle emission inspection facilities financed with the proceeds and other transit facilities not so financed; provided that when gross revenues are so pledged, the county or municipality may apply to the payment of the expense of maintaining and operating the transit facilities, the gross revenues of which are so pledged, the county's or municipality's revenues derived from sources other than the proceeds of ad valorem taxes and may, in the proceedings authorizing the issue of bonds, covenant and agree to apply to the payment of the maintenance and operation expenses so much of the revenues as may be necessary for such purposes or as may be specified in the proceedings;

(2) income derived from franchises granted by the governing body of a county or municipality;

(3) contributions, grants or other financial assistance from the state or federal government or any other source;

(4) county or municipal gasoline tax revenue; or

(5) any one or a combination of these sources.

C. The ordinance is irrepealable as long as any indebtedness on the bonds is unpaid by the county or municipality.

**History:** 1978 Comp., § 7-24A-14, enacted by Laws 1978, ch. 182, § 14; 1985, ch. 196, § 7; 1999, ch. 226, § 2.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, made stylistic changes in Subsection A, redesignated former Subsection B(5) as B(4), added Subsection B(4) and in Subsection B(5), substituted "any one or a combination" for "any combination".

## 7-24A-15. Terms of bonds.

A. The ordinance authorizing issuance of bonds shall specify:

(1) issuance in any number of series;

(2) maturity dates;

(3) interest payable on the bonds;

(4) denominations;

(5) form, either coupon or registered;

(6) conversion or registration privileges;

(7) rank or priority;

(8) manner of execution;

(9) if desirable, features of redemption, prior to maturity with or without premium; and

(10) the terms, manner and medium of payment and redemption.

B. No member of the governing body or any person executing bonds is personally liable on any bond. All bonds are payable solely from the sources specified in the authorizing ordinance. No bond is a debt, liability or general obligation of the issuing county or municipality.

C. The terms prescribed by the authorizing ordinance and by this section shall be carried on the face of each bond.

**History:** 1978 Comp., § 7-24A-15, enacted by Laws 1978, ch. 182, § 15; 1985, ch. 196, § 8.

## 7-24A-16. Sale of bonds.

A. Bonds may be sold at either public or private sale; provided that no such bonds may be sold at any price which does not result in an actual net interest cost to maturity, computed on the basis of standard tables of bond values, in excess of the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 through 6-14-3 NMSA 1978] or the Public Securities Short-term Interest Rate Act [6-18-1 through 6-18-16 NMSA 1978], as applicable.

B. If any county or municipal officer whose signature appears on any bond ceases to be an officer before delivery of the bonds, the signature is valid for all purposes as if the officer had remained in office until delivery.

C. All bonds are fully negotiable.

**History:** 1978 Comp., § 7-24A-16, enacted by Laws 1978, ch. 182, § 16; 1985, ch. 196, § 9.

## 7-24A-17. Construction.

The County and Municipal Gasoline Tax Act is full authority for authorization and issuance of bonds. If [In] any proceeding involving the validity and enforceability of any bond or its security, any bond reciting in substance that it was issued by the county or municipality to aid in financing public transit or transportation projects or any other purpose authorized by the County and Municipal Gasoline Tax Act is conclusively presumed to have been issued for a county or municipal transit or transportation project or other purpose in accordance with that act.

**History:** 1978 Comp., § 7-24A-17, enacted by Laws 1978, ch. 182, § 17.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 7-24A-18. Additional security.

To further the marketability of bonds, the ordinance authorizing their issue may:

A. secure their payment by deed of trust or mortgage conveying county or municipally owned land and improvements acquired for the public transit facility operation or use from the proceeds of the bonds to a trustee for the benefit and security of the bondholders; and

B. authorize any other security agreement not in conflict with law.

**History:** 1978 Comp., § 7-24A-18, enacted by Laws 1978, ch. 182, § 18.

## 7-24A-19. Foreclosure.

If the interest or any serial maturity of any bond is in default, any obligee may foreclose against the county or municipality under the same procedure provided for foreclosure of real estate mortgages. The district court may appoint a receiver to operate the transit facilities or operation in default.

**History:** 1978 Comp., § 7-24A-19, enacted by Laws 1978, ch. 182, § 19.

## 7-24A-20. Legal investments.

Bonds are legal investments for savings banks and insurance companies under the laws of this state. They are bonds, notes or other obligations of a county or municipality of this state, issued pursuant to a law of this state, for the purposes of investment or purchase by the state investment officer.

**History:** 1978 Comp., § 7-24A-20, enacted by Laws 1978, ch. 182, § 20.

## 7-24A-21. Joint election.

A. If an election is held by one or more municipalities within a county or a municipality and the county concerning adoption of the county and municipal gasoline taxes, such election may be held jointly by such county and municipality, or municipalities, and may be held at any election except a primary election.

B. The election may be conducted using paper ballots. Consolidated voter precincts may be used if the board of county commissioners determines that such a consolidation would provide for a cost-effective and efficient election process and such consolidation would insure the integrity of the election process.

C. If a joint election is held by a municipality and a county pursuant to Section 7-24A-6.1 NMSA 1978 and a simple majority of the qualified electors of the county voting on the issue vote in favor of imposing the county-wide gasoline tax, the tax shall be imposed by the division and collected pursuant to the County and Municipal Gasoline Tax Act.

**History:** 1978 Comp., § 7-24A-21, enacted by Laws 1978, ch. 182, § 21; 1985, ch. 196, § 10; 1986, ch. 74, § 3.

# ARTICLE 24B
# Special County Hospital Gasoline Tax

## 7-24B-1. Short title.

Chapter 7, Article 24B NMSA 1978 may be cited as the "Special County Hospital Gasoline Tax Act".

**History:** Laws 1987, ch. 45, § 10; 1990, ch. 88, § 13.

**ANNOTATIONS**

**The 1990 amendment,** effective May 16, 1990, substituted "Chapter 7, Article 24B NMSA 1978" for "Sections 10 through 19 of this act".

## 7-24B-2. Definitions.

As used in the Special County Hospital Gasoline Tax Act:

A. "county" means:

(1) a county of the state of New Mexico having a population of more than ten thousand but less than ten thousand six hundred, according to the last federal decennial census or any subsequent decennial census, and having a net taxable value for rate-setting purposes for the 1986 property tax year or any subsequent year of more than eighty-two million dollars ($82,000,000) but less than eighty-two million three hundred thousand dollars ($82,300,000); and

(2) a county that has imposed a rate of one dollar fifty cents ($1.50) to each one thousand dollars ($1,000) of net taxable value of property as defined in the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978] for property taxation purposes in the county and to each one thousand dollars ($1,000) of the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978] and the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978] or has made an appropriation of funds or has imposed another tax which produces an amount not less than the revenue that would be produced by applying a rate of one dollar fifty cents ($1.50) to each one thousand dollars ($1,000) of net taxable value of property as defined in the Property Tax Code for property taxation purposes in the school district and to each one thousand dollars ($1,000) of the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act and the Oil and Gas Production Equipment Ad Valorem Tax Act. The proceeds of any tax imposed or appropriation made shall be dedicated for current operations and maintenance of a hospital owned and operated by the county or operated and maintained by another party pursuant to a lease with the county.

A county qualifying at any time under this definition shall continue to be qualified as a county and authorized to implement the provisions of the Special County Hospital Gasoline Tax Act;

B. "governing body" means the board of county commissioners of a county; and

C. "person" means:

(1) any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity, including any utility owned or operated by a county, municipality or other political subdivision of the state; or

(2) to the extent permitted by law, the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof.

**History:** Laws 1987, ch. 45, § 11; 1990, ch. 88, § 14.

## ANNOTATIONS

**The 1990 amendment,** effective May 16, 1990, in Subsection A, substituted "Special County Hospital Gasoline Tax Act" for "Special County Hospital Gross Receipts Tax Act" in the second paragraph; deleted former Subsection B which defined " 'department' "; designated former Subsection C as present Subsection B; added present Subsection C; and made a stylistic change.

## 7-24B-3. Use of proceeds.

The proceeds of the special county hospital gasoline tax shall be used for current operations and maintenance of a hospital owned and operated by the county or operated and maintained by another party pursuant to a lease with the county and the use of these proceeds shall be for the care and maintenance of sick and indigent persons and shall be an expenditure for a public purpose.

**History:** Laws 1987, ch. 45, § 12; 2003, ch. 205, § 3; 2005, ch. 338, § 3.

**ANNOTATIONS**

**The 2005 amendment,** effective July 1, 2005, deleted former Subsection B, which provided for a distribution of special county hospital gasoline tax to the largest municipality in certain class B counties for hospital purposes.

**The 2003 amendment,** effective July 1, 2003, added the designation to Subsection A and inserted the exception at the beginning of Subsection A and added Subsection B.

## 7-24B-4. Special county hospital gasoline tax; authorization; imposition; rate.

A. The majority of the members of the governing body of a county may adopt an ordinance imposing a tax of up to two cents ($.02) a gallon on all gasoline sold at retail in the county and upon which gasoline taxes are imposed in accordance with the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978]. The tax imposed by this section is to be referred to as the "special county hospital gasoline tax" and is in addition to the tax imposed in the Gasoline Tax Act.

B. The special county hospital gasoline tax may be imposed by the governing body of a county regardless of whether the county has imposed a tax on gasoline pursuant to the County and Municipal Gasoline Tax Act [Chapter 7, Article 24A NMSA 1978].

C. The special county hospital gasoline tax may be imposed in increments of one cent ($.01) per gallon up to a maximum of two cents ($.02) per gallon. The amount of the tax and the specific purposes for which the proceeds shall be used shall be stated in the ordinance adopted by the governing body of the county.

D. The special county hospital gasoline tax shall be imposed for a period of not more than five years from the effective date of the ordinance imposing the tax. This

authorization may be extended for additional five-year periods provided all requirements for enactment of the first ordinance are met.

**History:** Laws 1987, ch. 45, § 13; 1990, ch. 88, § 15.

**ANNOTATIONS**

**The 1990 amendment,** effective May 16, 1990, substituted "sold at retail in the county" for "received in New Mexico and distributed within the boundaries of the county" in the first sentence of Subsection A.

## 7-24B-5. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 88, § 21 repealed 7-24B-5 NMSA 1978, as enacted by Laws 1987, ch. 45, § 14, relating to procedure for adoption of ordinance, effective May 16, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

## 7-24B-5.1. Registration required.

Each person selling gasoline at retail in a county that imposes a special county hospital gasoline tax shall register with the county as a seller of gasoline at retail.

**History:** 1978 Comp., § 7-24B-5.1, enacted by Laws 1990, ch. 88, § 16.

## 7-24B-6. Ordinance shall conform to certain provisions of the Gasoline Tax Act.

Any ordinance imposing a special county hospital gasoline tax shall contain or adopt by reference the same definitions and the same provisions relating to deductions, refunds and credits as are contained in the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978].

**History:** Laws 1987, ch. 45, § 15; 1990, ch. 88, § 17.

**ANNOTATIONS**

**The 1990 amendment,** effective May 16, 1990, substituted "shall conform" for "must conform" in the section heading and inserted "or adopt by reference".

## 7-24B-7. Referendum requirements.

A. The ordinance shall not go into effect until after an election is held and a simple majority of the qualified electors of the county voting in the election vote in favor of imposing the special county hospital gasoline tax. The governing body shall provide for an election on the question of imposing the tax within sixty days after the date the ordinance is adopted. The question may be submitted to the qualified electors and voted upon as a separate question in a general election or in any special election called for that purpose by the governing body. A special election upon the question shall be called, held, conducted and canvassed in substantially the same manner as provided by law for general elections. If the question of imposing a special county hospital gasoline tax fails, the governing body shall not again propose a special county hospital gasoline tax for a period of one year after the election.

B. A single election may be held on the question of imposing a special county hospital gasoline tax as authorized in the Special County Hospital Gasoline Tax Act, on the question of imposing a special county hospital gross receipts tax as authorized in the Special County Hospital Gross Receipts Tax Act and on the question of imposing a mill levy pursuant to the Hospital Funding Act [Chapter 4, Article 48B NMSA 1978].

**History:** Laws 1987, ch. 45, § 16; 1990, ch. 88, § 18; 1993, ch. 30, § 24.

**ANNOTATIONS**

**Compiler's notes.** — The Special County Hospital Gross Receipts Tax Act, referred to in Subsection B, consisted of former 7-20-19 to 7-20-26 NMSA 1978. Laws 1993, ch. 354, § 13, 14, and 19 recompiled or repealed 7-20-19 to 7-20-26 NMSA 1978. The recompiled sections are currently codified at 7-20E-13 and 7-20E-14 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, deleted the former final sentence of Subsection A which read "A certified copy of any ordinance imposing a special county hospital gasoline tax shall be mailed to the department within five days after the ordinance is adopted in any election called for that purpose."

**The 1990 amendment,** effective May 16, 1990, substituted "Special County Hospital Gasoline Tax Act" for "Special County Gasoline Tax Act" in Subsection B and deleted former Subsection C which read "Any ordinance repealed under the provisions of the Special County Hospital Gasoline Tax Act shall be repealed effective on either July 1, or January 1".

## 7-24B-8. Collection of special county hospital gasoline tax.

The county shall collect the special county hospital gasoline tax imposed by the Special County Hospital Gasoline Tax Act. Every person subject to the imposition of the special county hospital gasoline tax shall file a return on forms provided by and with the information required by the county and shall pay the tax due on or before the twenty-fifth day of the month following the month in which the gasoline is sold at retail within the county.

**History:** Laws 1987, ch. 45, § 17; 1990, ch. 88, § 19.

**ANNOTATIONS**

**The 1990 amendment,** effective May 16, 1990, deleted "by department" following "gasoline tax" and "Transfer of proceeds" at the end of the section heading; deleted the subsection designation "A" and former Subsection B, relating to the charge for administrative costs of collection and the transfer of proceeds of the tax by the department; and, in the present section, substituted "county" for "department" in two places and, in the second sentence, deleted "second" preceding "month following" and substituted "sold at retail within" for "received in New Mexico and distributed within the boundaries of".

## 7-24B-9. Interpretation of Special County Hospital Gasoline Tax Act.

The county shall interpret the provisions of the Special County Hospital Gasoline Tax Act.

**History:** Laws 1987, ch. 45, § 18; 1990, ch. 88, § 20.

**ANNOTATIONS**

**The 1990 amendment,** effective May 16, 1990, substituted "county" for "department".

## 7-24B-10. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 88, § 21 repealed 7-24B-10 NMSA 1978, as enacted by Laws 1987, ch. 45, § 19, relating to imposition of federal regulations, effective May 16, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

# ARTICLE 25
# Resources Excise Tax

## 7-25-1. Short title.

Chapter 7, Article 25 NMSA 1978 may be cited as the "Resources Excise Tax Act".

**History:** 1953 Comp., § 72-16A-20, enacted by Laws 1966, ch. 48, § 1; 1985, ch. 65, § 21.

**ANNOTATIONS**

**Cross references.** — For provisions governing administration and enforcement, *see* 7-1-2 NMSA 1978.

For duty of successor in business with respect to this act, *see* 7-1-61 NMSA 1978 et seq.

**Law reviews.** — For comment, "Approaches to State Taxation of the Mining Industry," see 10 Nat. Resources J. 156 (1970).

For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M. L. Rev. 69 (1976-77).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation §§ 28 to 30, 614.

84 C.J.S. Taxation § 95 et seq.

## 7-25-2. Purpose.

The purpose of the Resources Excise Tax Act is to provide revenue for public purposes by levying a tax on the privilege of severing and processing natural resources within New Mexico.

**History:** 1953 Comp., § 72-16A-21, enacted by Laws 1966, ch. 48, § 2.

**ANNOTATIONS**

**Primary purpose of Resources Excise Tax Act** is to encourage the development of the extractive industries of this state through the imposition of rates that are a fraction of the gross receipts tax (see Sections 7-9-1 to 7-9-81 NMSA 1978). Carter & Sons, Inc. v. N.M. Bureau of Revenue, 1979-NMCA-025, 92 N.M. 591, 592 P.2d 191.

**Taxation of lumber business activities.** — "Road maintenance" and "hauling" are an integral and indispensable part of a taxpayer's activity of severing timber and delivering it to a lumber mill and as such are exempt from the gross receipts tax (see Sections 7-9-1 to 7-9-81 NMSA 1978) by the provisions of Section 7-9-35 NMSA 1978, while being taxable under the Resources Excise Tax Act. Carter & Sons, Inc. v. N.M. Bureau of Revenue, 1979-NMCA-025, 92 N.M. 591, 592 P.2d 191.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 84 C.J.S. Taxation § 95 et seq.

## 7-25-3. Definitions.

As used in the Resources Excise Tax Act:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "natural resource" means timber and any product thereof and any metalliferous or nonmetalliferous mineral product, combination or compound thereof, severed in New Mexico but does not include oil, natural gas, liquid hydrocarbon individually or any combination thereof, carbon dioxide, helium or nonhydrocarbon gas;

C. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity;

D. "processing" means smelting, leaching, refining, reducing, compounding or otherwise preparing for sale or commercial use any natural resource so that its character or condition is materially changed in mills or plants located in New Mexico;

E. "processor" means any person engaging in the business of processing natural resources that the person owns, or any person who is the owner of natural resources and who has another person perform the processing of such natural resources;

F. "service charge" means the total amount of money or the reasonable value of other consideration received for severing or processing any natural resource by any person who is not the owner of the natural resource. However, if the money received does not represent the value of the severing or processing performed, "service charge" means the reasonable value of the severing or processing performed;

G. "severer" means any person engaging in the business of severing natural resources that the person owns, or any person who is the owner of natural resources and who has another person perform the severing of such natural resources;

H. "severing" means mining, quarrying, extracting, felling or producing any natural resource in New Mexico for sale, profit or commercial use; and

I. "taxable value" means the value after severing or processing, without deduction of any kind other than specified in this subsection, of any natural resource severed or processed in New Mexico. It is presumed, in the absence of preponderant evidence of another value, that the taxable value means the total amount of money or the reasonable value of other consideration received for the severed or processed natural resource. However, if the amount of money received does not represent the value of the severed or processed natural resource or if the severed or processed natural resource is not sold, the taxable value shall be the reasonable value of the severed or processed natural resource. All natural resources severed or processed in New Mexico shall be

included in determining taxable value, regardless of the place of sale or the fact that delivery may be made to points outside of New Mexico. If any person shall ship, transmit or transport natural resources out of New Mexico without making sale of them or shall ship, transmit or transport natural resources out of New Mexico in an unfinished condition, the value of the natural resources in the condition in which they existed when shipped, transmitted or transported out of New Mexico and before they enter interstate commerce, without deduction of any kind other than specified in this subsection, shall be the basis for determining the taxable value. Amounts received from selling natural resources, other than metalliferous mineral ores, whether processed or unprocessed, to the United States or any agency or instrumentality thereof, the state of New Mexico or any political subdivision thereof, or to organizations that have demonstrated to the department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501 (c) (3) of the United States Internal Revenue Code of 1954, as amended or renumbered, which employ the natural resource in the conduct of functions described in Section 501 (c) (3) and not in the conduct of an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1954, as amended or renumbered, may be deducted from taxable value. Any royalty or other similar interest, whether payable in cash or in kind, paid to the United States or any agency or instrumentality thereof, or the state of New Mexico or any political subdivision thereof, or any Indian tribe, Indian pueblo or Indian that is a ward of the United States may be deducted from taxable value. In computing taxable value, any owner of natural resources may deduct any service charge on which the service tax imposed by Section 7-25-6 NMSA 1978 is payable.

History: 1953, Comp., § 72-16A-22, enacted by Laws 1966, ch. 48, § 3; 1968, ch. 58, § 1; 1969, ch. 267, § 1; 1970, ch. 14, § 1; 1971, ch. 23, § 1; 1972, ch. 37, § 1; 1977, ch. 249, § 50; 1979, ch. 255, § 1; 1985, ch. 65, § 22; 1986, ch. 20, § 91; 2007, ch. 275, § 3.

## ANNOTATIONS

**Cross references.** — For Sections 501(c)(3) and 513 of the Internal Revenue Code of 1954, *see* 26 U.S.C. §§ 501(c)(3) and 513, respectively.

**The 2007 amendment,** effective July 1, 2007, excluded helium and nonhydrocarbon gas in the definition of "natural resource".

**"Severing" includes incidental development work.** — The exemption from the gross receipts tax provided by Section 7-9-35 NMSA 1978 applies when severing was taking place as the development work was performed and none of taxpayer's work was preliminary to or preparatory for severing; receipts from development work, which includes construction, are exempted from the gross receipts tax and taxable under the service tax provided by Section 7-25-6 NMSA 1978 when such construction work is incidental to the severing. Patten v. Bureau of Revenue, 1974-NMCA-051, 86 N.M. 355, 524 P.2d 527.

**Highway department owns sand and gravel severed from leased pits.** — Highway department is owner of sand and gravel processed or severed from pits it leases from others. J.W. Jones Constr. Co. v. Revenue Div., 1979-NMCA-144, 94 N.M. 39, 607 P.2d 126.

**"Taxable value" includes reimbursements for tax increases.** — When a severer is reimbursed for the amount of a severance tax increase, it must include the reimbursed amount in "taxable value" in figuring the resources tax. In re Ranchers-Tufco Limestone Project Joint Venture, 1983-NMCA-126, 100 N.M. 632, 674 P.2d 522, cert. denied, 100 N.M. 505, 672 P.2d 1136.

**Law reviews.** — For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M. L. Rev. 69 (1976-77).

## 7-25-4. Rate and measure of tax; denomination as "resources tax".

A. For the privilege of severing natural resources, there is imposed on any severer of natural resources in New Mexico an excise tax at the following rates on the taxable value of the natural resources:

(1) all natural resources except potash and molybdenum, three-fourths of one percent;

(2) potash, one-half of one percent; and

(3) molybdenum, one-eighth of one percent.

B. The tax imposed by this section shall be referred to as the "resources tax".

**History:** 1953 Comp., § 72-16A-23, enacted by Laws 1966, ch. 48, § 4; 1970, ch. 8, § 3; 1973, ch. 144, § 1; 1999, ch. 177, § 1; repealed and reenacted by 1999, ch. 177, § 2.

**ANNOTATIONS**

**Cross references.** — For exemption of natural resource on which processors tax is paid, *see* 7-25-7 NMSA 1978.

**1999 amendments.** — Laws 1999, ch. 177, § 1, for tax years beginning July 1, 1999 and ending July 1, 2002, reduced the three-quarters of one percent tax on copper in Subsection A and provided for a resources tax on copper of one-fourth of one percent until July 1, 2002. *See* Laws 1999, ch. 177, § 5 for the applicability of Laws 1999, ch. 177, §§ 1 and 3.

Laws 1999, ch. 177, § 2, applicable for the tax year beginning July 1, 2002, repealed and reenacted 7-25-4 NMSA 1978 to increase the resources tax on copper from one-

fourth of one percent to three-quarters of one percent. *See* Laws 1999, ch. 177, § 6 for the applicability of Laws 1999, ch. 177, §§ 2 and 4.

**Law reviews.** — For comment, "Approaches to State Taxation of the Mining Industry," see 10 Nat. Resources J. 156 (1970).

For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M. L. Rev. 69 (1976-77).

For article, "Evaluating Congressional Limits on a State's Severance Tax Equity Interest in Its Natural Resources: An Essential Responsibility for the Supreme Court," see 22 Nat. Resources J. 673 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation §§ 218, 614.

## 7-25-5. Rate and measure of tax; denomination as "processors tax".

A. For the privilege of processing natural resources, there is imposed on any processor of natural resources in New Mexico an excise tax at the following rates on the taxable value of the natural resources:

(1) all natural resources except timber, potash and molybdenum, three-fourths of one percent;

(2) timber, three-eighths of one percent;

(3) potash, one-eighth of one percent; and

(4) molybdenum, one-eighth of one percent.

B. The tax imposed by this section shall be referred to as the "processors tax".

**History:** 1978 Comp., § 7-25-5, enacted by Laws 1985, (1st S.S.), ch. 3, §§ 1, 2; 1999, ch, 177, § 3; repealed and reenacted by Laws 1999, ch. 177, § 4.

**ANNOTATIONS**

**1999 amendments.** — Laws 1999, ch. 177, § 3, for tax years beginning July 1, 1999 and ending July 1, 2002, reduced the three-quarters of one percent processors tax on copper to one-fourth of one percent. *See* Laws 1999, ch. 177, § 5 for the applicability of Laws 1999, ch. 177, §§ 1 and 3.

Laws 1999, ch. 177, § 4, applicable for the tax year beginning July 1, 2002, repealed and reenacted 7-25-5 NMSA 1978 to increase the processors tax on copper in Subsection A(1)from one-fourth of one percent to three-fourths of one percent. *See* Laws 1999, ch. 177, § 6 for the applicability of Laws 1999, ch. 177, §§ 2 and 4.

**Law reviews.** — For comment, "Approaches to State Taxation of the Mining Industry," see 10 Nat. Resources J. 156 (1970).

For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M. L. Rev. 69 (1976-77).

For article, "Evaluating Congressional Limits on a State's Severance Tax Equity Interest in Its Natural Resources: An Essential Responsibility for the Supreme Court," see 22 Nat. Resources J. 673 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation §§ 218, 614.

84 C.J.S. Taxation § 95 et seq.

## 7-25-6. Rate and measure of tax; denomination as "service tax".

A. For the privilege of severing or processing in New Mexico natural resources that are owned by another person and are not otherwise taxed by Sections 7-25-4 and 7-25-5 NMSA 1978, there is imposed on the service charge of any person severing or processing natural resources that are owned by another person an excise tax at the same rate that would be imposed on an owner of natural resources for performing the same function.

B. The tax imposed by this section shall be referred to as the "service tax".

**History:** 1953 Comp., § 72-16A-25, enacted by Laws 1966, ch. 48, § 6; 1993, ch. 30, § 25.

**ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, substituted "Sections 7-25-4 and 7-25-5 NMSA 1978" for "Sections 4 and 5 of the Resources Excise Tax Act" in Subsection A.

**Severance alone does not give rise to taxable event.** Yankee Atomic Elec. Co. v. N.M. & Ariz. Land Co., 632 F.2d 855 (10th Cir. 1980).

**Severance and sale, transportation or consumption triggers tax.** — Severance, coupled with the sale, transportation out of New Mexico, or consumption thereof triggers the imposition of the tax. Yankee Atomic Elec. Co. v. N.M. & Ariz. Land Co., 632 F.2d 855 (10th Cir. 1980).

**Receipts from development work incidental to severing taxable under this section.** — The exemption from the gross receipts tax provided by Section 7-9-35 NMSA 1978 applies when severing was taking place as the development work was performed and none of taxpayer's work was preliminary to or preparatory for severing; receipts from development work, which includes construction, are exempted from the gross receipts tax and taxable under the service tax provided by this section when such construction work is incidental to the severing. Patten v. Bureau of Revenue, 86 N.M. 355, 524 P.2d 527 (Ct. App. 1974).

**Law reviews.** — For comment, "Approaches to State Taxation of the Mining Industry," see 10 Nat. Resources J. 156 (1970).

For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M.L. Rev. 69 (1976-77).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation §§ 218, 614.

## 7-25-7. Exemption; resources tax.

Exempted from the resources tax is the taxable value of any natural resource that is processed in New Mexico and on whose taxable value the processors tax is paid.

**History:** 1953 Comp., § 72-16A-26, enacted by Laws 1966, ch. 48, § 7.

**ANNOTATIONS**

**Cross references.** — For resources tax, *see* 7-25-4 NMSA 1978.

For processors tax, *see* 7-25-5 NMSA 1978.

## 7-25-8. Sales of natural resources subject to Gross Receipts and Compensating Tax Act.

In addition to being subject to the Resources Excise Tax Act, any person who sells nonfissionable natural resources other than for subsequent sale in the ordinary course of business or for use as an ingredient or component part of a manufactured product is

also subject to the provisions of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] on such sales.

**History:** 1953 Comp., § 72-16A-27, enacted by Laws 1966, ch. 48, § 8; 1984, ch. 2, § 8.

**ANNOTATIONS**

**Cross references.** — For exception to exemption from gross receipts tax of persons liable for resources excise tax, *see* 7-9-35 NMSA 1978.

## 7-25-9. Date payment due.

The taxes imposed by the Resources Excise Tax Act are to be paid on or before the twenty-fifth day of the month following the month in which the first of the following occurs: sale, transportation out of New Mexico or consumption.

**History:** 1953 Comp., § 72-16A-28, enacted by Laws 1966, ch. 48, § 9; 1970, ch. 43, § 1; 1977, ch. 235, § 1.

**ANNOTATIONS**

**Cross references.** — For deposit of receipts in suspense fund, *see* 7-1-6 NMSA 1978.

# ARTICLE 26
# Severance Tax

## 7-26-1. Short title.

Sections 7-26-1 through 7-26-8 NMSA 1978 may be cited as the "Severance Tax Act".

**History:** Laws 1971, ch. 65, § 1; 1953 Comp., § 72-18-1; Laws 1977, ch. 102, § 3; 1985, ch. 65, § 23.

**ANNOTATIONS**

**Cross references.** — For provisions governing administration and enforcement, *see* 7-1-2 NMSA 1978.

For oil and gas severance tax, *see* 7-29-1 to 7-29-23 NMSA 1978.

**Law reviews.** — For comment, "Approaches to State Taxation of the Mining Industry," see 10 Nat. Resources J. 156 (1970).

For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M.L. Rev. 69 (1976-77).

For comment, "Constitutional Limitations On State Severance Taxes," see 20 Nat. Resources J. 887 (1980).

For comment, "An Outline For Development of Cost-Based State Severance Taxes," see 20 Nat. Resources J. 913 (1980).

For article, "Evaluating Congressional Limits on a State's Severance Tax Equity Interest in Its Natural Resources: An Essential Responsibility for the Supreme Court," see 22 Nat. Resources J. 673 (1982).

For article, "State Policies and Practices in Coal Severance Taxation," see 27 Nat. Resources J. 591 (1987).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation § 614.

Tax on severance of natural resources from soil, 32 A.L.R. 827.

Severance tax as property tax or privilege tax, 103 A.L.R. 35.

## 7-26-2. Definitions.

As used in the Severance Tax Act:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "natural resource" means timber and any metalliferous or nonmetalliferous mineral product, combination or compound thereof but does not include oil, natural gas, liquid hydrocarbon, individually or any combination thereof, or carbon dioxide;

C. "severer" means any person engaging in the business of severing natural resources that the person owns or any person who is the owner of natural resources and has another person perform the severing of such natural resources;

D. "severing" means mining, quarrying, extracting, felling or producing any natural resources in New Mexico;

E. "owner", when used in connection with the severing of any of the natural resources covered by the Severance Tax Act under any lease or contract with the state or United States, includes any person having the right to sever those resources; and

F. "director" or "secretary" means the secretary of taxation and revenue.

**History:** Laws 1937, ch. 103, § 2; C.S. 1929, § 97-4A-102; 1941 Comp., § 76-1302; Laws 1949, ch. 65, § 2; 1951, ch. 24, § 1; 1953 Comp., § 72-18-2; Laws 1957, ch. 79, § 1; 1959, ch. 52, § 27; 1961, ch. 98, § 2; 1970, ch. 8, § 2; 1974, ch. 61, § 1; 1977, ch. 102, § 4; 1985, ch. 65, § 24; 1986, ch. 20, § 92.

**ANNOTATIONS**

**Law reviews.** — For comment, "Constitutional Limitations On State Severance Taxes," see 20 Nat. Resources J. 887 (1980).

For comment, "An Outline For Development of Cost-Based State Severance Taxes," see 20 Nat. Resources J. 913 (1980).

For article, "State Policies and Practices in Coal Severance Taxation," Nat. Resources J. 591 (1987).

## 7-26-3. Imposition of tax; denomination as "severance tax".

For the privilege of severing natural resources, there is imposed on any severer of natural resources in New Mexico an excise tax on the taxable value or the quantity of natural resources severed and saved by or for him as determined under, and at the rates provided in the Severance Tax Act. The tax imposed by this section shall be known as the "severance tax".

**History:** 1953 Comp., § 72-18-3, enacted by Laws 1971, ch. 65, § 5; 1977, ch. 102, § 5.

**ANNOTATIONS**

**Responsibility for payment attaches at time of sale.** — The legal incidence or the responsibility for the payment of the severance tax attaches at the time that a sale is made. United Nuclear Corp. v. Revenue Div., 1982-NMCA-067, 98 N.M. 296, 648 P.2d 335, cert. denied, 98 N.M. 336, 648 P.2d 794.

**Responsibility for payment falls upon severer of resource.** — The legal incidence or the responsibility for the payment of the tax falls on the taxpayer who is the severer of the natural resource. United Nuclear Corp. v. Revenue Div., 1982-NMCA-06798 N.M. 296, 648 P.2d 335, cert. denied, 98 N.M. 336, 648 P.2d 794.

**Law reviews.** — For comment, "Approaches to State Taxation of the Mining Industry," see 10 Nat. Resources J. 156 (1970).

For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M.L. Rev. 69 (1976-77).

For article, " 'New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 Nat. Resources J. 283 (1977).

For comment, "Constitutional Limitations On State Severance Taxes," see 20 Nat. Resources J. 887 (1980).

For comment, "An Outline For Development of Cost-Based State Severance Taxes," see 20 Nat. Resources J. 913 (1980).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation § 614.

Tax on severance of natural resources from soil, 32 A.L.R. 827.

Severance tax as property tax or privilege tax, 103 A.L.R. 35.

## 7-26-4. Determination of taxable value of natural resources.

A. Except as otherwise provided in Subsections C, E, F and G of this section, the "taxable event" is the severance of a natural resource whose taxable value is determined under the provisions of this section.

B. For all natural resources except potash or potash products described under Subsection C of this section, molybdenum or molybdenum products described under Subsection D of this section, copper, lead or zinc described in Subsection E of this section, gold described in Subsection F of this section, silver described in Subsection G of this section, coal and uranium, the gross value of the natural resource is the sales value of the severed and saved product at the first marketable point without any deductions, except that:

(1) for those products having a posted field or market price at the point of production, the gross value is its posted field or market price, except that the gross value of potash is forty percent of the posted field or market price, less those expenses of hoisting, crushing and loading necessary to place the severed product in marketable form and at a marketable place, but the allowable deductions for hoisting, loading and crushing shall not exceed fifty percent of the posted field or market price; and

(2) for those products that must be processed or beneficiated before sale, the gross value is the sales value after deducting freight charges from the point of severance to the point of first sale and the cost of processing or beneficiation.

C. The gross value for each type of potash and potash product requiring processing or beneficiation (other than sizing), regardless of the form in which the product is actually sold, shall be thirty-three and one-third percent of the proceeds realized from the sale of muriate of potash and sulphate of potash magnesia, as standard grades, and thirty-three and one-third percent of the value of such products consumed in the production of other potash products, less fifty percent of such reported value as a deduction for expenses of hoisting, loading, crushing, processing and beneficiation. For purposes of this subsection, the taxable event occurs when products are sold or consumed. Any potash or potash products, the value of which is computed under this subsection, shall not also have their value computed by the use of any of the provisions of Subsection B of this section.

D. The gross value for each type of molybdenum and molybdenum product requiring processing or beneficiation, regardless of the form in which the product is actually sold, shall be the value of molybdenum contained in concentrates shipped or sold from a mine site, but in no event a value less than the value that bona fide sales which reflect current market conditions would yield for the same quantity of molybdenum products contained in concentrates at the mine site, less fifty percent of that value as a deduction for the expenses of hoisting, loading, crushing, processing and beneficiation.

E. The gross value for copper, lead and zinc shall be sixty-six and two-thirds percent of the sales value established from published price data, as further described in this subsection, of the quantity of copper, lead or zinc recoverable from the concentrate or other product which is sold or is shipped, transmitted or transported out of New Mexico without sale, less fifty percent of the sales value as a deduction for the expenses of hoisting, loading, crushing, processing and beneficiation. For purposes of this subsection, the taxable event occurs when the severer sells copper, lead or zinc in New Mexico or when the severer ships, transmits or transports copper, lead or zinc out of New Mexico without first making sale of it. The secretary shall designate by regulation which published price index shall be used to establish the sales value for each resource. The sales value for each resource shall be the monthly average price published for each resource for the month in which the taxable event occurs. When the taxable event is sale, the recoverable quantity of copper, lead or zinc shall be reported as the provisional quantity determined by presale assay, and the reported quantity may be adjusted in a report filed after final assay, if necessary. When the taxable event is shipment, transmission or transportation out of New Mexico without sale, the recoverable quantity of copper, lead or zinc shall be reported as the provisional quantity determined after preshipment assay. Copper, lead or zinc shall not be considered saved for the purposes of the Severance Tax Act unless the copper, lead or zinc can economically be separated and saved from the dominant resource, which is the resource subject to sale by the severer. Any copper, lead or zinc the value of which is

computed under this subsection shall not also have its value computed by the use of any of the provisions of Subsection B of this section.

F. The gross value for gold shall be the sales value established from published price data, as further described in this subsection, of the quantity of gold recoverable from the concentrate or other product which is sold or is shipped, transmitted or transported out of New Mexico without sale, less fifty percent of the sales value as a deduction for the expenses of hoisting, loading, crushing, processing and beneficiation. For purposes of this subsection, the taxable event occurs when the severer sells gold in New Mexico or when the severer ships, transmits or transports gold out of New Mexico without first making sale of it. The secretary shall designate by regulation which published price index shall be used to establish the sales value for gold. The sales value for gold shall be the monthly average price published for gold for the month in which the taxable event occurs. When the taxable event is sale, the recoverable quantity of gold shall be reported as the provisional quantity determined by presale assay, and the reported quantity may be adjusted in a report filed after final assay, if necessary. When the taxable event is shipment, transmission or transportation out of New Mexico without sale, the recoverable quantity of gold shall be reported as the provisional quantity determined after preshipment assay. For purposes of the Severance Tax Act, gold shall not be considered saved unless the gold can economically be separated and saved from the dominant resource, which is the resource subject to sale by the severer. Any gold the value of which is computed under this subsection shall not also have its value computed by the use of any of the provisions of Subsection B of this section.

G. The gross value for silver shall be eighty percent of the sales value established from published price data, as further described in this subsection, of the quantity of silver recoverable from the concentrate or other product which is sold or is shipped, transmitted or transported out of New Mexico without sale, less fifty percent of the sales value as a deduction for the expenses of hoisting, loading, crushing, processing and beneficiation. For purposes of this subsection, the taxable event occurs when the severer sells silver in New Mexico or when the severer ships, transmits or transports silver out of New Mexico without first making sale of it. The secretary shall designate by regulation which published price index shall be used to establish the sales value for silver. The sales value for silver shall be the monthly average price published for silver for the month in which the taxable event occurs. When the taxable event is sale, the recoverable quantity of silver shall be reported as the provisional quantity determined by presale assay, and the reported quantity may be adjusted in a report filed after final assay, if necessary. When the taxable event is shipment, transmission or transportation out of New Mexico without sale, the recoverable quantity of silver shall be reported as the provisional quantity determined after preshipment assay. For purposes of the Severance Tax Act, silver shall not be considered saved unless the silver can economically be separated and saved from the dominant resource, which is the resource subject to sale by the severer. Any silver the value of which is computed under this subsection shall not also have its value computed by the use of any of the provisions of Subsection B of this section.

H. The taxable value of all severed natural resources except coal and uranium is the gross value of the severed resource determined under this section less rental or royalty payments belonging to the United States or the state.

I. The taxable value to be reported for severed and saved uranium-bearing material is the sales price per pound of the content of U3O8 contained in the severed and saved or processed uranium, regardless of the form in which the product is actually disposed of, reduced by fifty percent for the purposes of Section 7-26-7 NMSA 1978. It is presumed, in the absence of preponderant evidence of another value, that the sales price means the total amount of money and the reasonable value of other consideration received, or either of them, for the severed and saved uranium ore or processed uranium "yellowcake" concentrate without deduction of any kind. However, if the severed and saved uranium ore or "yellowcake" concentrate is not sold as ore or concentrate, the sales price shall be the value of U3O8 in ore or "yellowcake" concentrate represented in the final product.

**History:** Laws 1971, ch. 65, § 6; 1953 Comp., § 72-18-4; Laws 1972, ch. 47, § 2; 1977, ch. 102, § 6; 1981, ch. 169, § 1; 1983, ch. 210, § 1; 1984, ch. 84, § 1; 1986, ch. 20, § 93.

## ANNOTATIONS

**Taxable value of uranium-bearing material not affected by results of milling. —** Taxable value of severed, uranium-bearing material should be determined on the basis of the U3O8 content of severed and saved raw ore when raw ore is sold; the U3O8 later lost in the milling process is not involved. In re Ranchers-Tufco Limestone Project Joint Venture, 1983-NMCA-126, 100 N.M. 632, 674 P.2d 522, cert. denied, 100 N.M. 505, 672 P.2d 1136.

**Responsibility for payment attaches at time of sale. —** The legal incidence or the responsibility for the payment of the severance tax attaches at the time that a sale is made. United Nuclear Corp. v. Revenue Div., 1982-NMCA-067, 98 N.M. 296, 648 P.2d 335, cert. denied, 98 N.M. 336, 648 P.2d 794.

**"Taxable value" includes all monies received. —** The taxpayer must include in the taxable value all monies received, including the amount of severance tax that it has billed its customers. United Nuclear Corp. v. Revenue Div., 1982-NMCA-067, 98 N.M. 296, 648 P.2d 335, cert. denied, 98 N.M. 336, 648 P.2d 794.

**Tax assessment to include reimbursements for tax increases. —** A severance tax assessment should include any amount that is reimbursed to the severer due to an increase in the severance tax. In re Ranchers-Tufco Limestone Project Joint Venture, 1983-NMCA-126, 100 N.M. 632, 674 P.2d 522, cert. denied, 100 N.M. 505, 672 P.2d 1136.

Oil and gas taxes imposed by the state against a non-Indian producer whose operations are located on an Indian reservation do not constitute an impermissible burden on interstate commerce. Cotton Petroleum v. State, 1987-NMCA-121, 106 N.M. 517, 745 P.2d 1170, cert. quashed, 106 N.M. 511, 745 P.2d 1159, *aff'd*, 490 U.S. 163, 109 S. Ct. 1698, 104 L. Ed. 2d 209 (1989).

**Law reviews.** — For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M.L. Rev. 69 (1976-77).

For comment, "Constitutional Limitations On State Severance Taxes," see 20 Nat. Resources J. 887 (1980).

For comment, "An Outline For Development of Cost-Based State Severance Taxes," see 20 Nat. Resources J. 913 (1980).

## 7-26-5. Tax rates on severed natural resources except coal and uranium.

The severance tax is imposed at the following rates on the taxable value determined under Section 7-26-4 NMSA 1978 of the following natural resources:

A. potash 2 1/2%

B. copper 1/2%

C. timber 1/8%

D. pumice, gypsum, sand, gravel, clay, fluorspar and other nonmetallic minerals 1/8%

E. lead, zinc, thorium, molybdenum, manganese, rare earth and other metals 1/8%

F. gold and silver 1/5%

**History:** 1953 Comp., § 72-18-5, enacted by Laws 1977, ch. 102, § 7; 1984, ch. 84, § 2.

**ANNOTATIONS**

**Repeals.** — Laws 1971, ch. 65, § 7, repealed former 72-18-5, 1953 Comp., relating to security to insure compliance with severance tax provisions.

**Law reviews.** — For comment, "Constitutional Limitations On State Severance Taxes," see 20 Nat. Resources J. 887 (1980).

For comment, "An Outline for Development of Cost-Based State Severance Taxes," see 20 Nat. Resources J. 913 (1980).

## 7-26-6. Severance tax on coal; surtax.

A. The severance tax on coal is measured by the quantity of coal severed and saved. The taxable event is sale, transportation out of New Mexico or consumption of the coal, whichever first occurs. Upon each short ton (two thousand pounds) of coal severed and saved, there shall be imposed on the severer a severance tax. For the period commencing on July 1, 1982, the severance tax rate shall be:

(1) surface coal, fifty-seven cents ($.57); and

(2) underground coal, fifty-five cents ($.55).

B. The severance tax on coal shall be increased by a surtax, hereby imposed. The surtax shall be imposed on the unit of quantity of such product or natural resource at the following rates:

(1) surface coal, sixty cents ($.60); and

(2) underground coal, fifty-eight cents ($.58).

C. The surtax rate on coal shall be increased on July 1, 1994, and on July 1 of each succeeding year by an amount equal to the product of the dollar amount of the severance tax imposed on each ton of coal by a percentage equal to the percentage rise in the producer price index for coal from the calendar year 1992 to the calendar year just prior to the year in which the surtax rates are computed, but in no case shall the surtax rate be decreased. The rates so computed shall be computed by the department in April of 1994 and in April of each year thereafter and published on or before May 1, 1994 and on or before May 1 of each year thereafter.

If the producer price index for coal is substantially revised or if the base year used as an index of one hundred is changed, the department shall make an adjustment in the percentage used to compute the surtax rates that would produce results equivalent, as nearly as possible, to those that would have been obtained if the producer price index for coal had not been so revised or if the base year had not been changed. If this index ceases to become available, then a comparable index based upon changes in the price of coal shall be adopted by the department by regulation.

D. As used in this section:

(1) "producer price index for coal" means the commodity code 05-1 as reported annually by the bureau of labor statistics at the United States department of labor in their annual producer price indexes data;

(2) "surface coal" means coal that is severed using surface mining methods;

(3) "surface mining" means the extraction of coal from the earth by removing the material overlying a coal seam and then removing the coal by common methods, including, but not limited to, contour mining, strip mining, mountain top removal mining, box cut mining, open pit mining and area mining; and

(4) "underground coal" means all coal that is not surface coal.

**History:** 1978 Comp., § 7-26-6, enacted by Laws 1982, ch. 77, § 1; 1989, ch. 261, § 1; 1993, ch. 89, § 1.

**ANNOTATIONS**

**Cross references.** — For intergovernmental coal severance tax credit, *see* 7-29C-2 NMSA 1978.

For conservation tax on coal, *see* 7-30-1 to 7-30-27 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, substituted "1994" for "1993" in three places and "1992" for "1991" in one place in the first paragraph of Subsection C; substituted "producer price index for coal" for "consumer price index" in the first and second paragraphs of Subsection C; deleted the former first sentence of the second paragraph of Subsection C defining "consumer price index" and substituted "If the producer price index for coal" for "If the manner in which the consumer price index is determined" at the beginning of the current second paragraph of Subsection C; inserted current Paragraph (1) and redesignated former Paragraphs (1) to (3) as Paragraphs (2) to (4) in Subsection D; deleted "auger mining" following "strip mining" in Paragraph (3) of Subsection D; and made minor stylistic changes.

**The 1989 amendment,** effective July 1, 1989, added "; surtax" to the section heading; in Subsection A deleted former Paragraph (1) which read: "for the period ending June 30, 1982, the tax rate shall be fifty-seven cents ($.57)", restructured former Paragraph (2) as the fourth sentence, redesignated former Subparagraphs (a) and (b) as Paragraphs (1) and (2), and made minor stylistic changes; added Subsections B and C; and redesignated former Subsection C as Subsection D.

**Law reviews.** — For comment, "Constitutional Limitations On State Severance Taxes," see 20 Nat. Resources J. 887 (1980).

For comment, "An Outline For Development of Cost-Based State Severance Taxes," see 20 Nat. Resources J. 913 (1980).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Classification of coal for purposes of taxation, 24 A.L.R. 1225.

## 7-26-6.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-26-6.1 NMSA 1978, as enacted by Laws 1980, ch. 62, § 9, relating to a credit for the payment of additional coal severance taxes, effective July 1, 1985.

## 7-26-6.2. Coal surtax exemption; qualification requirements.

A. The following coal is exempt from the surtax imposed on coal under the provisions of Section 7-26-6 NMSA 1978:

(1) coal sold and delivered pursuant to coal sales contracts that are entered into on or after July 1, 1990, under which deliveries start after July 1, 1990, if the sales contracts are not the result of:

(a) a producer and purchaser mutually rescinding an existing contract and negotiating a revised contract under substantially similar terms and conditions;

(b) a purchaser establishing an affiliated company to purchase coal on behalf of the purchaser; or

(c) a purchaser independently abrogating a contract that was in effect on July 1, 1990 with a producer for the purpose of securing the benefits of the exemption granted by this section; and

(2) coal sold and delivered pursuant to a contract in effect on July 1, 1990 that exceeds the average calendar year deliveries under the contract during production years 1987, 1988 and 1989 or the highest contract minimum during 1987, 1988 and 1989, whichever is greater.

B. If a contract existing on July 1, 1990 is renegotiated between a producer and a purchaser after May 20, 1992 and if that renegotiated contract requires the purchaser to take annual coal deliveries in excess of the greater of the average calendar year deliveries under the contract during production years 1987, 1988 and 1989 or the highest contract minimum during 1987, 1988 and 1989, the surtax imposed by Subsection B of Section 7-26-6 NMSA 1978 shall not apply to such excess deliveries for the remaining term of the renegotiated contract.

C. For coal exempt under the provisions of Paragraph (2) of Subsection A of this section, if the contract involved was for a lesser term during the production years specified, then actual deliveries shall be annualized to establish average calendar year deliveries, and in the event that coal sold and delivered in a calendar year after June 30, 2009 falls below the average calendar year deliveries during 1987, 1988 and 1989, the exemption shall no longer apply unless the deliveries are reduced due to causes beyond the reasonable control of either party to the contract.

D. The taxpayer, prior to taking the exemption provided by this section, shall register any contract for the sale of coal that qualifies for the exemption from the surtax under the provisions of this section with the department on forms provided by the secretary. If upon examination of the contract or upon audit or inspection of transactions occurring under the contract the secretary or the secretary's delegate determines that a person who is a party to the contract has taken an action to circumvent the intent and purpose of this section, the exemption shall be disallowed.

**History:** 1978 Comp., § 7-26-6.2, enacted by Laws 1990, ch. 83, § 1 and Laws 1990, ch. 84, § 1; 1992, ch. 65, § 1; 1992, ch. 115, § 1; 1994, ch. 73, § 1; 1995, ch. 53, § 1; 1997, ch. 61, § 1; 1999, ch. 86, § 1.

**ANNOTATIONS**

**The 1999 amendment,** effective June 18, 1999, in Subsection A, deleted "until July 1, 2009" following "is exempt" in the introductory language, and "and before June 30, 1999" following "July 1, 1990" in Paragraph (1); in Subsection B, deleted "prior to June 30, 1999 and" following "a purchaser" near the beginning and "or until July 1, 2009, whichever occurs first" at the end; in Subsection C, substituted "June 30, 2009" for "June 30, 1999"; and made minor stylistic changes.

**The 1997 amendment,** effective June 20, 1997, substituted "1999" for "1997" following "June 30," in Subsection B.

**The 1995 amendment,** effective June 16, 1995, substituted "June 30, 1997" for "June 30, 1995" in Paragraph (1) of Subsection A and in Subsections B and C.

**The 1994 amendment,** effective July 1, 1994, substituted "1995" for "1994" in Paragraph A(1), in the first sentence of Subsection B, and in Subsection C; substituted "May 20, 1992" for "effective date of this 1992 act" in Subsection B; and deleted "taxation and revenue" preceding "department" in the first sentence of Subsection D.

**The 1992 amendment,** effective May 20, 1992, substituted "highest contract minimum during 1987, 1988 and 1989, whichever is greater" for "contract minimum, whichever is greater" in Subsection A(2) and rewrote Subsection B. Laws 1992, ch. 65, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 1992, ch. 115, § 1. *See* 12-1-8 NMSA 1978.

## 7-26-7. Severance tax on uranium.

The severance tax on uranium is measured by the quantity of U3O8 contained in and recoverable from severed and saved uranium-bearing material whether that material is ore or solution, measured in a standard manner established by regulation of the director. The taxable event is the sale, transportation out of New Mexico or consumption of the uranium-bearing material, whichever first occurs. Upon each pound of severed and saved U3O8 contained in severed uranium-bearing material, there shall

be collected from the severer a severance tax equal to three and one-half percent of taxable value.

**History:** 1953 Comp., § 72-18-7, enacted by Laws 1977, ch. 102, § 9; 1980, ch. 62, § 2; 1981, ch. 169, § 2; 1983, ch. 210, § 2; 1985, ch. 65, § 25.

## ANNOTATIONS

**Repeals.** — Laws 1971, ch. 65, § 7, repealed former 72-18-7, 1953 Comp., relating to deducting severance taxes from royalties, etc.

**Cross references.** — For conservation tax on uranium, *see* 7-30-1 to 7-30-27 NMSA 1978.

**Severance alone does not give rise to taxable event.** Yankee Atomic Elec. Co. v. N.M. & Ariz. Land Co., 632 F.2d 855 (10th Cir. 1980).

**Severance coupled with sale, transportation or consumption triggers tax.** — Severance, coupled with the "sale, transportation out of New Mexico, or consumption" triggers the imposition of the tax. Yankee Atomic Elec. Co. v. N.M. & Ariz. Land Co., 632 F.2d 855 (10th Cir. 1980).

**"Taxable value" includes all moneys received.** — The taxpayer must include in the taxable value all moneys received, including the amount of severance tax that it has billed its customers. United Nuclear Corp. v. Revenue Div., 1982-NMCA-067, 98 N.M. 296, 648 P.2d 335, cert. denied, 98 N.M. 336, 648 P.2d 794.

**Taxable value of uranium-bearing material not affected by results of milling.** — Taxable value of severed uranium-bearing material should be determined on the basis of the U3O8 content of severed and saved raw ore when raw ore is sold; the U3O8 later lost in the milling process is not involved. In re Ranchers-Tufco Limestone Project Joint Venture, 1983-NMCA-126, 100 N.M. 632, 674 P.2d 522, cert. denied, 100 N.M. 505, 672 P.2d 1136.

**Law reviews.** — For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M.L. Rev. 69 (1976-77).

For article, "Nonneutral Features of Energy Taxation," see 20 Nat. Resources J. 853 (1980).

For comment, "Constitutional Limitations On State Severance Taxes," see 20 Nat. Resources J. 887 (1980).

For comment, "An Outline For Development of Cost-Based State Severance Taxes," see 20 Nat. Resources J. 913 (1980).

## 7-26-7.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-26-7.1 NMSA 1978, as enacted by Laws 1980, ch. 62, § 10, relating to temporary credit for a uranium producer, effective July 1, 1985.

## 7-26-8. Date payment of tax due.

The severance tax is to be paid on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

**History:** 1953 Comp., § 72-18-8, enacted by Laws 1977, ch. 102, § 10.

**ANNOTATIONS**

**Repeals.** — Laws 1971, ch. 65, § 7, repealed former 72-18-8, 1953 Comp., relating to deduction of severance taxes by purchasers.

**Cross references.** — For deposit of receipts from taxes in severance tax bonding fund, *see* 7-27-2 NMSA 1978.

**Law reviews.** — For comment, "Constitutional Limitations On State Severance Taxes," see 20 Nat. Resources J. 887 (1980).

For comment, "An Outline For Development of Cost-Based State Severance Taxes," see 20 Nat. Resources J. 913 (1980).

## 7-26-9. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 261, § 2 repealed 7-26-9 NMSA 1978, as amended by Laws 1987, ch. 315, § 1, relating to severance tax surtax, effective July 1, 1989.

Laws 1971, ch. 65, § 7, repealed former 72-18-9, 1953 Comp., relating to deduction of severance taxes by purchasers and requiring reports and payment of deductions.

## 7-26-10, 7-26-11. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 70, § 23 repealed 7-26-10 and 7-26-11 NMSA 1978, as enacted by Laws 1977, ch. 102, § 1 and Laws 1980, ch. 62, § 12, relating to the

purpose of this article and a temporary provision prohibiting double taxation under the provisions of this article, effective July 1, 1995. For provisions of former sections, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

# ARTICLE 27
# Severance Tax Bonding Act

## 7-27-1. Short title.

Sections 7-27-1 through 7-27-27 NMSA 1978 may be cited as the "Severance Tax Bonding Act".

**History:** 1953 Comp., § 72-18-29, enacted by Laws 1961, ch. 5, § 2; 2000, ch. 97, § 1.

**ANNOTATIONS**

**The 2000 amendment,** effective May 17, 2000, substituted "Sections 7-27-1 through 7-27-27 NMSA 1978" for "This act".

**Law reviews.** — For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For article, "New Mexico Taxes: Taking Another Look," see 32 N.M.L. Rev. 351 (2002).

## 7-27-2. Severance tax bonding fund created.

There is created the "severance tax bonding fund" into which shall be distributed, in accordance with the Tax Administration Act [Chapter 7, Article 1 NMSA 1978], the net receipts from taxes levied upon natural resource products severed and saved from the soil in accordance with the provisions of the Severance Tax Act [7-26-1 through 7-26-8 NMSA 1978] and the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978] and into which shall be deposited such other money as the legislature may from time to time determine.

**History:** 1953 Comp., § 72-18-30, enacted by Laws 1961, ch. 5, § 3; 1973, ch. 294, § 1; 1985, ch. 65, § 26.

**ANNOTATIONS**

**Cross references.** — For transfers from severance tax bonding fund to severance tax permanent fund, *see* 7-27-8 NMSA 1978.

**Reappropriation of unexpended severance tax bond proceeds.** — The legislature can reappropriate the balance of unexpended severance tax bond proceeds for purposes other than the purpose specified in the legislation originally authorizing the

issuance and sale of the bonds, but only if the proceeds have not reverted to the severance tax bond fund and it is determined by bond counsel that the bondholders are not adversely affected by the reappropriation. 1991 Op. Att'y Gen. No. 91-01.

## 7-27-3. Severance tax permanent fund created.

There is created in the state treasury the "severance tax permanent fund".

**History:** 1953 Comp., § 72-18-30.1, enacted by Laws 1973, ch. 294, § 2; 1996, ch. 3, § 1.

**ANNOTATIONS**

**The 1996 amendment,** effective upon certification by the secretary of state that the proposed amendments to art. 8, § 10 and art. 12, §§ 2, 4, and 7 of the New Mexico Constitution have passed, substituted "fund created" for "and income funds" in the section heading, substituted "is" for "are" preceding "created in", and deleted "and the 'severance tax income fund'" from the end of the section. Those constitutional amendments, proposed by S.J.R. No. 2 (Laws 1996), were adopted at the general election held November 5, 1996, by a vote of 307,442 for and 153,021 against.

## 7-27-3.1. Transfer of investment powers.

The functions, powers and duties vested by law relating to the investment or reinvestment of money and the purchase, sale or exchange of investments or securities of the severance tax permanent fund are transferred to the council. The state treasurer shall maintain custody of the severance tax permanent fund but shall at all times render the fund or any part of it available for investment in accordance with the provisions of Sections 7-27-1 through 7-27-48 NMSA 1978.

**History:** 1978 Comp., § 7-27-3.1, enacted by Laws 1983, ch. 306, § 5.

## 7-27-3.2. Definition.

As used in Sections 7-27-1 through 7-27-48 NMSA 1978, "council" means the state investment council.

**History:** 1978 Comp., § 7-27-3.2, enacted by Laws 1983, ch. 306, § 6.

## 7-27-3.3. Severance tax permanent fund; annual distributions.

The secretary of finance and administration shall make annual distributions from the severance tax permanent fund in the amount authorized by and calculated pursuant to the provisions of Article 8, Section 10 of the constitution of New Mexico. One-twelfth of

the amount authorized to be distributed in a fiscal year shall be distributed each month to the general fund.

**History:** Laws 1999, ch. 88, § 1.

## 7-27-4. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1996, ch. 3, § 3, repealed 7-27-4 NMSA 1978, as amended by Laws 1986, ch. 20, § 94, relating to disposition of income from the severance tax permanent fund, effective upon certification by the secretary of state that the proposed amendments to art. 8, § 10 and art. 12, §§ 2, 4, and 7 of the New Mexico Constitution have passed. Those constitutional amendments, proposed by S.J.R. No. 2 (Laws 1996), were adopted at the general election held November 5, 1996, by a vote of 307,442 for and 153,021 against. For provisions of former section, *see* the 1995 NMSA 1978 on *NMOneSource.com.*

## 7-27-5. Investment of severance tax permanent fund.

The severance tax permanent fund shall be invested in separate differential rate and market rate investment classes. "Differential rate investments" are permitted in Sections 7-27-5.3 through 7-27-5.5, 7-27-5.13 through 7-27-5.17, 7-27-5.22 and 7-27-5.24 through 7-27-5.26 NMSA 1978 and are intended to stimulate the economy of New Mexico and to provide income to the severance tax permanent fund. "Market rate investments" are investments that are not differential rate investments and are intended to provide income to the severance tax permanent fund. All market rate investments and differential rate investments shall be invested in accordance with the Uniform Prudent Investor Act [45-7-601 through 45-7-612 NMSA 1978] and shall be accounted for in accordance with generally accepted accounting principles.

**History:** 1978 Comp., § 7-27-5, enacted by Laws 1983, ch. 306, § 7; 1987, ch. 219, § 1; 1988, ch. 133, § 2; 1988, ch. 134, § 6; 1989, ch. 265, § 2; 1990, ch. 126, § 2; 1990, ch. 127, § 9; 1990 (2nd S.S.), ch. 3, § 1; 1991, ch. 83, § 2; 1995, ch. 215, § 1; 1997, ch. 178, § 2; 2000, ch. 5, § 3; 2000 (2nd S.S.), ch. 6, § 1; 2005, ch. 240, § 3.

**ANNOTATIONS**

**Cross references.** — For investment of state funds generally, see 6-8-1 to 6-8-18, 6-10-10 NMSA 1978.

**The 2005 amendment,** effective July 1, 2005, provided that the fund shall be invested in separate differential rate and market rate investment classes; defined "differential rate investments" by reference to the statutory sections listed prior to the amendment; provided that differential rate investments are intended to provide income to the severance tax permanent fund; defined "market rate investments"; deleted the former

statement of the purposes of the severance tax permanent fund and intent of market rate investments and the provision that the prudent man rule be applied to market rate investments.

**The 2000 (2nd S.S.) amendment,** effective July 3, 2000, substituted "and 7-27-5.24 through 7-27-5.26" for "7-27-5.24 and 7-27-5.25" in the third sentence.

**The 2000 amendment,** effective February 15, 2000, inserted "and 7-27-5.25" in the third sentence.

**The 1997 amendment,** effective on June 20, 1997, in the third sentence, deleted "7-27-5.7" following "7-27-5.5" and substituted "7-27-5.22 and 7-27-5.24 NMSA 1978" for "and 7-27-5.21 NMSA 1978" at the end.

**The 1995 amendment,** effective June 16, 1995, substituted "Sections 7-27-5.3 through 7-27-5.5, 7-27-5.7, 7-27-5.13 through 7-27-5.17 and 7-27-5.21 NMSA 1978" for "Sections 7-27-5.2 through 7-27-5.5, 7-27-5.7 and 7-27-5.13 through 7-27-5.17 NMSA 1978" in the second sentence.

**The 1991 amendment,** effective July 1, 1991, substituted the final sentence of the section for a sentence which read "The full cost pass-through accounting method shall be used to account for exchanges of fixed-income securities".

**The 1990 (2nd S.S.) amendment,** effective January 1, 1991, substituted "through 7-27-5.17 NMSA 1978" for "and 7-27-5.14 NMSA 1978" in the third sentence.

**The 1990 amendment,** effective March 30, 1990, inserted the reference to 7-27-5.14 NMSA 1978 in the third sentence. This section was also amended by Laws 1990, ch. 126, § 2. The section was set out as amended by Laws 1990, ch. 127, § 9. *See* 12-1-8 NMSA 1978.

**The 1989 amendment,** effective April 5, 1989, added "7-27-5.13" in the third sentence.

## 7-27-5.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 240, § 7 repealed 7-27-5.1 NMSA 1978, as enacted by Laws 1983, ch. 306, § 8, relating to market rate investments, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

## 7-27-5.2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 267, § 5 repealed 7-27-5.2 NMSA 1978, as amended by Laws 1991, ch. 83, § 2, concerning investment of the severance tax permanent fund, effective July 1, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 7-27-5.3. Conventional mortgage pass-through securities.

A. The severance tax permanent fund may be invested in conventional mortgage pass-through securities secured by real estate situated in New Mexico. In the initial twelve-month period, the aggregate face amount of such securities shall not exceed one hundred million dollars ($100,000,000), and in no succeeding fiscal year shall the face amount of pass-through securities authorized by the council in that fiscal year exceed one hundred million dollars ($100,000,000).

B. The council shall establish the yield on investments in conventional mortgage pass-through securities, which yield shall be in effect from the effective date of this act until July 1, 1986. After that date, the yield shall not be less than one-half of one percent of the investment below, and shall be determined by reference to, the yield on comparable term and type government national mortgage association securities. Such yield shall not be less than one-half of one percent of the investment below, and shall be determined by reference to, the yield on comparable term and type government national mortgage association securities.

C. The council may purchase conventional mortgage pass-through securities created and issued by a mortgage pooling corporation which has purchased eligible mortgages from mortgage lenders authorized to originate mortgages in New Mexico and which maintains a permanent manned office within New Mexico; provided, however, the council may, in its discretion, purchase such conventional mortgage pass-through securities directly from such qualified mortgage lenders.

D. Conventional mortgage pass-through securities eligible for purchase by the council shall be limited to such securities issued by the federal national mortgage association or issued by a governmental agency, representing an undivided ownership interest in a pool of mortgage loans.

E. The mortgage pooling corporation and the qualified mortgage lender shall be subject to such regulations as the council may promulgate and shall enter into written agreements specifying the powers and duties of the respective parties. The council shall further establish guidelines for mortgage loans eligible for inclusion in the pass-through security, provided such guidelines do not contradict the eligibility requirements set forth in Subsection F of this section.

F. To be eligible for inclusion in a conventional mortgage pass-through security, the mortgage loan shall:

(1) be originated by a qualified mortgage lender;

(2) be secured by a single-family dwelling to be occupied by the owner;

(3) be a conventional mortgage, deed of trust or other security instrument creating a first lien against the fee simple in real estate situated in New Mexico upon which there is constructed a permanent structure;

(4) have a maximum original term not to exceed thirty years;

(5) be made to a person domiciled in New Mexico who is eighteen years of age or older;

(6) contain no prepayment penalties; and

(7) not exceed the dollar limit for federal national mortgage association approved mortgages.

G. To be eligible for purchase by the council, the securities shall be based on mortgage loans on new construction for at least sixty percent of the dollar amount of the securities.

**History:** 1978 Comp., § 7-27-5.3, enacted by Laws 1983, ch. 306, § 10; 1984, ch. 131, § 2; 1985, ch. 222, § 1; 1987, ch. 229, § 1.

**ANNOTATIONS**

**Cross references.** — For the severance tax permanent fund, *see* 7-27-3 NMSA 1978.

## 7-27-5.4. New Mexico business investments.

No more than twenty percent of the book value of the severance tax permanent fund may be invested in the following investments and in the following amounts:

A. no more than ten percent of the book value of the severance tax permanent fund may be invested in notes or obligations securing loans to New Mexico businesses made by farm credit entities, banks and savings and loan associations and mortgages approved by the department of housing and urban development pursuant to the act of congress of July 30, 1953 known as the Small Business Act of 1953, as amended, and notes or obligations pursuant to the act of congress of August 14, 1946 known as the Farmers' Home Administration Act of 1946, as amended, only to the extent that both principal and interest are guaranteed by the United States government. The effective yield of these loans shall be a market rate not less than the yield available on the planned amortized class tranche of collateralized mortgage obligations guaranteed by the federal national mortgage association or the federal home loan mortgage corporation with an average life comparable to the maturity of the loan. The state investment officer may enter into conventional agreements for the servicing of the loans and the administration of the receipts therefrom. Any servicing agreement may contain

reasonable and customary provisions, including servicing fees not to exceed one hundred fifty basis points, as may be agreed upon; provided, in no event shall the rate paid by the borrower on the loan, together with servicing fees, exceed the maximum rate permitted by the applicable federal guarantee program; and

B. no more than ten percent of the book value of the fund may be invested in bonds, notes, debentures or other evidence of indebtedness, excluding commercial paper rated not less than Baa or BBB or the equivalent by a national rating service of any corporation organized and operating within the United States, excluding regulated public utility corporations, which as a condition of receiving the proceeds of such evidence of indebtedness will use such proceeds to establish or expand business outlets or ventures in New Mexico, provided that:

(1) the investment in the bonds, notes or debentures or other evidence of indebtedness of any one corporation shall not exceed one hundred percent of the cost of the expansion venture or new outlet or twenty million dollars ($20,000,000), whichever is less;

(2) the rate of interest to be paid on the bonds, notes or debentures or other evidence of indebtedness shall be established by the council, but shall not be less than the equivalent yield available on United States treasury issues of a comparable maturity plus one hundred basis points;

(3) the indebtedness shall be approved prior to purchase by the council; and

(4) the guidelines for initiation of the purchase by the council of the bonds, notes, debentures or other evidence of indebtedness and the terms thereof shall be established by the council.

**History:** 1978 Comp., § 7-27-5.4, enacted by Laws 1983, ch. 306, § 11; 1984, ch. 131, § 3; 1987, ch. 306, § 2; 1988, ch. 132, § 2; 1989, ch. 271, § 1; 1990, ch. 68, § 1; 1994, ch. 78, § 1; 1999, ch. 88, § 2.

## ANNOTATIONS

**Compiler's notes.** — The Farmers Home Administration Act of 1946 was the popular name of the amendments of 7 U.S.C. § 1001 et seq. and 12 U.S.C. § 371 by P.L. 79-731. Most of the provisions of 7 U.S.C. § 1001 et seq. have been repealed. *See* 7 U.S.C. § 1921 et seq.

**Cross references.** — For creation of severance tax permanent fund, *see* 7-27-3 NMSA 1978.

For the Small Business Act of 1953, *see* 15 U.S.C. § 631 et seq.

**The 1999 amendment,** effective March 19, 1999, in Subsection B, deleted "or guaranteed by an irrevocable letter of credit to the state of New Mexico issued by a financial institution or corporation rated a or A or the equivalent" following "or the equivalent" in the introductory language, in Paragraph (2), inserted "established by the council, but shall not be less than the" and deleted "fifty to" following "maturity plus", and made minor stylistic changes.

**The 1994 amendment,** effective March 7, 1994, in Subsection A, substituted the language following "loans shall be" in the second sentence for "equivalent to the yield available on United States treasury issues of comparable maturity", inserted "including servicing fees not to exceed one hundred basis points" in the third sentence, and added the language following "agreed upon" at the end of the section.

**The 1990 amendment,** effective May 16, 1990, inserted "farm credit entities" in the first sentence of Subsection A.

**The 1989 amendment,** effective June 16, 1989, inserted "or guaranteed by an irrevocable letter of credit to the state of New Mexico issued by a financial institution or corporation rated a or A or the equivalent" in Subsection B.

## 7-27-5.5. Educational loan notes.

The severance tax permanent fund may be invested in educational loan notes issued pursuant to the Educational Assistance Act [Chapter 21, Article 21A NMSA 1978]; provided that in no event shall the principal amount of such notes purchased in any twelve-month period exceed ten million dollars ($10,000,000), and in no event shall the total amount of such notes held by the severance tax permanent fund exceed ten percent of the book value of the severance tax permanent fund. If any educational loan note is sold by the severance tax permanent fund, the sale shall be without recourse to the fund or the state.

**History:** 1978 Comp., § 7-27-5.5, enacted by Laws 1983, ch. 306, § 12.

## 7-27-5.6. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 240, § 7 repealed 7-27-5.6 NMSA 1978, as enacted by Laws 1987, ch. 219, § 2, relating to private equity investments, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

## 7-27-5.7. Repealed.

**ANNOTATIONS**

**Repeals.** — Subsection F of former 7-27-5.7 NMSA 1978, as enacted by Laws 1988, ch. 134, § 7, relating to oil and gas production investments, repealed that section effective July 1, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com.*

## 7-27-5.8 to 7-27-5.12. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 57, § 1 repealed 7-27-5.8 to 7-27-5.12 NMSA 1978, as enacted by Laws 1988, ch. 134, §§ 1 to 5, relating to oil and gas production in the state, effective June 18, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com.*

## 7-27-5.13. Educational institution research and development facilities revenue bonds.

No more than ten percent of the book value of the severance tax permanent fund may be invested in educational institution revenue bonds described in this section.

A. The revenue bonds shall have been issued by one of the following educational institutions:

(1) the university of New Mexico;

(2) the New Mexico state university;

(3) the New Mexico highlands university;

(4) the western New Mexico university;

(5) the eastern New Mexico university; and

(6) the New Mexico institute of mining and technology.

B. The revenue bonds shall have been issued under the authority of Chapter 6, Article 17 NMSA 1978.

C. The revenue bonds shall have been issued to provide funds for the construction, furnishing and equipping of a research or development facility, including any infrastructure improvements necessary to the construction of the facility. The facility shall be one that will:

(1) provide space for operations of an already funded research or development project;

(2) be income-producing when completed and occupied; and

(3) provide both the local community in which it is located and the state generally with economic benefits including, but not limited to, employment for students of post-secondary educational institutions.

**History:** 1978 Comp., § 7-27-5.13, enacted by Laws 1989, ch. 265, § 3.

## 7-27-5.14. Findings and purpose.

The legislature finds that the health of the New Mexico economy is heavily dependent on the establishment and expansion of small businesses and that the lack of available private equity is an impediment to the start-up and growth of businesses in the state. The legislature further finds that the commercialization of technology conceived in the universities and the federal scientific and engineering laboratories and test facilities in the state is likely to occur elsewhere unless sources of local private equity are developed. The purpose of Section 7-27-5.15 NMSA 1978 is to provide a mechanism whereby the establishment of private equity funds, whose investment policies are supportive of the economic welfare of New Mexico, will be stimulated.

**History:** 1978 Comp., § 7-27-5.14, enacted by Laws 1990, ch. 126, § 4; 2001, ch. 252, § 9; 2016, ch. 48, § 1.

**ANNOTATIONS**

**The 2016 amendment,** effective May 18, 2016, after "whereby the establishment of", deleted "locally managed".

**The 2001 amendment,** effective June 15, 2001, substituted "private equity" for "venture capital" throughout the section; and substituted "Section 7-27-5.15 NMSA 1978" for "this act".

## 7-27-5.15. New Mexico private equity funds and New Mexico business investments.

A. No more than nine percent of the market value of the severance tax permanent fund may be invested in New Mexico private equity funds or New Mexico businesses under this section.

B. In making investments pursuant to Subsection A of this section, the council shall make investments in New Mexico private equity funds or New Mexico businesses whose investments or enterprises enhance the economic development objectives of the state.

C. The state investment officer shall make investments pursuant to Subsection A of this section only upon approval of the council and within guidelines and policies established by the council.

D. As used in this section:

(1) "New Mexico business" means, in the case of a corporation or limited liability company, a business with its principal office and a majority of its full-time employees located in New Mexico or, in the case of a limited partnership, a business with its principal place of business and eighty percent of its assets located in New Mexico; and

(2) "New Mexico private equity fund" means an entity that makes, manages or sources potential investments in New Mexico businesses and that:

(a) has as its primary business activity the investment of funds in return for equity in or debt of businesses for the purpose of providing capital for start-up, expansion, product or market development, recapitalization or similar business purposes;

(b) holds out the prospects for capital appreciation from such investments;

(c) has at least one full-time manager with at least three years of professional experience in assessing the growth prospects of businesses or evaluating business plans;

(d) is committed to investing or helps secure investing by others, in an amount at least equal to the total investment made by the state investment officer in that fund pursuant to this section, in businesses with a principal place of business in New Mexico and that hold promise for attracting additional capital from individual or institutional investors nationwide for businesses in New Mexico; and

(e) accepts investments only from accredited investors as that term is defined in Section 2 of the federal Securities Act of 1933, as amended (15 USCA Section 77(b)), and rules and regulations promulgated pursuant to that section, or federally recognized Indian tribes, nations and pueblos with at least five million dollars ($5,000,000) in overall investment assets.

E. The state investment officer is authorized to make investments in New Mexico businesses to create new job opportunities and to support new, emerging or expanding businesses in a manner consistent with the constitution of New Mexico if:

(1) the investments are made:

(a) in conjunction with cooperative investment agreements with parties that have demonstrated abilities and relationships in making investments in new, emerging or expanding businesses;

(b) in a New Mexico aerospace business that has received an award from the United States government or one of its agencies or instrumentalities: 1) in an amount, not less than one hundred million dollars ($100,000,000), that is equal to at least ten times the investment from the severance tax permanent fund; and 2) for the purpose of stimulating commercial enterprises; or

(c) in a New Mexico business that: 1) is established to perform technology transfer, research and development, research commercialization, manufacturing, training, marketing or public relations in any field of science or technology, including but not limited to energy, security, defense, aerospace, automotives, electronics, telecommunications, computer and information science, environmental science, biomedical science, life science, physical science, materials science or nanoscience, using research developed in whole or in part by a state institution of higher education or a prime contractor designated as a national laboratory by an act of congress that is operating a facility in the state, or an affiliated entity; and 2) has an agreement to operate the business on state lands;

(2) an investment in any one business does not exceed ten percent of the amount available for investment pursuant to this section; and

(3) the investments represent no more than fifty-one percent of the total investment capital in a business; provided, however, that nothing in this subsection prohibits the ownership of more than fifty-one percent of the total investment capital in a New Mexico business if the additional ownership interest:

(a) is due to foreclosure or other action by the state investment officer pursuant to agreements with the business or other investors in that business;

(b) is necessary to protect the investment; and

(c) does not require an additional investment of the severance tax permanent fund.

F. The state investment officer shall make a commitment to the small business investment corporation pursuant to the Small Business Investment Act [Chapter 58, Article 29 NMSA 1978] to invest one percent of the market value of the severance tax permanent fund to create new job opportunities by providing capital for land, buildings or infrastructure for facilities to support new or expanding businesses and to otherwise make investments to create new job opportunities to support new or expanding businesses in a manner consistent with the constitution of New Mexico. On July 1 of each year, the state investment officer shall determine whether the invested capital in the small business investment corporation is less than one percent of the market value

of the severance tax permanent fund. If the invested capital in the small business investment corporation equals less than one percent of the market value of the severance tax permanent fund, further commitments shall be made until the invested capital is equal to one percent of the market value of the fund.

G. The state investment officer shall report semiannually on the investments made pursuant to this section. Annually, a report shall be submitted to the legislature prior to the beginning of each regular legislative session and a second report no later than October 1 each year to the legislative finance committee, the revenue stabilization and tax policy committee and any other appropriate interim committee. Each report shall provide the amounts invested in each New Mexico private equity fund, as well as information about the objectives of the funds, the companies in which each private equity fund is invested and how each private equity investment enhances the economic development objectives of the state. Each report also shall provide the amounts invested in each New Mexico business.

History: 1978 Comp., § 7-27-5.15, enacted by Laws 1990, ch. 126, § 5; 1997, ch. 70, § 1; 2000, ch. 76, § 1; 2000, ch. 97, § 2; 2001, ch. 238, § 1; 2001, ch. 252, § 10; 2003, ch. 399, § 2; 2003, ch. 401, § 1; 2003, ch. 406, § 1; 2004, ch. 57, § 1; 2005, ch. 63, § 1; 2006, ch. 10, § 1; 2007, ch. 355, § 1; 2007, ch. 359, § 1; 2007, ch. 360, § 1; 2013, ch. 181, § 1; 2015, ch. 95, § 9; 2016, ch. 48, § 2.

## ANNOTATIONS

**Cross references.** — For Section 6 of the federal Securities Act of 1933, *see* 15 U.S.C. § 77f.

**The 2016 amendment,** effective May 18, 2016, amended the definition of "private equity fund"; in the catchline, added "New Mexico"; in Subsection D, Paragraph (2), after "equity fund means", deleted "a limited partnership, limited liability company or corporation organized and operating in the United States and maintaining an office staffed by a full-time investment officer in New Mexico" and added "an entity that makes, manages or sources potential investments in New Mexico businesses and", in Subparagraph D(2)(c), after "business plans", deleted "and who has established permanent residency in the state", in Subparagraph D(2)(d), after each occurrence of "business in", deleted "the state" and added "New Mexico"; in Subsection G, after "semiannually on the", deleted "New Mexico private equity", after "in which each", added "private equity", after "invested and how each", added "private equity", and after "Each report", added "also".

**The 2015 amendment,** effective June 19, 2015, eliminated the private equity investment advisory committee; and in Subsection C, after "approval of the council", deleted "upon review of the recommendation of the private equity investment advisory committee".

**The 2013 amendment,** effective June 14, 2013, permitted the state investment council to invest in New Mexico businesses that perform technology transfer, research and development, research commercialization, manufacturing, training, marketing or public relations in fields of science and technology on state land; and added Subparagraph (c) of Paragraph (1) of Subsection E.

**The 2007 amendment**, effective June 15, 2007, increased investments of the severance tax permanent fund in private equity funds from six to nine percent.

**The 2006 amendment,** effective May 17, 2006, added Subparagraph (b) of Paragraph (1) of Subsection E to authorize the state investment officer to make investments in New Mexico aerospace businesses.

**The 2005 amendment,** effective June 17, 2005, increased the percentage of the severance tax permanent fund invested in the small business investment corporation to three-fourths percent of the market value of the fund.

**The 2004 amendment,** effective May 19, 2004, amended Subsection F to change "one-fourth" to "one-half" percent of the market value of the severance tax fund in three places.

**The 2003 amendment,** effective June 20, 2003, deleted "small" preceding "business" in the section heading; substituted "six percent" for "three percent" near the beginning of Subsection A; deleted former Subsection B, relating to limitations on investments in private equity funds; and added Subsections E and G.

This section was also amended by Laws 2003, ch. 399, § 2 and Laws 2003, ch. 401, § 1. The section was set out as amended by Laws 2003, ch. 406, § 1. *See* 12-1-8 NMSA 1978.

## 7-27-5.16. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 240, § 7, effective July 1, 2005, repealed 7-27-5.16 NMSA 1978, as enacted by Laws 1996, ch. 127, § 10, relating to ONGARD system revenue bonds. For provisions of former section, *see* the 2004 NMSA 1978 on the *NMOneSource.com.*

## 7-27-5.17. Employers mutual company revenue bonds.

The severance tax permanent fund may be invested in revenue bonds issued by the employers mutual company under the authority of the Employers Mutual Company Act [52-9-1 through 52-9-24 NMSA 1978], provided that the amount invested shall not exceed ten million dollars ($10,000,000) and provided further that the bonds shall bear

interest at a market rate not less than the existing rate of return for ten-year United States treasury bonds on the date of the bond sale.

**History:** 1978 Comp., § 7-27-5.17, enacted by Laws 1990 (2nd S.S.), ch. 3, § 2.

## 7-27-5.18. Purpose.

It is the purpose of this act to encourage economic development in New Mexico by linking deposit of the severance tax permanent fund in New Mexico financial institutions to an increase in loans to New Mexico businesses and investment in New Mexico government entities and to encourage financial institutions to make the type of loans that meet business needs not addressed by conventional loans and loans guaranteed by federal, state or local agencies.

**History:** Laws 1993, ch. 267, § 1.

## 7-27-5.19. Deposits in New Mexico financial institutions; limitations.

A. No more than twenty percent of the book value of the severance tax permanent fund may be invested in deposits in New Mexico financial institutions under terms and conditions set by the council in accordance with the provisions of this section.

B. To be eligible for deposits under this section, a financial institution's loans and investments shall equal in the aggregate at least one hundred thousand dollars ($100,000). If eligible, a financial institution may qualify for deposits as follows:

(1) a financial institution may qualify for deposits in an amount equal to new loans and investments made by that financial institution after July 1, 1993;

(2) the financial institution shall provide the state investment officer with the necessary documentation and information for each new loan or investment and the state investment officer shall verify that each such loan or investment meets the requirements of this section and the regulations, guidelines and investment policies adopted pursuant to this section; and

(3) in any calendar year, the state investment officer may increase the deposits in any financial institution only to the extent new loans and investments made by the financial institution have increased over the same period of the prior year.

C. Notwithstanding any other collateral, interest rate or other provisions of law to the contrary governing deposit of public money in Chapter 6, Article 10 NMSA 1978, deposits of the severance tax permanent fund made pursuant to this section shall be governed by the regulations, guidelines and investment policies established by the council and shall not be made until such regulations, guidelines and policies are adopted. Those policies shall provide:

(1) the terms and conditions for pledging of collateral security and the amount and kind of collateral security to be pledged; provided:

(a) no collateral shall be required for deposits of financial institutions rated "A" by the council pursuant to its risk assessment analysis, unless the council in its sole discretion deems it necessary to protect the severance tax permanent fund;

(b) financial institutions not rated "A" by the council shall secure each severance tax permanent fund deposit with security having an aggregate value equal to seventy-five percent of the amount of money deposited by that institution or any greater percentage determined by the council in its sole discretion to be necessary to protect the severance tax permanent fund;

(c) secured deposits shall be secured by: 1) securities of the United States or its agencies or instrumentalities, the state or its agencies or instrumentalities or political subdivisions of the state; 2) securities guaranteed by agencies or instrumentalities of the United States; or 3) New Mexico residential mortgages;

(d) to be rated "A" by the council, a bank shall at a minimum have: 1) primary capital at least equal to six percent of assets; 2) net income after taxes at least equal to sixty-one hundredths of one percent of the average assets of the bank for the current quarter and for each of the three previous quarters; and 3) an aggregate amount of nonperforming loans, defined as loans that are at least ninety days past due, that does not exceed thirty-four and nine-tenths percent of primary capital; provided the council in its sole discretion may increase any of the requirements of this paragraph to protect the severance tax permanent fund; and

(e) to be rated "A" by the council, a savings and loan association shall have a regulatory net worth equal to at least three percent of total assets and net income after taxes equal to at least thirty hundredths of one percent of average assets for the current quarter and for each of the previous three quarters; provided the council may increase these requirements or add additional criteria for nonperforming loans as a percentage of primary capital or net worth that are similar to the criteria for banks, as necessary to conform to changing applicable federal regulatory requirements or to protect the severance tax permanent fund;

(2) the rate at which severance tax permanent fund deposits shall bear interest, payable monthly, which shall be at a fixed market rate determined by the council, but in no event shall the rate of interest paid be less than the yield available on comparable maturities of obligations of the United States government, its agencies or instrumentalities or obligations guaranteed by the United States government, its agencies or instrumentalities, whichever is higher;

(3) the terms of maturity, renewal or withdrawal; provided that in no event shall the maturity exceed eight years and the council may withdraw any deposit before

maturity without penalty if more than seventy-five percent collateral is required by the rules and regulations adopted by the council; and

(4) such other terms, including the financial condition of the financial institution, as the council deems prudent to protect the severance tax permanent fund and to implement efficiently and effectively the deposit program.

D. In making deposits in New Mexico financial institutions pursuant to this section, the state investment officer shall not deposit from the severance tax permanent fund an amount that exceeds two hundred percent of the total equity capital in the case of banks or two hundred percent of the net worth in the case of savings and loan associations or ten percent of the total of that bank's or the savings and loan association's deposits, whichever is less. These limits shall be based on the most recently published statement of financial condition required by federal or state financial authorities as certified by an authorized officer of the financial institution unless the council has more current reliable information from the financial institution. In the event a financial institution exceeds the limitations set forth in this subsection, the state investment officer may withdraw without penalty the deposits that exceed that limitation. The maximum funds on deposit or the deposit limit in this subsection shall not apply to the state fiscal agent bank as to the funds held by the fiscal agent bank or demand deposits held by a state checking depository bank approved by the state board of finance in accordance with the provisions of Section 6-10-35 NMSA 1978.

E. As used in this section:

(1) "financial institution" means a New Mexico bank, a branch of a bank doing business in New Mexico or a savings and loan association that is qualified as an insured public depository;

(2) "investment" means a New Mexico municipal bond or a New Mexico industrial revenue bond; and

(3) "loan" means a loan of any term that is secured or unsecured and is made for business purposes. "Loan" does not include a loan that is a renewal or restructuring of a loan existing on or before July 1, 1993, a loan of more than three million dollars ($3,000,000) to one borrower, a student loan, a consumer loan or a loan to purchase or provide permanent financing on a personal residence, but does include a loan that is made to "persons of low or moderate income" as that term is defined in the Mortgage Finance Authority Act [Chapter 58, Article 18 NMSA 1978], is secured by real estate and is held and serviced by the original lending financial institution in New Mexico. For purposes of this paragraph, "business" includes but is not limited to manufacturing; construction; transportation; communications; publishing; wholesale or retail business; restaurants; entertainment; architectural, engineering and other professional services; medical and health services; food processing; farming or ranching; mining and natural resource exploration and development; and research and technology development.

**History:** Laws 1993, ch. 267, § 2; 1997, ch. 220, § 1.

**ANNOTATIONS**

**The 1997 amendment,** effective June 20, 1997, inserted "a branch of a bank doing business in New Mexico" in Paragraph E(1), and made minor stylistic changes throughout the section.

## 7-27-5.20. Deposits in New Mexico credit unions.

The severance tax permanent fund may be invested in deposits in New Mexico credit unions, provided each deposit is insured by an agency of the United States and the credit union offers interest on such deposits at least equal to that offered to its members for similar deposits. Such deposits may be invested for a term of maturity of eight years or less at an interest rate to be set by the council. Such deposits shall be made and administered by the council and state investment officer in accordance with the law governing deposits of public money, including, but not limited to, Sections 6-10-10, 6-10-16, 6-10-24.1 and 6-10-29 NMSA 1978. As used in this section, "deposit" includes share, share certificate and share draft.

**History:** Laws 1993, ch. 267, § 3.

**ANNOTATIONS**

## 7-27-5.21. New Mexico lottery revenue bonds.

The severance tax permanent fund may be invested in revenue bonds issued by the New Mexico lottery authority pursuant to the provisions of the New Mexico Lottery Act [Chapter 6, Article 24 NMSA 1978]. The amount invested shall not exceed three million dollars ($3,000,000).

**History:** Laws 1995, ch. 155, § 36.

**ANNOTATIONS**

**Cross references.** — For authorization to issue revenue bonds, *see* 6-24-26 NMSA 1978.

## 7-27-5.22. Severance tax permanent fund; investment in obligations issued under Section 33-1-19 NMSA 1978 for corrections facilities.

Subject to the approval of the state investment council, the severance tax permanent fund may be invested in bonds, certificates of participation or other obligations issued pursuant to Section 33-1-19 NMSA 1978 for corrections related facilities.

**History:** 1978 Comp., § 7-27-5.22, enacted by Laws 1995, ch. 215, § 2.

## 7-27-5.23. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 240, § 7 repealed 7-27-5.23 NMSA 1978, as enacted by Laws 1997, ch. 45, § 3, relating to short-term investments, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

## 7-27-5.24. Severance tax permanent fund; investment in obligations issued for state capitol buildings and renovations.

Subject to the approval of the state investment council, the severance tax permanent fund may be invested in revenue bonds issued by the New Mexico finance authority for state capitol buildings and relocation-associated renovations in the state capitol. The amount invested shall not exceed ten million one hundred fifty-five thousand dollars ($10,155,000).

**History:** 1978 Comp., § 7-27-5.24, enacted by Laws 1997, ch. 178, § 3.

## 7-27-5.25. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 240, § 7 repealed 7-27-5.25 NMSA 1978, as enacted by Laws 2000, ch. 5, § 4, relating to revenue bonds issued for parking facility, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

## 7-27-5.26. Investment in films to be produced in New Mexico.

A. No more than six percent of the market value of the severance tax permanent fund may be invested in New Mexico film private equity funds or a New Mexico film project under this section.

B. If an investment is made under this section, not more than fifteen million dollars ($15,000,000) of the amount authorized for investment pursuant to Subsection A of this section shall be invested in any one New Mexico film private equity fund or any one New Mexico film project.

C. The state investment officer shall make investments pursuant to this section only upon approval of the council after a review by the New Mexico film division of the economic development department. The state investment officer may make debt or

equity investments pursuant to this section only in New Mexico film projects or New Mexico film private equity funds that invest only in film projects that:

(1) are filmed wholly or substantially in New Mexico;

(2) have shown to the satisfaction of the New Mexico film division that a distribution contract is in place with a reputable distribution company;

(3) have agreed that, while filming in New Mexico, a majority of the production crew will be New Mexico residents;

(4) have posted a completion bond that has been approved by the New Mexico film division; provided that a completion bond shall not be required if the fund or project is guaranteed pursuant to Paragraph (5) of this subsection; and

(5) have obtained a full, unconditional and irrevocable guarantee of repayment of the invested amount in favor of the severance tax permanent fund:

(a) from an entity that has a credit rating of not less than Baa or BBB by a national rating agency;

(b) from a substantial subsidiary of an entity that has a credit rating of not less than Baa or BBB by a national rating agency;

(c) by providing a full, unconditional and irrevocable letter of credit from a United States incorporated bank with a credit rating of not less than A by a national rating agency; or

(d) from a substantial and solvent entity as determined by the council in accordance with its standards and practices; or

(6) if not guaranteed pursuant to Paragraph (5) of this subsection, have obtained no less than one-third of the estimated total production costs from other sources as approved by the state investment officer.

D. The state investment officer may loan at a market rate of interest, with respect to an eligible New Mexico film project, up to eighty percent of an expected and estimated film production tax credit available to a film production company pursuant to the provisions of Section 7-2F-1 NMSA 1978; provided that the film production company agrees to name the state investment officer as its agent for the purpose of filing an application for the film production tax credit to which the company is entitled if the company does not apply for the film production tax credit. The New Mexico film division of the economic development department shall determine the estimated amount of a film production tax credit. The council shall establish guidelines for the state investment officer's initiation of a loan and the terms of the loan.

E. As used in this section:

(1) "film project" means a single media or multimedia program, including advertising messages, fixed on film, videotape, computer disc, laser disc or other similar delivery medium from which the program can be viewed or reproduced and that is intended to be exhibited in theaters; licensed for exhibition by individual television stations, groups of stations, networks, cable television stations or other means or licensed for the home viewing market; and

(2) "New Mexico film private equity fund" means any limited partnership, limited liability company or corporation organized and operating in the United States that

(a) has as its primary business activity the investment of funds in return for equity in film projects produced wholly or partly in New Mexico;

(b) holds out the prospects for capital appreciation from such investments; and

(c) accepts investments only from accredited investors as that term is defined in Section 2 of the federal Securities Act of 1933, as amended, and rules promulgated pursuant to that section.

History: 1978 Comp., § 7-27-5.26, enacted by Laws 2000 (2nd S.S.), ch. 6, § 2; 2001, ch. 252, § 12; 2002, ch. 60, § 1; 2003, ch. 56, § 1; 2005, ch. 101, § 2; 2005, ch. 106, § 1; 2007, ch. 340, § 1; 2015, ch. 95, § 10.

## ANNOTATIONS

**Cross references.** — For Section 2 of the federal Securities Act of 1933, *see* 15 U.S.C. § 77b.

**The 2015 amendment,** effective June 19, 2015, eliminated the private equity investment advisory committee; in the introductory paragraph of Subsection C, after "upon approval of the", deleted "state investment", and after "a review by", deleted "the private equity investment advisory committee"; in Subsection C, Paragraph (5)(d), after "determined by the", deleted "state investment"; and in Subsection D, in the third sentence, after "The", deleted "state investment".

**The 2007 amendment,** effective June 15, 2007, increased the percentage of the severance tax permanent fund that may be invested in film private equity funds to six percent.

**The 2005 amendment,** effective June 17, 2005, increased in Subsections A and B the percentage of the severance tax permanent fund that may be invested in the New Mexico film private equity funds or a New Mexico film project from 2½ percent to 5 percent and the maximum amount that may be invested from $7,500,000 to

$15,000,000. This section was also amended by Laws 2005, ch. 101, § 2. The section was set out as amended by Laws 2005, ch 106, § 1. *See* 12-1-8 NMSA 1978.

**The 2003 amendment,** effective June 20, 2003, substituted "two and on-half" for "one-half of one" near the beginning of Subsection A; added present Subsection D and redesignated former Subsection D as Subsection E.

**The 2002 amendment,** effective March 4, 2002, inserted "or a New Mexico film project" in Subsection A; inserted "or any one New Mexico film project" in Subsection B; in Subsection C, in the introductory matter, substituted "debt or equity investments" for "an investment" and inserted "New Mexico film projects or", deleted former Paragraph (2), which read: "have obtained no less than one-third of the estimated total production costs from other sources", and redesignated the remaining paragraphs accordingly, added the proviso in Paragraph (4), and added Paragraphs (5) and (6).

**The 2001 amendment,** effective June 15, 2001, substituted "private equity" for "venture capital" throughout the section.

## 7-27-6. Severance tax bonding fund pledged.

A. The money in the severance tax bonding fund is first pledged for the payment of principal and interest on all severance tax bonds issued after the enactment of the Severance Tax Bonding Act.

B. The money in the severance tax bonding fund is second pledged, on a basis subordinate to any severance tax bonds then or thereafter outstanding, for the payment of principal and interest on all supplemental severance tax bonds issued after the enactment of the Severance Tax Bonding Act.

**History:** 1953 Comp., § 72-18-31, enacted by Laws 1961, ch. 5, § 4; 1999 (1st S.S.), ch. 6, § 1.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, deleted the former first sentence, relating to the first pledging of the severance tax bonding fund moneys, added the Subsection A designation, substituted "first" for "further" and made a minor stylistic change, and added Subsection B.

## 7-27-7. Special income to retire bonds.

When a law authorizing a severance tax bond issue or supplemental severance tax bond issue contemplates the income of money for the retirement of the bond issue other than or in addition to the money in the severance tax bonding fund, then the money derived from such income shall be paid to the state treasurer and be credited to the specific bond issue account and deposited in the severance tax bonding fund.

**History:** 1953 Comp., § 72-18-32, enacted by Laws 1961, ch. 5, § 5; 1999 (1st S.S.), ch. 6, § 2.

**ANNOTATIONS**

**Cross references. —** For laws authorizing severance tax bond issues, *see* appendix to this article.

**The 1999 amendment,** effective July 1, 1999, inserted "or supplemental severance tax bond issue" and substituted "state treasurer" for "state board of finance".

## 7-27-8. Transfer of money to severance tax permanent fund.

On each December 31 and each June 30 the state treasurer shall transfer to the severance tax permanent fund all money in the severance tax bonding fund except the amount necessary to meet all principal and interest payments on bonds payable from the severance tax bonding fund on the next two ensuing semiannual payment dates.

**History:** 1953 Comp., § 72-18-33, enacted by Laws 1961, ch. 5, § 6; 1973, ch. 294, § 3.

## 7-27-9. Bonds to be known as severance tax bonds and supplemental severance tax bonds.

A. Prior to July 1, 1999, all bonds issued wherein the money in the severance tax bonding fund is pledged for their retirement shall be known as "New Mexico severance tax bonds".

B. After July 1, 1999, there shall be two categories of bonds issued by the state board of finance wherein the money in the severance tax bonding fund is pledged for their retirement. Those bonds shall be known as "New Mexico severance tax bonds" and as "New Mexico supplemental severance tax bonds".

**History:** 1953 Comp., § 72-18-34, enacted by Laws 1961, ch. 5, § 7; 1999 (1st S.S.), ch. 6, § 3.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, added "and supplemental severance tax bonds" to the catchline; added the Subsection A designation, added "Prior to July 1, 1999" to the beginning, and made a stylistic change; and added Subsection B.

## 7-27-10. State board of finance shall issue bonds.

A. The state board of finance is authorized to issue and sell severance tax bonds within the provisions of the Severance Tax Bonding Act, and no other agency of the state is authorized to issue or sell severance tax bonds.

B. The state board of finance may issue and sell supplemental severance tax bonds within the provisions of the Severance Tax Bonding Act, and no other agency of the state is authorized to issue or sell supplemental severance tax bonds.

**History:** 1953 Comp., § 72-18-35, enacted by Laws 1961, ch. 5, § 8; 1999 (1st S.S.), ch. 6, § 4.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, added the Subsection A designation, added Subsection B, and made a minor stylistic change.

## 7-27-10.1. Bonding capacity; authorization for severance tax bonds; priority for water projects and tribal infrastructure projects.

A. By January 15 of each year, the division shall estimate the amount of bonding capacity available for severance tax bonds to be authorized by the legislature.

B. For each year except 2017, the division shall allocate nine percent of the estimated bonding capacity each year for water projects, and the legislature authorizes the state board of finance to issue severance tax bonds in the annually allocated amount for use by the water trust board to fund water projects statewide. The water trust board shall certify to the state board of finance the need for issuance of bonds for water projects. The state board of finance may issue and sell the bonds in the same manner as other severance tax bonds in an amount not to exceed the authorized amount provided for in this subsection. If necessary, the state board of finance shall take the appropriate steps to comply with the federal Internal Revenue Code of 1986, as amended. Proceeds from the sale of the bonds are appropriated to the water project fund in the New Mexico finance authority for the purposes certified by the water trust board to the state board of finance.

C. The division shall allocate the following percentage of the estimated bonding capacity for tribal infrastructure projects:

(1) in 2016, six and one-half percent; and

(2) in 2017 and each subsequent year, four and one-half percent.

D. The legislature authorizes the state board of finance to issue severance tax bonds in the amount provided for in this section for use by the tribal infrastructure board to fund tribal infrastructure projects. The tribal infrastructure board shall certify to the state board of finance the need for issuance of bonds for tribal infrastructure projects.

The state board of finance may issue and sell the bonds in the same manner as other severance tax bonds in an amount not to exceed the authorized amount provided for in this section. If necessary, the state board of finance shall take the appropriate steps to comply with the federal Internal Revenue Code of 1986, as amended. Proceeds from the sale of the bonds are appropriated to the tribal infrastructure project fund for the purposes certified by the tribal infrastructure board to the state board of finance.

E. Money from the severance tax bonds provided for in this section shall not be used to pay indirect project costs. Any unexpended balance from proceeds of severance tax bonds issued for a water project or a tribal infrastructure project shall revert to the severance tax bonding fund within six months of completion of the project. The New Mexico finance authority shall monitor and ensure proper reversions of the bond proceeds appropriated for water projects, and the department of finance and administration shall monitor and ensure proper reversions of the bond proceeds appropriated for tribal infrastructure projects.

F. As used in this section:

(1) "division" means the board of finance division of the department of finance and administration;

(2) "tribal infrastructure project" means a qualified project under the Tribal Infrastructure Act [6-29-1 through 6-29-9 NMSA 1978]; and

(3) "water project" means a capital outlay project for:

(a) the storage, conveyance or delivery of water to end users;

(b) the implementation of federal Endangered Species Act of 1973 collaborative programs;

(c) the restoration and management of watersheds;

(d) flood prevention; or

(e) conservation, recycling, treatment or reuse of water.

**History:** Laws 2003, ch. 134, § 1; 2009, ch. 22, § 1; 2010, ch. 37, § 1; 2015, ch. 63, § 1; 2016 (2nd S.S.), ch. 5, § 9; 2017 (1st S.S.), ch. 1, § 4.

## ANNOTATIONS

**Cross references.** — For the federal Internal Revenue Code of 1986, *see* 26 U.S.C. § 1 et seq.

For the federal Endangered Species Act of 1973, *see* 16 U.S.C.S. § 1531 et seq.

**The 2017 (1st S.S.) amendment,** effective May 26, 2017, suspended the severance tax bonding capacity allocation for water projects for the year 2017; in Subsection B, added "For each year except 2017"; in Subsection C, in the introductory clause, changed "percentages" to "percentage"; and in Subsection D, after "in the amount", deleted "allocated pursuant to" and added "provided for in", and after "provided for in this", deleted "subsection" and added "section".

**The 2016 (2nd S.S.) amendment,** effective October 21, 2016, reduced the percentages of estimated severance tax bonding capacity allocated to water and tribal infrastructure projects; in Subsection B, after "water projects statewide", deleted "except for projects authorized in Subsection F of this section"; in Subsection C(2), after "subsequent year", deleted "five and one-half" and added "four and one-half"; and deleted Subsection F and redesignated former Subsection G as Subsection F.

**Severability.** — Laws 2016 (2nd S.S.), ch. 5, § 12, provided that if a specific reversion, a voided authorization, a change in the use of severance tax bond proceeds or an authorization to expend severance tax bond proceeds is held invalid or otherwise cannot be effectuated, the remainder of Laws 2016 (2nd S.S.), ch. 5 and any other reversion, voided authorization, change in the use of severance tax bond proceeds or authorization to expend severance tax bond proceeds shall not be affected.

**The 2015 amendment,** effective July 1, 2015, adjusted the percentages of severance tax bonding capacity allocated for tribal infrastructure projects; in Subsection A, after "each year, the", deleted "board of finance", and after "division", deleted "of the department of finance and administration"; in Subsection C, after "The", deleted "board of finance", after "allocate", deleted "five percent" and added "the following percentages", after "capacity", deleted "each year", and after the first occurrence of "tribal infrastructure projects", deleted "and" and added Paragraphs (1) and (2) of Subsection C; designated the remainder of Subsection C as a new Subsection D and redesignated the succeeding subsections accordingly; in Subsection D, after "severance tax bonds in the", deleted "annually allocated", and after "amount", added "allocated pursuant to this section"; in Subsection F, after "The", deleted "board of finance", and after "division", deleted "of the department of finance and administration"; and added new Paragraph (1) of Subsection G and redesignated the succeeding subsections accordingly.

**The 2010 amendment,** effective July 1, 2011, in the catchline, after "priority", deleted "water projects" and added "for water projects and tribal infrastructure projects"; in Subsection B, in the first sentence, after "The division shall", deleted "authorize" and added "allocate"; after "bonding capacity each year", added "for water projects"; and after "tax bonds in the annually", deleted "deducted" and added "allocated"; and after "Section", changed "D" to "E"; and in the third sentence, after "authorized amount provided for in", deleted "Subsection A of this section" and added "this subsection"; added Subsection C; in Subsection D, in the second sentence, after "bonds issued for a water project", added "or a tribal infrastructure project" and after "six months of completion of the", deleted "water"; and in the third sentence, after "ensure proper

reversions", added the remainder of the sentence; and added Paragraph (1) of Subsection F.

**Applicability.** — Laws 2010, ch. 37, § 2 provided that the allocation of severance tax bonding capacity and the authorization of severance tax bonds for tribal infrastructure projects shall commence with the severance tax bonding capacity estimated on January 15, 2012 for authorization by the second session of the fiftieth legislature.

**The 2009 amendment,** effective March 20, 2009, in Subsection A, added the exception at the end of the subsection and added Subsection D.

## 7-27-11. Authority to refund bonds.

A. The state board of finance may issue and sell at public or private sale severance tax bonds to refund outstanding severance tax bonds by exchange, immediate or prospective redemption, cancellation or escrow, including the escrow of debt service funds accumulated for payment of outstanding bonds, or any combination thereof when, in its opinion, such action will be beneficial to the state.

B. The state board of finance may issue and sell at public or private sale supplemental severance tax bonds to refund outstanding supplemental severance tax bonds by exchange, immediate or prospective redemption, cancellation or escrow, including the escrow of debt service funds accumulated for payment of outstanding supplemental severance tax bonds, or any combination thereof when, in its opinion, such action will be beneficial to the state.

**History:** 1953 Comp., § 72-18-36, enacted by Laws 1961, ch. 5, § 9; 1985 (1st S.S.), ch. 15, § 13; 1999 (1st S.S.), ch. 6, § 5.

### ANNOTATIONS

**Cross references.** — For the state board of finance, *see* 6-1-1 NMSA 1978.

**The 1999 amendment,** effective July 1, 1999, deleted "and other bonds payable from the severance tax bonding fund" preceding "by exchange" near the middle of Subsection A; deleted former Subsections B and C, relating to use of the level savings method of advance refunding and prohibiting issuance of certain bonds to refund outstanding severance tax bonds; and added present Subsection B.

## 7-27-11.1. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1999 (1st S.S.), ch. 6, § 20 repealed 7-27-11.1 NMSA 1978, as enacted by Laws 1985 (1st S.S.), ch. 15, § 15, relating to declaration of legislative intent

in enacting 7-27-11 NMSA 1978, effective July 1, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com.*

## 7-27-12. When severance tax bonds to be issued.

A. The state board of finance shall issue and sell all severance tax bonds when authorized to do so by any law that sets out the amount of the issue and the recipient of the money.

B. The state board of finance shall also issue and sell severance tax bonds authorized by Sections 72-14-36 through 72-14-42 NMSA 1978, and such authority as has been given to the interstate stream commission to issue and sell such bonds is transferred to the state board of finance. The state board of finance shall issue and sell all severance tax bonds only when so instructed by resolution of the governing body or by written direction from an authorized officer of the recipient of the bond money.

C. Except as provided in Subsection D of this section, proceeds from supplemental severance tax bonds shall be used only for public school capital outlay projects pursuant to the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978] or the Public School Capital Improvements Act [Chapter 22, Article 25 NMSA 1978].

D. Proceeds from supplemental severance tax bonds issued pursuant to Paragraph (2) of Subsection A of Section 19 of Chapter 6 of Laws 1999 (1st S.S.) and Section 1 of this 2017 act shall be used for the purposes specified in those provisions.

E. Except as provided in Subsection F of this section, the state board of finance shall issue and sell all supplemental severance tax bonds when so instructed by resolution of the public school capital outlay council pursuant to Section 7-27-12.2 NMSA 1978.

F. The state board of finance shall issue and sell the supplemental severance tax bonds authorized by:

(1) Paragraph (2) of Subsection A of Section 19 of Chapter 6 of Laws 1999 (1st S.S.) when so instructed by resolution of the commission on higher education; and

(2) Section 1 of this 2017 act upon certification by the secretary of finance and administration of the need to use proceeds from those bonds as outlined in that section.

**History:** 1953 Comp., § 72-18-37, enacted by Laws 1961, ch. 5, § 10; 1984, ch. 4, § 2; 1999 (1st S.S.), ch. 6, § 6; 2001, ch. 37, § 1; 2001, ch. 338, § 1; 2017 (1st S.S.), ch. 1, § 5.

**ANNOTATIONS**

**Cross references.** — For laws authorizing severance tax bond issues, *see* the appendix to this article.

For state board of finance, *see* 6-1-1 NMSA 1978.

For commission on higher education, *see* 21-1-26 NMSA 1978.

For public school capital outlay council, *see* 22-24-6 NMSA 1978.

For interstate stream commission, *see* 72-14-1 NMSA 1978.

**The 2017 (1st S.S.) amendment,** effective May 26, 2017, authorized the board of finance division of the department of finance and administration to transfer proceeds from supplemental severance tax bonds to the general fund for use by the department in fiscal year 2017 to restore certain allotments from the general fund; in Subsection D, after "(1st S.S.)", added "and Section 1 of this 2017 act", and after "specified in", deleted "that paragraph" and added "those provisions"; and in Subsection F, after "authorized by", added paragraph designation "(1)", and at the end of Paragraph (1), added "and", and added Paragraph (2).

**2001 Multiple Amendments.** — Laws 2001, ch. 338, § 1, effective April 5, 2001, substituted "by written direction from an authorized officer" for "executive head" at the end of Subsection B; in Subsection C, inserted the exception to the beginning of the subsection, deleted "critical" preceding "capital outlay", substituted "the Public School Capital Improvements Act" for language concerning post-secondary infrastructure renovation and expansion needs; deleted former Subsection D; and added current Subsections D, E and F.

Laws 2001, ch. 37, § 1, effective June 15, 2001, in Subsection B, deleted "executive head" and added "by written direction from an authorized officer"; and in Subsection D, after the second occurrence of "commission higher education", deleted "pursuant to certification by the governing bodies of the appropriate educational institutions".

**The 1999 amendment,** effective July 1, 1999, added the Subsection A and B designations and added Subsection C; inserted "or executive head" in the second sentence in Subsection B; and made minor stylistic changes.

## 7-27-12.1. Severance tax bonds; purpose for which issued; appropriation of proceeds.

The state board of finance may issue and sell severance tax bonds in fiscal years 2001 through 2010 in compliance with the Severance Tax Bonding Act in an amount not exceeding a total of twenty million dollars ($20,000,000) when the local government division of the department of finance and administration certifies the need for the issuance of the bonds; provided that no more than four million dollars ($4,000,000) may be issued in fiscal year 2001 and no more than two million dollars ($2,000,000) may be

issued in any one fiscal year thereafter. The state board of finance shall schedule the issuance and sale of the bonds in the most expeditious and economical manner possible upon a finding by the board that the project has been developed sufficiently to justify the issuance and that the project can proceed to contract within a reasonable time. The state board of finance shall further take the appropriate steps necessary to comply with the Internal Revenue Code of 1986, as amended. The proceeds from the sale of the bonds are appropriated to the local government division of the department of finance and administration for the purpose of financing water and sewer distribution and collection systems in the developed and underserved areas of Bernalillo county, including areas in the city of Albuquerque. The certification and issuance of bonds for any fiscal year is contingent upon the secretary of finance and administration receiving certification from the governing body of the city of Albuquerque and the board of county commissioners of Bernalillo county that funding in an amount equal to one and one-half times the amount of bonds issued pursuant to this section, including the amount of bonds proposed to be issued for that fiscal year, has been secured from federal, city and county sources to construct the water and sewer distribution and collection systems. Any funding from federal, city and county sources in excess of the amount required for certification in any fiscal year may be carried forward and credited against the amount required in subsequent fiscal years. Any unexpended or unencumbered balance remaining at the end of fiscal year 2012 shall revert to the severance tax bonding fund. If the local government division of the department of finance and administration has not certified the need for the issuance of the bonds by the end of fiscal year 2010, the authorization provided in this section shall expire.

**History:** Laws 1999 (1st S.S.), ch. 5, § 1; 2000 (2nd S.S.), ch. 18, § 1; 2002, ch. 66, § 1.

**ANNOTATIONS**

**Cross references.** — For the Internal Revenue Code of 1986, *see* 26 U.S.C. § 1 et seq.

**The 2002 amendment,** effective May 15, 2002, substituted "one and one-half" for "four and one-half" in the fifth sentence.

**The 2000 amendment,** effective April 12, 2000, inserted "four million dollars ($4,000,000) may be issued in fiscal year 2001 and no more than" preceding "two million dollars" and inserted the fifth sentence.

## 7-27-12.2. Supplemental severance tax bonds; public school capital outlay and other projects.

A. The public school capital outlay council is authorized to certify by resolution that proceeds of supplemental severance tax bonds are needed for expenditures relating to public school capital outlay projects pursuant to the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978] or for the state distribution for public school capital

improvements pursuant to the Public School Capital Improvements Act [Chapter 22, Article 25 NMSA 1978]. The resolution shall specify the total amount needed.

B. The state board of finance may issue and sell supplemental severance tax bonds in compliance with the Severance Tax Bonding Act when the public school capital outlay council certifies by resolution the need for the issuance of the bonds or when the secretary of public education certifies the need for the issuance of the bonds pursuant to Section 22-24-4 NMSA 1978 or Section 3 of this 2016 act. The amount of the bonds sold at each sale shall not exceed the lesser of:

(1) the total of the amounts certified by the council and the secretary of public education; or

(2) the amount that may be issued pursuant to the restrictions of Section 7-27-14 NMSA 1978.

C. The state board of finance shall schedule the issuance and sale of the bonds in the most expeditious and economical manner possible.

D. The proceeds from the sale of the bonds are appropriated as follows:

(1) the amount certified by the secretary of public education as necessary to make the distribution pursuant to Section 22-25-9 NMSA 1978 is appropriated to the public school capital improvements fund for the purpose of carrying out the provisions of the Public School Capital Improvements Act; and

(2) the remainder of the proceeds is appropriated to the public school capital outlay fund for the purpose of carrying out the provisions of the Public School Capital Outlay Act.

History: 1978 Comp., § 7-27-12.2, enacted by Laws 2001, ch. 338, § 2; 2004, ch. 125, § 1; 2016 (2nd S.S.), ch. 2, § 1.

## ANNOTATIONS

**Compiler's notes.** — The reference to "Section 3 of this 2016 act" in Subsection B of this section, refers to Laws 2016 (2nd S.S.), ch. 2, § 3, effective October 7, 2016, which appropriated twelve million five hundred thousand dollars ($12,500,000) from the public school capital outlay fund to the instructional material fund for expenditure in fiscal year 2017 and subsequent fiscal years for the purchase of instructional material pursuant to the Instructional Material Law; provided that the secretary of public education certifies the need for the issuance of supplemental severance tax bonds to meet that appropriation. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the public school capital outlay fund.

**Cross references.** — For the state board of finance, *see* 6-1-1 NMSA 1978.

For the secretary of public education, *see* 9-24-5 NMSA 1978.

For the public school capital outlay council, *see* 22-24-6 NMSA 1978.

**The 2016 (2nd S.S.) amendment,** effective October 7, 2016, authorized the state board of finance to issue and sell supplemental severance tax bonds in compliance with the Severance Tax Bonding Act when the secretary of public education certifies the need for the issuance of the bonds pursuant to the Public School Capital Outlay Act; in the catchline, added "and other"; in Subsection B, after "council certifies by resolution the need for the issuance of the bonds", added "or when the secretary of public education certifies the need for the issuance of the bonds pursuant to Section 22-24-4 NMSA 1978 or Section 3 of this 2016 act", and after "shall not exceed the lesser of:", added the paragraph designation "(1)"; in Paragraph C(1), changed "amount" to "total of the amounts", and after "certified by the council", added "and the secretary of public education"; and added the paragraph designation "(2)".

**The 2004 amendment,** effective May 19, 2004, amended Subsection A to insert "expenditures relating to" before "public school capital outlay", deleted "Section 22-24-5 NMSA 1978" and inserted in its place "the Public School Capital Outlay Act", amended Subsection D to substitute "secretary of public education" for "superintendent of public instruction" in Paragraph (1) and deleted in Paragraph (2) the purpose of the awards language and substitute in its place the purpose of "carrying out the provisions of the Public School Capital Outlay Act".

## 7-27-12.3. Administration of certain bond proceeds appropriated to the public school capital outlay fund.

Proceeds of severance tax bonds and supplemental severance tax bonds previously or hereafter issued by the state board of finance that are appropriated to the public school capital outlay fund for the purpose of carrying out the provisions of the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978] shall, except to the extent that the proceeds are derived from any bonds the interest on which is excluded from federal income tax, be transferred by the state board of finance immediately upon receipt to the public school capital outlay fund. All money so transferred shall be administered for disbursement purposes by the public school capital outlay council consistent with the requirements of the Public School Capital Outlay Act.

History: Laws 2005, ch. 274, § 1.

**ANNOTATIONS**

**Effective dates. —** Laws 2005, ch. 274, § 20 made Laws 2005, ch. 274, § 1 effective April 6, 2005.

## 7-27-12.4. Authorization for severance tax bonds for severance tax transportation fund; appropriation of proceeds.

A. The state board of finance may issue and sell severance tax bonds in fiscal years 2007 through 2009 in compliance with the Severance Tax Bonding Act in an amount not exceeding a total of one hundred fifty million dollars ($150,000,000) when the department of transportation certifies the need for the issuance of the bonds; provided that:

(1) in fiscal year 2007, no more than fifty million dollars ($50,000,000) in bonds shall be issued; and

(2) in each of fiscal years 2008 and 2009, no more than the lesser of fifty million dollars ($50,000,000) or twelve and one-half percent of severance tax bonding capacity, as determined pursuant to Section 7-27-10.1 NMSA 1978, shall be issued.

B. The state board of finance shall schedule the issuance and sale of the bonds in the most expeditious and economical manner possible upon a finding by the board that, based upon a certification from the department of transportation, the proceeds of the bonds are needed and that the projects can proceed to contract within a reasonable time. The state board of finance shall further take the appropriate steps necessary to comply with the federal Internal Revenue Code of 1986, as amended. The state board of finance may issue and sell the bonds in the same manner as other severance tax bonds in an amount not to exceed the authorized amount provided for in this subsection.

C. The proceeds from the sale of the bonds are appropriated as follows:

(1) proceeds of the bonds issued in fiscal year 2007 are appropriated to the local government transportation fund for distribution as directed by the department of transportation for projects pursuant to Section 6-21-6.12 NMSA 1978;

(2) twenty percent of the proceeds of the bonds issued in fiscal years 2008 and 2009 are appropriated to the department of transportation to perform routine maintenance on state highways;

(3) forty percent of the proceeds of the bonds issued in fiscal years 2008 and 2009 are appropriated to the local government transportation fund for distribution as directed by the department of transportation for projects pursuant to Section 6-21-6.12 NMSA 1978; and

(4) forty percent of the proceeds of the bonds issued in fiscal years 2008 and 2009 are appropriated to the department of transportation for the purpose of completing those projects authorized in Paragraphs (1) and (3) through (38) of Subsection A of Laws 2003 (1st S.S.), Chapter 3, Section 27, provided that the department shall comply with the requirements of Subsections C, D and E of Section 67-3-59.4 NMSA 1978.

D. Money from the severance tax bonds provided for in this section shall not be used to pay indirect costs. If the department of transportation has not certified the need for the issuance of the bonds by July 1, 2009, the authorization provided in this section shall expire.

History: Laws 2007 (1st S.S.), ch. 3, § 1.

**ANNOTATIONS**

**Cross references.** — For the Internal Revenue Code, *see* 26 U.S.C.

**Effective dates.** — Laws 2007 (1st S.S.), ch. 3 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 28, 2007, 90 days after the adjournment of the legislature.

## 7-27-12.5. Authorization for severance tax bonds; priority for infrastructure projects for colonias.

A. After the annual estimate of severance tax bonding capacity pursuant to Subsection A of Section 7-27-10.1 NMSA 1978, the board of finance division of the department of finance and administration shall allocate the following percentages of the estimated bonding capacity for colonias infrastructure projects:

(1) in 2016, six and one-half percent; and

(2) in 2017 and each subsequent year, four and one-half percent.

B. The legislature authorizes the state board of finance to issue severance tax bonds in the amount allocated pursuant to this section for use by the colonias infrastructure board to fund the projects. The colonias infrastructure board shall certify to the state board of finance the need for issuance of bonds for colonias infrastructure projects. The state board of finance may issue and sell the bonds in the same manner as other severance tax bonds in an amount not to exceed the authorized amount provided for in this subsection. If necessary, the state board of finance shall take the appropriate steps to comply with the federal Internal Revenue Code of 1986, as amended. Proceeds from the sale of the bonds are appropriated to the colonias infrastructure project fund for the purposes certified by the colonias infrastructure board to the state board of finance.

C. Money from the severance tax bonds provided for in this section shall not be used to pay indirect project costs. Any unexpended balance from proceeds of severance tax bonds issued for a colonias infrastructure project shall revert to the severance tax bonding fund within six months of completion of the project. The colonias infrastructure board shall monitor and ensure proper reversions of the bond proceeds appropriated for the projects.

D. As used in this section, "colonias infrastructure project" means a qualified project under the Colonias Infrastructure Act [Chapter 6, Article 30 NMSA 1978].

History: Laws 2010, ch. 10 § 9; 2015, ch. 63, § 2; 2016 (2nd S.S.), ch. 5, § 10.

**ANNOTATIONS**

**Cross references.** — For the colonias infrastructure board, *see* 6-30-4 NMSA 1978.

For the Internal Revenue Code of 1986, *see* 26 U.S.C.

**The 2016 (2nd S.S.) amendment,** effective October 21, 2016, reduced the percentages of estimated severance tax bonding capacity allocated to colonias infrastructure projects; and in Subsection A(2), after "subsequent year", deleted "five and one-half" and added "four and one-half".

**Severability.** — Laws 2016 (2nd S.S.), ch. 5, § 12, provided that if a specific reversion, a voided authorization, a change in the use of severance tax bond proceeds or an authorization to expend severance tax bond proceeds is held invalid or otherwise cannot be effectuated, the remainder of Laws 2016 (2nd S.S.), ch. 5 and any other reversion, voided authorization, change in the use of severance tax bond proceeds or authorization to expend severance tax bond proceeds shall not be affected.

**The 2015 amendment,** effective July 1, 2015, adjusted the percentages of severance tax bonding capacity allocated for colonias infrastructure projects; in the introductory sentence of Subsection A, after "allocate", deleted "five percent" and added "the following percentages", after "capacity", deleted "each year", and after "colonias infrastructure projects", deleted "and", added a colon, and after the colon, added new Paragraphs (1) and (2) of Subsection A; designated the remainder of Subsection A as Subsection B and redesignated the succeeding subsections accordingly; and in Subsection B, after "severance tax bonds in the", deleted "annually allocated", and after "amount", added "allocated pursuant to this section".

## 7-27-13. Reserved.

## 7-27-14. Amount of tax; security for bonds.

A. The legislature shall provide for the continued assessment, levy, collection and deposit into the severance tax bonding fund of the tax or taxes upon natural resource products severed and saved from the soil of the state that, together with such other income as may be deposited to the fund, will be sufficient to produce an amount that is at least the amount necessary to meet annual debt service charges on all outstanding severance tax bonds and supplemental severance tax bonds.

B. Except as otherwise specifically provided by law, the state board of finance shall issue no severance tax bonds unless the aggregate amount of severance tax bonds

outstanding, and including the issue proposed, can be serviced with not more than the following percentages of the annual deposits into the severance tax bonding fund, as determined by the lesser of the deposits during the preceding fiscal year or the deposits during the current fiscal year as estimated by the division:

(1) for fiscal year 2016, forty-nine and four-tenths percent;

(2) for fiscal year 2017, forty-eight and eight-tenths percent;

(3) for fiscal year 2018, forty-eight and two-tenths percent; and

(4) for fiscal year 2019 and subsequent fiscal years, forty-seven and six-tenths percent.

C. The state board of finance shall issue no supplemental severance tax bonds with a term that extends beyond the fiscal year in which the bonds are issued unless the aggregate amount of severance tax bonds and supplemental severance tax bonds outstanding, and including the issue proposed, can be serviced with not more than the following percentages of the annual deposits into the severance tax bonding fund, as determined by the lesser of the deposits during the preceding fiscal year or the deposits during the current fiscal year as estimated by the division:

(1) for fiscal year 2016, sixty-one and nine-tenths percent;

(2) for fiscal year 2017, sixty-one and three-tenths percent;

(3) for fiscal year 2018, sixty and seven-tenths percent; and

(4) for fiscal year 2019 and subsequent fiscal years, sixty and one-tenth percent.

D. Except as otherwise specifically provided by law, the state board of finance may issue supplemental severance tax bonds with a term that does not extend beyond the fiscal year in which they are issued if the debt service on such supplemental severance tax bonds when added to the debt service previously paid or scheduled to be paid during that fiscal year on severance tax bonds and supplemental severance tax bonds does not exceed the following percentages of the lesser of the deposits into the severance tax bonding fund during the preceding fiscal year or the deposits into the severance tax bonding fund during the current fiscal year as estimated by the division:

(1) for fiscal year 2016, ninety-four and four-tenths percent;

(2) for fiscal year 2017, ninety-three and eight-tenths percent;

(3) for fiscal year 2018, ninety-three and two-tenths percent;

(4) for fiscal year 2019, ninety-one percent;

(5) for fiscal year 2020, eighty-nine and four-tenths percent;

(6) for fiscal year 2021, eighty-seven and eight-tenths percent; and

(7) for fiscal year 2022 and subsequent fiscal years, eighty-six and two-tenths percent.

E. The provisions of this section shall not be modified by the terms of any severance tax bonds or supplemental severance tax bonds hereafter issued.

F. For the purposes of this section, "division" means the board of finance division of the department of finance and administration.

History: 1953 Comp., § 72-18-38, enacted by Laws 1961, ch. 5, § 11; 1999 (1st S.S.), ch. 6, § 7; 2000, ch. 95, § 1; 2000 (2nd S.S.), ch. 11, § 2; 2003, ch. 238, § 1; 2004, ch. 125, § 2; 2015, ch. 63, § 3.

## ANNOTATIONS

**The 2015 amendment,** effective July 1, 2015, increased distributions to the severance tax permanent fund by phasing in reductions to the severance tax bonding capacity and supplemental severance tax bonding capacity; in Subsection B, after "serviced with not more than", deleted "fifty percent" and added "the following percentages", after "determined by the", added "lesser of the", and after "preceding fiscal year", added "or the deposits during the current fiscal year as estimated by the division:"; added Paragraphs (1), (2), (3) and (4) of Subsection B; in Subsection C, after "not more than", deleted "sixty-two and one-half percent" and added "the following percentages", after "determined by", added "the lesser of", and after "preceding fiscal year", added "or the deposits during the current fiscal year as estimated by the division:"; added Paragraphs (1), (2), (3) and (4) of Subsection C; in Subsection D, after "tax bonds does not exceed", deleted "ninety-five percent" and added "the following percentages", after "of", added "the lesser of", after "preceding fiscal year", added "or the deposits into the severance tax bonding fund during the current fiscal year as estimated by the division:"; added Paragraphs (1), (2), (3), (4), (5), (6) and (7) of Subsection D; and added Subsection F.

**The 2004 amendment,** effective July 1, 2004, amended Subsection D to substitute "ninety-five" for "eighty-seven and one-half" preceding "percent".

**The 2003 amendment,** effective June 20, 2003, inserted "Except as otherwise specifically provided by law," at the beginning of Subsections B and D.

**The 2000 (2nd S.S.) amendment,** effective April 12, 2000, substituted "eighty-seven and one-half percent" for "seventy-five percent" in Subsection D.

**The 2000 amendment,** effective May 17, 2000, inserted "with a term that extends beyond the fiscal year in which the bonds are issued" preceding "unless" in Subsection C, added present Subsection D, and redesignated former Subsection D as Subsection E.

**The 1999 amendment,** effective July 1, 1999, added "and supplemental severance tax bonds" at the end of Subsection A; in Subsection B inserted "of severance tax bonds" and deleted "including any severance tax bonds authorized prior to the enactment of this Severance Tax Bonding Act, but not yet issued" preceding "and including"; added present Subsection C; redesignated former Subsection C as Subsection D; and in Subsection D inserted "severance tax" and "or supplemental severance tax bonds".

## 7-27-15. Majority approval necessary for board action.

Any action taken hereunder by the state board of finance must be approved by a majority of its members.

**History:** 1953 Comp., § 72-18-39, enacted by Laws 1961, ch. 5, § 12.

## 7-27-16. Form of bonds.

A. The state board of finance, except as otherwise specifically provided in the Severance Tax Bonding Act, shall determine at its discretion the terms, covenants and conditions of severance tax bonds and supplemental severance tax bonds, including but not limited to: date of issue, denominations, maturities, rate or rates of interest, call features, call premiums, registration, refundability and other covenants covering the general and technical aspects of the issuance of the bonds.

B. The bonds shall be in such form as the state board of finance may determine, and successive issues shall be identified by alphabetical, numerical or other proper series designation.

**History:** 1953, Comp., § 72-18-40, enacted by Laws 1961, ch. 5, § 13; 1983, ch. 265, § 31; 1999 (1st S.S.), ch. 6, § 8.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, added the subsection designations and inserted "and supplemental severance tax bonds" near the middle of Subsection A.

## 7-27-17. Execution of bonds.

Severance tax bonds and supplemental severance tax bonds shall be signed and attested by the state treasurer and shall be executed with the facsimile signature of the governor and the facsimile seal of the state, except for bonds issued in book entry or similar form without the delivery of physical securities. Any interest coupons attached to

the bonds shall bear the facsimile signature of the state treasurer, which officer, by the execution of the bonds, shall adopt as his own signature the facsimile thereof appearing on the coupons. Except for bonds issued in book entry or similar form without the delivery of physical securities, the Uniform Facsimile Signature of Public Officials Act [6-9-1 through 6-9-6 NMSA 1978] shall apply, and the state board of finance shall determine the manual signature to be affixed on the bonds.

**History:** 1953 Comp., § 72-18-41, enacted by Laws 1961, ch. 5, § 14; 1961, ch. 79, § 1; 1969, ch. 63, § 1; 1983, ch. 265, § 32; 1984, ch. 4, § 3; 1999 (1st S.S.), ch. 6, § 9.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, inserted "and supplemental severance tax bonds" near the beginning of the first sentence.

## 7-27-18. Procedure for sale of bonds.

A. Severance tax bonds and supplemental severance tax bonds shall be sold by the state board of finance at such times and in such manner as the board may elect, consistent with the need of the board, commission or agency that is the recipient of the bond money, to the highest bidder for cash at not less than par and accrued interest.

B. The state board of finance shall publish a notice of the time and place of sale in a newspaper of general circulation in the state, and also in a recognized financial journal outside the state. Such publication shall be made once at least five business days prior to the date fixed for such sale. Such notice shall specify the amount, denomination, maturity and description of the bonds to be offered for sale and the place, day and hour at which bids therefor shall be received and publicly examined. All bids shall be sealed or sent by facsimile or other electronic transmission to the state board of finance as set forth in the notice. All bids, except that of the state, shall be accompanied by a deposit of two percent of the bid price, either in the form of a financial surety bond or in cash or by cashier's check or treasurer's check of, or by certified check drawn on, a solvent commercial bank or trust company in the United States. The financial surety bond or the long-term debt obligations of the issuer or person guarantying the obligations of the issuer of the financial surety bond shall be rated in one of the top two rating categories of a nationally recognized rating agency, without regard to any modification of the rating, and the financial surety bond shall be issued by an insurance company licensed to issue such a bond in New Mexico. Deposits of unsuccessful bidders shall be returned upon rejection of the bid.

C. At the time and place specified in such notice, bids shall be publicly examined and the bonds, or any part thereof, shall be awarded to the bidder or bidders offering the best price therefor. Before delivering any bonds sold, the state treasurer shall detach therefrom and cancel all interest coupons that may have matured prior to the date of delivery. The state board of finance may reject any or all bids and readvertise.

The state board of finance may sell a severance tax bond or supplemental severance tax bond issue, or any part thereof, to the state at private sale.

**History:** 1953 Comp., § 72-18-42, enacted by Laws 1961, ch. 5, § 15; 1999 (1st S.S.), ch. 6, § 10; 2001, ch. 37, § 2.

**ANNOTATIONS**

**The 2001 amendment,** effective June 15, 2001, in Subsection B, changed the requirement that the publication of notice be made once each week for two consecutive weeks prior to the sale date, the last publication of which to be at least ten days prior to the date of sale, to the publication be made at least five business days prior to the sale date; deleted "sealed" preceding "bids therefor" and inserted "and publicly examined" and the following sentence; inserted the language beginning "either in the form of a financial surety bond" and ending "licensed to issue such a bond in New Mexico"; in Subsection C, substituted "bids shall be publicly examined and" for "the state board of finance shall open the bids in public and shall award" and inserted "shall be awarded" preceding "to the bidder".

**The 1999 amendment,** effective July 1, 1999, added the subsection designations; inserted "and supplemental severance tax bonds" in Subsection A; substituted "two percent" for "five percent" in the next-to-last sentence in Subsection B; inserted "or supplemental severance tax bond" in the last sentence in Subsection C; and made minor stylistic changes.

## 7-27-19. Severance tax bonds and supplemental severance tax bonds legal investments.

Severance tax bonds and supplemental severance tax bonds are legal investments for any person or board charged with the investment of any public funds and are acceptable as security for any deposit of public money.

**History:** 1953 Comp., § 72-18-43, enacted by Laws 1961, ch. 5, § 16; 1999 (1st S.S.), ch. 6, § 11.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, inserted "and supplemental severance tax bonds" in the catchline and near the beginning of the section.

## 7-27-20. Expenses paid from severance tax bonding fund.

The expense incurred in the issuance of severance tax bonds and supplemental severance tax bonds shall be paid from the severance tax bonding fund.

**History:** 1953 Comp., § 72-18-44, enacted by Laws 1961, ch. 5, § 17; 1999 (1st S.S.), ch. 6, § 12.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, inserted "and supplemental severance tax bonds".

## 7-27-21. Treasurer to make bond payments and keep records.

Severance tax bonds and supplemental severance tax bonds payable from the severance tax bonding fund shall be paid by the state treasurer who shall keep a complete bond register showing severance tax bonds and supplemental severance tax bonds, coupons paid and outstanding on the bonds and such other records as the state board of finance shall require.

**History:** 1953 Comp., § 72-18-45, enacted by Laws 1961, ch. 5, § 18; 1999 (1st S.S.), ch. 6, § 13.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, inserted "severance tax" and "and supplemental severance tax bonds", each in two places, and inserted "on the bonds" near the end.

## 7-27-22. Severance tax bonding act to be full authority for issuance of bonds.

The Severance Tax Bonding Act shall, without reference to any other act of the legislature, be full authority for the issuance and sale of severance tax bonds and supplemental severance tax bonds, which bonds and the coupons attached thereto shall have all the qualities of investment securities under the Uniform Commercial Code [Chapter 55 NMSA 1978] and shall not be invalid for any irregularity or defect or be contestable in the hands of bona fide purchasers or holders thereof for value.

**History:** 1953 Comp., § 72-18-46, enacted by Laws 1961, ch. 5, § 19; 1961, ch. 79, § 2; 1984, ch. 4, § 4; 1999 (1st S.S.), ch. 6, § 14.

**ANNOTATIONS**

**Cross references.** — For investment securities under the Uniform Commercial Code, *see* 55-8-1 NMSA 1978 et seq.

**The 1999 amendment,** effective July 1, 1999, inserted "and supplemental severance tax bonds" near the middle.

## 7-27-23. Suit may be brought to compel performance of officers.

Any holder of severance tax bonds or supplemental severance tax bonds or any person or officer being a party in interest may sue to enforce and compel the performance of the provisions of the Severance Tax Bonding Act.

**History:** 1953 Comp., § 72-18-47, enacted by Laws 1961, ch. 5, § 20; 1999 (1st S.S.), ch. 6, § 15.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, inserted "or supplemental severance tax bonds" and made a minor stylistic change.

## 7-27-24. Bonds tax free.

All severance tax bonds and supplemental severance tax bonds shall be exempt from taxation by the state or any of its political subdivisions.

**History:** 1953 Comp., § 72-18-48, enacted by Laws 1961, ch. 5, § 21; 1999 (1st S.S.), ch. 6, § 16.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, inserted "and supplemental severance tax bonds".

## 7-27-25. No impairment of obligation of contract.

Nothing in this Severance Tax Bonding Act shall be construed as impairing or authorizing the impairment of the contract between the state and the holders of the outstanding Building and Institution Severance Tax Bonds, Series July 1, 1955.

**History:** 1953 Comp., § 72-18-49, enacted by Laws 1961, ch. 5, § 25.

## 7-27-26. Severance tax bonding fund continued.

The severance tax bonding fund created by Laws 1959, Chapter 323 is hereby continued as the severance tax bonding fund created by and referred to in the Severance Tax Bonding Act.

**History:** 1953 Comp., § 72-18-50, enacted by Laws 1961, ch. 5, § 26; 1986, ch. 20, § 95.

**ANNOTATIONS**

**Compiler's notes.** — Laws 1959, ch. 323, §§ 1, 2 and 5 to 21, were repealed by Laws 1961, ch. 5, § 1. Laws 1959, ch. 323, § 3, was repealed by Laws 1971, ch. 65, § 7. Laws 1959, ch. 323, § 4, was repealed by Laws 1985, ch. 65, § 46.

## 7-27-27. Purpose and intent.

The purpose of the Severance Tax Bonding Act is to establish the authority who shall issue and sell all severance tax bonds for financing specific projects authorized by the legislature and all supplemental severance tax bonds pursuant to Section 7-27-12.2 NMSA 1978 and to guarantee redemption of such bonds by revenue derived from the receipts from taxes levied upon natural resource products severed and saved from the soil and such other money as the legislature may from time to time determine. It is intended that projects to be financed from the fund shall include the construction of public school buildings, other buildings for state institutions and water resource projects; and it is further intended that the income from water resource projects in excess of the amount required for operation and maintenance of the project shall be used to repay the severance tax bonding fund.

**History:** 1953 Comp., § 72-18-51, enacted by Laws 1961, ch. 5, § 27; 1986, ch. 20, § 96; 1999 (1st S.S.), ch. 6, § 17; 2001, ch. 338, § 3.

### ANNOTATIONS

**The 2001 amendment,** effective April 5, 2001, deleted "and supplemental severance tax bonds" preceding "for financing specific projects authorized by the legislature" and inserted, following that same language, "and all supplemental severance tax bonds pursuant to Section 7-27-12.2 NMSA 1978"; deleted "but not limited to" following "shall include"; and inserted "public school buildings, other" preceding "buildings for state institutions".

**The 1999 amendment,** effective July 1, 1999, inserted "and supplemental severance tax bonds" in the first sentence.

## 7-27-28 to 7-27-30. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1986, ch. 20, § 136C repealed former 7-27-28 through 7-27-30 NMSA 1978, as enacted by Laws 1981 (1st S.S.), ch. 9, relating to the Severance Tax Income Bonding Act, effective May 21, 1986.

## 7-27-31. Severance tax income bond retirement fund created.

There is created the "severance tax income bond retirement fund." Transfers from the severance tax income fund shall be made monthly to the severance tax income bond retirement fund in an amount sufficient, when added to the balance in the fund, to

meet all principal and interest payments on bonds payable from the severance tax income bond retirement fund during the next twelve months.

**History:** Laws 1981 (1st S.S.), ch. 9, § 4.

## 7-27-32. Severance tax income bond retirement fund pledged.

The money in the severance tax income bond retirement fund is pledged for the principal and interest on all severance tax income bonds issued after the effective date of the Severance Tax Income Bonding Act.

**History:** Laws 1981 (1st S.S.), ch. 9, § 5.

**ANNOTATIONS**

**Compiler's notes.** — Pursuant to Laws 1981 (1st S.S.), ch. 9, § 23, the effective date of the Severance Tax Income Bonding Act was July 1, 1981.

The Severance Tax Income Bonding Act, referred to in this section, is presently compiled as 7-27-31, 7-27-32, 7-27-42 to 7-27-44, 7-27-46, and 7-27-47 NMSA 1978.

## 7-27-33 to 7-27-41. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1986, ch. 20, § 136C repealed former 7-27-33 through 7-27-41 NMSA 1978, as enacted by Laws 1981 (1st S.S.), ch. 9, relating to the Severance Tax Income Bonding Act, effective May 21, 1986.

## 7-27-42. Severance tax income bonds; legal investments.

Severance tax income bonds are legal investments for any person or board charged with the investment of any public funds and are acceptable as security for any deposit of public money.

**History:** Laws 1981 (1st S.S.), ch. 9, § 15.

## 7-27-43. Expenses paid from severance tax income bond retirement fund.

The expense incurred in the issuance of severance tax income bonds shall be paid from the severance tax income bond retirement fund.

**History:** Laws 1981 (1st S.S.), ch. 9, § 16.

## 7-27-44. Treasurer to make bond payments and keep records.

Bonds payable from the severance tax income bond retirement fund shall be paid by the state treasurer who shall keep a complete bond register showing bonds and coupons paid and outstanding and such other records as the state board of finance requires.

**History:** Laws 1981 (1st S.S.), ch. 9, § 17; 1986, ch. 20, § 97.

## 7-27-45. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1986, ch. 20, § 136C repealed former 7-27-45 NMSA 1978, as enacted by Laws 1981, ch. 9, § 18, making the Severance Tax Income Bonding Act the full authority for issuance of bonds, effective May 21, 1986.

## 7-27-46. Suit may be brought to compel performance of officers.

Any holder of severance tax income bonds, or any person or officer being a party in interest, may sue to enforce and compel the performance of the provisions of the Severance Tax Income Bonding Act.

**History:** Laws 1981 (1st S.S.), ch. 9, § 19.

**ANNOTATIONS**

**Compiler's notes.** — The Severance Tax Income Bonding Act, referred to in this section, is presently compiled as 7-27-31, 7-27-32, 7-27-42 to 7-27-44, 7-27-46, and 7-27-47 NMSA 1978.

## 7-27-47. Bonds tax-free.

Interest earned on all severance tax income bonds shall be exempt from taxation by the state or any of its political subdivisions.

**History:** Laws 1981 (1st S.S.), ch. 9, § 20.

## 7-27-48. Temporary provision; no impairment of obligation of contract.

Nothing in this act shall be construed as impairing or authorizing the impairment of the contract between the state and the holders of severance tax bonds authorized or issued, or both, prior to the effective date of this act.

**History:** Laws 1981 (1st S.S.), ch. 9, § 22.

### ANNOTATIONS

**Compiler's notes.** — The term "this act", referred to in this section, means Laws 1981 (1st S.S.), ch. 9, which is presently compiled as 7-27-31, 7-27-32, 7-27-42 to 7-27-44, 7-27-46, and 7-27-47 NMSA 1978.

**Laws 2007,** ch. 64, § 5, effective March 29, 2007, authorized the issuance of severance tax bonds for state laboratory facilities.

## Appendix to Article 27

### Authorized Severance Tax Bonds

Appx., Art. 27

The New Mexico Legislature has, since 1968, authorized issuance of the following severance tax bonds:

Laws 1993, ch. 367, §§ 1 to 38, as amended by Laws 1996, ch. 14, § 32, and Laws 2003, ch. 429, § 92 various amounts for various capital improvements.

Laws 1994, ch. 148, § 9, as amended by Laws 1996, ch. 24, § 1 and Laws 2003, ch. 429 § 55 $24,979,270 for various local capital projects.

Laws 1994, ch. 148, § 10, as reauthorized by Laws 1996, ch. 14, § 13, and as amended by Laws 2002, ch. 99, § 58, and Laws 2002, ch. 110, § 62, for a senior center at Tesuque pueblo in Santa Fe county.

Laws 1994, ch. 148, § 13, as amended by Laws 2002, ch. 99, § 8, $22,762,000 for general services department capital projects, including construction of a multipurpose recreational center at the Sequoyah adolescent treatment center in Bernalillo county, construction of a visitor, control and administrative center and improve security at the New Mexico boys' school in Springer in Colfax county, renovation of the old national guard site in Santa Fe county, continuation of phase two of construction of state library, archives and records center in Santa Fe county, expansion of the New Mexico law enforcement academy in Santa Fe County, and construction of a minimum security unit and a building to house the corrections industries programs near the southern New Mexico correctional facility in Dona Ana county.

Laws 1994, ch. 148, § 16, as amended by Laws 2003, ch. 429, § 106 $2,044,564 for New Mexico office of Indian affairs capital projects.

Laws 1995, ch. 214, § 3, $16,000,000 as reauthorized by Laws 1996, ch. 4, § 23A, amended by Laws 1996 (1st S.S.), ch. 4, § 42; Laws 1998, ch. 7, §§ 46, 50 as further

reauthorized by Laws 2000 (2nd S.S.), ch. 23, §§ 89, 101, as amended by Laws 2002, ch. 99, § 77 and Laws 2002, ch. 110, § 83 for various purposes.

Laws 1996 (1st S.S.), ch. 4, § 3, as extended by Laws 1998, ch. 118, § 41, and amended by Laws 2002, ch. 99, § 72, and Laws 2002, ch. 110, § 78, $290,000 to the office of cultural affairs for the purpose of constructing El Camino Real state monument for the museum of New Mexico located in Socorro county, planning or designing a cultural museum in the city of Santa Fe, and making renovations addressing accessibility concerns at the New Mexico museum of natural history and science in Albuquerque.

Laws 1996 (1st S.S.), ch. 4, § 5, as amended by Laws 2003, ch. 429, § 167 $11,175,000 to the local government division of the department of finance and administration for various purposes and making some appropriations contingent upon matching funds.

Laws 1996 (1st S.S.), ch. 4, § 7, as amended by Laws 2000 (2nd S.S.), ch. 23, § 109 and Laws 2002, ch. 99, § 15, $12,312,750 to the property control division of the general services department (and then the capital program fund) for various purposes.

Laws 1998, ch. 7, § 4, as amended by Laws 2002, ch. 99, § 38, $1,970,000 to the office of cultural affairs for various purposes throughout the state.

Laws 1998, ch. 7, § 8, as amended by Laws 2002, ch. 99, § 59, and Laws 2002, ch. 110, § 63, $2,540,250 to the department of environment for various improvements and installations of wells, water and wastewater systems and water filtration systems throughout the state.

Laws 1998, ch. 7, § 9, as amended by Laws 1999 (1st S.S.), ch. 2, § 91, Laws 2000 (2nd S.S.), ch. 23, § 116 and Laws 2002, ch. 99, §§ 22, 23, 40, 51, 55, and Laws 2003, ch. 429, §§ 136, 155, 178, $13,761,800 to the local government division of the department of finance and administration (and the office of Indian affairs) for various purposes throughout the state.

Laws 1998, ch. 7, § 10, as amended by Laws 2002, ch. 99, § 7, $18,620,700 to the capital program fund for renovations and improvements to various facilities and buildings throughout the state.

Laws 1998, ch. 7, § 12, as amended by Laws 2002, ch. 99, §§ 42, 44, 48, 50, and Laws 2003, ch. 429, § 206 $1,633,000 to New Mexico office of Indian affairs for various purposes.

Laws 1998, ch. 118, § 2, as amended by Laws 2003, ch. 429, § 118 $1,647,000 to the state agency on aging to be used by various senior citizen centers throughout the state.

Laws 1998, ch. 118, § 9, as amended by Laws 2002, ch. 99, § 59, and Laws 2003, ch. 429, §§ 129, 130 $6,103,000 to the department of environment for various water and sewer construction and improvement projects throughout the state, and to carry out the purposes of the Wastewater Facility Construction Loan Act.

Laws 1998, ch. 118, § 11, as amended by Laws 2002, ch. 99, §§ 19, 33, 34, 62, 68, and Laws 2002, ch. 110, §§ 67, 73, and Laws 2003, ch. 429, §§ 84, 85, 154 $21,595,600 to the local government division of the department of finance and administration for construction of new public service centers and parks, and equipment, improvements and additions to various existing parks, community service centers, and various other community facilities throughout the state.

Laws 1998, ch. 118, § 14, as amended by Laws 2002, ch. 99, § 53, $10,697,300 to the capital program fund for various purposes.

Laws 1998, ch. 118, § 18, as reauthorized by Laws 1999 (1st S.S.), ch. 2, § 90 and amended by Laws 2002, ch. 99, §§ 41, 43, 56, 76, and Laws 2002, ch. 110, § 82, and Laws 2003, ch. 429, § 104 $3,408,000 to the New Mexico office of Indian affairs for various purposes.

Laws 1998, ch. 118, § 19, as amended by Laws 2003, ch. 429, § 109, 110 $13,209,175 to the state department of public education for construction of and various improvements and equipment for schools, including installation of educational technology, throughout the state.

Laws 1999 (1st S.S.), ch. 2, § 5, as amended by Laws 2003, ch. 429, §§ 122, 124, 126, 127, $6,245,000 to the capital program fund for various purposes.

Laws 1999 (1st S.S.), ch. 2, § 9, as amended by Laws 2002, ch. 99, §§ 10, 11, $647,500 to the office of the state engineer for various improvements throughout the state.

Laws 1999 (1st S.S.), ch. 2, § 10, as amended by Laws 2002, ch. 99, § 13, and Laws 2003, ch. 429, §§ 48, 134, $4,953,188 to the department of environment for various water and sewer construction and improvement projects throughout the state.

Laws 1999 (1st S.S.), ch. 2, § 13, as amended by Laws 2002, ch. 99, § 14, and Laws 2003, ch. 429, § 131 $335,000 to the department of health to purchase equipment and make capital improvements throughout the state.

Laws 1999 (1st S.S.), ch. 2, § 14, as amended by Laws 2002, ch. 99, §§ 61, 71, and Laws 2002, ch. 110, §§ 65, 77 and Laws 2003, ch. 429, § 61 $5,978,321 to the state highway and transportation department for improvements throughout the state.

Laws 1999 (1st S.S.), ch. 2, § 15, as amended by Laws 2002, ch. 99, §§ 49, 73, and Laws 2003, ch. 429, §§ 88, 89, 91, 95, 96 to 100, 102, 103, 107, 201, 204, 205,

$2,790,901 to New Mexico office of Indian affairs to purchase equipment and make improvements at various sites throughout the state.

Laws 1999 (1st S.S.), ch. 2, § 17, as amended by Laws 2002, ch. 99, §§ 21, 47 and Laws 2003, ch. 429, §§ 66, 74, 75, 80, 82, 101, 108, 147, 151, 163, 174, 176, 179, 181, 182, 185, 186, 187, 197, $18,920,170 to the local government division for the purchase of equipment, new construction, and to make improvements to various sites throughout the state.

Laws 1999 (1st S.S.), ch. 2, § 19, as amended by Laws 2003, ch. 429, §§ 111, 112, 121, 180, 190 $12,670,326 to the state department of public education for educational technology and improvements at various schools throughout the state.

Laws 1999 (1st S.S.), ch. 2, § 30, as amended by Laws 2002, ch. 99, § 5 and Laws 2003, ch. 429, § 123 from irrigation works construction fund to capital program fund.

Laws 1999 (1st S.S.), ch. 2, § 31, as amended by Laws 2003, ch. 429, § 125, from the public buildings repair fund to the capital program fund.

Laws 2000 (2nd S.S.), ch. 23, § 4, as amended by Laws 2002, ch. 99, § 69, and Laws 2002, ch. 110, § 75, and Laws 2003, ch. 429, § 119 $898,500 for the state agency on aging and local government division of the department of finance and administration for various purposes.

Laws 2000 (2nd S.S.), ch. 23, § 6, as amended by Laws 2002, ch. 99, § 26, $2,310,000 to the office of cultural affairs for various purposes.

Laws 2000 (2nd S.S.), ch. 23, § 8, as amended by Laws 2002, ch. 99 and Laws 2003, ch. 429, § 184, § 12, $4,514,495 to the department of the environment for various purposes.

Laws 2000 (2nd S.S.), ch. 23, § 12, as amended by Laws 2002, ch. 99, § 16, and Laws 2003, ch. 429, § 59 $6,965,784 to the state highway and transportation department for various road improvements throughout the state.

Laws 2000 (2nd S.S.), ch. 23, § 13, as amended by Laws 2002, ch. 99, §§ 39, 52, 74, and Laws 2002, ch. 110, § 80, $3,644,940 to the New Mexico office of Indian affairs for various purposes.

Laws 2000 (2nd S.S.), ch. 23, § 15, as amended by Laws 2002, ch. 99, §§ 9, 20, 23, 25, 28, 29, 30, 32, 35, 57, 63, 64, 66, 70, and Laws 2002, ch. 110, §§ 68, 69, 71, 74, 76, and Laws 2003, ch. 429, §§ 54, 64, 117, 142, 144, 145, 150, 153, 158, 162, 164, 168, 183, 193 $21,491,665 to the local government division of the department of finance and administration for various purposes.

Laws 2000 (2nd S.S.), ch. 23, § 16, as amended by Laws 2002, ch. 99, § 46, and Laws 2002, ch. 110, § 84, $10,550,080 to the state department of public education for various school improvements and programs.

Laws 2000 (2nd S.S.), ch. 23, § 19, as amended by Laws 2002, ch. 99, §§ 2 to 4, $4,000,000 to the public buildings repair fund for various capital projects throughout the state.

Laws 2002, ch. 110, §§ 1 to 38, as amended by Laws 2003, ch. 429 §§ 44 to 47, 49 to 51, 53, 56, 57, 60, 62, 63, 65, 67 to 73, 76, 77, 79, 81, 83, 86, 87, 90, 94, 113 to 116, 128, 132, 133, 135, 137, 140, 143, 146, 148, 152, 156, 157, 159 to 161, 165, 166, 169 to 173, 175, 177, 188, 189, 192, 194 to 196, 198 to 200, 202, 203, 207 to 214, 216, 217 varying amounts for aging projects, armory projects, court projects, district attorney projects, railroad projects, museum and cultural projects, historic preservation projects, statewide e-commerce projects, energy, minerals and natural resources projects, water projects, environment projects, state fair projects, digital technology projects, health facility projects, highway projects, Indian affairs projects, acequia projects, local projects, public education projects, state buildings, tourism projects, higher education projects, dam rehabilitation projects.

Laws 2002, ch. 110, § 56, effective March 6, 2002, appropriates $6,666,667 from the capital projects fund to the public buildings repair fund and from the public buildings repair fund to the capital program fund for expenditure in fiscal years 2002 through 2007 to make various capital improvments at public buildings throughout the state.

Laws 2003, ch. 429, § 3, effective April 10, 2003, appropriates $25,000 to the office on African-American affairs for the purchase of artifacts, exhibits and art of the African-American culture and heritage.

Laws 2003, ch. 429, § 4, effective April 10, 2003, appropriates varying amounts for varying projects to the state agency on aging.

Laws 2003, ch. 429, § 5, effective April 10, 2003, appropriates $270,000 to the state armory board for repair and renovation of state armory and national guard armory facilities.

Laws 2003, ch. 429, § 6, effective April 10, 2003, appropriates varying amounts to the border authority for construction of facilities.

Laws 2003, ch. 429, § 7, effective April 10, 2003, appropriates $38,000 to the thirteenth judicial district court for purchase of an automobile and electronic equipment.

Laws 2003, ch. 429, § 8, effective April 10, 2003, appropriates $120,000 to the Cumbres and Toltec scenic railroad commission for federal match to rebuild locomotives.

Laws 2003, ch. 429, § 9, effective April 10, 2003, appropriates varying amounts for varying purposes to the office of cultural affairs.

Laws 2003, ch. 429, § 10, effective April 10, 2003, appropriates $225,000 to the economic development department for city hall in Las Vegas and a statewide feasibility study.

Laws 2003, ch. 429, § 11, effective April 10, 2003, appropriates varying amounts for the construction and maintenance of parks to the state parks division of the energy, minerals and natural resources department.

Laws 2003, ch. 429, § 12, effective April 10, 2003, appropriates varying amounts for varying purposes to the office of the state engineer.

Laws 2003, ch. 429, § 13, effective April 10, 2003, appropriates varying amounts for varying purposes to the interstate stream commission.

Laws 2003, ch. 429, § 14, effective April 10, 2003, appropriates varying amounts for varying purposes to the department of environment.

Laws 2003, ch. 429, § 15, effective April 10, 2003, appropriates $3,000,000 for the construction of wastewater facilities to the wastewater facility construction loan fund.

Laws 2003, ch. 429, § 16, effective April 10, 2003, appropriates varying amount for varying projects to the state fair commission.

Laws 2003, ch. 429, § 17, effective April 10, 2003, appropriates $2,000,000 for the development of digital microwave communications to the general services department.

Laws 2003, ch. 429, § 18, effective April 10, 2003, appropriates varying amounts for varying projects to the state highway and transportation department.

Laws 2003, ch. 429, § 19, effective April 10, 2003, appropriates $155,000 for hangar construction to the aviation division of the state highway and transportation department.

Laws 2003, ch. 429, § 20, effective April 10, 2003, appropriates $600,000 for energy-efficient improvements to dwellings of low-income persons to the department of finance and administration.

Laws 2003, ch. 429, § 21, effective April 10, 2003, appropriates varying amount for varying projects to the New Mexico office of Indian affairs.

Laws 2003, ch. 429, § 22, effective April 10, 2003, appropriates varying amounts for varying purposes to the local government division of the department of finance and administration.

Laws 2003, ch. 429, § 23, effective April 10, 2003, appropriates varying amounts for varying purposes to the state department of education.

Laws 2003, ch. 429, § 24, effective April 10, 2003, appropriates varying amount for varying projects to the capital program fund.

Laws 2003, ch. 429, § 25, effective April 10, 2003, appropriates $8,000,000 for repair of state-owned facilities to the property control division of the general services department and $8,000,000 for building repair from the public buildings repair fund to the capital program fund.

Laws 2003, ch. 429, § 26, effective April 10, 2003, appropriates varying amounts for varying purposes to agencies of learning.

Laws 2003, ch. 429, § 27, effective April 10, 2003, appropriates $4,000,000 for the purchase of helicopters for the use of the New Mexico state police to the secretary of public safety and $5,000,000 for varying purposes to the office of cultural affairs.

Laws 2003, ch. 429, § 28, effective April 10, 2003, appropriates $28,011,000 from the general fund to the capital projects fund.

Laws 2003, ch. 429, § 29, effective April 10, 2003, appropriates varying amounts for varying purposes from the capital projects fund to the state agency on aging.

Laws 2003, ch. 429, § 30, effective April 10, 2003, appropriates $210,800 for varying purposes from the capital projects fund to the office of cultural affairs.

Laws 2003, ch. 429, § 31, effective April 10, 2003, appropriates $550,000 for varying purposes from the capital projects fund to the economic development department.

Laws 2003, ch. 429, § 32, effective April 10, 2003, appropriates varying amounts for varying purposes from the capital projects fund to the department of environment.

Laws 2003, ch. 429, § 33, effective April 10, 2003, appropriates varying amounts for varying purposes from the capital projects fund to the office of the state engineer.

Laws 2003, ch. 429, § 34, effective April 10, 2003, appropriates varying amounts for varying road improvements from the capital projects fund to the state highway and transportation department.

Laws 2003, ch. 429, § 35, effective April 10, 2003, appropriates varying amounts for varying purposes from the capital projects fund to the New Mexico office of Indian affairs.

Laws 2003, ch. 429, § 36, effective April 10, 2003, appropriates $30,000 for the purchase of sculpture from the capital projects fund to the state land office.

Laws 2003, ch. 429, § 37, effective April 10, 2003, appropriates varying amounts for varying purposes from the capital projects fund to the local government division of the department of finance and administration.

Laws 2003, ch. 429, § 38, effective April 10, 2003, appropriates varying amounts for public education projects from the capital projects fund to the state department of public education.

Laws 2003, ch. 429, § 39, effective April 10, 2003, appropriates varying amounts for varying higher education projects from the capital projects fund to varying agencies of higher learning.

Laws 2003, ch. 429, § 40, effective April 10, 2003, appropriates $165,000 for various improvements to the state capitol from legislative cash to the legislative council service.

Laws 2003, ch. 429, § 41, effective April 10, 2003, appropriates varying amounts for game and fish projects from the game protection fund to the department of game and fish.

Laws 2003, ch. 429, § 42, effective April 10, 2003, appropriates $5,000,000 for an addition and renovations to the miners' Colfax medical center from the miners' trust fund to the board of trustees of the Colfax medial center.

Laws 2003, ch. 429, § 43, effective April 10, 2003, appropriates $4,500,000 for highway projects from the state road fund to the state highway and transportation department.

Laws 2004, ch. 126, § 3, effective March 10, 2004, authorizes the issuance of severance bonds for aging projects.

Laws 2004, ch. 126, § 4, effective March 10, 2004, authorizes the issuance of severance bonds for the third judicial district court.

Laws 2004, ch. 126, § 5, effective March 10, 2004, authorizes the issuance of severance bonds for the twelfth judicial district court.

Laws 2004, ch. 126, § 6, effective March 10, 2004, authorizes the issuance of severance bonds for cultural affairs projects.

Laws 2004, ch. 126, § 7, effective March 10, 2004, authorizes the issuance of severance bonds for economic development projects.

Laws 2004, ch. 126, § 8, effective March 10, 2004, authorizes the issuance of severance bonds for the Tularosa water projects.

Laws 2004, ch. 126, § 9, effective March 10, 2004, authorizes the issuance of severance bonds for environment projects.

Laws 2004, ch. 126, § 10, effective March 10, 2004, authorizes the issuance of severance bonds for state fair projects.

Laws 2004, ch. 126, § 11, effective March 10, 2004, authorizes the issuance of $10,000,000 in severance bonds for a statewide human resources, accounting and management reporting project.

Laws 2004, ch. 126, § 12, effective March 10, 2004, authorizes the issuance of severance bonds for Indian Affairs projects.

Laws 2004, ch. 126, § 13, effective March 10, 2004, authorizes the issuance of severance bonds for local government projects.

Laws 2004, ch. 126, § 14, effective March 10, 2004, authorizes the issuance of severance bonds for public education projects.

Laws 2004, ch. 126, § 15, effective March 10, 2004, authorizes the issuance of severance bonds for public transportation projects.

Laws 2004, ch. 126, § 16, effective March 10, 2004, authorizes the issuance of severance bonds for Mesilla Valley bosque state park in Dona Ana county.

Laws 2004, ch. 126, § 17, effective March 10, 2004, authorizes the issuance of severance bonds for university projects.

Laws 2004, ch. 126, § 18, effective March 10, 2004, authorizes the issuance of severance bonds for Fort Stanton.

Laws 2004, ch. 126, § 19, effective March 10, 2004, authorizes the issuance of $127,530,943 severance bonds for capital projects fund projects.

Laws 2004, ch. 126, §§ 49, 51 to 53, 56 to 60, 63, 65 to 69, 71 to 73, 75 to 78, 82 to 93, 95 to 102, 105, 108 to 115, 117 to 120 and 139, effective March 10, 2004, authorize or reauthorize severance tax bond projects.

Laws 2004, ch. 126, § 151, effective March 10, 2004, authorizes the issuance of $10,000,000 in severance bonds for the statewide human resources, accounting and management project.

Laws 2005, ch. 347, § 3, effective April 8, 2005, authorizes the issuance of severance tax bonds for thirty-one aging projects.

Laws 2005, ch. 347, § 4, effective April 8, 2005, authorizes the issuance of severance tax bonds for national guard armories in Dona Ana and Taos counties.

Laws 2005, ch. 347, § 5, effective April 8, 2005, authorizes the issuance of severance tax bonds for Bernalillo county district court.

Laws 2005, ch. 347, § 6, effective April 8, 2005, authorizes the issuance of $70,000 of severance tax bonds for two court projects.

Laws 2005, ch. 347, § 7, effective April 8, 2005, authorizes the issuance of severance tax bonds for 9 different cultural affairs projects.

Laws 2005, ch. 347, § 8, effective April 8, 2005, authorizes the issuance of $150,000 of severance tax bonds for economic development projects.

Laws 2005, ch. 347, § 9, effective April 8, 2005, authorizes the issuance of severance tax bonds for water projects.

Laws 2005, ch. 347, § 10, effective April 8, 2005, authorizes the issuance of $10,100,000 of severance tax bonds for the Pecos river and two other interstate stream water projects.

Laws 2005, ch. 347, § 11, effective April 8, 2005, authorizes the issuance of $100,000 of severance tax bonds for Shakespeare Ghost Town state park in Lordsburg.

Laws 2005, ch. 347, § 12, effective April 8, 2005, authorizes the issuance of severance tax bonds for 84 different environment projects statewide.

Laws 2005, ch. 347, § 13, effective April 8, 2005, authorizes the issuance of severance tax bonds for 3 health department projects.

Laws 2005, ch. 347, §§ 14 and 15, effective April 8, 2005, authorize the issuance of severance tax bonds for state fair and Indian affairs projects.

Laws 2005, ch. 347, § 16, effective April 8, 2005, authorizes the issuance of severance tax bonds for 298 local government projects some of which were vetoed by the Governor.

Laws 2005, ch. 347, § 18, effective April 8, 2005, authorizes the issuance of severance tax bonds for to purchase vehicles for the New Mexico youth challenge program in Roswell in Chaves county.

Laws 2005, ch. 347, § 19, effective April 8, 2005, authorizes the issuance of severance tax bonds for 135 different public education projects.

Laws 2005, ch. 347, § 20, effective April 8, 2005, authorizes the issuance of severance tax bonds for 118 transportation projects.

Laws 2005, ch. 347, § 21, effective April 8, 2005, authorizes the issuance of severance tax bonds for higher education projects.

Laws 2005, ch. 347, § 22, effective April 8, 2005, authorizes the issuance of severance tax bonds for state building projects.

Laws 2005, ch. 347, § 23, effective April 8, 2005, authorizes the issuance of severance tax bonds for 193 aging projects.

Laws 2005, ch. 347, § 24, effective April 8, 2005, authorizes the issuance of severance tax bonds for armory projects.

Laws 2005, ch. 347, § 25, effective April 8, 2005, authorizes the issuance of severance tax bonds for children, youth and families projects.

Laws 2005, ch. 347, §§ 64 to 295, effective April 8, 2005, reauthorize and change the purpose of the balances of previously funded capital projects.

Laws 2006, ch. 107, §§ 7 to 10, 16 to 21, 24, 25, 28, 31 to 33, 35, 39 to 43, 45 to 47, 49, 53, 54, 56, 60 to 62, 69, 71, to 74, 77, 82, 88 to 91, 93 to 97, 99 to 106, 108, 110, 111, 114 to 117, 120, 122 to 124, 126, 128, 129, 131, 136, 140, 143, 147, 150, 152, 155, 156, 158, 160 to 161, 166, 169, 177, 178, 179 to 181, effective May 17, 2006, reauthorize or reappropriate balances, expand or change purposes and establish conditions for severance tax bond proceeds for capital outlay projects.

Laws 2007, ch. 42, §§ 1 to 102, effective March 15, 2007, authorize the issuance of severance tax bonds and make appropriations for capital outlay expenditures.

Laws 2008 (2nd S.S.), ch. 9, § 1, effective September 2, 2008, authorized the issuance of $150,000,000 in severance tax bonds for certain road projects enumerated in Laws 2003 (1st S. S.), ch. 3, § 27.

Laws 2009, ch. 5, § 2, effective February 6, 2009, changed certain severance tax bond authorizations and appropriations.

Laws 2009, ch. 125, §§ 1 and 3 through 40, effective June 19, 2009, authorized the issuance of severance tax bonds and make appropriations for capital outlay expenditures.

## Authorized Supplemental Severance Tax Bonds

The New Mexico Legislature has, since 1999, authorized issuance of the following supplemental severance tax bonds:

Laws 2004, ch. 125, § 15, effective May 19, 2004: fifty-seven million dollars ($57,000,000) for completing projects that have been partially funded by the public

school capital outlay council in September 2003 and for making awards of grant assistance for correcting deficiencies pursuant to the Public School Capital Outlay Act.

Laws 2006, ch. 111, § 3, effective March 8, 2006, authorizes the issuance of severance tax bonds for eleven aging projects.

Laws 2006, ch. 111, § 4, effective March 8, 2006, authorizes the issuance of severance tax bonds for the fifth, seventh and eleventh judicial district court.

Laws 2006, ch. 111, § 5, effective March 8, 2006, authorizes the issuance of severance tax bonds for security equipment in the supreme court building.

Laws 2006, ch. 111, § 6, effective March 8, 2006, authorizes the issuance of severance tax bonds for 5 different cultural affairs projects.

Laws 2006, ch. 111, § 7, effective March 8, 2006, authorizes the issuance of $500,000 of severance tax bonds for a wood harvesting project in San Miguel county.

Laws 2006, ch. 111, § 8, effective March 8, 2006, authorizes the issuance of severance tax bonds for public school specific capital projects throughout the state.

Laws 2006, ch. 111, § 9, effective March 8, 2006, authorizes the issuance of severance tax bonds for the vocational rehabilitation division to purchase vehicles.

Laws 2006, ch. 111, §10, effective March 8, 2006, authorizes the issuance of $4,000,000 in severance tax bonds to the for wildfire protection.

Laws 2006, ch. 111, § 11, effective March 8, 2006, authorizes the issuance of severance tax bonds for water projects, including a $9,000,000 for purchasing water rights, land and infrastructure projects as part of the long-term strategy for compliance with the Pecos River Compact and Texas v. New Mexico.

Laws 2006, ch. 111, § 12, effective March 8, 2006, authorizes the issuance of severance tax bonds for acequia projects.

Laws 2006, ch. 111, § 13, effective March 8, 2006, authorizes the issuance of severance tax bonds for the department of environment for statewide water and wastewater projects.

Laws 2006, ch. 111, § 14, effective March 8, 2006, authorizes the issuance of $1,550,000 for the state fair African-American performing arts project.

Laws 2006, ch. 111, § 15, effective March 8, 2006, authorizes the issuance of $426,000 for affordable housing, $5,000,000 for Canon air force base projects and $5,000,000 for tribal infrastructure projects.

Laws 2006, ch. 111, § 16, effective March 8, 2006, authorizes the issuance of severance tax bonds for Indian affairs department projects.

Laws 2006, ch. 111, § 17, effective March 8, 2006, authorizes the issuance of severance tax bonds for legislative web casting.

Laws 2006, ch. 111, § 18, effective March 8, 2006, authorizes the issuance of severance tax bonds for local government capital projects throughout the state.

Laws 2006, ch. 111, § 19, effective March 8, 2006, authorizes the issuance of severance tax bonds for a civil air patrol hangar at Las Cruces.

Laws 2006, ch. 111, § 20, effective March 8, 2006, authorizes the issuance of severance tax bonds for natural resource department projects, including $500,000 for the Rio Grande nature center in Albuquerque.

Laws 2006, ch. 111, § 21, effective March 8, 2006, authorizes the issuance of $500,0000 in severance tax bonds for department of public safety communications project for disaster communications.

Laws 2006, ch. 111, § 22, effective March 8, 2006, authorizes the issuance of severance tax bonds for department of transportation projects throughout the state.

Laws 2006, ch. 111, § 23, effective March 8, 2006, authorizes the issuance of severance tax bonds for community college projects.

Laws 2006, ch. 111, § 24, effective March 8, 2006, authorizes the issuance of severance tax bonds for universities, colleges and special constitutional schools

Laws 2006, ch. 111, § 25, effective March 8, 2006, authorizes the issuance of severance tax bonds for property control division projects.

Laws 2006, ch. 111, § 68, effective March 8, 2006, authorizes the issuance of a total of $100,000,000 in severance tax bonds for a regional spaceport in Sierra county, $33,000,000 to be issued in fiscal year 2006, and, subject to certain conditions, the issuance of $33,000,000 in severance tax bonds the proceeds of which may be expended in fiscal year 2007 and the issuance of $34,000,000 in severance tax bonds the proceeds of which may be expended in fiscal year 2008.

Laws 2007, ch. 341, §§ 1 to 308, effective April 2, 2007, reauthorize and reappropriate balances, expand of change purposes, extend expenditure periods, change agencies and establish conditions for the reversion of unexpended cash balances of capital outlay projects approved by the legislature in prior years.

Laws 2009, ch. 128, §§ 1 through 556, effective April 7, 2009, reauthorized and reappropriated balances, expanded or changed purposes, extended expenditure

periods, changed agencies and established conditions for the reversion of unexpended cash balances of capital outlay projects approved by the legislature in prior years and funded by the severance tax bonding fund, general fund and capital projects fund.

# ARTICLE 28
# Oil and Gas Accounting

(Repealed by Laws 1985, ch. 65, § 46.)

## 7-28-1 to 7-28-13. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-28-1 to 7-28-13 NMSA 1978, relating to the Oil and Gas Accounting Commission Act, effective July 1, 1985.

# ARTICLE 29
# Oil and Gas Severance Tax

## 7-29-1. Title.

Chapter 7, Article 29 NMSA 1978 may be cited as the "Oil and Gas Severance Tax Act".

**History:** 1953 Comp., § 72-19-1, enacted by Laws 1959, ch. 52, § 1; 1985, ch. 65, § 27.

**ANNOTATIONS**

**Cross references.** — For intergovernmental tax credits, *see* 7-29C-1 NMSA 1978.

**Severance tax is excise, not property, tax.** — A tax upon oil and gas severed from soil under Laws 1933, ch. 72, was an excise tax and not a property tax on tangible property not in proportion to value thereof, and was not unconstitutional. Flynn, Welch & Yates, Inc. v. State Tax Comm'n, 1934-NMSC-001, 38 N.M. 131, 28 P.2d 889.

**Law reviews.** — For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For note, "Tribal Severance Taxes - Outside the Purview of the Commerce Clause," see 21 Nat. Resources J. 405 (1981).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation §§ 219, 614.

Oil and gas rights or privileges as independent subject of taxation, or as tangible property for purposes of taxation, 16 A.L.R. 513.

Validity of privilege or occupation tax on business of severing natural resources from soil, 32 A.L.R. 827.

84 C.J.S. Taxation §§ 208.

## 7-29-2. Definitions.

As used in the Oil and Gas Severance Tax Act:

A. "commission", "department", "division" or "oil and gas accounting division" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

C. "severance" means the taking from the soil of any product in any manner whatsoever;

D. "value" means the actual price received for products at the production unit, except as otherwise provided in the Oil and Gas Severance Tax Act;

E. "product" or "products" means oil, natural gas or liquid hydrocarbon, individually or any combination thereof, carbon dioxide, helium or a non-hydrocarbon gas;

F. "operator" means any person:

(1) engaged in the severance of products from a production unit; or

(2) owning an interest in any product at the time of severance who receives a portion or all of such product for his interest;

G. "primary recovery" means the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool as classified by the oil conservation division of the energy, minerals and natural resources department pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978 into the wellbore by means of the natural pressure of the oil well or pool, including but not limited to artificial lift;

H. "purchaser" means a person who is the first purchaser of a product after severance from a production unit, except as otherwise provided in the Oil and Gas Severance Tax Act;

I. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, co-partnership, cooperative, joint venture, association or other group or combination acting as a unit, and the plural as well as the singular number;

J. "interest owner" means a person owning an entire or fractional interest of whatsoever kind or nature in the products at the time of severance from a production unit, or who has a right to a monetary payment that is determined by the value of such products;

K. "new production natural gas well" means a producing crude oil or natural gas well proration unit that begins its initial natural gas production on or after May 1, 1987 as determined by the oil conservation division of the energy, minerals and natural resources department;

L. "qualified enhanced recovery project", prior to January 1, 1994, means the use or the expanded use of carbon dioxide, when approved by the oil conservation division of the energy, minerals and natural resources department pursuant to the Enhanced Oil Recovery Act [Chapter 7, Article 29A NMSA 1978], for the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool classified by the oil conservation division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978;

M. "qualified enhanced recovery project", on and after January 1, 1994, means the use or the expanded use of any process approved by the oil conservation division of the energy, minerals and natural resources department pursuant to the Enhanced Oil Recovery Act for the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool classified by the oil conservation division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978, other than a primary recovery process; the term includes but is not limited to the use of a pressure maintenance process, a water flooding process and immiscible, miscible, chemical, thermal or biological process or any other related process;

N. "production restoration project" means the use of any process for returning to production a natural gas or oil well that had thirty days or less of production in any period of twenty-four consecutive months beginning on or after January 1, 1993, as approved and certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act [7-29B-1 through 7-29B-6 NMSA 1978];

O. "well workover project" means any procedure undertaken by the operator of a natural gas or crude oil well that is intended to increase the production from the well and that has been approved and certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act;

P. "stripper well property" means a crude oil or natural gas producing property that is assigned a single production unit number by the department and is certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act to have produced in the preceding calendar year:

(1) if a crude oil producing property, an average daily production of less than ten barrels of oil per eligible well per day;

(2) if a natural gas producing property, an average daily production of less than sixty thousand cubic feet of natural gas per eligible well per day; or

(3) if a property with wells that produce both crude oil and natural gas, an average daily production of less than ten barrels of oil per eligible well per day, as determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil;

Q. "average annual taxable value" means as applicable:

(1) the average of the taxable value per one thousand cubic feet, determined pursuant to Section 7-31-5 NMSA 1978, of all natural gas produced in New Mexico for the specified calendar year as determined by the department; or

(2) the average of the taxable value per barrel, determined pursuant to Section 7-31-5 NMSA 1978, of all oil produced in New Mexico for the specified calendar year as determined by the department; and

R. "tax" means the oil and gas severance tax.

**History:** 1953 Comp., § 72-29-2, enacted by Laws 1959, ch. 52, § 2; 1977, ch. 249, § 53; 1980, ch. 97, § 1; 1986, ch. 20, § 98; 1987, ch. 315, § 2; 1992, ch. 38, § 6; 1995, ch. 15, § 7; 1999, ch. 7, § 1; 1999, ch. 256, § 1; 2005, ch. 130, § 1.

## ANNOTATIONS

**The 2005 amendment,** effective July 1, 2005, defined "product" in Subsection E to include helium or non-hydrocarbon gas.

**The 1999 amendment,** effective June 18, 1999, added Subsections P and Q, and redesignated former Subsection P as Subsection R. This section was also amended by Laws 1999, ch. 7, § 1. The section was set out as amended by Laws 1999, ch. 256, § 1. *See* 12-1-8 NMSA 1978.

**The 1995 amendment,** effective June 16, 1995, added Subsections N through P.

**The 1992 amendment,** effective March 6, 1992, added Subsection G and redesignated the subsequent subsections accordingly; in Subsection K, substituted "energy, minerals and natural resources department" for "energy and minerals resources department"; added Subsections L and M; and made stylistic changes.

**Law reviews.** — For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M.L. Rev. 69 (1976-77).

## 7-29-3. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-29-3 NMSA 1978, as enacted by Laws 1959, ch. 52, § 3, relating to the purpose and declaration of intention of the Oil and Gas Severance Tax Act, effective July 1, 1985.

## 7-29-4. Oil and gas severance tax imposed; collection; interest owner's liability to state; Indian liability.

A. There is imposed and shall be collected by the department a tax on all products that are severed and sold, except as provided in Subsection B of this section. The measure of the tax and the rates are:

(1) on natural gas severed and sold, except as provided in Paragraphs (4), (6) and (7) of this subsection, three and three-fourths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978;

(2) on oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead, except as provided in Paragraphs (3), (5), (8) and (9) of this subsection, three and three-fourths percent of taxable value determined pursuant to Section 7-29-4.1 NMSA 1978;

(3) on oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead produced from a qualified enhanced recovery project, one and seven-eighths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to the fiscal year in which the tax rate is to be imposed, was less than twenty-eight dollars ($28.00) per barrel;

(4) on the natural gas from a well workover project that is certified by the oil conservation division of the energy, minerals and natural resources department in its approval of the well workover project, two and forty-five hundredths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the annual average price of west Texas intermediate crude oil, determined by the

department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to the fiscal year in which the tax rate is to be imposed, was less than twenty-four dollars ($24.00) per barrel;

(5) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a well workover project that is certified by the oil conservation division of the energy, minerals and natural resources department in its approval of the well workover project, two and forty-five hundredths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to the fiscal year in which the tax rate is to be imposed, was less than twenty-four dollars ($24.00) per barrel;

(6) on the natural gas from a stripper well property, one and seven-eighths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided the average annual taxable value of natural gas was equal to or less than one dollar fifteen cents ($1.15) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(7) on the natural gas from a stripper well property, two and thirteen-sixteenths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the average annual taxable value of natural gas was greater than one dollar fifteen cents ($1.15) per thousand cubic feet but not more than one dollar thirty-five cents ($1.35) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(8) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, one and seven-eighths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the average annual taxable value of oil was equal to or less than fifteen dollars ($15.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(9) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, two and thirteen-sixteenths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the average annual taxable value of oil was greater than fifteen dollars ($15.00) per barrel but not more than eighteen dollars ($18.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed; and

(10) on carbon dioxide, helium and non-hydrocarbon gases, three and three-fourths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978.

B. The tax imposed in Subsection A of this section shall not be imposed on:

(1) natural gas severed and sold from a production restoration project during the first ten years of production following the restoration of production, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to each fiscal year in which the tax exemption is to be effective, was less than twenty-four dollars ($24.00) per barrel; and

(2) oil and other liquid hydrocarbons removed from natural gas at or near the wellhead from a production restoration project during the first ten years of production following the restoration of production, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to each fiscal year in which the tax exemption is to be effective, was less than twenty-four dollars ($24.00) per barrel.

C. Every interest owner shall be liable for the tax to the extent of his interest in such products. Any Indian tribe, Indian pueblo or Indian shall be liable for the tax to the extent authorized or permitted by law.

D. The tax imposed by this section may be referred to as the "oil and gas severance tax".

**History:** 1978 Comp., § 7-29-4, enacted by Laws 1980, ch. 62, §§ 3, 5; 1987, ch. 315, § 3; 1989, ch. 130, § 2; 1992, ch. 38, § 7; 1995, ch. 15, § 8; 1999, ch. 256, § 2; 2005, ch. 130, § 2.

## ANNOTATIONS

**Cross references.** — For the Natural Gas and Crude Oil Production Incentive Act, *see* 7-29B-1 NMSA 1978.

**The 2005 amendment,** effective July 1, 2005, imposed the severance tax on helium and non-hydrocarbon gases in Subsection A(10).

**The 1999 amendment,** effective June 18, 1999, substituted "pursuant to" for "under" throughout the section; substituted "Paragraphs (4), (6) and (7)" for "Paragraph (4)" in Subsection A(1); inserted "(8) and (9)" in Subsection A(2); deleted "in excess of the production projection" preceding "certified" and substituted "two and forty-five hundredths percent" for "one and seven-eighths percent" in Subsections A(4) and A(5); and added Subsections A(6) through A(9), redesignating former Subsection A(6) as A(10).

**The 1995 amendment,** effective June 16, 1995, in Subsection A, added the exception at the end of the first sentence, rewrote Paragraph (1), substituted "Paragraphs (3) and (5)" for "Paragraph (3)" in Paragraph (2), added Paragraphs (4) and (5), and

redesignated former Paragraph (4) as Paragraph (6); added subsection B; and redesignated former Subsections B and C as Subsections C and D.

**The 1992 amendment,** effective March 6, 1992, in Subsection A, inserted "except as provided in Paragraph (3) of this subsection" in Paragraph (2), added Paragraph (3), made a related stylistic change, and redesignated former Paragraph (3) as Paragraph (4); and added Subsection C.

**The 1989 amendment,** effective June 16, 1989, in Subsection A(1) substituted "taxable value determined under Section 7-29-4.1 NMSA 1978" for "value" in Subparagraph (a) and substituted all of the language of Subparagraph (b) beginning with "taxable" for "value of products"; and added Subsection A(3).

**Tribe's power to impose severance tax not limited by federal government.** — The federal interest in interstate commerce, manifested in traditional commerce clause analyses, does not limit the Jicarilla Apache tribe's power to impose an oil and gas severance tax to be measured by production of these products within the reservation. Merrion v. Jicarilla Apache Tribe, 617 F.2d 537 (10th Cir. 1980), *aff'd*, 455 U.S. 130, 102 S. Ct. 894, 71 L. Ed. 2d 21 (1982).

**Non-Indian producers operating on reservations.** — Oil and gas taxes imposed by the state against a non-Indian producer whose operations are located on an Indian reservation do not constitute an impermissible burden on interstate commerce, were not preempted by federal laws promoting tribal self-sufficiency, and may be imposed on the same on-reservation production of oil and gas by non-Indian lessees as is subject to the tribe's own severance tax. Cotton Petroleum v. State, 1987-NMCA-121, 106 N.M. 517, 745 P.2d 1170, cert. quashed, 106 N.M. 511, 745 P.2d 1159, *aff'd*, 490 U.S. 163, 109 S. Ct. 1698, 104 L. Ed. 2d 209 (1989).

**Tax liability of interest owners.** — Although, pursuant to Subsection C, each interest owner is liable for its proportionate share of the calculated tax, the law does not mandate or even contemplate the determination of different taxable values for each of the various interest owners based on proceeds received downstream from the wellhead. The law is satisfied so long as (1) carbon dioxide production is accurately measured and valued as a whole at the wellhead, (2) the appropriate tax rate is applied to that production to calculate the total tax owed, and (3) the total tax is allocated to the various interest owners in proportion to their fractional interest in that production. Any readjustment in the allocation of the tax burden among working interest owners and royalty interest owners is left to private contract. Feerer v. Amoco Prod. Co., 242 F.3d 1259 (10th Cir. 2001).

**Taxable value of carbon dioxide.** — The calculation of severance taxes under New Mexico law, Subsection A(6) (now Subsection A(10)), is based on a single valuation of a total quantity of carbon dioxide extracted at the wellhead during a given time period. Feerer v. Amoco Prod. Co., 242 F.3d 1259 (10th Cir. 2001).

**Law reviews.** — For article, "Nonneutral Features of Energy Taxation," see 20 Nat. Resources J. 853 (1980).

For note, "Court Picks New Test in Cotton Petroleum," see 30 Nat. Resources J. 919 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 72 Am. Jur. 2d State and Local Taxation §§ 739 to 752.

53 C.J.S. Licenses §§ 65, 70; 85 C.J.S. Taxation §§ 973 to 978.

## 7-29-4.1. Taxable value; method of determining.

To determine the taxable value of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead, of carbon dioxide, of helium, of non-hydrocarbon gases, of natural gas from new production natural gas wells and of natural gas severed after June 30, 1990, there shall be deducted from the value of products:

A. royalties paid or due the United States or the state of New Mexico;

B. royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States of America; and

C. the reasonable expense of trucking any product from the production unit to the first place of market.

**History:** 1978 Comp., § 7-29-4.1, enacted by Laws 1980, ch. 62, § 6; 1989, ch. 130, § 3; 2005, ch. 130, § 3.

**ANNOTATIONS**

**The 2005 amendment,** effective July 1, 2005, provided the method to determine the taxable value of helium and non-hydrocarbon gases.

**The 1989 amendment,** effective June 16, 1989, inserted "of carbon dioxide, of natural gas from new production natural gas wells and of natural gas severed after June 30, 1990" in the undesignated introductory paragraph.

**Transportation adjustment.** — Regulation 3.18.6.9 NMAC required all owners of pipelines at the time of the adoption of the regulation to use the owners' predecessors' depreciation schedule to calculate the transportation adjustment for years subsequent to 1991. Kinder Morgan CO2 Co. v. N.M. Taxation & Revenue Dep't, 2009-NMCA-019, 145 N.M. 579, 203 P.3d 110, cert. denied, 2009-NMCERT-001, 145 N.M. 655, 203 P.3d 870.

Where a pipeline was constructed by the first owner prior to 1985 for $7.9 million; the pipeline was purchased by a second owner in 1985 for $45 million; and the pipeline was purchased in 1998 by the taxpayer, 3.18.6.9 NMAC, which was adopted in 1991, required the second owner and the taxpayer to calculate the transportation adjustment for years subsequent to 1991 on the basis of the first owner's depreciation schedule which was based on a $7.9 million cost to construct the pipeline. Kinder Morgan CO2 Co. v. N.M. Taxation & Revenue Dep't, 2009-NMCA-019, 145 N.M. 579, 203 P.3d 110, cert. denied, 2009-NMCERT-001, 145 N.M. 655, 203 P.3d 870.

## 7-29-4.2. Value may be determined by department; standard.

The department may determine the value of products severed from a production unit when:

A. the operator and purchaser are affiliated persons;

B. the sale and purchase of products is not an arm's length transaction; or when

C. products are severed and removed from a production unit and a value as defined in the Oil and Gas Severance Tax Act is not established for such products.

The value determined by the department shall be commensurate with the actual price received for products of like quality, character and use which are severed in the same field or area. If there are no sales of products of like quality, character and use severed in the same field or area, then the department shall establish a reasonable value.

**History:** 1978 Comp., § 7-29-4.2, enacted by Laws 1980, ch. 62, § 7; 1989, ch. 130, § 4.

**ANNOTATIONS**

**Cross references.** — For payments of royalties in oil, *see* 19-10-64 NMSA 1978 et seq.

**The 1989 amendment,** effective June 16, 1989, substituted "department" for "division" in the catchline, substituted "department" for "oil and gas accounting division" throughout the section, and made minor stylistic changes throughout the section.

**Determination of value.** — The statute does not mandate the way in which the department must calculate processing costs, whether by a comparable value or by some other method. Rather, the final value of natural gas calculated by the department must be commensurate with similar products. Chevron U.S.A., Inc. v. State ex rel. Taxation and Revenue Dep't, 2006-NMCA-050, 139 N.M. 498, 134 P.3d 785, cert. denied, 2006-NMCERT-005, 139 N.M. 567, 136 P.3d 568.

**Burden to prove propriety of regulations.** — An administrative agency does not have the burden to show that its regulations are proper. The department's regulation regarding the presumption of control was rational and valid. Chevron U.S.A., Inc. v. State ex rel. Taxation and Revenue Dep't, 2006-NMCA-050, 139 N.M. 498, 134 P.3d 785, cert. denied, 2006-NMCERT-005, 139 N.M. 567, 136 P.3d 568.

## 7-29-4.3. Price increase subject to approval of agency of United States of America, state of New Mexico or court; refund.

When an increase in the value of any product is subject to the approval of any agency of the United States of America or the state of New Mexico or any court, the increased value shall be subject to this tax. In the event the increase in value is disapproved, either in whole or in part, then the amount of tax which has been paid on the disapproved part of the value shall be considered excess tax. Any person who has paid any such excess tax may apply for a refund of that excess tax in accordance with the provisions of Section 7-1-26 NMSA 1978.

**History:** 1978 Comp., § 7-29-4.3, enacted by Laws 1980, ch. 62, § 8; 1985, ch. 65, § 28.

### ANNOTATIONS

**Federal class action settlement agreement.** — Where taxpayer was party to a settlement agreement that was approved by a federal district court in a class action involving the underpayment of royalties on the production of carbon dioxide gas; the settlement agreement settled the allegation that taxpayer had suppressed the price of carbon dioxide gas; and part of the proceeds of the settlement agreement were compensation to royalty interest owners for the failure to obtain a reasonable sales price for the carbon dioxide gas, the settlement agreement constituted an order that increased the value of the carbon dioxide gas previously reported by taxpayer and a taxable event under Section 7-29-4.3 NMSA 1978. Hess Corp. v. N.M. Taxation & Revenue Dep't, 2011-NMCA-043, 149 N.M. 527, 252 P.3d 751, cert. denied, 2011-NMCERT-003, 150 N.M. 619, 264 P.3d 520.

## 7-29-4.4, 7-29-4.5. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1989, ch. 130, § 14 repealed 7-29-4.4 and 7-29-4.5 NMSA 1978, as enacted by Laws 1980, ch. 97, §§ 2 and 3, relating to collection of carbon dioxide severance tax and method of determining taxable value on carbon dioxide, effective June 16, 1989.

## 7-29-4.6. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 70, § 23 repealed 7-29-4.6 NMSA 1978, as enacted by Laws 1980, ch. 62, § 11, relating to a temporary tax credit for persons liable for payment of taxes imposed by 7-26-9 NMSA 1978 or 7-29-4 NMSA 1978, effective July 1, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

## 7-29-4.7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 130, § 14 repealed 7-29-4.7 NMSA 1978, as enacted by Laws 1980, ch. 62, § 13, relating to surtax applicability, effective June 16, 1989.

## 7-29-5. Products on which tax has been levied; regulation by commission.

This tax shall not be levied more than once on the same product. Reporting of products on which this tax has been paid shall be subject to the regulation of the commission.

**History:** 1953 Comp., § 72-19-8, enacted by Laws 1959, ch. 52, § 8.

**ANNOTATIONS**

**Compiler's notes.** — For the meaning of "commission", *see* 7-29-2A NMSA 1978.

## 7-29-6. Operator or purchaser to withhold interest owner's tax; commission may require withholding of tax; tax withheld to be remitted to the state; operator or purchaser to be reimbursed.

Any operator making a monetary payment to an interest owner for his portion of the value of products from a production unit shall withhold from such payment the amount of tax due from the interest owner.

Any purchaser who, by express or implied agreement with the operator, makes a monetary payment to an interest owner for his portion of the value of products from a production unit, shall withhold from such payment the amount of tax due from the interest owner.

The commission may require any purchaser making a monetary payment to an interest owner for his portion of the value of products from a production unit to withhold from such payment the amount of tax due from the interest owner.

Any operator or purchaser who pays any tax due from an interest owner shall be entitled to reimbursement from the interest owner for the tax so paid and may take credit for such amount from any monetary payment to the interest owner for the value of products.

**History:** 1953 Comp., § 72-19-9, enacted by Laws 1959, ch. 52, § 9.

**ANNOTATIONS**

**Compiler's notes.** — For the meaning of "commission", *see* 7-29-2A NMSA 1978.

**Tax liability of interest owners.** — Although, pursuant to Section 7-29-4(C) NMSA 1978, each interest owner is liable for its proportionate share of the calculated tax, the law does not mandate or even contemplate the determination of different taxable values for each of the various interest owners based on proceeds received downstream from the wellhead. The law is satisfied so long as (1) carbon dioxide production is accurately measured and valued as a whole at the wellhead, (2) the appropriate tax rate is applied to that production to calculate the total tax owed, and (3) the total tax is allocated to the various interest owners in proportion to their fractional interest in that production. Any readjustment in the allocation of the tax burden among working interest owners and royalty interest owners is left to private contract. Feerer v. Amoco Prod. Co., 242 F.3d 1259 (10th Cir. 2001).

## 7-29-7. Operator's report; tax remittance; additional information.

Each operator shall, in the form and manner required by the division, make a return to the division showing the total value, volume and kind of products sold from each production unit for each calendar month. All taxes due, or to be remitted, by the operator shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional report or information the division may deem necessary for the proper administration of the Oil and Gas Severance Tax Act may be required.

**History:** 1953 Comp., § 72-19-10, enacted by Laws 1959, ch. 52, § 10; 1986, ch. 5, § 2.

## 7-29-8. Purchaser's report; tax remittance; additional information.

Each purchaser shall in the form and manner required by the division make a return to the division showing the total value, volume and kind of products purchased by him from each production unit for each calendar month. All taxes due, or to be remitted, by the purchaser shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional reports or information the division may deem necessary for the proper administration of the Oil and Gas Severance Tax Act may be required.

**History:** 1953 Comp., § 72-19-11, enacted by Laws 1959, ch. 52, § 11; 1986, ch. 5, § 3.

**ANNOTATIONS**

**Cross references.** — For the meaning of "division", *see* 7-29-2A NMSA 1978.

## 7-29-9 to 7-29-22. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-29-9 to 7-29-22 NMSA 1978, relating to the fund and remedies under the Oil and Gas Severance Tax Act, effective July 1, 1985.

## 7-29-23. Advance payment required.

A. Any person required to make payment of tax pursuant to Section 7-29-7 or 7-29-8 NMSA 1978 shall make the advance payment required by this section.

B. For the purposes of this section:

(1) "advance payment" means the payment required to be made by this section in addition to any oil and gas severance tax, penalty or interest due; and

(2) "average tax" means the aggregate amount of tax, net of any refunds or credits, paid by a person during the twelve-month period ending March 31 pursuant to the Oil and Gas Severance Tax Act divided by the number of months during that period for which the person made payment.

C. Each year, prior to July 1, each person required to pay tax pursuant to the Oil and Gas Severance Tax Act shall compute the average tax for the period ending March 31 of that year. The average tax calculated for a year shall be used during the twelve-month period beginning with July of that year and ending with June of the following year as the basis for making the advance payments required by Subsection D of this section.

D. Every month, beginning with July 1991, every person required to pay tax in a month pursuant to the Oil and Gas Severance Tax Act shall pay, in addition to any amount of tax, interest or penalty due, an advance payment in an amount equal to the applicable average tax, except:

(1) if the person is making a final return under the Oil and Gas Severance Tax Act, no advance payment pursuant to this subsection is due for that return; and

(2) as provided in Subsection F of this section.

E. Every month, beginning with tax payments due in August 1991, every person required to pay tax pursuant to the Oil and Gas Severance Tax Act may claim a credit

equal to the amount of advance payment made in the previous month, except as provided in Subsection F of this section.

F. If, in any month, a person is not required to pay tax pursuant to the Oil and Gas Severance Tax Act, that person is not required to pay the advance payment and may not claim a credit pursuant to Subsection E of this section provided that, in any succeeding month when the person has liability under the Oil and Gas Severance Tax Act, the person may claim a credit for any advance payment made and not credited.

G. In the event that the date by which a person is required to pay the tax pursuant to the Oil and Gas Severance Tax Act is accelerated to a date earlier than the twenty-fifth day of the second month following the month of production, the advance payment provision contained in this section is null and void and any money held as advance payments shall be credited to the taxpayers' accounts.

**History:** Laws 1991, ch. 9, § 36.

# ARTICLE 29A
# Enhanced Oil Recovery

## 7-29A-1. Short title.

Chapter 7, Article 29A NMSA 1978 may be cited as the "Enhanced Oil Recovery Act".

**History:** Laws 1992, ch. 38, § 1; 1993, ch. 30, § 26.

**ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, substituted "Chapter 7, Article 29A NMSA 1978" for "Sections 1 through 5 of this act".

## 7-29A-2. Definitions.

As used in the Enhanced Oil Recovery Act:

A. "crude oil" means oil and other liquid hydrocarbons removed from natural gas at or near the wellhead;

B. "division" means the oil conservation division of the energy, minerals and natural resources department;

C. "enhanced recovery project" means the use or the expanded use of any process for the displacement of crude oil from an oil well or pool classified by the division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978 other than

a primary recovery process, including but not limited to the use of a pressure maintenance process, a water flooding process, an immiscible, miscible, chemical, thermal or biological process or any other related process;

D. "expansion or expanded use" means a significant change or modification, as determined by the oil conservation division in:

(1) the technology or process used for the displacement of crude oil from an oil well or pool classified by the division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978; or

(2) the expansion, extension or increase in size of the geologic area or adjacent geologic area that could reasonably be determined to represent a new or unique area of activity;

E. "operator" means the person responsible for the actual physical operation of an enhanced recovery project;

F. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association or other group or combination acting as a unit, and the plural as well as the singular number;

G. "positive production response" means that the rate of oil production from the wells or pools affected by an enhanced recovery project is greater than the rate that would have occurred without the project;

H. "primary recovery" means the displacement of crude oil from an oil well or pool classified by the division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978 into the well bore by means of the natural pressure of the oil well or pool, including but not limited to artificial lift;

I. "recovered oil tax rate" means that tax rate, as set forth in Paragraph (3) of Subsection A of Section 7-29-4 NMSA 1978, on crude oil produced from an enhanced recovery project;

J. "secondary recovery project" means an enhanced recovery project that:

(1) occurs subsequent to the completion of primary recovery and is not a tertiary recovery project;

(2) involves the application, in accordance with sound engineering principles, of carbon dioxide miscible fluid displacement, pressure maintenance, water flooding or any other secondary recovery method accepted and approved by the division pursuant to the provisions of Paragraph (14) of Subsection B of Section 70-2-12 NMSA 1978 that can reasonably be expected to result in an increase, determined in light of all facts and circumstances, in the amount of crude oil that may ultimately be recovered; and

(3) encompasses a pool or portion of a pool the boundaries of which can be adequately defined and controlled;

K. "severance" means the taking from the soil of any product in any manner whatsoever;

L. "termination" means the discontinuance of an enhanced recovery project by the operator; and

M. "tertiary recovery project" means an enhanced recovery project that:

(1) occurs subsequent to the completion of a secondary recovery project;

(2) involves the application, in accordance with sound engineering principles, of carbon dioxide miscible fluid displacement, pressure maintenance, water flooding or any other tertiary recovery method accepted and approved by the division pursuant to the provisions of Paragraph (14) of Subsection B of Section 70-2-12 NMSA 1978 that can reasonably be expected to result in an increase, determined in light of all facts and circumstances, in the amount of crude oil that may ultimately be recovered; and

(3) encompasses a pool or portion of a pool the boundaries of which can be adequately defined and controlled.

**History:** Laws 1992, ch. 38, § 2.

## 7-29A-3. Procedures for qualifying for the recovered oil tax rate.

A. Crude oil severed and sold from an enhanced recovery project or the expansion of an existing project shall qualify for the recovered oil tax rate if, before the enhanced recovery project or expansion begins operation, the division approves the project or expansion and designates the area to be affected by the project or expansion, but no project or expansion approved by the division prior to the effective date of the Enhanced Oil Recovery Act shall qualify for the recovered oil tax rate.

B. The operator of a proposed enhanced recovery project or expansion shall apply to the division for approval of the proposed enhanced recovery project or expansion and shall provide the division with any relevant information the division requires for that approval.

C. If approval by the division of a unitization agreement as set forth in Chapter 70, Article 7 NMSA 1978 is required for purposes of carrying out the enhanced recovery project or expansion, the division shall not approve the enhanced recovery project or expansion unless it approves the unitization agreement.

D. An operator may apply for approval of a proposed enhanced recovery project or expansion concurrently with an application for approval of a unitization agreement as

set forth in Chapter 70, Article 7 NMSA 1978 for the purposes of carrying out the proposed enhanced recovery project or expansion.

E. The division shall only approve a proposed enhanced recovery project or expansion if it determines that the application for approval has not been prematurely filed either for economic or technical reasons and that the area to be affected by the enhanced recovery project or expansion has been so depleted that it is prudent to apply enhanced recovery techniques to maximize the ultimate recovery of crude oil from the well or pool.

F. Upon the approval of the application for an enhanced recovery project or expansion, the division shall issue a certification of approval to the operator and designate the area to be affected by the enhanced recovery project or expansion.

G. The recovered oil tax rate shall apply only to the crude oil produced from the area the division certifies to be affected by the enhanced recovery project or expansion.

H. The operator shall file an application for certification of a positive production response with the division to be eligible to receive the recovered oil tax rate.

I. The recovered oil tax rate shall only apply to crude oil produced from an enhanced recovery project or the expansion of an existing project beginning the first day of the month following the date the division certifies that a positive production response has occurred and if the application for certification of positive production response is filed:

(1) not later than five years from the date the division issues the certification of approval of the enhanced recovery project or expansion if the enhanced recovery project or expansion is designated a secondary recovery project; or

(2) not later than seven years from the date the division issues the certification of approval of the enhanced recovery project or expansion if the enhanced recovery project or expansion is designated a tertiary recovery project.

J. Qualification for the recovered oil tax rate ends on the first day of the first calendar month that begins on or after the ninety-first day following the termination of the enhanced recovery project or expansion.

K. If the active operation of an approved enhanced recovery project or expansion is terminated, the operator shall notify the division and the secretary of taxation and revenue in writing, not later than the thirtieth day after the termination of the enhanced recovery project or expansion.

L. In addition to the powers enumerated in Section 70-2-12 NMSA 1978, the division shall adopt, promulgate and enforce rules and regulations concerning the approval of the applications, the designation of the affected areas and the operation,

expansion and termination of the enhanced recovery projects as provided for in the Enhanced Oil Recovery Act.

**History:** Laws 1992, ch. 38, § 3.

**ANNOTATIONS**

**Compiler's notes.** — The effective date of the Enhanced Oil Recovery Act was March 6, 1992, the effective date of Laws 1992, ch. 38.

## 7-29A-4. Notification to the secretary of taxation and revenue; duties of the secretary.

A. The division shall immediately notify the secretary of taxation and revenue upon:

(1) certifying that a positive production response has occurred for an enhanced oil recovery project, in which case the notice shall contain the date certification was made and the date positive production response occurred;

(2) receiving notification of termination of an enhanced recovery project, in which case the notice shall contain the date of termination; and

(3) adopting and promulgating rules and regulations pursuant to the provisions of the Enhanced Oil Recovery Act.

B. The secretary of taxation and revenue shall adopt and promulgate rules and regulations to enforce the provisions of the Enhanced Oil Recovery Act.

**History:** Laws 1992, ch. 38, § 4.

## 7-29A-5. Secretary of taxation and revenue approval; refund.

A. The person responsible for paying the oil and gas severance tax on production from the enhanced recovery project shall not qualify to receive the recovered oil tax rate unless that person:

(1) applies to the secretary of taxation and revenue in the form and manner prescribed by the secretary for approval to pay the oil and gas severance tax on crude oil severed and saved from the enhanced recovery project at the recovered oil tax rate;

(2) includes the certifications from the division of approval and designation of the affected areas of the enhanced recovery project and of a positive production response from the enhanced recovery project; and

(3) provides all relevant material that the secretary of taxation and revenue considers necessary to administer the applicable provisions of the Enhanced Oil Recovery Act.

B. An approval of the secretary of taxation and revenue in accordance with Subsection A of this section shall be applicable to crude oil severed and sold from the enhanced recovery project on and after the first day of the month following the month in which the division certifies that a positive production response with respect to the enhanced recovery project has occurred. If the oil and gas severance tax is paid at a rate imposed in Paragraph (2) of Subsection A of Section 7-29-4 NMSA 1978 on crude oil severed and saved from the enhanced recovery project after the month in which the division certifies that a positive production response with respect to the enhanced recovery project has occurred, a claim for refund may be filed in accordance with Section 7-1-26 NMSA 1978 for the excess in tax over the amount due using the recovered oil tax rate. Notwithstanding the provisions of Subsection E [Subsection F] of Section 7-1-26 NMSA 1978 any such refund granted shall be made in the form of a credit against future oil and gas severance tax liabilities.

**History:** Laws 1992, ch. 38, § 5.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law. The reference to Subsection E of 7-1-26 NMSA 1978 in Subsection B should now be a reference to Subsection F in light of the 1997 amendment to 7-1-26 NMSA 1978.

# ARTICLE 29B
# Natural Gas and Crude Oil Production Incentives

## 7-29B-1. Short title.

Sections 1 through 6 [7-29B-1 through 7-29B-6 NMSA 1978] of this act may be cited as the "Natural Gas and Crude Oil Production Incentive Act".

**History:** Laws 1995, ch. 15, § 1.

## 7-29B-2. Definitions.

As used in the Natural Gas and Crude Oil Production Incentive Act:

A. "average annual taxable value" means the average of the taxable value per barrel, determined pursuant to Section 7-31-5 NMSA 1978, of all oil produced in New Mexico for the specified calendar year as determined by the department;

B. "average daily production" means, for any crude oil or natural gas property assigned a single production number by the department, the number derived by dividing the total volume of crude oil or natural gas production from the property reported to the division during a calendar year by the sum of the number of days each eligible well within the property produced or injected during that calendar year;

C. "department" means the taxation and revenue department;

D. "division" means the oil conservation division of the energy, minerals and natural resources department;

E. "eligible well" means a crude oil or natural gas well that produces or an injection well that injects and is integral to production for any period of time during the preceding calendar year;

F. "natural gas" means any combustible vapor composed chiefly of hydrocarbons occurring naturally;

G. "operator" means the person responsible for the actual physical operation of a natural gas or oil well;

H. "person" means any individual or other legal entity, including any group or combination of individuals or other legal entities acting as a unit;

I. "production restoration incentive tax exemption" means the tax exemption set forth in Subsection B of Section 7-29-4 NMSA 1978 for natural gas or oil produced from a production restoration project;

J. "production restoration project" means the use of any process for returning to production a natural gas or oil well that had thirty days or less of production in any period of twenty-four consecutive months beginning on or after January 1, 1993 as approved and certified by the division;

K. "severance" means the taking from the soil of any product in any manner whatsoever;

L. "stripper well property" means a crude oil or natural gas producing property that is assigned a single production unit number by the department and:

(1) if a crude oil producing property, produced an average daily production of less than ten barrels of oil per eligible well per day for the preceding calendar year;

(2) if a natural gas producing property, produced an average daily production of less than sixty thousand cubic feet of natural gas per eligible well per day during the preceding calendar year; or

(3) if a property with wells that produce both crude oil and natural gas, produced an average daily production of less than ten barrels of oil per eligible well per day for the preceding calendar year, as determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil;

M. "stripper well incentive tax rates" means the tax rates set forth in Paragraphs (6) through (9) of Subsection A of Section 7-29-4 NMSA 1978 and in Paragraphs (4) through (7) of Subsection A of Section 7-31-4 NMSA 1978 for natural gas or oil produced from a well within a stripper well property;

N. "well workover incentive tax rate" means the tax rate set forth in Paragraphs (4) and (5) of Subsection A of Section 7-29-4 NMSA 1978 on the natural gas or oil produced from a well workover project; and

O. "well workover project" means any procedure undertaken by the operator of a natural gas or oil well that is intended to increase the production from the well and that has been approved and certified by the division.

**History:** Laws 1995, ch. 15, § 2; 1999, ch. 7, § 2; 1999, ch. 256, § 3.

**ANNOTATIONS**

**The 1999 amendment,** effective June 18, 1999, added Subsections A, B, E, L, and M, and redesignated the remaining subsections accordingly; deleted former Subsection F, which read: "'production projection' means the estimate of the productive capacity of a natural gas or oil well that is certified by the division pursuant to the provisions of the Natural Gas and Crude Oil Production Incentive Act as the future rate of production from the well prior to the operator of the well performing a well workover project on the well"; and deleted "in excess of the production projection" following "produced" in Subsection N.

This section was also amended by Laws 1999, ch. 7, § 2, effective June 18, 1999, which would have substituted "in any period of twenty-four consecutive months beginning on or after January 1, 1993" for "between January 1, 1993 and December 31, 1994" in Subsection H. The section was set out as amended by Laws 1999, ch. 256, § 3. *See* 12-1-8 NMSA 1978.

## 7-29B-3. Approval of production restoration projects, well workover projects and stripper well properties.

A. A natural gas or oil well shall be approved by the division as a production restoration project if:

(1) the operator of the well makes application to the division in accordance with the provisions of the Natural Gas and Crude Oil Production Incentive Act and rules

adopted pursuant to that act for approval of a production restoration project and the application is made within twelve months of the completion of the production restoration project; and

(2) the division records show that the well had thirty days or less of production in any period of twenty-four consecutive months beginning on or after January 1, 1993.

B. A natural gas or oil well shall be approved by the division as a well workover project if:

(1) the operator of the well makes application to the division in accordance with the provisions of the Natural Gas and Crude Oil Production Incentive Act and rules adopted pursuant to that act for approval of a well workover project;

(2) the division determines that the procedure performed by the operator of the well is a procedure to increase the production from the well, but is not routine maintenance performed by a prudent operator to maintain the well in operation. Such procedures may include, but are not limited to:

(a) re-entry into the well to drill deeper, to sidetrack to a different location or to recomplete for production;

(b) recompletion by reperforation of a zone from which natural gas or oil has been produced or by perforation of a different zone;

(c) repair or replacement of faulty or damaged casing or related downhole equipment;

(d) fracturing, acidizing or installing compression equipment; or

(e) squeezing, cementing or installing equipment necessary for removal of excessive water, brine or condensate from the well bore in order to establish, continue or increase production from the well; and

(3) the operator of the well submits to the division evidence of a positive production increase over the production rate of the well prior to the workover. The operator must submit a production curve or tabulation made up of at least twelve months' production prior to the workover and at least three months' production following the workover that reflects a positive production increase from the workover. The production curve or tabulation must be certified by the operator as that of the well on which a workover was performed.

C. A natural gas or crude oil producing property shall be approved and certified by the division as a stripper well property if the division records show that the property is assigned a single production unit number by the department and:

(1) if a crude oil producing property, produced an average daily production of less than ten barrels of oil per eligible well per day for the preceding calendar year;

(2) if a natural gas producing property, produced an average daily production of less than sixty thousand cubic feet of natural gas per eligible well per day during the preceding calendar year; or

(3) if a property with wells that produce both crude oil and natural gas, produced an average daily production of less than ten barrels of oil per eligible well per day for the preceding calendar year, as determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil.

**History:** Laws 1995, ch. 15, § 3; 1999, ch. 7, § 3; 1999, ch. 256, § 4.

**ANNOTATIONS**

**The 1999 amendment,** effective June 18, 1999, deleted "and" preceding "well" and added "and stripper well properties" in the section heading; deleted "and regulations" preceding "adopted" in Subsections A(1) and B(1); substituted "performed" for "proposed to be undertaken", deleted "intended" following "procedure" and "that would be" following "performed" in Subsection B(2); rewrote Subsection B(3), which read: "the operator of the well submits to the division an estimate of the productive capacity of the well based on at least twelve months of established production, and the division, based on its verification of that estimate, determines the future rate of production from the well prior to the operator of the well performing the well workover project on the well and certifies that as the production projection for the project"; and added Subsection C.

This section was also amended by Laws 1999, ch. 7, § 3, effective June 18, 1999, which would have added "and the application" to the end of Paragraph A(1), and substituted "in any period of twenty-four consecutive months beginning on or after January 1, 1993" for "between January 1, 1993 and December 31, 1994" in Paragraph A(2). The section was set out as amended by Laws 1999, ch. 256, § 3. *See* 12-1-8 NMSA 1978.

## 7-29B-4. Application procedures; certification of approval; rules; administration.

A. The operator of a proposed production restoration project or well workover project shall apply to the division for approval of a production restoration project or a well workover project in the form and manner prescribed by the division and shall provide any relevant material and information the division requires for that approval.

B. Upon a determination that the project complies with the provisions of the Natural Gas and Crude Oil Production Incentive Act and rules adopted pursuant to that act, the division shall approve the application and shall issue a certification of approval to the

operator and designate the natural gas or oil well as a production restoration project or well workover project, as applicable.

C. In addition to the powers enumerated in Section 70-2-12 NMSA 1978, the division shall adopt, promulgate and enforce rules to carry out the provisions of the Natural Gas and Crude Oil Production Incentive Act.

D. The division shall consider and approve applications for approval of a production restoration project or well workover project without holding hearings on the applications. If the division denies approval of an application pursuant to such a process, the division, upon the request of the applicant, shall set a hearing of the application before an examiner appointed by the division to conduct the hearing. The hearing shall be conducted in accordance with the provisions of the Oil and Gas Act [Chapter 70, Article 2 NMSA 1978] for such hearings.

**History:** Laws 1995, ch. 15, § 4; 1999, ch. 256, § 5.

**ANNOTATIONS**

**The 1999 amendment,** effective June 18, 1999, deleted "and regulations" following "rules" in the section heading and throughout the section; deleted former Subsection C which read: "At the time of issuing a certification of approval to an operator of a natural gas or oil well for a well workover project, the division shall also certify the production projection for that project", and redesignated the remaining subsections accordingly; and deleted "Sections 1 through 5 of" following "provisions of" in Subsection C.

## 7-29B-5. Notice to secretary of taxation and revenue.

The division shall notify immediately the secretary of taxation and revenue upon:

A. adoption of rules pursuant to the provisions of the Natural Gas and Crude Oil Production Incentive Act;

B. certification of the date that production has been restored on a production restoration project;

C. certification of the date that a well workover project has been completed; and

D. certification of the stripper well properties for the fiscal year.

**History:** Laws 1995, ch. 15, § 5; 1999, ch. 256, § 6.

**ANNOTATIONS**

**The 1999 amendment,** effective June 18, 1999, deleted "and regulations" following "rules" in Subsection A, and added Subsection D.

## 7-29B-6. Qualification for production restoration incentive tax exemption and well workover and stripper well property incentive tax rate; secretary of taxation and revenue approval; refund.

A. The person responsible for paying the oil and gas severance tax on natural gas or oil produced from a production restoration project shall qualify to receive a ten-year production restoration incentive tax exemption upon:

(1) application to the department in the form and manner prescribed by the department for approval for the ten-year production restoration incentive tax exemption;

(2) submission of the certification of approval from the division and designation of the natural gas or oil well as a production restoration project; and

(3) submission of any other relevant material that the secretary of taxation and revenue deems necessary to administer the applicable provisions of the Natural Gas and Crude Oil Production Incentive Act.

B. The person responsible for payment of the oil and gas severance tax on natural gas or oil produced from a well workover project shall qualify for the well workover incentive tax rate on all the natural gas or oil produced by that project upon:

(1) application to the department in the form and manner prescribed by the department for approval to apply the well workover incentive tax rate to the natural gas or oil produced from a well workover project;

(2) submission of the certification from the division of approval and designation of the natural gas or oil well as a well workover project; and

(3) any other relevant material that the department considers necessary to administer the applicable provisions of the Natural Gas and Crude Oil Production Incentive Act.

C. The person responsible for paying the oil and gas severance tax and the oil and gas emergency school tax on natural gas and crude oil produced from a stripper well property shall qualify to receive the stripper well property incentive tax rate for the fiscal year following certification by the division in the form and manner agreed to by the division and the department designating the property as a stripper well property. The division shall certify stripper well properties for calendar year 1998 no later than June 30, 1999 and no later than June 1 of each succeeding year for the preceding calendar year.

D. The production restoration incentive tax exemption shall apply to natural gas or oil produced from a production restoration project beginning the first day of the month following the date the division certifies that production has been restored and ending the last day of the tenth year of production following that date. The well workover incentive

tax rate applies to the natural gas or oil produced from a well workover project beginning the first day of the month following the date the division certifies that the well workover project has been completed. The stripper well property incentive tax rates apply to the natural gas or oil produced from a stripper well property in the twelve months beginning May 1 prior to July 1 of the fiscal year to which the certification of the property as a stripper well property applies.

E. The person responsible for payment of the oil and gas severance tax on natural gas or oil production from an approved well workover project may file a claim for credit against current tax liability or for refund in accordance with Section 7-1-26 NMSA 1978 for taxes paid in excess of the amount due using the well workover incentive tax rate. Notwithstanding the provisions of Subsection E [Subsection F] of Section 7-1-26 NMSA 1978, any such refund granted shall be made in the form of a credit against any future oil and gas severance tax liabilities incurred by the taxpayer.

F. Well workover projects certified prior to July 1, 1999 shall be deemed to be approved and certified in accordance with the provisions of this 1999 act and natural gas or oil produced from those projects shall be eligible for the well workover incentive tax rate effective beginning July 1, 1999.

G. The secretary of taxation and revenue may adopt and promulgate rules to enforce the provisions of this section.

**History:** Laws 1995, ch. 15, § 6; 1999, ch. 256, § 7.

## ANNOTATIONS

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law. The reference to Subsection E of 7-1-26 NMSA 1978 in Subsection E should now be a reference to Subsection F in light of the 1997 amendment to 7-1-26 NMSA 1978.

**Compiler's notes. —** The phrase "this 1999 act," referred to in Subsection F, means Laws 1999, Chapter 256, which was compiled as 7-29-2, 7-29-4, 7-29B-2 to 7-29B-6, 7-31-2 and 7-31-4 NMSA 1978.

**The 1999 amendment,** effective June 18, 1999, inserted "and stripper well property" in the section heading; inserted "all' preceding "the natural", substituted "by" for "in excess of the production projection for" in Subsection B; deleted "in excess of the production projection" following "produced" in Subsections B(1) and D; deleted "and of the production projection for the well workover project" following "project" in Subsection B(2); added Subsections C and F, and redesignated the remaining subsections accordingly; added the third sentence of Subsection D; inserted "credit against current tax liability or for" in the first sentence of Subsection E; and deleted "and regulations" following "rules" in Subsection G.

# ARTICLE 29C
# Intergovernmental Tax Credits

## 7-29C-1. Intergovernmental tax credits.

A. Any person who is liable for the payment of the oil and gas severance tax, the oil and gas conservation tax, the oil and gas emergency school tax or the oil and gas ad valorem production tax imposed on products severed from Indian tribal land or imposed on the privilege of severing products from Indian tribal land shall be entitled to a credit to be computed under this section and to be deducted from the payment of the indicated taxes with respect to products from qualifying wells. The credit provided by this subsection may be referred to as the "intergovernmental production tax credit".

B. Any person who is liable for the payment of the oil and gas production equipment ad valorem tax imposed on equipment located on Indian tribal land shall be entitled to a credit to be computed under this section and to be deducted from the payment of the indicated taxes with respect to equipment at qualifying wells. The credit provided by this subsection may be referred to as the "intergovernmental production equipment tax credit".

C. For the purposes of this section:

(1) "equipment" means wells and nonmobile equipment used at a well in connection with severance, treatment or storage of well products;

(2) "Indian tribal land" means all land that on March 1, 1995 was within the exterior boundaries of an Indian reservation or pueblo grant or held in trust by the United States for an Indian person, nation, tribe or pueblo;

(3) "product" means oil, natural gas or liquid hydrocarbon, individually or in combination, or carbon dioxide; and

(4) "qualifying well" means a well on Indian tribal land, the actual drilling of which commenced on or after July 1, 1995.

D. The intergovernmental production tax credit shall be determined separately for each calendar month and shall be equal to seventy-five percent of the lesser of:

(1) the aggregate amount of severance, privilege, ad valorem or similar tax in effect on March 1, 1995 that is imposed by the Indian nation, tribe or pueblo upon the products severed from qualifying wells or upon the privilege of severing products from qualifying wells; or

(2) the aggregate amount of the oil and gas severance tax, the oil and gas conservation tax, the oil and gas emergency school tax and the oil and gas ad valorem

production tax imposed by this state upon the products severed from qualifying wells or upon the privilege of severing products from qualifying wells.

E. The intergovernmental production equipment tax credit shall be determined annually for the equipment at qualifying wells and shall be equal to seventy-five percent of the lesser of:

(1) the amount of ad valorem or similar tax in effect on March 1, 1995 that is imposed by the Indian nation, tribe or pueblo upon the equipment for the calendar year; or

(2) the amount of the oil and gas production equipment ad valorem tax imposed by this state upon the equipment for the calendar year.

F. If, after March 1, 1995, an Indian nation, tribe or pueblo increases any severance, privilege, ad valorem or similar tax applicable to products or equipment to which the tax credits provided by this section apply, the amount of the intergovernmental production tax credit for any month to which the increase applies shall be reduced by the difference between the aggregate amount of tax due to the Indian nation, tribe or pueblo for the production month and the aggregate amount of tax that would have been imposed by the terms of the tax or taxes in effect on March 1, 1995, and the intergovernmental production equipment tax credit shall be reduced by the difference between the aggregate amount of tax due to the Indian nation, tribe or pueblo for the year and the aggregate amount of tax that would have been imposed for the year by the terms of the tax or taxes in effect on March 1, 1995.

G. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied proportionately against the amount of oil and gas severance tax, oil and gas conservation tax, oil and gas emergency school tax, oil and gas ad valorem production tax and oil and gas production equipment ad valorem tax due with respect to the products, severance of products or equipment taxed.

H. The taxation and revenue department shall administer and interpret the provisions of this section in accordance with the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

I. The burden of showing entitlement to a credit authorized by this section is on the taxpayer claiming it, and he shall furnish to the appropriate tax collecting agency, in the manner determined by the taxation and revenue department, proof of payment of any tribal tax on which the credit is based.

**History:** Laws 1995, ch. 171, § 1; 1999, ch. 108, § 1.

## ANNOTATIONS

**The 1999 amendment,** effective, July 1, 1999, inserted "person" in Paragraph C(2).

## 7-29C-2. Intergovernmental tax credit; severance tax on coal.

A. Any person who is liable pursuant to Section 7-26-6 NMSA 1978 for the payment of the severance tax on coal severed and saved from tribal land is entitled to a credit to be computed under this section and to be deducted from the payment of the indicated tax. The credit provided by this section may be referred to as the "intergovernmental coal severance tax credit".

B. For the purposes of this section, "tribal land" means all land in New Mexico that, on March 1, 2001, was within the exterior boundaries of the reservation or pueblo grant of an Indian nation, tribe or pueblo, was within a dependent Indian community of the Indian nation, tribe or pueblo or was held in trust by the United States for the Indian nation, tribe or pueblo.

C. The intergovernmental coal severance tax credit shall be determined separately for each calendar month and shall be equal to seventy-five percent of the lesser of:

(1) the aggregate amount of tax due under one or more taxes in effect on March 1, 2001 imposed by the Indian nation, tribe or pueblo upon coal severed and saved from the tribal land of that Indian nation, tribe or pueblo, the value of coal severed and saved, the privilege of severing coal or the value of the leasehold interest; or

(2) the aggregate amount of severance tax and surtax due the state pursuant to Section 7-26-6 NMSA 1978 upon coal severed and saved from the tribal land of the Indian nation, tribe or pueblo.

D. If, after March 1, 2001, an Indian nation, tribe or pueblo increases any severance, privilege, possessory interest or similar tax applicable to coal to which the tax credits provided by this section apply, the amount of the intergovernmental coal severance tax credit for any month to which the increase applies shall be reduced by the difference between the aggregate amount of tax due to the Indian nation, tribe or pueblo for the month and the aggregate amount of tax that would have been imposed by the terms of the tax or taxes in effect on March 1, 2001. The expiration of a partial or total waiver from the tribal tax granted prior to March 1, 2001 does not constitute an increase in the tribal tax.

E. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied proportionately against the amount of severance tax and the amount of surtax due.

F. The burden of showing entitlement to a credit authorized by this section is on the taxpayer claiming it, and the taxpayer shall furnish to the appropriate tax collecting agency, in the manner determined by the taxation and revenue department, proof of payment of any tribal tax on which the credit is based.

G. The taxation and revenue department is authorized to promulgate rules or instructions prescribing the method by which a taxpayer may allocate credit for a tax imposed by the Indian nation, tribe or pueblo on a basis other than monthly against the monthly amounts of severance tax and surtax due.

**History:** 1978 Comp., § 7-29C-2, enacted by Laws 2001, ch. 134, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2001, ch. 134, § 4 made Laws 2001, ch. 134, § 2 effective July 1, 2001.

# ARTICLE 30
# Oil and Gas Conservation Tax

## 7-30-1. Title.

Chapter 7, Article 30 NMSA 1978 may be cited as the "Oil and Gas Conservation Tax Act".

**History:** 1953 Comp., § 72-20-1, enacted by Laws 1959, ch. 53, § 1; 1985, ch. 65, § 30.

**ANNOTATIONS**

**Cross references.** — For intergovernmental tax credits, *see* 7-29C-1 NMSA 1978.

**Law reviews.** — For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For note, "Tribal Severance Taxes - Outside the Purview of the Commerce Clause," see 21 Nat. Resources J. 405 (1981).

## 7-30-2. Definitions.

As used in the Oil and Gas Conservation Tax Act:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

C. "severance" means the taking from the soil of any product in any manner whatsoever;

D. "value" means the actual price received for products at the production unit, except as otherwise provided in the Oil and Gas Conservation Tax Act;

E. "product" or "products" means oil, natural gas or liquid hydrocarbon, individually or any combination thereof, uranium, coal, geothermal energy, carbon dioxide, helium or a non-hydrocarbon gas;

F. "operator" means any person:

(1) engaged in the severance of products from a production unit; or

(2) owning an interest in any product at the time of severance who receives a portion or all of such product for his interest;

G. "purchaser" means a person who is the first purchaser of a product after severance from a production unit, except as otherwise provided in the Oil and Gas Conservation Tax Act;

H. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association or other group or combination acting as a unit, and the plural as well as the singular number;

I. "interest owner" means a person owning an entire or fractional interest of whatsoever kind or nature in the products at the time of severance from a production unit or who has a right to a monetary payment that is determined by the value of such products; and

J. "tax" means the oil and gas conservation tax.

**History:** 1953 Comp., § 72-20-2, enacted by Laws 1959, ch. 53, § 2; 1975, ch. 289, § 14; 1977, ch. 249, § 54; 1980, ch. 97, § 4; 1986, ch. 20, § 99; 1989, ch. 130, § 5; 2005, ch. 130, § 4.

**ANNOTATIONS**

**The 2005 amendment,** effective July 1, 2005, defined "product" in Subsection E to include helium or non-hydrocarbon gas and defines "tax" in Subsection J to mean the oil and gas conservation tax.

**The 1989 amendment,** effective June 16, 1989, substituted "'department'" for "'commission', 'department' or 'division'" in Subsection A.

**Law reviews.** — For article, " 'New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 Nat. Resources J. 283 (1977).

## 7-30-3. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-30-3 NMSA 1978, as enacted by Laws 1959, ch. 53, § 3, relating to the purpose and declaration of intention of the Oil and Gas Conservation Tax Act, effective July 1, 1985.

# 7-30-4. Oil and gas conservation tax levied; collected by department; rate; interest owner's liability to state; Indian liability.

A. There is levied and shall be collected by the department a tax on all products that are severed and sold. The measure and rate of the tax shall be nineteen-hundredths percent of the taxable value of sold products. Every interest owner shall be liable for this tax to the extent of the owner's interest in the value of the products or to the extent of the owner's interest as may be measured by the value of the products. An Indian tribe, Indian pueblo or Indian shall be liable for this tax to the extent authorized or permitted by law.

B. When the average price of west Texas intermediate crude in the previous quarter exceeds seventy dollars ($70.00) per barrel, an additional tax to that provided pursuant to Subsection A of this section is levied and shall be collected by the department on oil that is severed and sold in the ensuing quarter. The measure and rate of the total tax on oil shall be twenty-four hundredths percent of the taxable value of the sold product. Every interest owner shall be liable for this tax to the extent of the owner's interest in the value of the products or to the extent of the owner's interest as may be measured by the value of the products. An Indian tribe, Indian pueblo or Indian shall be liable for this tax to the extent authorized or permitted by law.

History: 1953 Comp., § 72-20-4, enacted by Laws 1959, ch. 53, § 4; 1975, ch. 289, § 15; 1977, ch. 237, § 6; 1985, ch. 65, § 31; 1989, ch. 130, § 6; 1996, ch. 72, § 1; 2003, ch. 433, § 2; 2007, ch. 97, § 1; 2010, ch. 98, § 2.

## ANNOTATIONS

**Cross references.** — For the oil and gas reclamation fund, *see* 70-2-37 NMSA 1978.

**The 2010 amendment,** effective May 19, 2010, in Subsection A, in the second sentence, deleted "Except as provided in Subsections B and C of this section"; deleted former Subsection B, which provided that if the unencumbered balance of the oil and gas reclamation fund equals or exceeds $2,500,000 the tax rate shall be eighteen-hundredths percent; deleted former Subsection C, which provided that if the unencumbered balance of the oil and gas reclamation fund is less than or equal to $500,000, the tax rate shall be nineteen-hundredths percent; deleted former Subsection D, which provided that the department shall notify taxpayers of changes in the tax rate; and added a new Subsection B.

**The 2007 amendment,** effective June 15, 2007, in Subsection B, increased the maximum amount to be held in the oil and gas reclamation fund from $1,150,000 to $2,500,000.

**The 2003 amendment,** effective July 1, 2003, inserted the exception near the beginning of Subsection A; rewrote Subsection B designating part of former Subsction B as present Subsection C and redesignating former Subsection C as Subsection D; and deleted the last phrase of Subsection C, concerning distribution to the oil and gas reclamation fund.

**The 1996 amendment,** effective May 15, 1996, made stylistic changes in Subsection A.

**The 1989 amendment,** effective June 16, 1989, substituted "department" for "division" in the catchline; in Subsection A substituted "department" for "division" in the first sentence, inserted "and rate" in the second sentence, and made minor stylistic changes in the third sentence; rewrote the first and second sentences of Subsection B; and designated the former third sentence of Subsection B as Subsection C.

**Severance alone does not give rise to taxable event.** Yankee Atomic Elec. Co. v. N.M. & Ariz. Land Co., 632 F.2d 855 (10th Cir. 1980).

**Severance, coupled with sale, triggers imposition of tax.** Yankee Atomic Elec. Co. v. N.M. & Ariz. Land Co., 632 F.2d 855 (10th Cir. 1980).

**Indian right to tax oil production not preempted by congress.** — Although it granted to the states the right to tax the production of oil and gas on Indian reservations, congress did not preempt similar tribal taxation. Merrion v. Jicarilla Apache Tribe, 617 F.2d 537 (10th Cir. 1980), aff'd, 455 U.S. 130, 102 S. Ct. 894, 71 L. Ed. 2d 21 (1982).

**Law reviews.** — For article, " 'New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 Nat. Resources J. 283 (1977).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 84 C.J.S. Taxation §§ 165 et seq.

## 7-30-5. Taxable value; method of determining.

A. To determine the taxable value of oil, natural gas or liquid hydrocarbon, individually or any combination thereof, carbon dioxide, helium or non-hydrocarbon gases, there shall be deducted from the value of products:

(1) royalties paid or due the United States or the state of New Mexico;

(2) royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States; and

(3) the reasonable expense of trucking any product from the production unit to the first place of market.

B. The taxable value of coal shall be the taxable value determined under Section 7-25-3 NMSA 1978, less royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States.

C. The taxable value of uranium shall be twenty-five percent of an amount equal to the difference between:

(1) the taxable value determined under Section 7-25-3 NMSA 1978; and

(2) royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States.

D. The taxable value of geothermal energy shall be the value at the point of first sale, less the cost of transporting it from the point of severance to the point of the first sale, less the royalties paid or due the United States or the state of New Mexico or any Indian tribe, Indian pueblo or Indian that is a ward of the United States.

**History:** 1953 Comp., § 72-20-5, enacted by Laws 1959, ch. 53, § 5; 1975, ch. 289, § 16; 1977, ch. 102, § 2; 1980, ch. 97, § 5; 1985, ch. 65, § 32; 2005, ch. 130, § 5.

**ANNOTATIONS**

**The 2005 amendment,** effective July 1, 2005, provided the method to determine the taxable value of helium and non-hydrocarbon gases.

**Law reviews.** — For article, " 'New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 Nat. Resources J. 283 (1977).

## 7-30-6. Value may be determined by department; standard.

The department may determine the value of products severed from a production unit when:

A. the operator and purchaser are affiliated persons;

B. the sale and purchase of products is not an arm's length transaction; or when

C. products are severed and removed from a production unit and a value as defined in this act is not established for such products.

The value determined by the department shall be commensurate with the actual price received for products of like quality, character and use which are severed in the same field or area.

**History:** 1953 Comp., § 72-20-6, enacted by Laws 1959, ch. 53, § 6; 1989, ch. 130, § 7.

**ANNOTATIONS**

**The 1989 amendment,** effective June 16, 1989, substituted "department" for "commission" in the section heading and throughout the section, and made minor stylistic changes.

**Determination of value. —** The statute does not mandate the way in which the department must calculate processing costs, whether by a comparable value or by some other method. Rather, the final value of natural gas calculated by the department must be commensurate with similar products. Chevron U.S.A., Inc. v. State ex rel. Taxation and Revenue Dep't, 2006-NMCA-050, 139 N.M. 498, 134 P.3d 785, cert. denied, 2006-NMCERT-005, 139 N.M. 567, 136 P.3d 568.

## 7-30-7. Price increase subject to approval of agency of United States of America, state of New Mexico or court; refund.

When an increase in the value of any product is subject to the approval of any agency of the United States of America or the state of New Mexico, or any court, the increased value shall be subject to this tax. In the event the increase in value is disapproved, either in whole or in part, then the amount of tax which has been paid on the disapproved part of the value shall be considered excess tax. Any person who has paid any such excess tax may apply for a refund of that excess tax in accordance with the provisions of Section 7-1-26 NMSA 1978.

**History:** 1953 Comp., § 72-20-7, enacted by Laws 1959, ch. 53, § 7; 1985, ch. 65, § 33.

## 7-30-8. Products on which tax has been levied; regulation by department.

This tax shall not be levied more than once on the same product. Reporting of products on which this tax has been paid shall be subject to the regulation of the department.

**History:** 1953 Comp., § 72-20-8, enacted by Laws 1959, ch. 53, § 8; 1989, ch. 130, § 8.

**ANNOTATIONS**

**The 1989 amendment,** effective June 16, 1989, substituted "department" for "commission" in the section heading and in the second sentence.

## 7-30-9. Operator or purchaser to withhold interest owner's tax; department may require withholding of tax; tax withheld to be remitted to the state; operator or purchaser to be reimbursed.

A. Any operator making a monetary payment to an interest owner for his portion of the value of products from a production unit shall withhold from such payment the amount of tax due from the interest owner.

B. Any purchaser who, by express or implied agreement with the operator, makes a monetary payment to an interest owner for his portion of the value of products from a production unit, shall withhold from such payment the amount of tax due from the interest owner.

C. The department may require any purchaser making a monetary payment to an interest owner for his portion of the value of products from a production unit to withhold from such payment the amount of tax due from the interest owner.

D. Any operator or purchaser who pays any tax due from an interest owner shall be entitled to reimbursement from the interest owner for the tax so paid, and may take credit for such amount from any monetary payment to the interest owner for the value of products.

**History:** 1953 Comp., § 72-20-9, enacted by Laws 1959, ch. 53, § 9; 1989, ch. 130, § 9.

**ANNOTATIONS**

**The 1989 amendment,** effective June 16, 1989, added the subsection designations, and substituted "department" for "commission" in the section heading and in Subsection C.

## 7-30-10. Operator's report; tax remittance; additional information.

Each operator shall, in the form and manner required by the department, make a return to the department showing the total value, volume and kind of products sold from each production unit for each calendar month. All taxes due or to be remitted by the operator shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. A uranium or a coal return shall be filed on or before the twenty-fifth day of the month following the month in which the taxable event occurs pursuant to Section 7-26-6 or 7-26-7 NMSA 1978. Any additional report or information the department may deem necessary for the proper administration of the Oil and Gas Conservation Tax Act may be required.

**History:** 1953 Comp., § 72-20-10, enacted by Laws 1959, ch. 53, § 10; 1986, ch. 5, § 4; 1989, ch. 130, § 10; 2005, ch. 130, § 6.

**ANNOTATIONS**

**The 2005 amendment,** effective July 1, 2005, provided the deadline for filing uranium and coal returns.

**The 1989 amendment,** effective June 16, 1989, substituted "department" for "division" throughout the section.

## 7-30-11. Purchaser's report; tax remittance; additional information.

Each purchaser shall, in the form and manner required by the department, make a return to the department showing the total value, volume and kind of products purchased by him from each production unit for each calendar month. All taxes due or to be remitted by the purchaser shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional reports or information the department may deem necessary for the proper administration of the Oil and Gas Conservation Tax Act may be required.

**History:** 1953 Comp., § 72-20-11, enacted by Laws 1959, ch. 53, § 11; 1986, ch. 5, § 5; 1989, ch. 130, § 11.

### ANNOTATIONS

**The 1989 amendment,** effective June 16, 1989, substituted "department" for "division" throughout the section.

## 7-30-12, 7-30-13. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-30-12 and 7-30-13 NMSA 1978, as amended by Laws 1977, ch. 59, § 1, and by Laws 1977, ch. 247, § 184, relating to the oil and gas accounting commission conservation tax fund and the monthly report to the department of finance and administration, effective July 1, 1985.

## 7-30-14. Recompiled.

### ANNOTATIONS

**Recompilations.** — Laws 1989, ch. 130, § 12 recompiled 7-30-14 NMSA 1978, relating to disposition of oil conservation fund, as 70-2-36.1 NMSA 1978, effective June 16, 1989.

## 7-30-15 to 7-30-26. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-30-15 to 7-30-26 NMSA 1978, as enacted by Laws 1959, ch. 53, §§ 15 to 26, relating to the remedies under the Oil and Gas Conservation Tax Act, effective July 1, 1985.

## 7-30-27. Advance payment required.

A. Any person required to make payment of tax pursuant to Section 7-30-10 or 7-30-11 NMSA 1978 shall make the advance payment required by this section.

B. For the purposes of this section:

(1) "advance payment" means the payment required to be made by this section in addition to any oil and gas conservation tax, penalty or interest due; and

(2) "average tax" means the aggregate amount of tax, net of any refunds or credits, paid by a person during the twelve-month period ending March 31 pursuant to the Oil and Gas Conservation Tax Act divided by the number of months during that period for which the person made payment.

C. Each year, prior to July 1, each person required to pay tax pursuant to the Oil and Gas Conservation Tax Act shall compute the average tax for the period ending March 31 of that year. The average tax calculated for a year shall be used during the twelve-month period beginning with July of that year and ending with June of the following year as the basis for making the advance payments required by Subsection D of this section.

D. Every month, beginning with July 1991, every person required to pay tax in a month pursuant to the Oil and Gas Conservation Tax Act shall pay, in addition to any amount of tax, interest or penalty due, an advance payment in an amount equal to the applicable average tax, except:

(1) if the person is making a final return under the Oil and Gas Conservation Tax Act, no advance payment pursuant to this subsection is due for that return; and

(2) as provided in Subsection F of this section.

E. Every month, beginning with tax payments due in August 1991, every person required to pay tax pursuant to the Oil and Gas Conservation Tax Act may claim a credit equal to the amount of advance payment made in the previous month, except as provided in Subsection F of this section.

F. If, in any month, a person is not required to pay tax pursuant to the Oil and Gas Conservation Tax Act, that person is not required to pay the advance payment and may not claim a credit pursuant to Subsection E of this section provided that, in any succeeding month when the person has liability under the Oil and Gas Conservation

Tax Act, the person may claim a credit for any advance payment made and not credited.

G. In the event that the date by which a person is required to pay the tax pursuant to the Oil and Gas Conservation Tax Act is accelerated to a date earlier than the twenty-fifth day of the second month following the month of production, the advance payment provision contained in this section is null and void and any money held as advance payments shall be credited to the taxpayers' accounts.

**History:** Laws 1991, ch. 9, § 37.

# ARTICLE 31
# Oil and Gas Emergency School Tax

## 7-31-1. Title.

Chapter 7, Article 31 NMSA 1978 may be cited as the "Oil and Gas Emergency School Tax Act".

**History:** 1953 Comp., § 72-21-1, enacted by Laws 1959, ch. 54, § 1; 1985, ch. 65, § 34.

**ANNOTATIONS**

**Cross references.** — For intergovernmental tax credits, *see* 7-29C-1 NMSA 1978.

**Law reviews.** — For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For note, "Tribal Severance Taxes - Outside the Purview of the Commerce Clause," see 21 Nat. Resources J. 405 (1981).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation §§ 219, 614.

84 C.J.S. Taxation §§ 161, 170.

## 7-31-2. Definitions.

As used in the Oil and Gas Emergency School Tax Act:

A. "commission", "department" or "division" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

C. "severance" means the taking from the soil of any product in any manner whatsoever;

D. "value" means the actual price received from products at the production unit, except as otherwise provided in the Oil and Gas Emergency School Tax Act;

E. "product" or "products" means oil, natural gas or liquid hydrocarbon, individually or any combination thereof, carbon dioxide, helium or a non-hydrocarbon gas;

F. "operator" means any person:

(1) engaged in the severance of products from a production unit; or

(2) owning an interest in any product at the time of severance who receives a portion or all of such product for his interest;

G. "purchaser" means a person who is the first purchaser of a product after severance from a production unit, except as otherwise provided in the Oil and Gas Emergency School Tax Act;

H. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association, limited liability company or other group or combination acting as a unit, and the plural as well as the singular number;

I. "interest owner" means a person owning an entire or fractional interest of whatsoever kind or nature in the products at the time of severance from a production unit or who has a right to a monetary payment that is determined by the value of such products;

J. "stripper well property" means a crude oil or natural gas producing property that is assigned a single production unit number by the department and is certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act [7-29B-1 through 7-29B-6 NMSA 1978] to have produced in the preceding calendar year:

(1) if a crude oil producing property, an average daily production of less than ten barrels of oil per eligible well per day;

(2) if a natural gas producing property, an average daily production of less than sixty thousand cubic feet of natural gas per eligible well per day; or

(3) if a property with wells that produce both crude oil and natural gas, an average daily production of less than ten barrels of oil per eligible well per day, as determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil;

K. "average annual taxable value" means as applicable:

(1) the average of the taxable value per one thousand cubic feet, determined pursuant to Section 7-31-5 NMSA 1978, of all natural gas produced in New Mexico for the specified calendar year as determined by the department; or

(2) the average of the taxable value per barrel, determined pursuant to Section 7-31-5 NMSA 1978, of all oil produced in New Mexico for the specified calendar year as determined by the department; and

L. "tax" means the oil and gas emergency school tax.

**History:** 1953 Comp., § 72-21-2, enacted by Laws 1959, ch. 54, § 2; 1977, ch. 249, § 55; 1980, ch. 97, § 6; 1986, ch. 20, § 100; 1993, ch. 360, § 1; 1999, ch. 256, § 8; 2005, ch. 130, § 7.

**ANNOTATIONS**

**The 2005 amendment,** effective July 1, 2005, in Subsection E, defined "product" to include helium or non-hydrocarbon gas.

**The 1999 amendment.** effective June 18, 1999, added Subsections J and K, and redesignated former Subsection J as Subsection L.

**The 1993 amendment,** effective June 18, 1993, inserted "limited liability company" in Subsection H; and added Subsection J, making related grammatical changes.

## 7-31-3. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-31-3 NMSA 1978, as amended by Laws 1975, ch. 133, § 3, relating to the purpose and declaration of intention of the Oil and Gas Emergency School Tax Act, effective July 1, 1985.

## 7-31-4. Privilege tax levied; collected by department; rate; interest owner's liability to state; Indian liability.

A. There is levied and shall be collected by the department a privilege tax on the business of every person severing products in this state. The measure of the tax shall be:

(1) on oil and on oil and other liquid hydrocarbons removed from natural gas at or near the wellhead, except as provided in Paragraphs (4) and (5) of this subsection, three and fifteen hundredths percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978;

(2) on carbon dioxide, helium and non-hydrocarbon gases, three and fifteen hundredths percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978;

(3) on natural gas, except as provided in Paragraphs (6) and (7) of this subsection, four percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978;

(4) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, one and fifty-eight hundredths percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978, provided that the average annual taxable value of oil was equal to or less than fifteen dollars ($15.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(5) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, two and thirty-six hundredths percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978, provided that the average annual taxable value of oil was greater than fifteen dollars ($15.00) per barrel but not more than eighteen dollars ($18.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(6) on the natural gas removed from a stripper well property, two percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978, provided that the average annual taxable value of natural gas was equal to or less than one dollar fifteen cents ($1.15) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed; and

(7) on the natural gas removed from a stripper well property, three percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978, provided that the average annual taxable value of natural gas was greater than one dollar fifteen cents ($1.15) per thousand cubic feet but not more than one dollar thirty-five cents ($1.35) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed.

B. Every interest owner, for the purpose of levying this tax, is deemed to be in the business of severing products and is liable for this tax to the extent of his interest in the value of the products or to the extent of his interest as may be measured by the value of the products.

C. Any Indian tribe, Indian pueblo or Indian is liable for this tax to the extent authorized or permitted by law.

**History:** 1953 Comp., § 72-21-4, enacted by Laws 1959, ch. 54, § 4; 1963, ch. 179, § 24; 1983, ch. 213, § 21; 1993, ch. 360, § 2; 1999, ch. 256, § 9; 2005, ch. 130, § 8.

**ANNOTATIONS**

**Cross references.** — For natural gas processors tax, *see* 7-33-1 to 7-33-8 NMSA 1978.

**The 2005 amendment,** effective July 1, 2005, in Subsection A(2), imposed the privilege tax on helium and non-hydrocarbon gases.

**The 1999 amendment,** effective June 18, 1999, inserted "except as provided in Paragraphs (4) and (5) of this subsection" in Subsection A(1), substituted "fifteen hundredths" for "fifteen one-hundredths" and "pursuant to" for "under" in Subsections A(1) and A(2), inserted "except as provided in Paragraphs (6) and (7) of this subsection" in Subsection A(3); added Subsections (A)(4) through A(7), and made minor stylistic changes.

**The 1993 amendment,** effective June 18, 1993, inserted the subsection designations; substituted "department" for "division" in the catchline and in the first sentence of Subsection A; deleted "three and fifteen one-hundredths percent of the taxable value of such products" at the end of the introductory paragraph of Subsection A; and added paragraphs (1) to (3) of Subsection A.

**Indian right to tax oil production not preempted by congress.** — Although it granted to the states the right to tax the production of oil and gas on Indian reservations, congress did not preempt similar tribal taxation. Merrion v. Jicarilla Apache Tribe, 617 F.2d 537 (10th Cir. 1980), aff'd, 455 U.S. 130, 102 S. Ct. 894, 71 L. Ed. 2d 21 (1982).

**Non-Indian producers operating on reservations.** — Oil and gas taxes imposed by the state against a non-Indian producer whose operations are located on an Indian reservation do not constitute an impermissible burden on interstate commerce, were not preempted by federal laws promoting tribal economic self-sufficiency, and may be imposed on the same on-reservation production of oil and gas by non-Indian lessees as is subject to the tribe's own severance tax. Cotton Petroleum v. State, 1987-NMCA-121, 106 N.M. 517, 745 P.2d 1170, cert. quashed, 106 N.M. 511, 745 P.2d 1159, *aff'd*, 490 U.S. 163, 109 S. Ct. 1698, 104 L. Ed. 2d 209 (1989).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 84 C.J.S. Taxation §§ 165 et seq.

## 7-31-5. Taxable value; method of determining.

To determine the taxable value there shall be deducted from the value of products:

A. royalties paid or due the United States or the state of New Mexico;

B. royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States of America; and

C. the reasonable expense of trucking any product from the production unit to the first place of market.

**History:** 1953 Comp., § 72-21-5, enacted by Laws 1959, ch. 54, § 5; 1963, ch. 179, § 25.

## 7-31-6. Value may be determined by commission; standard.

The commission may determine the value of products severed from a production unit when:

A. the operator and purchaser are affiliated persons; or when

B. the sale and purchase of products is not an arm's length transaction; or when

C. products are severed and removed from a production unit and a value as defined in this act is not established for such products.

The value determined by the commission shall be commensurate with the actual price received for products of like quality, character and use which are severed in the same field or area.

**History:** 1953 Comp., § 72-21-6, enacted by Laws 1959, ch. 54, § 6.

**ANNOTATIONS**

**Cross references.** — For meaning of "commission", *see* 7-31-2A NMSA 1978.

**Compiler's notes.** — The term "this act", referred to in Subsection C, means Laws 1959, ch. 54, compiled as 7-31-1, 7-31-2, and 7-31-4 to 7-31-11 NMSA 1978.

**Determination of value.** — The statute does not mandate the way in which the department must calculate processing costs, whether by a comparable value or by some other method. Rather, the final value of natural gas calculated by the department must be commensurate with similar products. Chevron U.S.A., Inc. v. State ex rel. Taxation and Revenue Dep't, 2006-NMCA-050, 139 N.M. 498, 134 P.3d 785, cert. denied, 2006-NMCERT-005, 139 N.M. 567, 136 P.3d 568.

## 7-31-7. Price increase subject to approval of agency of United States of America, state of New Mexico or court; refund.

When an increase in the value of any product is subject to the approval of any agency of the United States of America or the state of New Mexico or any court, the increased value shall be subject to this tax. In the event the increase in value is disapproved, either in whole or in part, then the amount of tax which has been paid on the disapproved part of the value shall be considered excess tax. Any person who has paid any such excess tax may apply for a refund of that excess tax in accordance with the provisions of Section 7-1-26 NMSA 1978.

**History:** 1953 Comp., § 72-21-7, enacted by Laws 1959, ch. 54, § 7; 1985, ch. 65, § 35.

## 7-31-8. Products on which tax has been levied; regulation by commission.

This tax shall not be levied more than once on the same product. Reporting of products on which this tax has been paid shall be subject to the regulation of the commission.

**History:** 1953 Comp., § 72-21-8, enacted by Laws 1959, ch. 54, § 8.

**ANNOTATIONS**

**Cross references.** — For meaning of "commission", *see* 7-31-2A NMSA 1978.

## 7-31-9. Operator or purchaser to withhold interest owner's tax; commission may require withholding of tax; tax withheld to be remitted to the state; operator or purchaser to be reimbursed.

Any operator making a monetary payment to an interest owner for his portion of the value of products from a production unit shall withhold from such payment the amount of tax due from any interest owner.

Any purchaser, who, by express or implied agreement with the operator, makes a monetary payment to an interest owner for his portion of the value of products from a production unit, shall withhold from such payment the amount of tax due from the interest owner.

The commission may require any purchaser making a monetary payment to an interest owner for his portion of the value of products from a production unit to withhold from such payment the amount of tax due from the interest owner.

Any operator or purchaser who pays any tax due from an interest owner shall be entitled to reimbursement from the interest owner for the tax so paid, and may take credit for such amount from any monetary payment to the interest owner for the value of products.

**History:** 1953 Comp., § 72-21-9, enacted by Laws 1959, ch. 54, § 9.

**ANNOTATIONS**

**Cross references.** — For meaning of "commission", *see* 7-31-2A NMSA 1978.

## 7-31-10. Operator's report; tax remittance; additional information.

Each operator shall in the form and manner required by the division make a return to the division showing the total value, volume and kind of products sold from each production unit for each calendar month. All taxes due or to be remitted by the operator shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional report or information the division may deem necessary for the proper administration of the Oil and Gas Emergency School Tax Act may be required.

**History:** 1953 Comp., § 72-21-10, enacted by Laws 1959, ch. 54, § 10; 1986, ch. 5, § 6.

**ANNOTATIONS**

**Cross references.** — For meaning of "division", *see* 7-31-2A NMSA 1978.

## 7-31-10.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 218, § 3 repealed 7-31-10.1 NMSA 1978, as enacted by Laws 1999, ch. 218, § 1, relating to one-time tax credit for new wells, effective July 1, 2001. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com.*

## 7-31-11. Purchaser's report; tax remittance; additional information.

Each purchaser shall in the form and manner required by the division make a return to the division showing the total value, volume and kind of products purchased by him from each production unit for each calendar month. All taxes due or to be remitted by the purchaser shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional reports or information the division may deem necessary for the proper administration of the Oil and Gas Emergency School Tax Act may be required.

**History:** 1953 Comp., § 72-21-11, enacted by Laws 1959, ch. 54, § 11; 1986, ch. 5, § 7.

**ANNOTATIONS**

**Cross references.** — For meaning of "division", *see* 7-31-2A NMSA 1978.

## 7-31-12 to 7-31-25. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-31-12 to 7-31-25 NMSA 1978 relating to the fund and remedies under the Oil and Gas Emergency School Tax Act, effective July 1, 1985.

## 7-31-26. Advance payment required.

A. Any person required to make payment of tax pursuant to Section 7-31-10 or 7-31-11 NMSA 1978 shall make the advance payment required by this section.

B. For the purposes of this section:

(1) "advance payment" means the payment required to be made by this section in addition to any oil and gas emergency school tax, penalty or interest due; and

(2) "average tax" means the aggregate amount of tax, net of any refunds or credits, paid by a person during the twelve-month period ending March 31, pursuant to the Oil and Gas Emergency School Tax Act divided by the number of months during that period for which the person made payment.

C. Each year, prior to July 1, each person required to pay tax pursuant to the Oil and Gas Emergency School Tax Act shall compute the average tax for the period ending March 31 of that year. The average tax calculated for a year shall be used during the twelve-month period beginning with July of that year and ending with June of the following year as the basis for making the advance payments required by Subsection D of this section.

D. Every month, beginning with July 1991, every person required to pay tax in a month pursuant to the Oil and Gas Emergency School Tax Act shall pay, in addition to any amount of tax, interest or penalty due, an advance payment in an amount equal to the applicable average tax, except:

(1) if the person is making a final return under the Oil and Gas Emergency School Tax Act, no advance payment pursuant to this subsection is due for that return; and

(2) as provided in Subsection F of this section.

E. Every month, beginning with tax payments in August 1991, every person required to pay tax pursuant to the Oil and Gas Emergency School Tax Act may claim a credit equal to the amount of advance payment made in the previous month, except as provided in Subsection F of this section.

F. If, in any month, a person is not required to pay tax pursuant to the Oil and Gas Emergency School Tax Act, that person is not required to pay the advance payment and may not claim a credit pursuant to Subsection E of this section provided that, in any succeeding month when the person has liability under the Oil and Gas Emergency School Tax Act, the person may claim a credit for any advance payment made and not credited.

G. In the event that the date by which a person is required to pay the tax pursuant to the Oil and Gas Emergency School Tax Act is accelerated to a date earlier than the twenty-fifth day of the second month following the month of production, the advance payment provision contained in this section is null and void and any money held as advance payments shall be credited to the taxpayers' accounts.

**History:** Laws 1991, ch. 9, § 38.

## 7-31-27. Jicarilla Apache tribal capital improvements tax credit.

A. A person who is liable for the payment of the oil and gas emergency school tax imposed on products severed from Jicarilla Apache tribal land or imposed on the privilege of severing products from Jicarilla Apache tribal land shall be entitled to a credit to be computed pursuant to this section and to be deducted from the payment of those taxes with respect to products from qualifying wells. The credit provided by this section may be referred to as the "Jicarilla Apache tribal capital improvements tax credit".

B. As used in this section:

(1) "Jicarilla Apache tribal land" means land within the state of New Mexico that on March 1, 2002 was within the exterior boundaries of a Jicarilla Apache reservation or was held in trust by the United States for the Jicarilla Apache Nation;

(2) "product" means oil, natural gas or liquid hydrocarbon, individually or in combination, or carbon dioxide;

(3) "qualifying well" means a well on Jicarilla Apache tribal land; and

(4) "Jicarilla Apache tribal capital improvements tax" means a tax imposed after the effective date of this section by the Jicarilla Apache Nation that is exclusively dedicated to fund capital improvement projects on Jicarilla Apache tribal land and that is not available to finance the construction of buildings used for commercial activity.

C. The Jicarilla Apache tribal capital improvements tax credit shall be determined separately for each calendar month and shall be equal to the lesser of:

(1) the amount of the Jicarilla Apache tribal capital improvements tax imposed by the Jicarilla Apache Nation upon the products severed from qualifying wells or upon the privilege of severing products from qualifying wells; or

(2) seven-tenths of one percent of the taxable value of the products severed from qualifying wells as determined by applicable state law.

D. A credit pursuant to this section shall be allowed by the taxation and revenue department only if the Jicarilla Apache Nation has entered into a cooperative agreement with the secretary of taxation and revenue for the exchange of information necessary for the administration of the Jicarilla Apache tribal capital improvements tax credit.

E. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied against the amount of the oil and gas emergency school tax due with respect to the products or severance of products taxed.

F. The credit provided by this section shall be in addition to any credit claimed by the taxpayer or allowed by the taxation and revenue department pursuant to Section 7-29C-1 NMSA 1978 with respect to the same products or the severance of the same products. A Jicarilla Apache tribal capital improvements tax that qualifies for the credit provided by this section shall constitute an increase in tribal taxes for purposes of Subsection F of Section 7-29C-1 NMSA 1978 only to the extent that it exceeds the amount identified in Paragraph (2) of Subsection C of this section.

G. The taxation and revenue department shall administer and interpret the provisions of this section in accordance with the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

H. The burden of showing entitlement to a credit authorized by this section is on the taxpayer claiming it, and the taxpayer shall furnish to the appropriate tax collecting agency, in a manner determined by the taxation and revenue department, proof of payment of the Jicarilla Apache tribal capital improvements tax on which the credit is based.

**History:** Laws 2002, ch. 15, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2002, ch. 15, § 2 made Laws 2002, ch. 15, § 1 effective January 1, 2003.

# ARTICLE 32
# Oil and Gas Ad Valorem Production Tax

## 7-32-1. Title.

Chapter 7, Article 32 NMSA 1978 may be cited as the "Oil and Gas Ad Valorem Production Tax Act".

**History:** 1953 Comp., § 72-22-1, enacted by Laws 1959, ch. 55, § 1; 1985, ch. 65, § 36.

**ANNOTATIONS**

**Cross references.** — For intergovernmental tax credits, *see* 7-29C-1 NMSA 1978.

**Law reviews.** — For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For note, "Tribal Severance Taxes - Outside the Purview of the Commerce Clause," see 21 Nat. Resources J. 405 (1981).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation §§ 219, 220.

Effect of severance of fee in oil and gas from fee on surface on taxability of oil and gas rights or privileges, 16 A.L.R. 514, 29 A.L.R. 606, 146 A.L.R. 880.

What property is exempted from ad valorem tax under statute or constitution providing for payment of oil and gas production tax by producers in lieu of other taxes, 77 A.L.R. 1078.

Method or rule for valuation of oil lease for tax purposes, 84 A.L.R. 1310.

84 C.J.S. Taxation § 95 et seq.

## 7-32-2. Definitions.

As used in the Oil and Gas Ad Valorem Production Tax Act:

A. "commission", "department" or "division" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

C. "severance" means the taking from the soil any product in any manner whatsoever;

D. "value" means the actual price received for products at the production unit, except as otherwise provided in the Oil and Gas Ad Valorem Production Tax Act;

E. "product" or "products" means oil, natural gas or liquid hydrocarbon, individually or any combination thereof, carbon dioxide, helium or a non-hydrocarbon gas;

F. "operator" means any person:

(1) engaged in the severance of products from a production unit; or

(2) owning an interest in any product at the time of severance who receives a portion or all of such product for his interest;

G. "purchaser" means a person who is the first purchaser of a product after severance from a production unit, except as otherwise provided in the Oil and Gas Ad Valorem Production Tax Act;

H. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association or other group or combination acting as a unit, and the plural as well as the singular number;

I. "interest owner" means a person owning an entire or fractional interest of whatsoever kind or nature in the products at the time of severance from a production unit or who has a right to a monetary payment that is determined by the value of such products;

J. "assessed value" means the value against which tax rates are applied; and

K. "tax" means the oil and gas ad valorem production tax.

**History:** 1953 Comp., § 72-22-2, enacted by Laws 1959, ch. 55, § 2; 1977, ch. 249, § 56; 1980, ch. 97, § 7; 1986, ch. 20, § 101; 2005, ch. 130, § 9.

**ANNOTATIONS**

**The 2005 amendment,** effective July 1, 2005, in Subsection E, defined "product" to include helium or non-hydrocarbon gas; and Subsection K, defined "tax" to mean the oil and gas ad valorem production tax.

## 7-32-3. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-32-3 NMSA 1978, as enacted by Laws 1959, ch. 55, § 3, relating to the purpose and declaration of intention of the Oil and Gas Ad Valorem Production Tax Act, effective July 1, 1985.

## 7-32-4. Ad valorem tax levied; collected by division; rate; interest owner's liability to state; Indian liability.

There is levied and shall be collected by the division an ad valorem tax on the assessed value of products which are severed and sold from each production unit at the rate certified to the division by the department of finance and administration under the provisions of Section 7-37-7 NMSA 1978. Such rate shall be levied for each month following its certification and shall be levied monthly thereafter until a new rate is certified. Every interest owner shall be liable for this tax to the extent of his interest in the value of such products, or to the extent of his interest as may be measured by the value of such products. Provided, any Indian tribe, Indian pueblo or Indian shall be liable for this tax to the extent authorized or permitted by law.

**History:** 1953 Comp., § 72-22-4, enacted by Laws 1959, ch. 55, § 4; 1981, ch. 37, § 58.

**ANNOTATIONS**

**Law reviews.** — For article, "Nonneutral Features of Energy Taxation," see 20 Nat. Resources J. 853 (1980).

## 7-32-5. Assessed value; method of determining.

A. The taxable value of products is an amount equal to one hundred fifty percent of the value of products after deducting:

(1) royalties paid or due the United States or the state of New Mexico;

(2) royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States; and

(3) the reasonable expense of trucking any product from the production unit to the first place of market.

B. The assessed value of products shall be determined by applying the uniform assessment ratio to the taxable value of products. The method prescribed by this section shall be the exclusive method for determining the assessed value of products. The tax imposed by Section 7-32-4 NMSA 1978 of the Oil and Gas Ad Valorem Production Tax Act, together with the tax imposed by Section 7-34-4 NMSA 1978 of the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978], shall be the full and exclusive measure of ad valorem tax liability on the interests of all persons, including the operator and interest owners, in the production unit. Any other ad valorem tax on the production unit or on products severed therefrom is void.

**History:** 1953 Comp., § 72-22-5, enacted by Laws 1959, ch. 55, § 5; 1972, ch. 59, § 1.

**ANNOTATIONS**

**Cross references.** — For exclusive ad valorem taxes on equipment, *see* 7-34-5 NMSA 1978.

## 7-32-6. Value may be determined by commission; standard.

The commission may determine the value of products severed from a production unit when:

A. the operator and purchaser are affiliated persons; or when

B. the sale and purchase of products is not an arm's length transaction; or when

C. products are severed and removed from a production unit and a value as defined in this act is not established for such products.

The value determined by the commission shall be commensurate with the actual price received for products of like quality, character and use which are severed in the same field or area.

**History:** 1953 Comp., § 72-22-6, enacted by Laws 1959, ch. 55, § 6.

**ANNOTATIONS**

**Compiler's notes.** — The term "this act", as it appears in Subsection C, means Laws 1959, ch. 55, compiled as 7-32-1, 7-32-2, 7-32-4 to 7-32-11, and 7-32-13 to 7-32-15 NMSA 1978.

**Cross references.** — For meaning of "commission", *see* 7-32-2A NMSA 1978.

**Determination of value.** — The statute does not mandate the way in which the department must calculate processing costs, whether by a comparable value or by some other method. Rather, the final value of natural gas calculated by the department must be commensurate with similar products. Chevron U.S.A., Inc. v. State ex rel. Taxation and Revenue Dep't, 2006-NMCA-050, 139 N.M. 498, 134 P.3d 785, cert. denied, 2006-NMCERT-005, 139 N.M. 567, 136 P.3d 568.

## 7-32-7. Price increase subject to approval of agency of United States of America, state of New Mexico or court; refund.

When an increase in the value of any product is subject to the approval of any agency of the United States of America or the state of New Mexico or any court, the increased value shall be subject to this tax. In the event the increase in value is disapproved, either in whole or in part, then the amount of tax which has been paid on the disapproved part of the value shall be considered excess tax. Any person who has paid any such excess tax may apply for a refund of that excess tax in accordance with the provisions of Section 7-1-26 NMSA 1978.

**History:** 1953 Comp., § 72-22-7, enacted by Laws 1959, ch. 55, § 7; 1985, ch. 65, § 37.

## 7-32-8. Products on which tax has been levied; regulation by commission.

This tax shall not be levied more than once on the same product. Reporting of products on which this tax has been paid shall be subject to the regulation of the commission.

**History:** 1953 Comp., § 72-22-8, enacted by Laws 1959, ch. 55, § 8.

**ANNOTATIONS**

**Cross references.** — For meaning of "commission", *see* 7-32-2A NMSA 1978.

## 7-32-9. Operator or purchaser to withhold interest owner's tax; commission may require withholding of tax; tax withheld to be remitted to the state; operator or purchaser to be reimbursed.

Any operator making a monetary payment to an interest owner for his portion of the value of products from a production unit shall withhold from such payment the amount of tax due from any interest owner.

Any purchaser, who, by express or implied agreement with the operator, makes a monetary payment to an interest owner for his portion of the value of products from a production unit, shall withhold from such payment the amount of tax due from the interest owner.

The commission may require any purchaser making a monetary payment to an interest owner for his portion of the value of products from a production unit to withhold from such payment the amount of tax due from the interest owner.

Any operator or purchaser who pays any tax due from an interest owner shall be entitled to reimbursement from the interest owner for the tax so paid, and may take credit for such amount from any monetary payment to the interest owner for the value of products.

**History:** 1953 Comp., § 72-22-9, enacted by Laws 1959, ch. 55, § 9.

**ANNOTATIONS**

**Cross references.** — For meaning of "commission", *see* 7-32-2A NMSA 1978.

## 7-32-10. Operator's report; tax remittance; additional information.

Each operator shall in the form and manner required by the division make a return to the division showing the total value, volume and kind of products sold from each

production unit for each calendar month. All taxes due or to be remitted by the operator shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional report or information the division may deem necessary for the proper administration of the Oil and Gas Ad Valorem Production Tax Act may be required.

**History:** 1953 Comp., § 72-22-10, enacted by Laws 1959, ch. 55, § 10; 1986, ch. 5, § 8.

**ANNOTATIONS**

**Cross references.** — For meaning of "division", *see* 7-32-2A NMSA 1978.

## 7-32-11. Purchaser's report; tax remittance; additional information.

Each purchaser shall in the form and manner required by the division make a return to the division showing the total value, volume and kind of products purchased by him from each production unit for each calendar month. All taxes due or to be remitted by the purchaser shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional reports or information the division may deem necessary for the proper administration of the Oil and Gas Ad Valorem Production Tax Act may be required.

**History:** 1953 Comp., § 72-22-11, enacted by Laws 1959, ch. 55, § 11; 1986, ch. 5, § 9.

**ANNOTATIONS**

**Cross references.** — For meaning of "division", *see* 7-32-2A NMSA 1978.

## 7-32-12. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-32-12 NMSA 1978, as enacted by Laws 1959, ch. 55, § 12, relating to the oil and gas accounting commission ad valorem tax fund, effective July 1, 1985.

## 7-32-13. Division shall prepare schedules and forward to assessors; assessor shall deliver schedule to treasurer.

By the last day of each month, the division shall prepare and certify a schedule to the respective counties in which production units are located. The schedules shall reflect the accounting of the preceding month and shall list each production unit, and by production unit show the assessed value, taxing district, extension of tax levies, tax payments and other information as the director of the division deems appropriate. The

schedules shall be forwarded to the assessors of the respective counties who upon receipt thereof shall accept them as the assessment of property as required in the Oil and Gas Ad Valorem Production Tax Act and shall deliver them to the county treasurer as the oil and gas ad valorem schedule for the county.

**History:** 1953 Comp., § 72-22-13, enacted by Laws 1959, ch. 55, § 13; 1985, ch. 65, § 38.

**ANNOTATIONS**

**Cross references.** — For meaning of "division", *see* 7-32-2A NMSA 1978.

## 7-32-14. Monthly report to department of finance and administration; remittance to state and county treasurers; state and county treasurers may distribute funds.

A. By the last day of each month, the department shall prepare and certify a report to the secretary of finance and administration. The report shall be for the preceding month and shall show the amount of taxes collected and distributed to the oil and gas production tax fund, the amount due the state and each taxing district imposing a tax as reflected by the schedules prepared pursuant to Section 7-32-13 NMSA 1978 and any other information required by the secretary of finance and administration. The secretary of finance and administration shall forthwith remit the appropriate amounts from the oil and gas production tax fund to the state treasurer and the respective county treasurers. The state treasurer and the county treasurers shall, upon receipt of such remittance, make appropriate distribution of the proceeds thereof, except as provided in Subsection B of this section.

B. If the board of county commissioners notifies the secretary of finance and administration that the county elects not to distribute the proceeds of the oil and gas ad valorem production tax due the municipalities, community college districts and school districts within the county, the secretary of finance and administration shall pay amounts due directly to municipalities, community college districts and school districts within the county.

**History:** 1953 Comp., § 72-22-14, enacted by Laws 1959, ch. 55, § 14; 1963, ch. 88, § 1; 1977, ch. 247, § 186; 1983, ch. 221, § 1; 1985, ch. 65, § 39; 1993, ch. 131, § 1.

**ANNOTATIONS**

**Cross references.** — For the oil and gas production tax fund, *see* 7-1-6.22 NMSA 1978.

**The 1993 amendment,** effective March 31, 1993, substituted "department" for "division" in the first sentence of Subsection A and inserted "community college districts" twice in Subsection B.

## 7-32-15. Determination of assessed values for taxing districts.

To determine for any purpose the total assessed value of property required to be assessed under the Oil and Gas Ad Valorem Production Tax Act for any taxing district, the assessed value of the taxing district as is reflected by the oil and gas ad valorem production tax schedules of the twelve months of the calendar year preceding the determination shall be used.

**History:** 1953 Comp., § 72-22-15, enacted by Laws 1959, ch. 55, § 15; 1985, ch. 65, § 40.

**ANNOTATIONS**

## 7-32-16 to 7-32-27. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-32-16 to 7-32-27 NMSA 1978, as enacted by Laws 1959, ch. 55, §§ 16 to 23 and 25 to 27 and as amended by Laws 1963, ch. 88, § 2, relating to the remedies under the Oil and Gas Ad Valorem Production Tax Act, effective July 1, 1985.

## 7-32-28. Advance payment required.

A. Any person required to make payment of tax pursuant to Section 7-32-10 or 7-32-11 NMSA 1978 shall make the advance payment required by this section.

B. For the purposes of this section:

(1) "advance payment" means the payment required to be made by this section in addition to any oil and gas ad valorem production tax, penalty or interest due; and

(2) "average tax" means the aggregate amount of tax, net of any refunds or credits, paid by a person during the twelve-month period ending March 31 pursuant to the Oil and Gas Ad Valorem Production Tax Act divided by the number of months during that period for which the person made payment.

C. Each year, prior to July 1, each person required to pay tax pursuant to the Oil and Gas Ad Valorem Production Tax Act shall compute the average tax for the period ending March 31 of that year. The average tax calculated for a year shall be used during the twelve-month period beginning with July of that year and ending with June of the following year as the basis for making the advance payments required by Subsection D of this section.

D. Every month, beginning with July 1991, every person required to pay tax in a month pursuant to the Oil and Gas Ad Valorem Production Tax Act shall pay, in addition to any amount of tax, interest or penalty due, an advance payment in an amount equal to the applicable average tax, except:

(1) if the person is making a final return under the Oil and Gas Ad Valorem Production Tax Act, no advance payment pursuant to this subsection is due for that return; and

(2) as provided in Subsection F of this section.

E. Every month, beginning with tax payments due in August 1991, every person required to pay tax pursuant to the Oil and Gas Ad Valorem Production Tax Act may claim a credit equal to the amount of advance payment made in the previous month, except as provided in Subsection F of this section.

F. If, in any month, a person is not required to pay tax pursuant to the Oil and Gas Ad Valorem Production Tax Act, that person is not required to pay the advance payment and may not claim a credit pursuant to Subsection E of this section provided that, in any succeeding month when the person has liability under the Oil and Gas Ad Valorem Production Tax Act, the person may claim a credit for any advance payment made and not credited.

G. In the event that the date by which a person is required to pay the tax pursuant to the Oil and Gas Ad Valorem Production Tax Act is accelerated to a date earlier than the twenty-fifth day of the second month following the month of production, the advance payment provision contained in this section is null and void and any money held as advance payments shall be credited to the taxpayers' accounts.

**History:** Laws 1991, ch. 9, § 39.

# ARTICLE 33
# Natural Gas Processors Tax

## 7-33-1. Short title.

Chapter 7, Article 33 NMSA 1978 may be cited as the "Natural Gas Processors Tax Act".

**History:** 1953 Comp., § 72-23-1, enacted by Laws 1963, ch. 179, § 1; 1970, ch. 13, § 2; 1985, ch. 65, § 41.

**ANNOTATIONS**

**Law reviews.** — For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For note, "Tribal Severance Taxes - Outside the Purview of the Commerce Clause," see 21 Nat. Resources J. 405 (1981).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation §§ 218, 219.

84 C.J.S. Taxation § 208.

## 7-33-2. Definitions.

As used in the Natural Gas Processors Tax Act:

A. "average annual taxable value" means the average of the taxable value per mcf, determined pursuant to Section 7-31-5 NMSA 1978, of all natural gas produced in New Mexico for the specified calendar year as determined by the department;

B. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "fiscal year" means the period starting July 1 and ending June 30 of the succeeding calendar year;

D. "mcf" means one thousand cubic feet;

E. "mmbtu" means one million British thermal units;

F. "natural gas" means any hydrocarbon that at atmospheric conditions of temperature and pressure is in a gaseous state, and includes non-hydrocarbon gases that are in combination with hydrocarbon gases;

G. "natural gas processing plant" means a facility used to extract liquid hydrocarbons and non-hydrocarbon gaseous or liquid substances, individually or in any combination, from natural gas, but does not include a facility that refines or processes oil, natural gas or liquid hydrocarbons or that extracts substances from natural gas through a field or lease operation;

H. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association or other group or combination acting as a unit;

I. "processor" means a person who operates a natural gas processing plant; and

J. "tax" means the natural gas processors tax.

**History:** 1953 Comp., § 72-23-2, enacted by Laws 1963, ch. 179, § 2; 1970, ch. 13, § 3; 1977, ch. 249, § 57; 1986, ch. 20, § 102; 1998, ch. 102, § 1.

**ANNOTATIONS**

**The 1998 amendment,** effective January 1, 1999, rewrote the section to the extent that a detailed comparison is impracticable.

**Removal of carbon dioxide was not a field or lease operation.** — Where taxpayer, which was a producer of coal seam gas, had carbon dioxide removed from the gas at a processing plant to make the gas marketable or acceptable to interstate pipelines, the taxpayer was subject to the natural gas processors tax, because the removal of carbon dioxide constituted a processing operation that was not exempt as a field or lease operation. Amoco Production Co. v. N.M. Taxation and Revenue Dep't, 2003-NMCA-092, 134 N.M. 162, 74 P.3d 96.

**State courts may determine if additional tax was imposed increasing gas price.** — Whether an additional tax was imposed on gas company's sale of natural gas to other company so as to provide contractual basis for increased price is within state courts' jurisdiction. Pan Am. Petroleum Corp. v. El Paso Natural Gas Co., 1970-NMSC-156, 82 N.M. 193, 477 P.2d 827.

## 7-33-3. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 115, § 6B repealed 7-33-3 NMSA 1978, as amended by Laws 1975, ch. 133, § 4, relating to purpose of Natural Gas Processors Tax Act, effective July 1, 1989.

## 7-33-4. Privilege tax levied; collected by department; rate.

A. There is levied and shall be collected by the department a privilege tax on processors for the privilege of operating a natural gas processing plant in New Mexico. This tax may be referred to as the "natural gas processors tax".

B. The tax shall be imposed on the amount of mmbtus of natural gas delivered to the processor at the inlet of the natural gas processing plant after subtracting the mmbtu deductions authorized in Subsection E of this section. The tax shall be imposed at the rate per mmbtu determined in Subsection C or D of this section, as applicable.

C. The tax rate for the six-month period beginning on January 1, 1999 shall be determined by multiplying the rate of sixty-five hundredths of one cent ($.0065) per mmbtu by a fraction, the numerator of which is the annual average taxable value per

mcf of natural gas produced in New Mexico during the 1997 calendar year and the denominator of which is one dollar thirty-three cents ($1.33) per mcf. The resulting tax rate shall be rounded to the nearest one-hundredth of one cent per mmbtu.

D. The tax rate for each fiscal year beginning on or after July 1, 1999 shall be determined by multiplying the rate of sixty-five hundredths of one cent ($.0065) per mmbtu by a fraction, the numerator of which is the annual average taxable value per mcf of natural gas produced in New Mexico during the preceding calendar year and the denominator of which is one dollar thirty-three cents ($1.33) per mcf. The resulting tax rate shall be rounded to the nearest one-hundredth of one cent per mmbtu.

E. A processor may deduct from the amount of mmbtus of natural gas subject to the tax the mmbtus of natural gas that are:

(1) used for natural gas processing by the processor;

(2) returned to the lease from which it is produced;

(3) legally flared by the processor; or

(4) lost as a result of natural gas processing plant malfunctions or other incidences of force majeur.

F. On or before June 15, 1999 and June 15 of each succeeding year, the department shall inform each processor in writing of the tax rate applicable for the succeeding fiscal year.

G. Any Indian nation, tribe or pueblo or Indian is liable for the tax to the extent authorized or permitted by law.

**History:** 1953 Comp., § 72-23-4, enacted by Laws 1963, ch. 179, § 4; 1970, ch. 13, § 5; 1984, ch. 2, § 9; 1998, ch. 102, § 2.

## ANNOTATIONS

**The 1998 amendment,** effective January 1, 1999, deleted "oil and gas accounting division of the taxation and revenue" from the section heading and rewrote the section to the extent that a detailed comparison is impracticable.

**"Interest owners" liable under former section.** — Under the version of this section in effect prior to its 1998 amendment, the "interest owner" of the natural gas was liable for the privilege tax on processing natural gas. Blackwood & Nichols Co. v. N.M. Taxation & Revenue Dep't, 1998-NMCA-113, 125 N.M. 576, 964 P.2d 137, cert. denied, 126 N.M. 107, 967 P.2d 447 (decided under prior law).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 85 C.J.S. Taxation § 973 et seq.

## 7-33-5. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1998, ch. 102, § 7, repealed 7-33-5 NMSA 1978, as enacted by Laws 1963, ch. 179, § 5, relating to valuing the products of a processor, effective January 1, 1999. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com.*

## 7-33-6. Refund.

Any person who has overpaid the tax may apply for a refund of that overpayment in accordance with the provisions of Section 7-1-26 NMSA 1978.

**History:** 1953 Comp., § 72-23-6, enacted by Laws 1963, ch. 179, § 6; 1985, ch. 65, § 42; 1998, ch. 102, § 3.

**ANNOTATIONS**

**The 1998 amendment,** effective January 1, 1999, deleted "Price increase subject to approval of agency of United States of America, state of New Mexico or court" in the section heading, deleted the first two sentences of the section pertaining to product value being subject to tax, and in the last sentence substituted "overpaid the tax" for "paid any such excess tax" and "overpayment" for "excess tax".

## 7-33-7. Natural gas on which tax has been levied; regulation by department.

The tax shall not be levied more than once on the same natural gas. Reporting of natural gas on which the tax has been paid is subject to the regulation of the department.

**History:** 1953 Comp., § 72-23-7, enacted by Laws 1963, ch. 179, § 7; 1998, ch. 102, § 4.

**ANNOTATIONS**

**The 1998 amendment,** effective January 1, 1999, substituted "Natural gas" for "Products" and "department" for "commission" in the section heading; substituted "natural gas" for "product" at the end of the first sentence; in the last sentence substituted "natural gas" for "products" and "department" for "commission", and made a minor stylistic change.

## 7-33-8. Tax return; tax remittance; additional information.

A. Each processor shall submit a return monthly to the department in the form and manner required by the department showing for the month the total mmbtus of natural gas received by the processor at the inlet of the natural gas processing plant and the total mmbtus of natural gas deducted pursuant to the Natural Gas Processors Tax Act. All tax due or to be remitted by the processor shall accompany the return.

B. The return required by this section shall be filed on or before the twenty-fifth day of the month after the calendar month for which the return is required.

C. The department may require additional reports or information as necessary for the proper administration of the Natural Gas Processors Tax Act.

**History:** 1953 Comp., § 72-23-8, enacted by Laws 1963, ch. 179, § 8; 1970, ch. 13, § 7; 1998, ch. 102, § 5.

**ANNOTATIONS**

**The 1998 amendment,** effective January 1, 1999, substituted "return" for "report" in the section heading and rewrote the section to the extent that a detailed comparison is impracticable.

**"Interest owners" liable under former article.** — Under the version of this article in effect prior to the 1998 amendment of 7-33-4 NMSA 1978, the "interest owner" of the natural gas was liable for the privilege tax on processing natural gas. Blackwood & Nichols Co. v. N.M. Taxation & Revenue Dep't, 1998-NMCA-113, 125 N.M. 576, 964 P.2d 137, cert. denied, 126 N.M. 107, 967 P.2d 447 (decided under prior law).

## 7-33-9 to 7-33-22. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-33-9 to 7-33-22 NMSA 1978, relating to the fund and remedies under the Natural Gas Processors Tax Act, effective July 1, 1985.

# ARTICLE 34
# Oil and Gas Production Equipment Ad Valorem Tax

## 7-34-1. Short title.

Chapter 7, Article 34 NMSA 1978 may be cited as the "Oil and Gas Production Equipment Ad Valorem Tax Act".

**History:** 1953 Comp., § 72-24-1, enacted by Laws 1969, ch. 119, § 1; 1985, ch. 65, § 43.

**ANNOTATIONS**

**Law reviews.** — For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For note, "Tribal Severance Taxes - Outside the Purview of the Commerce Clause," see 21 Nat. Resources J. 405 (1981).

## 7-34-2. Definitions.

As used in the Oil and Gas Production Equipment Ad Valorem Tax Act:

A. "commission", "department" or "division" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association or other group or combination acting as a unit;

C. "operator" means any person engaged in the severance of products from a production unit;

D. "product" means oil, natural gas or liquid hydrocarbon, individually or any combination thereof, carbon dioxide, helium or a non-hydrocarbon gas;

E. "severance" means taking any product from the soil in any manner;

F. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

G. "equipment" means wells and nonmobile equipment used at a production unit in connection with severance, treatment or storage of production unit products;

H. "value" means the actual price received for products at the production unit as established under the Oil and Gas Ad Valorem Production Tax Act;

I. "assessed value" means the value against which tax rates are applied; and

J. "tax" means the oil and gas production equipment ad valorem tax.

**History:** 1953 Comp., § 72-24-2, enacted by Laws 1969, ch. 119, § 2; 1977, ch. 249, § 58; 1980, ch. 97, § 8; 1986, ch. 20, § 103; 2005, ch. 130, § 10.

**ANNOTATIONS**

**The 2005 amendment,** effective July 1, 2005, in Subsection D, defined "product" to include helium or non-hydrocarbon gas; and in Subsection J, defined "tax" to mean the oil and gas production equipment ad valorem tax.

## 7-34-3. Method of determining assessed value.

A. Annually the commission shall compute the value of products of each production unit for the previous calendar year.

B. The taxable value of equipment of each production unit is an amount equal to twenty-seven percent of the value of products of each production unit.

C. The assessed value of equipment of each production unit shall be determined by applying the uniform assessment ratio to the taxable value of equipment of each production unit.

**History:** 1953 Comp., § 72-24-3, enacted by Laws 1969, ch. 119, § 3; 1972, ch. 60, § 1.

**ANNOTATIONS**

**Cross references.** — For meaning of "commission", *see* 7-34-2A NMSA 1978.

## 7-34-4. Ad valorem tax levied.

An ad valorem tax is levied on the assessed value of the equipment at each production unit. The tax shall be at the rate certified to the division by the department of finance and administration under the provisions of Section 7-37-7 NMSA 1978.

**History:** 1953 Comp., § 72-24-4, enacted by Laws 1969, ch. 119, § 4; 1981, ch. 37, § 59.

**ANNOTATIONS**

**Cross references.** — For meaning of "commission", *see* 7-34-2A NMSA 1978.

**Indian right to tax oil production not preempted by congress.** — Although it granted to the states the right to tax the production of oil and gas on Indian reservations, congress did not preempt similar tribal taxation. Merrion v. Jicarilla Apache Tribe, 617 F.2d 537 (10th Cir. 1980), *aff'd*, 455 U.S. 130, 102 S. Ct. 894, 71 L. Ed. 2d 21 (1982).

## 7-34-5. Oil and gas production equipment ad valorem tax to be exclusive measure of ad valorem tax liability.

The tax levied by Section 7-34-4 NMSA 1978 shall be the full and exclusive measure of ad valorem tax liability for equipment used at a production unit for the calendar year

1969 and all subsequent years. Any other ad valorem tax on equipment used at a production unit is void.

**History:** 1953 Comp., § 72-24-5, enacted by Laws 1969, ch. 119, § 5; 1985, ch. 65, § 44.

**ANNOTATIONS**

**Cross references.** — For taxes being exclusive of any other ad valorem taxes, *see* 7-32-5 NMSA 1978.

## 7-34-6. Tax statement; tax due date.

Annually the commission shall compute the assessed value of equipment for each production unit and extend the applicable rates against the assessed value to determine the amount of tax due. The commission shall prepare a tax statement for each production unit showing the production unit identification, the taxing district in which it is located, calendar-year value, assessed value, district rates and the amount of tax due. The tax statement shall be sent to the operator on or before October 15th and payment shall be made to the commission on or before November 30.

**History:** 1953 Comp., § 72-24-6, enacted by Laws 1969, ch. 119, § 6.

**ANNOTATIONS**

**Cross references.** — For meaning of "commission", *see* 7-34-2A NMSA 1978.

## 7-34-7. Commission shall report to county; tax roll.

On or before December 30, the commission shall deliver a report to each county in which production units are located, identifying each production unit, the taxing district in which it is located, the value, assessed value, district rates and the amount of tax paid.

**History:** 1953 Comp., § 72-24-7, enacted by Laws 1969, ch. 119, § 7.

**ANNOTATIONS**

**Cross references.** — For meaning of "commission", see 7-34-2A NMSA 1978.

## 7-34-8. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-34-8 NMSA 1978, as enacted by Laws 1969, ch. 119, § 8, relating to the oil and gas accounting commission ad valorem equipment tax fund, effective July 1, 1985.

## 7-34-9. Monthly report to department of finance and administration; remittances to state and county treasurers; state and county treasurers may distribute funds.

A. By the last day of each month, the department shall prepare and certify a report to the secretary of finance and administration. The report shall be for the preceding month and shall show the amount of taxes distributed to the oil and gas equipment tax fund, the amount due the state and each taxing district imposing a tax and any other information required by the secretary of finance and administration. The secretary of finance and administration shall forthwith remit the appropriate amounts from the oil and gas equipment tax fund to the state treasurer and the county treasurers who shall make the appropriate distribution, except as provided in Subsection B of this section.

B. If the board of county commissioners notifies the secretary of finance and administration that the county elects not to distribute the proceeds of the oil and gas ad valorem production equipment tax due the municipalities, community college districts and school districts in the county, the secretary of finance and administration shall pay amounts due directly to municipalities, community college districts and school districts within the county.

**History:** 1953 Comp., § 72-24-9, enacted by Laws 1969, ch. 119, § 9; 1977, ch. 247, § 188; 1983, ch. 221, § 2; 1985, ch. 65, § 45; 1993, ch. 131, § 2.

**ANNOTATIONS**

**Cross references.** — For the oil and gas equipment tax fund, *see* 7-1-6.22 NMSA 1978.

**The 1993 amendment,** effective March 31, 1993, substituted "department" for "division" in Subsection A and inserted "community college districts" twice in Subsection B.

## 7-34-10 to 7-34-20. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-34-10 to 7-34-20 NMSA 1978, as enacted by Laws 1969, ch. 119, §§ 10 to 20, relating to the remedies under the Oil and Gas Production Equipment Ad Valorem Tax Act, effective July 1, 1985.

# ARTICLE 35
# Property Tax

## 7-35-1. Short title.

Articles 35 through 38 of Chapter 7 NMSA 1978 may be cited as the "Property Tax Code".

**History:** 1953 Comp., § 72-28-1, enacted by Laws 1973, ch. 258, § 1; 1982, ch. 28, § 1.

**ANNOTATIONS**

**Cross references.** — For constitutional provision as to equality in ad valorem taxation, *see* N.M. Const., art. VIII, § 1.

For constitutional provision as to property tax limits and exceptions, *see* N.M. Const., art. VIII, § 2.

For constitutional provision as to tax exempt property, *see* N.M. Const., art. VIII, § 3.

For constitutional provision as to head of family and veteran exemptions, *see* N.M. Const., art. VIII, § 5.

For constitutional provision as to assessment of lands, *see* N.M. Const., art. VIII, § 6.

For constitutional provision as to disabled veteran exemptions, *see* N.M. Const., art. VIII, § 5.

**Construction of Property Tax Code.** — The Property Tax Code, Articles 35 to 38 of Chapter 7 NMSA 1978, must be read and construed in its entirety. Brown v. Greig, 1987-NMCA-096, 106 N.M. 202, 740 P.2d 1186, cert. denied, 106 N.M. 174, 740 P.2d 1158.

**Law reviews.** — For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M.L. Rev. 69 (1976-77).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation §§ 24 to 27.

84 C.J.S. Taxation § 136 et seq.

## 7-35-2. Definitions.

As used in the Property Tax Code:

A. "department" or "division" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "director" means the secretary;

C. "livestock" means cattle, buffalo, horses, mules, sheep, goats, swine, ratites and other domestic animals useful to man;

D. "manufactured home" means a manufactured home as that term is defined in Section 66-1-4.11 NMSA 1978;

E. "net taxable value" means the value of property upon which the tax is imposed and is determined by deducting from taxable value the amount of any exemption authorized by the Property Tax Code;

F. "nonresidential property" means property that is not residential property;

G. "owner" means the person in whom is vested any title to property;

H. "person" means an individual or any other legal entity;

I. "property" means tangible property, real or personal;

J. "residential property" means property consisting of one or more dwellings together with appurtenant structures, the land underlying both the dwellings and the appurtenant structures and a quantity of land reasonably necessary for parking and other uses that facilitate the use of the dwellings and appurtenant structures; as used in this subsection, "dwellings" includes both manufactured homes and other structures when used primarily for permanent human habitation, but the term does not include structures when used primarily for temporary or transient human habitation such as hotels, motels and similar structures;

K. "secretary" means the secretary of taxation and revenue and, except for purposes of Section 7-35-6 NMSA 1978 and Paragraphs (1) and (2) of Subsection B of Section 7-38-90 [repealed] NMSA 1978, also includes the deputy secretary or a division director or deputy division director delegated by the secretary;

L. "tax" means the property tax imposed under the Property Tax Code;

M. "taxable value" means the value of property determined by applying the tax ratio to the value of the property determined for property taxation purposes;

N. "tax rate" means the rate of the tax expressed in terms of dollars per thousand dollars of net taxable value of property;

O. "tax ratio" means the percentage established under the Property Tax Code that is applied to the value of property determined for property taxation purposes in order to derive taxable value; and

P. "tax year" means the calendar year.

**History:** 1953 Comp., § 72-28-2, enacted by Laws 1973, ch. 258, § 2; 1977, ch. 249, § 60; 1981, ch. 37, § 60; 1985, ch. 109, § 1; 1986, ch. 20, § 104; 1991, ch. 166, § 1; 1993, ch. 39, § 1; 1994, ch. 9, § 1; 1994, ch. 9, § 2.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1995, ch. 31, § 7 repealed 7-38-90 NMSA 1978, referred to in Subsection K, effective July 1, 1995. For present comparable provisions, *see* 9-11-6.2 NMSA 1978.

**The second 1994 amendment,** effective January 1, 2001, in Subsection C, inserted "buffalo" and "ratites", and deleted "excluding ratites" at the end.

**The first 1994 amendment,** effective February 15, 1994, in Subsection C, inserted "buffalo", deleted "ratites" following "swine" and added "excluding ratites" at the end.

**The 1993 amendment,** effective June 18, 1993, inserted "ratites" in Subsection C.

**The 1991 amendment,** effective June 14, 1991, deleted "or, when delegated authority by the secretary, the director of the property tax division of the department" at the end of Subsection B; added Subsection D; redesignated former Subsections D to O as Subsections E to P; deleted "as defined in Section 66-1-4 NMSA 1978" following "manufactured homes" near the beginning of Subsection J; and added the language beginning "and, except for" at the end of Subsection K.

**The property tax division's conclusion that elk are not livestock is a reasonable interpretation of this section.** Had the legislature intended for the word "livestock" to be given identical treatment under the Livestock Code and the Property Tax Code, it would have been a simple matter for it to have given the term identical definitions. Jicarilla Apache Nation v. Rodarte, 2004-NMSC-035, 136 N.M. 630, 103 P.3d 554.

**Vendor is an "owner".** — Because a vendor holds legal title and because the Property Tax Code defines "owner" as the holder of any title, the vendor under a real estate contract is an "owner" under the code. Southwest Land Inv., Inc. v. Hubbart, 1993-NMSC-072, 116 N.M. 742, 867 P.2d 412.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Oil and gas royalty as real or personal property, 56 A.L.R.4th 539.

## 7-35-2.1. Additional definition.

As used in the Property Tax Code, "costs" means the expenses incurred by the department in connection with collecting delinquent taxes. As applied to a particular

property, "costs" may be, in the discretion of the department, either the sum of the expenses incurred specifically in connection with that property or the uniform charge applied to the class of delinquent properties of which the property is a member.

**History:** Laws 1995, ch. 12, § 5.

## 7-35-3. Director's supervisory power over county assessors; duty to evaluate performance and provide technical assistance; property valuation fund created.

A. The director has general supervisory authority over county assessors for the purposes of assuring implementation of and compliance with the provisions of the Property Tax Code and applicable regulations, orders, rulings and instructions of the department. He shall implement procedures for evaluation of the performance of county assessors' functions on a regular basis and shall also provide, subject to the availability of resources within the department and from the property valuation fund created in Subsection B of this section, appropriate technical assistance to county assessors.

B. A revolving fund, to be called the "property valuation fund", is created.

(1) The fund shall consist of:

(a) all money which on January 1, 1975 remained in the special reappraisal fund which was created pursuant to Section 72-2-21.1 NMSA 1953 [repealed] and the reappraisal loan fund which was created pursuant to Section 72-2-21.11 NMSA 1953 [repealed];

(b) all repayments of outstanding loans made or committed to be made from the special reappraisal fund and the reappraisal loan fund; and

(c) all money appropriated to the fund.

(2) The fund shall not be used to supplement the general operating budget of the department. The fund may be used by the department for:

(a) providing a county with technical assistance services pursuant to Section 7-36-19 NMSA 1978 in the valuation of major industrial or commercial properties subject to valuation by the assessor;

(b) providing a county with technical assistance services in keeping appraised values current for valuation purposes;

(c) providing other major technical assistance to a county;

(d) installing necessary maps and other increments of the property description system in a county pursuant to Section 7-38-10 NMSA 1978; and

(e) meeting prior commitments for loans of money in the reappraisal loan fund for assistance to a county in which reappraisal has not been completed.

(3) Amounts from the property valuation fund may be expended by the director only after approval by the state board of finance. Approval by the state board of finance, fully setting forth the reasons for the expenditure, must be requested in writing by either the director or the county assessor of the county requesting department assistance. A request by the county assessor must be concurred in by the board of county commissioners and the director.

(4) Any amount in the property valuation fund not currently needed for the purpose of the fund shall be invested by the state treasurer in such manner and for such times as will make the funds available when needed for the purposes of the fund.

(5) Any amount expended from the property valuation fund shall be reimbursed in full to the fund by the county requesting assistance or to which assistance has been provided; the reimbursement shall not be reduced by the director pursuant to Section 7-35-8 NMSA 1978; and the reimbursement shall be upon terms and conditions prescribed by the director and approved by the state board of finance.

(6) In any county which has not completed reappraisal by June 30, 1977, no political subdivision shall be eligible to receive any funds distributed from the following unless specific appropriations are made by the legislature:

(a) public school fund, supplemental distributions pursuant to Section 22-8-30 NMSA 1978; or

(b) any discretionary distributions made by the board of finance.

(7) There is appropriated to the property valuation fund all money which on January 1, 1975 remained in the special reappraisal fund and the reappraisal loan fund and all repayments of outstanding loans made or committed to be made from the special reappraisal fund and the reappraisal loan fund.

**History:** 1953 Comp., § 72-28-6, enacted by Laws 1973, ch. 258, § 6; 1975, ch. 153, § 1; 1989, ch. 324, § 2.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1974, ch. 92, § 34 repealed 72-2-21.1 and 72-2-21.11, 1953 Comp., referred to in Subsection B(1)(a).

**Cross references.** — For appraisers' certificates, property valuation and tax administration courses, *see* 4-39-2 to 4-39-5 NMSA 1978.

**The 1989 amendment,** effective April 7, 1989, in Subsection B, deleted former Paragraph (1)(c), which read "all money earned by the investment or loan of the money in the property valuation fund; and" and redesignated former Paragraph (1)(d) as Paragraph (1)(c), in Paragraph (2)(a), substituted "Section 7-36-19 NMSA 1978" for "Section 72-29-8 NMSA 1953", in Paragraph (2)(d), substituted "Section 7-38-10 NMSA 1978; and" for "Section 72-31-10 NMSA 1953", deleted former Paragraph (2)(e), which read "carrying out the functions from which a county assessor has been suspended pursuant to Section 72-28-9 NMSA 1953; and", redesignated former Paragraph (2)(f) as Paragraph (2)(e), in Paragraph (4) deleted "in such a manner and for such times as will make the funds available when needed for the purposes of the fund, and earnings from such investment shall be retained in the fund" from the end of the paragraph, in Paragraph (5), substituted "Section 7-35-8 NMSA 1978" for "Section 72-28-11 NMSA 1953", and in Paragraph (6)(a), substituted "Section 22-8-30 NMSA 1978" for "Section 77-6-29 NMSA 1953".

## 7-35-4. Department to provide manuals and other materials.

The department shall prepare, issue and periodically revise valuation manuals, cost and valuation schedules, bulletins and annotated digests of property tax laws and regulations in handbook form for the use of its employees, the county assessors and their employees and other persons involved in the administration and collection of the property tax. The department shall make the foregoing materials available to members of the public and may charge a fee for the materials to offset the cost of physical preparation. Any amounts collected are appropriated to the department for its operation.

**History:** 1953 Comp., § 72-28-7, enacted by Laws 1973, ch. 258, § 7.

## 7-35-5. Training programs; attendance by assessor.

A. The department shall conduct or sponsor special courses of instruction and in-service and intern training programs on the technical, legal and administrative aspects of property taxation. The department may cooperate with educational institutions and appropriate organizations interested in the property valuation or taxation field in the conduct or sponsorship of training programs. The department may reimburse the expenses incurred by assessors and employees of the state and its political subdivisions who attend training programs with the approval of the department.

B. The department shall establish a training program for persons elected or appointed as county assessors who have not held office as a county assessor within the ten years prior to the beginning of the term for which the person was elected or from the date of appointment. The department shall require attendance and satisfactory completion of such a program by such persons elected or appointed after the effective date of this 1991 act.

**History:** 1953 Comp., § 72-28-8, enacted by Laws 1973, ch. 258, § 8; 1991, ch. 166, § 2.

**ANNOTATIONS**

**Cross references.** — For courses in property valuation and property tax administration, *see* 4-39-2 NMSA 1978.

**The 1991 amendment,** effective June 14, 1991, added "Attendance by assessor" in the section heading; designated the existing language as Subsection A; and added Subsection B.

## 7-35-6. Suspension of county assessor's functions; department's performance of county assessor's functions.

A. If the secretary finds after informal efforts to obtain compliance have failed that a county assessor is not complying with the Property Tax Code or with the regulations, orders, rulings or other administrative directives of the department under the Property Tax Code, the secretary shall notify the county assessor and the board of county commissioners of the county involved by certified mail of the noncompliance and of the action required to remedy the noncompliance.

B. If the failure has not been remedied within sixty days after the notice is mailed, the secretary shall issue an order requiring the county assessor and the board of county commissioners to show cause why the county assessor's functions should not be suspended. The secretary shall set a time and place for a hearing on the order and shall send by certified mail to the county assessor and to the board of county commissioners copies of the order and the notice of hearings.

C. If the secretary determines after a hearing that a county assessor has failed to comply with the Property Tax Code or regulations, orders, rulings or instructions of the department or of the department of finance and administration pursuant to the Property Tax Code, the secretary may suspend in whole or in part any of the county assessor's functions. The suspension shall be by written order of the secretary and shall continue until the secretary finds that the county assessor is both willing and able to comply with the Property Tax Code and the regulations, orders, rulings or instructions of the department or of the department of finance and administration pursuant to the Property Tax Code.

D. During a suspension, the department succeeds to and shall carry out the functions from which the county assessor has been suspended. The county shall reimburse the department for all costs incurred in performing the functions. In the event that the county does not make reimbursement within a reasonable time, the department, notwithstanding any other provision of law, may obtain reimbursement by retaining ten percent of each distribution or transfer required by law to be made to the county from money collected by the department until the total retained equals the amount to be reimbursed. All amounts received or retained by the department under this subsection are appropriated to the department for its use in carrying out its duties under the Property Tax Code.

E. No less than thirty days after the date of any suspension order, the board of county commissioners may make a written request to the secretary to terminate the suspension order on the grounds that it is no longer justified because of the county assessor's willingness and ability to comply with the Property Tax Code or regulations, orders, rulings or instructions of the department or of the department of finance and administration pursuant to the Property Tax Code. Upon receipt of a request to terminate a suspension order, the secretary shall set a time and place for a hearing on the request. The date of the hearing shall be not more than thirty days after the receipt of the request, and the secretary shall notify the board of county commissioners and the county assessor of the time and place of the hearing by certified mail. If the secretary determines after a hearing that the county assessor is both willing and able to comply with the Property Tax Code and the regulations, orders, rulings or instructions of the department or of the department of finance and administration pursuant to the Property Tax Code, the secretary shall terminate the suspension by written order, which order must be made within ten days of the hearing. In the absence of such a finding, the secretary shall deny the request for termination of the suspension, which denial must be made by written order within ten days of the hearing. Nothing in this subsection prohibits the secretary from terminating an order of suspension issued in accordance with Subsection C of this section without a request for a hearing, or a hearing, on the issue of termination of suspension. Repeated requests for the termination of a suspension may be made, but no request may be made less than thirty days after the date of the secretary's denial of a previous request for termination of a suspension.

**History:** Laws 1981, ch. 37, § 61; 1991, ch. 166, § 3.

**ANNOTATIONS**

**Repeals and reenactments.** — Section 7-35-6 NMSA 1978 was repealed and reenacted by Laws 1981, Chapter 37, Section 61. For prior history, *see* 1953 Comp., § 72-28-9, enacted by Laws 1973, ch. 258, § 9; 1974, ch. 92, § 2.

**The 1991 amendment,** effective June 14, 1991, rewrote the section heading which read "Division to seek compliance by assessors and county commissioners"; in Subsection A, substituted "secretary" for "director" in two places and substituted "department under the Property Tax Code" for "division"; rewrote Subsection B; and added Subsections C to E.

## 7-35-7. Suspension of county treasurer's functions; department of finance and administration's performance of county treasurer's functions.

A. If the secretary of finance and administration finds that a county treasurer has failed to comply with the Property Tax Code or regulations, orders, rulings or instructions of the department or of the department of finance and administration, he shall notify the county treasurer and the board of county commissioners by certified mail of the fact and nature of the failure.

B. If the failure has not been remedied within sixty days after the notice is mailed, the secretary of finance and administration shall issue an order requiring the county treasurer and the board of county commissioners to show cause why the county treasurer's functions should not be suspended. The secretary of finance and administration shall set a time and place for a hearing on the order and shall send by certified mail to the county treasurer and to the board of county commissioners copies of the order and the notice of the hearing.

C. If the secretary of finance and administration determines after a hearing that a county treasurer has failed to comply with the Property Tax Code or regulations, orders, rulings or instructions of the department or of the department of finance and administration, the secretary of finance and administration may suspend in whole or in part any of the county treasurer's functions. The suspension shall be by written order of the secretary of finance and administration and shall continue until he finds that the county treasurer is both willing and able to comply with the Property Tax Code and the regulations, orders, rulings or instructions of the department or of the department of finance and administration.

D. During a suspension, the department of finance and administration succeeds to and shall carry out the functions from which the county treasurer has been suspended. The county shall reimburse the department of finance and administration for all costs incurred in performing the functions. All amounts received by the department of finance and administration under this subsection shall be deposited with the state treasurer for credit to the state general fund.

E. No less than thirty days after the date of any suspension order, the board of county commissioners may make a written request to the secretary of finance and administration to terminate the suspension order on the grounds that it is no longer justified because of the county treasurer's willingness and ability to comply with the Property Tax Code or regulations, orders, rulings or instructions of the department or of the department of finance and administration. Upon receipt of a request to terminate a suspension order, the secretary of finance and administration shall set a time and place for a hearing on the request. The date of the hearing shall be not more than thirty days after the receipt of the request, and the secretary of finance and administration shall notify the board of county commissioners and the county treasurer of the time and place of the hearing by certified mail. If the secretary of finance and administration determines after a hearing that the county treasurer is both willing and able to comply with the Property Tax Code and the regulations, orders, rulings or instructions of the department or of the department of finance and administration, he shall terminate the suspension by written order, which must be made within ten days of the hearing. In the absence of such a finding, he shall deny the request for termination of the suspension, which denial must be made by written order within ten days of the hearing. Nothing in this subsection prohibits the secretary of finance and administration from terminating an order of suspension in accordance with Subsection C of this section without a request for a hearing, or a hearing, on the issue of termination of suspension. Repeated requests for the termination of a suspension may be made, but no request may be made less than

thirty days after the date of the secretary of finance and administration's denial of a previous request for termination of a suspension.

F. Copies of suspension orders and orders terminating suspensions shall be sent to the department at the time they are made.

**History:** 1953 Comp., § 72-28-10, enacted by Laws 1973, ch. 258, § 10; 1974, ch. 92, § 3; 1977, ch. 247, § 189.

## 7-35-8. Authority for director to reduce amount required to be reimbursed to department by counties for services provided by department.

When any provision of the Property Tax Code requires a county to reimburse the department for the costs of services provided by the department, the director may reduce the amount required to be reimbursed to less than actual costs of the services.

**History:** 1953 Comp., § 72-28-11, enacted by Laws 1973, ch. 258, § 11.

## 7-35-9. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1982, ch. 28, § 31, repealed 7-35-9 NMSA 1978, relating to the furnishing of annual reports by the property tax division of the taxation and revenue department, effective May 19, 1982.

## 7-35-10. Division to furnish valuation services to state agencies and political subdivisions of the state.

The division shall provide, subject to the availability of resources within the division, assistance services to state agencies and political subdivisions in the valuation of property owned or being considered for purchase by the state or by political subdivisions. Agencies and political subdivisions that are not funded from the state general fund shall reimburse the division for the actual cost incurred in the valuation of the property.

**History:** 1953 Comp., § 72-28-13, enacted by Laws 1975, ch. 172, § 1; 1982, ch. 28, § 2.

# ARTICLE 36
# Valuation of Property

## 7-36-1. Provisions for valuation of property; applicability.

The provisions of this article apply to and govern the determination of value of all property subject to valuation for property taxation purposes under the Property Tax Code.

**History:** 1953 Comp., § 72-29-1, enacted by Laws 1973, ch. 258, § 13.

**ANNOTATIONS**

**Cross references.** — For constitutional provision as to equality of ad valorem taxation, *see* N.M. Const., art. VIII, § 1.

For constitutional provision as to property tax limits and exceptions, *see* N.M. Const., art. VIII, § 2.

For constitutional provision as to assessment of lands, *see* N.M. Const., art. VIII, § 6.

**Law reviews.** — For comment, "Ad Valorem Taxes - Omitted Property and Improvements - Assessments," see 6 Nat. Resources J. 105 (1966).

For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

For article, "New Mexico Taxes: Taking Another Look," see 32 N.M.L. Rev. 351 (2002).

## 7-36-2. Allocation of responsibility for valuation and determining classification of property for property taxation purposes; county assessor and department.

A. The county assessor is responsible and has the authority for the valuation of all property subject to valuation for property taxation purposes in the county except the property specified by Subsections B and C of this section.

B. The department is responsible and has the authority for the valuation of all property subject to valuation for property taxation purposes and used in the conduct of the following businesses:

(1) railroad;

(2) communications system as that term is defined in Section 7-36-30 NMSA 1978;

(3) pipeline;

(4) public utility; and

(5) airline.

C. The department is responsible and has the authority for the valuation of property subject to valuation for property taxation purposes when that property is:

(1) an electricity generating plant, whether or not owned by a public utility, if all or part of the electricity is generated for ultimate sale to the consuming public;

(2) mineral property and property held or used in connection with mineral property as defined in Sections 7-36-22 through 7-36-25 NMSA 1978; or

(3) machinery, equipment and other personal property of all resident and nonresident persons customarily engaged in construction that involves the use during a tax year of the machinery, equipment and other personal property in more than one county. For the purposes of this paragraph, "construction" means leveling or clearing land, excavating earth, drilling wells of any type, including seismograph shot holes or core drilling, or similar work, or building, altering, repairing or demolishing any:

(a) road, highway, bridge, parking area or related project;

(b) building, fence, stadium or other structure;

(c) airport, subway or similar facility;

(d) park, trail, athletic field, golf course or similar facility;

(e) dam, reservoir, canal, ditch or similar facility;

(f) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station, gas processing plant, coal gasification plant, refinery, distillery or similar facility;

(g) sewerage, water, gas or other pipeline;

(h) transmission line;

(i) radio, television or other tower;

(j) water, oil or other storage tank;

(k) shaft, tunnel or other mining appurtenance; or

(l) similar work.

D. The entity having responsibility and authority for valuing the property described in Subsections A through C of this section shall also have responsibility and authority for classifying that property as either residential or nonresidential under the provisions of Section 7-36-2.1 NMSA 1978.

E. The secretary by regulation may delegate authority to the county assessor for the valuation and classification of property subject to valuation for property taxation purposes for which the department is responsible pursuant to Subsections B through D of this section only if:

(1) the property is held or used in connection with the transmission, storage, measurement or distribution of water and the transmission, storage, measurement and distribution is conducted by a single person entirely within a single county; or

(2) the property is held or used in connection with a communications system as defined in Section 7-36-30 NMSA 1978 and the system operates entirely within a single county.

F. The department is authorized to enter into one or more agreements with each county assessor, subject to approval of each agreement by the appropriate board of county commissioners, under which the county assessor agrees to perform the valuation of property for which the department is responsible under Subsection B of this section but which property is not subject to the special methods of valuation set forth in Sections 7-36-27, 7-36-28 and 7-36-30 through 7-36-32 NMSA 1978.

**History:** 1953 Comp., § 72-29-2, enacted by Laws 1973, ch. 258, § 14; 1974, ch. 92, § 5; 1975, ch. 156, § 1; 1975, ch. 165, § 1; 1981, ch. 37, § 62; 1985, ch. 109, § 2; 1995, ch. 12, § 6.

## ANNOTATIONS

**Cross references.** — For county assessors, *see* Chapter 4, Article 39 NMSA 1978.

**The 1995 amendment,** effective June 16, 1995, substituted "department" for "division" in the section heading and in Subsections B, C, and E; inserted "gas processing plant, coal gasification plant, refinery, distillery" in Subparagraph C(3)(f); substituted "secretary" for "director" near the beginning of Subsection E; and added Subsection F.

**Different tax treatment based on use of contractor's equipment unconstitutional.** — Since the effect of former 7-36-9 NMSA 1978 and 72-6-4A(1)(c), 1953 Comp. (predecessor of this section), was that contractors whose machinery and equipment was used in more than one county were subject to property tax on sales inventories, and contractors whose machinery and equipment was not used in more than one county were not subject to property tax on sales inventories, this difference in tax treatment based solely on whether a contractor uses his equipment in more than one county was arbitrary and resulted in a denial of equal protection of the law; therefore, to the extent that valuation by the property appraisal department deprives the taxpayer of the exemption in former 7-36-9 NMSA 1978, that section is unconstitutional. Halliburton Co. v. Property Appraisal Dep't, 1975-NMCA-123, 88 N.M. 476, 542 P.2d 56.

**Use of equipment in multiple counties cannot be defended on basis of administrative convenience.** — A classification based solely on the use of machinery and equipment in more than one county is patently unreasonable, and cannot be defended on the basis of assessment procedures. Administrative convenience in arriving at a valuation of the property involved does not show a rational basis for taxing inventories of contractors who report value to the property appraisal department rather than to the county assessor. The fact that taxpayers may reasonably be required to report their property values to different government offices because of differences in geographic operations does not provide a reasonable basis for a difference in tax treatment on the values reported. Halliburton Co. v. Property Appraisal Dep't, 1975-NMCA-123, 88 N.M. 476, 542 P.2d 56.

**Mineral value taxed centrally.** — In New Mexico, any mineral value, whether held in fee or as severed minerals, may only be classified and valued by the state tax commission (now taxation and revenue department). Gerner v. State Tax Comm'n, 1963-NMSC-022, 71 N.M. 385, 378 P.2d 619.

**Director, not court, to choose between conflicting inferences.** — Decision of the director supported by substantial evidence that taxpayer contractor's activities, which were performed prior to production from a well, in the usual course of business, involving the use of machinery and equipment commonly used in the course of drilling an oil and gas well came within 72-6-4A(1)(c), 1953 Comp. (now Section 7-36-2C(3) NMSA 1978), was affirmed since although there was conflicting evidence and it was for the director to choose between conflicting inferences. Halliburton Co. v. Prop. Appraisal Dep't, 1975-NMCA-123, 88 N.M. 476, 542 P.2d 56.

**Use of machinery and equipment sufficient.** — Section 72-6-4A(1)(c), 1953 Comp. (now Section 7-36-2C(3) NMSA 1978), by its terms, did not require a company to be the drilling contractor; the contractor's work must involve the use of, but not be limited to, machinery and equipment commonly used in oil and gas well drilling. Halliburton Co. v. Prop. Appraisal Dep't, 1975-NMCA-123, 88 N.M. 476, 542 P.2d 56.

**Assessed value is not competent direct evidence** of value for purposes other than taxation. Gomez v. Board of Educ., 1966-NMSC-095, 76 N.M. 305, 414 P.2d 522.

**Valuation of livestock.** — Subsection D of Section 7-36-21 NMSA 1978 does not allocate valuation of livestock responsibility to the division (department); instead, that section simply requires the division (department) to supervise the assessor by establishing classes of livestock and values for those classes of livestock. While the division (department) must establish general criteria for valuing livestock, the county assessor does the actual valuation. Zwaagstra v. DelCurto, 1992-NMCA-087, 114 N.M. 263, 837 P.2d 457.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Method of rule for valuation of leasehold interest for purpose of property taxation, 84 A.L.R. 1310.

Price paid or received by taxpayer for property as evidence of its value for tax purposes, 160 A.L.R. 684.

Method of calculating value of stock of goods or the like for purposes of tangible personal property tax, 66 A.L.R.2d 833.

Separate assessment and taxation of air rights, 56 A.L.R.3d 1300.

## 7-36-2.1. Classification of property.

A. Property subject to valuation for property taxation purposes shall be classified as either residential property or nonresidential property.

B. The department by regulation, ruling, order or other directive shall provide for the implementation of a classification system and shall include a method for apportioning the value of multiple-use properties between residential and nonresidential components.

**History:** 1978 Comp., § 7-36-2.1, enacted by Laws 1981, ch. 37, § 63; 1995, ch. 12, § 7.

**ANNOTATIONS**

**Cross references. —** For general methods of valuation of property, *see* 7-36-15 NMSA 1978.

For limitations on tax rates on residential property, *see* 7-37-7.1 NMSA 1978.

For presumption of nonresidential classification, *see* 7-38-17.1 NMSA 1978.

**The 1995 amendment,** effective June 16, 1995, substituted "department" for "division" and made a minor stylistic change in Subsection B.

## 7-36-3. Industrial revenue bond, pollution control bond and economic development bond project property; health-related equipment; tax status.

A. Property interests of a lessee in project property held under a lease from a county or a municipality under authority of an industrial revenue bond or pollution control revenue bond act or the Statewide Economic Development Finance Act [Chapter 6, Article 25 NMSA 1978] are exempt from property taxation for as long as there is an outstanding bonded indebtedness under the terms of the revenue bonds issued for the acquisition of the project property, but in no event for a period of more than thirty years from the date of execution of the first lease of the project to the lessee by the county or municipality.

B. Property interests of a person, other than a public utility, arising out of the purchase of a project authorized by the Industrial Revenue Bond Act [Chapter 3, Article 32 NMSA 1978], the County Industrial Revenue Bond Act [Chapter 4, Article 59 NMSA 1978], the Pollution Control Revenue Bond Act [3-59-1 through 3-59-14 NMSA 1978] or the Statewide Economic Development Finance Act are exempt from property taxation for as long as the project purchaser remains liable to the project seller for any part of the purchase price, but not to exceed thirty years from the date of execution of the sale agreement.

C. Property interests of a participating health facility in health-related equipment purchased, acquired, leased, financed or refinanced with the proceeds of bonds issued under the Hospital Equipment Loan Act [Chapter 58, Article 23 NMSA 1978] are exempt from property taxation for as long as the participating health facility remains liable for any amount under any lease, loan or other agreement securing the bonds, but not to exceed thirty years from the date the bonds were issued for the health-related equipment.

D. The exemptions from property taxation under this section are not cumulative; provided, however, that the exemptions may be applied consecutively if subsequent exemptions relate to the financing of a new project or new health-related equipment.

**History:** 1953 Comp., § 72-29-2.1, enacted by Laws 1975, ch. 218, § 1; 1977, ch. 137, § 1; 2003, ch. 349, § 20; 2006, ch. 90, § 1; 2006, ch. 92, § 1.

## ANNOTATIONS

**The 2006 amendment,** effective May 17, 2006, added a new Subsection C, to provide a property tax exemption for property interests in health-related equipment; and in Subsection D (formerly Subsection C), provided that the exemption may be applied consecutively if subsequent exemption relate to the financing of a new project or new health-related equipment.

**Duplicate laws.** — Laws 2006, ch. 90, § 1 and Laws 2006, ch. 92, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 2006, ch. 92, §1. *See* 12-1-8 NMSA 1978.

**Applicability.** — Laws 2006, ch. 92, § 4 made the provisions of Laws 2006, ch. 92, § 1 applicable to property tax years beginning on or after January 1, 2006.

**The 2003 amendment,** effective June 20, 2003, inserted "or the Statewide Economic Development Finance Act" in Subsections A and B.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Pollution control: validity and construction of statute or ordinance allowing tax exemption for property used in pollution control, 65 A.L.R.3d 434.

## 7-36-3.1. Metropolitan redevelopment property; tax status of lessee's interests.

Property interests of a lessee in project property held under a lease with respect to a project authorized by the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978] and acquired or held by a municipality prior to January 1, 1986 under the provisions of that code are exempt from property taxation for as long as there is an outstanding bonded indebtedness, but in any event for a period not to exceed ten years from the date of execution of the first lease of the project by the municipality. Property interests of a lessee of or an owner of a substantial beneficial interest in project property acquired or held by a municipality on or after January 1, 1986 with respect to a project authorized by the Metropolitan Redevelopment Code are exempt from property taxation for a period extending from the date of acquisition of the project property by the municipality through December 31 of the year in which the seventh anniversary of that acquisition date occurs.

**History:** 1978 Comp., § 7-36-3.1, enacted by Laws 1979, ch. 56, § 2; 1985, ch. 225, § 5.

**ANNOTATIONS**

**Cross references.** — For Community Development Incentive Act, *see* 3-64-1 NMSA 1978 et seq.

## 7-36-3.2. Enterprise zone property; tax status of lessee's interests.

Property interests of a lessee in project property held under a lease with respect to a project authorized by the Enterprise Zone Act [5-9-1 through 5-9-15 NMSA 1978] and acquired or held by a local government are exempt from property taxation for a period not to exceed ten years from the date of execution of the first lease of the project by the local government.

**History:** 1978 Comp., § 7-36-3.2, enacted by Laws 1993, ch. 33, § 16.

**ANNOTATIONS**

## 7-36-4. Fractional property interests; definitions; taxation and valuation of fractional interests.

A. As used in this section:

(1) "fractional interest" means a tangible interest in real property, except for mineral property as defined in Section 7-36-22 NMSA 1978, that is less than the total of the interests existing in the property, but "fractional interest" does not include those property interests described in Sections 7-36-3, 7-36-3.1 and 7-36-3.2 NMSA 1978 nor

does it include the lessee's interest under a lease when the term of the lease is more than seventy-five years;

(2) "exempt entity" means any person whose real property is exempt from taxation under the constitution of New Mexico or the Enabling Act (36 Stat. 557, as amended) by reason of ownership;

(3) "exempt property" means property that is exempt from property taxation pursuant to Article 8, Section 3 of the constitution of New Mexico by reason of use;

(4) "improvements" includes surface and subsurface structures, fixtures, transmission lines, pipelines and other works, but "improvements" does not include:

(a) that property either included or specifically excluded under the terms "property used in connection with mineral property" under Section 7-36-23 NMSA 1978, "property used in connection with potash mineral property" under Section 7-36-24 NMSA 1978 and "property used in connection with uranium mineral property" under Section 7-36-25 NMSA 1978;

(b) a dwelling occupied by a low-income resident in a housing project authorized under the provisions of the Municipal Housing Law [Chapter 3, Article 45 NMSA 1978]; and

(c) those property interests described in Sections 7-36-3, 7-36-3.1 and 7-36-3.2 NMSA 1978;

(5) "nonexempt entity" means any person that is not an exempt entity; and

(6) "nonexempt property" means property that is not exempt property.

B. Fractional interests of nonexempt entities in real property of exempt entities are exempt from property taxation under the Property Tax Code, but this exemption shall not apply to the following property:

(1) improvements of land of an exempt entity if the improvements are owned or leased by a nonexempt entity; these improvements are subject to valuation for property taxation purposes and to property taxation to be paid by the nonexempt entity; and

(2) property interests of nonexempt entities held under equitable title in the property of exempt entities.

C. When fractional interests are created in property:

(1) fractional interests that are nonexempt property shall be reported to the appropriate valuation authority by the fractional interest owners for valuation for property tax purposes if the owner is a nonexempt entity; and

(2) except for fractional interests owned by the United States, an Indian nation, tribe or pueblo, the state of New Mexico or a political subdivision of the state, fractional interests that are owned by a nonexempt entity but are claimed to be exempt property shall be reported by the owner to the appropriate valuation authority for a determination of exemption status and valuation if determined to be nonexempt property.

D. Fractional interests that are nonexempt property shall be valued by the applicable method of valuation pursuant to the Property Tax Code, and if fractional interests that are exempt property have been created, the value of the remaining nonexempt fractional interests shall be determined in the property tax year following the creation of the interests as the value of the property in the property tax year immediately prior to the year in which creation of the fractional interests occurred, increased or decreased by the value directly attributable to the creation of the fractional interests that are exempt property. For subsequent property tax years, the nonexempt fractional interests shall be valued pursuant to the applicable methods of valuation.

**History:** 1953 Comp., § 72-29-2.2, enacted by Laws 1976, ch. 61, § 1; 1977, ch. 285, § 1; 1985, ch. 109, § 3; 1985, ch. 225, § 6; 1995, ch. 12, § 8; 1998, ch. 49, § 1.

## ANNOTATIONS

**Cross references.** — For constitutional provision as to tax exempt property, *see* N.M. Const., art. VIII, § 3.

For constitutional provision as to head of family and veteran exemption, *see* N.M. Const., art. VIII, § 5.

For the Enabling Act for New Mexico, *see* Pamphlet 3 in Volume 1 NMSA 1978.

**The 1998 amendment,** effective May 20, 1998, in the section heading, inserted "taxation and valuation of fractional interests"; added new Paragraphs A(3) and A(6) and redesignated the remaining Paragraphs in Subsection A accordingly; substituted "subject" for "hereby subjected" in Paragraph B(1); and added a new Subsection C.

**The 1995 amendment,** effective June 16, 1995, designated the existing introductory language as Subsection A and redesignated former Subsections A through D as Paragraphs A(1) through A(4); deleted "and Sections 7-36-5 and 7-36-6 NMSA 1978" following "section" in the introductory phrase of Subsection A; inserted references to Section 7-36-3.2 in Paragraph A(1) and Subparagraph A(3)(c); added Subsection B; and made related stylistic changes.

**Constitutional.** — Constitutional guarantees of equal protection and uniform taxation are not violated by the provision of this section for a 75-year limitation on leases qualifying for exemption. Welch v. Sandoval Cnty. Valuation Protests Bd., 1997-NMCA-086, 123 N.M. 722, 945 P.2d 452, cert. denied, 123 N.M. 627, 944 P.2d 275.

**License, not constituting interest in real property, does not meet definition of "fractional interest"** set forth in Subsection A of this section. Cutter Flying Serv., Inc. v. Property Tax Dep't, 1977-NMCA-105, 91 N.M. 215, 572 P.2d 943.

**"Term of the lease"** means the original term; thus, where a lease had an original term of more than 75 years but had less than 75 years remaining, the leasehold was not a "fractional interest" under Paragraph A(1). Welch v. Sandoval Cnty. Valuation Protests Bd., 1997-NMCA-086, 123 N.M. 722, 945 P.2d 452, cert. denied, 123 N.M. 627, 944 P.2d 275.

**"Real property"** is generally understood to mean a parcel of land together with all structures, fixtures and improvements upon it. Cutter Flying Serv., Inc. v. Property Tax Dep't, 1977-NMCA-105, 91 N.M. 215, 572 P.2d 943.

## 7-36-5, 7-36-6. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 12, § 15, repealed 7-36-5 and 7-36-6 NMSA 1978, as enacted by Laws 1976, ch. 61, §§ 2 and 3, relating to fractional property interests, effective June 16, 1995. For provisions of former sections, *see* the 1994 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 7-36-4 NMSA 1978.

## 7-36-7. Property subject to valuation for property taxation purposes.

A. Except for the property listed in Subsection B of this section or exempt pursuant to Section 7-36-8 NMSA 1978, all property is subject to valuation for property taxation purposes under the Property Tax Code if it has a taxable situs in the state.

B. The following property is not subject to valuation for property taxation purposes under the Property Tax Code:

(1) property exempt from property taxation under the federal or state constitution, federal law, the Property Tax Code or other laws, but:

(a) this does not include property all or a part of the value of which is exempt because of the application of the veteran, disabled veteran or head-of-family exemption;

(b) this provision does not excuse an owner from obligations to report the owner's property as required by regulation of the department adopted under Section 7-

38-8.1 NMSA 1978 or to claim its exempt status under Subsection C of Section 7-38-17 NMSA 1978;

(c) this includes property of a museum that: 1) has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or renumbered; 2) is used to provide educational services; and 3) grants free admission to each student who attends a public school in the county in which the museum is located; and

(d) this includes property that is operated either as a community to which the Continuing Care Act [Chapter 24, Article 17 NMSA 1978] applies or as a facility licensed by the department of health to operate as a nursing facility, a skilled nursing facility, an adult residential care facility, an intermediate care facility or an intermediate care facility for the developmentally disabled; and is owned by a charitable nursing, retirement or long-term care organization that: 1) has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or renumbered; 2) donates or renders gratuitously a portion of its services or facilities; and 3) uses all funds remaining after payment of its usual and necessary expenses of operation, including the payment of liens and encumbrances upon its property, to further its charitable purpose, including the maintenance, improvement or expansion of its facilities;

(2) oil and gas property subject to valuation and taxation under the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978] and the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978]; and

(3) productive copper mineral property subject to valuation and taxation under the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978]; for the purposes of this section, "copper mineral property" means all mineral property and property held in connection with mineral property when seventy-five percent or more, by either weight or value, of the salable mineral extracted from or processed by the mineral property is copper.

History: 1953 Comp., § 72-29-3, enacted by Laws 1973, ch. 258, § 15; 1981, ch. 37, § 53; 1982, ch. 28, § 3; 1990, ch. 125, § 3; 1995, ch. 12, § 9; 2000, ch. 92, § 2; 2000, ch. 94, § 2; 2001, ch. 217, § 1; 2008, ch. 46, § 1.

## ANNOTATIONS

**Cross references.** — For constitutional provision as to equality in ad valorem taxation, *see* N.M. Const., art. VIII, § 1.

For constitutional provision as to tax exempt property, *see* N.M. Const., art. VIII, § 3.

For constitutional provision as to head of family and veteran exemptions, *see* N.M. Const., art. VIII, § 5.

For constitutional provision as to assessment of lands, *see* N.M. Const., art. VIII, § 6.

For tax assessment of land by reference to numbers given by county surveyor, *see* 4-42-13 NMSA 1978.

For Section 501(c)(3) of the Internal Revenue Code of 1986, *see* 26 USCS § 501(c)(3).

**The 2008 amendment,** effective February 28, 2008, added Subparagraph (d) of Paragraph (1) of Subsection B.

**Applicability.** — Laws 2008, ch. 46, § 2 provided that Laws 2008, ch. 46, § 1 was applicable to taxable years beginning on or after January 1, 2008.

**The 2001 amendment,** effective June 15, 2001, added Paragraph B(1)(c).

**The 2000 amendment,** effective March 7, 2000, inserted "disabled veteran" in Subsection B(1) and made minor stylistic changes. Laws 2000, ch. 92, § 2 enacted identical amendments to this section. The section was set out as amended by Laws 2000, ch. 94, § 2. *See* 12-1-8 NMSA 1978.

**The 1995 amendment,** effective June 16, 1995, inserted "or exempt pursuant to Section 7-36-8 NMSA 1978" in Subsection A.

**The 1990 amendment,** effective March 7, 1990, in Subsection B, substituted "department" for "division" in Paragraph (1), added Paragraph (3), and made related stylistic changes.

**Assessor's standing to raise the constitutionality of this section.** — Where the Santa Fe county assessor appealed the district court's decision that petitioner, a retirement and continuing care community, was improperly denied a charitable property tax exemption on the grounds that by meeting the plain language requirements of 7-36-7(B)(1)(d) NMSA 1978, petitioner had also fulfilled the charitable use requirements for tax exemption under art. VIII, § 3 of the New Mexico constitution, the county assessor had standing to challenge the constitutionality of 7-36-7(B)(1)(d) NMSA 1978, because a justiciable controversy existed with regard to petitioner's claim of entitlement to a tax exemption and the county assessor is responsible and has the authority for the valuation of all property subject to valuation for property tax purposes. El Castillo Ret. Residences v. Martinez, 2017-NMSC-026, *aff'g* 2015-NMCA-041, and *overruling* La Vida Llena v. Montoya, 2013-NMCA-048, 299 P.3d 456.

**Constitutional limitation on the legislature's power.** — N.M. Const., art. VIII, § 3 operates as a limit on the legislature's power to redefine categories of property which will be exempt from taxation, and 7-36-7(B)(1)(d) NMSA 1978 may not be interpreted or

applied to grant exemptions that are not authorized by art. VIII, § 3. El Castillo Ret. Residences v. Martinez, 2017-NMSC-026, *aff'g* 2015-NMCA-041, and *overruling* La Vida Llena v. Montoya, 2013-NMCA-048, 299 P.3d 456.

Where the Santa Fe county assessor appealed the district court's decision that petitioner, a retirement and continuing care community, was improperly denied a charitable property tax exemption, the New Mexico supreme court held that the district court erred in concluding that petitioner fulfilled the charitable use requirements for tax exemption under art. VIII, § 3 of the New Mexico constitution, because petitioner, a self-sustaining community that accepts and benefits only financially and medically screened residents based on requirements calculated in the interests of financial security for itself, did not create any substantial public benefit and therefore cannot be entitled to exemption from taxation under 7-36-7(B)(1)(d) NMSA 1978 or N.M. Const., art. VIII, § 3. El Castillo Ret. Residences v. Martinez, 2017-NMSC-026, *aff'g* 2015-NMCA-041, and *overruling* La Vida Llena v. Montoya, 2013-NMCA-048, 299 P.3d 456.

**Property operated under the Continuing Care Act.** — Section 7-36-7(B)(1)(d) NMSA 1978 does not require a minimum amount of donated or gratuitously rendered services or facilities for charitable purposes in order for a continuing care facility to receive the property tax exemption. La Vida Llena v. Montoya, 2013-NMCA-048, 299 P.3d 456.

Where protestant operated a continuing care facility pursuant to the Continuing Care Act, Section 24-17-1 NMSA 1978 et seq., had been granted an exemption from federal taxes, used all funds remaining after payment of its usual and necessary expenses of operation to further its charitable purpose, provided services to some medicare residents when the cost of their care exceeded medicare reimbursement, permitted its staff time to serve other charitable organizations, provided services for its foundation, and did not terminate resident agreements when residents did not pay, protestant donated or rendered gratuitously some part of its facilities and services for charitable services and was entitled to receive the property tax exemption. La Vida Llena v. Montoya, 2013-NMCA-048, 299 P.3d 456.

**Property to provide educational services.** — Property devoted primarily and substantially to traditional museum functions of: (1) the preservation and exhibition of significant aspects, artifacts, and works of our lives and history for the benefit of the general public's appreciation, study, and knowledge; and (2) the carrying on of museum-related educational programs and activities such as lectures, studies, publishing scholarly materials, and creating instructional materials, is property with uses and purposes that ought to be considered for educational purposes tax exemption pursuant to the state constitution. Georgia O'Keefe Museum v. County of Santa Fe, 2003-NMCA-003, 133 N.M. 297, 62 P.3d 754.

To qualify for the educational purposes tax exemption, a museum must adhere to a systematic approach to learning. This requires an ordered, methodical, structured, and regular learning opportunity provided by the museum owner whose primary goal and major purpose through the museum is to impart knowledge and information in order to

educate the public in respect to a branch of learning and it requires substantial public benefit. Georgia O'Keefe Museum v. County of Santa Fe, 2003-NMCA-003, 133 N.M. 297, 62 P.3d 754.

**Indian lands and property exempt.** — New Mexico Const., art. XXI, § 2, clearly precludes state from taxing Indian lands and Indian property on the reservation. Prince v. Board of Educ., 1975-NMSC-068, 88 N.M. 548, 543 P.2d 1176.

**Private non-Indian corporations cannot escape obligation to pay state taxes** by locating their property on Indian reservations. Nothing forbids the imposition of such a tax, since it does not in any way infringe on the right of reservation Indians to make their own laws and be ruled by them. Prince v. Board of Educ., 1975-NMSC-068, 88 N.M. 548, 543 P.2d 1176.

**State may tax property of corporation leasing land from Indian tribe.** — Nothing prevents New Mexico from imposing a tax on the property of non-Indian corporations leasing land from the Navajo tribe, despite the fact that the property might be located on the reservation, because although the land itself cannot be taxed, the non-Indian property, which does not belong to and may not be acquired by the United States or reserved for its use, can. As private property owned by non-Indians who are not performing a federal function, it is subject to the taxing powers of this state. Prince v. Board of Educ., 1975-NMSC-068, 88 N.M. 548, 543 P.2d 1176.

**Lease to construct housing on federal land subject to tax.** — Congress having explicitly removed the bar of sovereign immunity as it applied to property belonging to the United States, the immunity granted the federal government by N.M. Const., art. VIII, § 3, and art. XXI, § 2, clearly was not available to one who had lease to construct military housing on federal land. It was his interest that was subject to taxation. Kirtland Heights, Inc. v. Board of Cnty. Comm'rs, 1958-NMSC-066, 64 N.M. 179, 326 P.2d 672.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation §§ 191 to 220.

Duty to pay real-property taxes as affected by time of commencement or termination of life estate, 8 A.L.R.4th 643.

Exemption of nonprofit theater or concert hall from local property taxation, 42 A.L.R.4th 614.

Property tax: effect of tax-exempt lessor's reversionary interest on valuation of nonexempt lessee's interest, 57 A.L.R.4th 950.

Exemption from real-property taxation of residential facilities maintained by hospital for patients, staff, or others, 61 A.L.R.4th 1105.

Nursing homes as exempt from property taxation, 34 A.L.R.5th 529.

84 C.J.S. Taxation § 120.

## 7-36-8. Tangible personal property exempt from property tax; exceptions.

A. Except as provided in Subsection B of this section, tangible personal property owned by a person is exempt from property taxation.

B. The following tangible personal property owned by a person is subject to valuation and taxation under the Property Tax Code:

(1) livestock;

(2) manufactured homes;

(3) aircraft not registered under the Aircraft Registration Act [64-4-1 through 64-4-15 NMSA 1978];

(4) private railroad cars, the earnings of which are not taxed under the provisions of the Railroad Car Company Tax Act [Chapter 7, Article 11 NMSA 1978];

(5) tangible personal property subject to valuation under Sections 7-36-22 through 7-36-25 and 7-36-27 through 7-36-32 NMSA 1978;

(6) vehicles not registered under the provisions of the Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978] and for which the owner has claimed a deduction for depreciation for federal income tax purposes during any federal income taxable year occurring in whole or in part during the twelve months immediately preceding the first day of the property tax year; and

(7) other tangible personal property not specified in Paragraphs (1) through (6) of this subsection:

(a) that is used, produced, manufactured, held for sale, leased or maintained by a person for purposes of the person's profession, business or occupation; and

(b) for which the owner has claimed a deduction for depreciation for federal income tax purposes during any federal income taxable year occurring in whole or in part during the twelve months immediately preceding the first day of the property tax year.

**History:** 1953 Comp., § 72-1-21, enacted by Laws 1973, ch. 373, § 1 and recompiled as § 72-29-3.1 by Laws 1974, ch. 92, § 35; 1975, ch. 53, § 1; 1983, ch. 295, § 1; 1991, ch. 166, § 4; 1992, ch. 34, § 1; 1993, ch. 8, § 1; 1995, ch. 12, § 10.

**ANNOTATIONS**

**Cross references.** — For constitutional provision as to tax exempt property, *see* N.M. Const., art. VIII, § 3.

For constitutional provision as to head of family and veteran exemptions, *see* N.M. Const., art. VIII, § 5.

For constitution provision as to disabled veteran exemption, *see* N.M. Const., art. VIII, § 15.

**The 1995 amendment,** effective June 16, 1995, substituted "Tangible" for "Certain" and added "exceptions" in the section heading and rewrote the section to such an extent that a detailed comparison would be impracticable.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Classification, as real estate or personal property, of mobile homes or trailers for purposes of state or local taxation, 7 A.L.R.4th 1016.

## 7-36-9, 7-36-10. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 8, § 2 repealed 7-36-9 and 7-36-10 NMSA 1978, as enacted by Laws 1973, ch. 374, § 2 and Laws 1973, ch. 11, § 1, respectively, relating to exemptions for inventories of personal property and motor vehicles registered under Motor Vehicle Code, effective June 18, 1993. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 7-36-11. Reserved.

## 7-36-12, 7-36-13. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 8, § 2 repealed 7-36-12 and 7-36-13 NMSA 1978, as enacted by Laws 1973, ch. 10, § 1 and Laws 1973, ch. 9, § 1 and as recompiled by Laws 1974, ch. 92, § 35, relating to exemptions for aircraft registered under the Aircraft Registration Act and private railroad cars whose earnings are subject to tax under § 7-11-3 NMSA 1978, effective June 18, 1993. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 7-36-14. Taxable situs; allocation of value of property.

A. Property has a taxable situs in the state if:

(1) it is real property and is located in the state;

(2) it is an interest in real property and the real property is located in the state;

(3) it is personal property and is physically present in the state on the date when it is required to be valued for property taxation purposes except for:

(a) property being transported in interstate commerce that is physically present in the state only while being transported through or over the state;

(b) property that is consigned to a warehouse or factory in the state from outside the state for the purpose of storage, manufacturing, processing or fabricating and which is in transit to a final destination outside the state, whether the destination is specified before or after the original transportation begins; or

(c) wool, mohair, hides, pelts and farm crops when owned by the person that originally produced them, but only during the tax year in which produced and the following tax year;

(4) it is personal property that is a part of a communications system as that term is defined in Section 7-36-30 NMSA 1978 and, even though not physically present in the state on the date when it is required to be valued for property taxation purposes, it is an integral part of the system and substantial property that is on that date a part of the communications system is physically present in New Mexico; or

(5) it is personal property and, even though not physically present in the state on the date when it is required to be valued for property taxation purposes, it is subject to valuation in accordance with the provisions of Section 7-36-31 or 7-36-32 NMSA 1978.

B. Real property and interests in real property having a taxable situs in the state shall be valued in and have their value allocated to the governmental units in which the real property is located unless a different method of allocation is specified under the Property Tax Code or by regulation of the department.

C. Personal property having a taxable situs in the state shall be valued in and have its value allocated to the governmental units in which the property is located on the date it is required to be valued unless a different method of allocation is specified under the Property Tax Code or by regulation of the department.

**History:** 1953 Comp., § 72-29-4, enacted by Laws 1973, ch. 258, § 16; 1985, ch. 109, § 4.

## ANNOTATIONS

**The 1985 amendment** added Subsections A(4) and A(5).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Situs of tangible personal property for purposes of property taxation, 2 A.L.R.4th 432.

Situs of aircraft, rolling stock and vessels for purposes of property taxation, 3 A.L.R.4th 837.

## 7-36-15. Methods of valuation for property taxation purposes; general provisions.

A. Property subject to valuation for property taxation purposes under this article of the Property Tax Code shall be valued by the methods required by this article of the Property Tax Code whether the determination of value is made by the department or the county assessor. The same or similar methods of valuation shall be used for valuation of the same or similar kinds of property for property taxation purposes.

B. Unless a method or methods of valuation are authorized in Sections 7-36-20 through 7-36-33 NMSA 1978, the value of property for property taxation purposes shall be its market value as determined by application of the sales of comparable property, income or cost methods of valuation or any combination of these methods. In using any of the methods of valuation authorized by this subsection, the valuation authority:

(1) shall apply generally accepted appraisal techniques; and

(2) in determining the market value of residential housing, shall consider any decrease in the value that would be realized by the owner in a sale of the property because of the effects of any affordable housing subsidy, covenant or encumbrance imposed pursuant to a federal, state or local affordable housing program that restricts the future use of the property or the resale price of the property or would otherwise prohibit the owner from fully benefitting from any enhanced value of the property. As used in this paragraph:

(a) "subsidy, covenant or encumbrance imposed pursuant to a federal, state or local affordable housing program" includes those imposed by a nonprofit entity approved by a governmental entity as a qualifying grantee pursuant to the Affordable Housing Act [6-27-1 through 6-27-8 NMSA 1978]; and

(b) "residential housing" means any building, structure or portion thereof that is primarily occupied, or designed or intended primarily for occupancy, as a residence by one or more households and any real property that is offered for sale or lease for the construction or location thereon of such a building, structure or portion thereof. "Residential housing" includes congregate housing, manufactured homes, housing intended to provide or providing transitional or temporary housing for homeless persons and common health care, kitchen, dining, recreational and other facilities primarily for use by residents of a residential housing project.

C. Dams, reservoirs, tanks, canals, irrigation wells, installed irrigation pumps, stock-watering wells and pumps, similar structures and equipment used for irrigation or stock-watering purposes, water rights and private roads shall not be valued separately from the land they serve. The foregoing improvements and rights shall be considered as appurtenances to the land they serve, and their value shall be included in the determination of value of the land.

D. The department shall adopt regulations to implement the methods of valuation authorized in this article of the Property Tax Code.

History: Laws 1973, ch. 258, § 17; 1953 Comp., § 72-29-5; reenacted by Laws 1975, ch. 165, § 2; 1995, ch. 12, § 11; 2008, ch. 77, § 1.

## ANNOTATIONS

**Cross references. —** For constitutional provision as to equality in ad valorem taxation, *see* N.M. Const., art. VIII, § 1.

For constitutional provision as to assessment of lands, *see* N.M. Const., art. VIII, § 6.

**The 2008 amendment,** effective February 29, 2008, added Paragraph (2) of Subsection B.

**Applicability. —** Laws 2008, ch. 77, § 2 provided that the provisions of Laws 2008, ch. 77, § 1 apply to the 2008 and subsequent property tax years.

**The 1995 amendment,** effective June 16, 1995, in Subsection B, substituted "Sections 7-36-20 through 7-36-33 NMSA 1978" for "Sections 72-29-9 through 72-29-22 NMSA 1953", and substituted the language beginning "by application of the" for "by sales of comparable property, or, if that method cannot be used due to the lack of comparable sales data for the property being valued, then its value shall be determined using an income method or cost methods of valuation" at the end of the first sentence; and substituted "Section 7-38-90 NMSA 1978" for "72-31-88 NMSA 1953" in Subsection D.

### I. GENERAL CONSIDERATION.

**Exclusive reliance on evidence of prior year comparable sales was reasonable. —** With respect to comparable sales, the legislature intended assessors and protests boards to consider only data available on January 1 of the tax year of the valuation notice. AMREP Sw., Inc. v. Sandoval Cnty. Assessor, 2012-NMCA-082, 284 P.3d 1118.

Where the county valuation protests board refused to consider the taxpayer's comparable 2009 sales evidence and relied exclusively on comparable 2008 sales for the valuation of the taxpayer's property for the 2009 tax year based on the board's interpretation of statutory and administrative code provisions that required property to be valued using only data available on January 1, 2009, the board's interpretation of the

statutory and administrative code provisions was reasonable. AMREP Sw., Inc. v. Sandoval Cnty. Assessor, 2012-NMCA-082, 284 P.3d 1118.

**Assessor's valuation sufficient evidence.** — Since the assessor's valuation is presumed to be correct it is sufficient evidence, where uncontradicted, to support the board's decision. Peterson Props. v. Valencia Cnty. Valuation Protests Bd., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

**How presumption of assessor's valuation may be overcome.** — The statutory presumption of correctness of the value of property by the county assessor for tax purposes can be overcome by a taxpayer showing that the assessor did not follow the applicable statutory provisions, or by presenting evidence tending to dispute the factual correctness of the valuation. La Jara Land Developers, Inc. v. Bernalillo Cnty. Assessor, 1982-NMCA-006, 97 N.M. 318, 639 P.2d 605.

**Admission of taxpayer's evidence when market value indeterminable.** — The protests board could not rely exclusively on the county assessor's valuation of property even though, according to 72-2-3, 1953 Comp., the assessment must be at "full actual value," and neither could it rely on comparable sales or sales of comparable lands where none have occurred; accordingly, the board should have allowed the admission of the only available relevant evidence which the taxpayer had. In situations where cash market value could not be determined, earning capacity, cost of reproduction and original cost less depreciation furnished relevant considerations for determining "value." In re Miller, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 89 N.M. 547, 555 P.2d 142 (1976) (decided under prior law).

**Presumption of assessor's valuation not overcome.** — Since taxpayer failed to present any evidence of sales of comparable property or evidence of value based on generally accepted appraisal techniques, and its only evidence, the purchase price of its land in question, did not establish a market value under Subsection B, the presumption of the correctness of the assessor's valuation was not overcome. Peterson Props. v. Valencia Cnty. Valuation Protests Bd., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

**Presumption of assessor's valuation not overcome.** — The presumption of the correctness of the assessor's valuation was not overcome by the taxpayers' offer, as evidence of market value, the price for which they purchased the property, where the sales price was not the result of an arms'-length transaction because of the taxpayers' mailing campaign to convince landowners to sell their property to the taxpayers at below market prices. In re Cobb, 1991-NMCA-122, 113 N.M. 251, 824 P.2d 1053, cert. denied, 113 N.M. 44, 822 P.2d 1127 (1992).

**Taxpayer rebutted presumption of assessor's valuation.** — Since taxpayers presented uncontradicted evidence that access to their property was physically blocked and also offered the only substantial evidence of the fair market value of the property in the form of testimony by a real estate appraiser that because of the lack of access the

highest and best use that the property could be put to was as grazing land by one of the adjoining landowners, and that as such it had a fair market value of $18.00 per acre, or $2034 and $5022 respectively for the two tracts, they effectively rebutted the presumption of 7-38-6 NMSA 1978 that the county assessor's valuations of $313,875 and $169,500 were correct. Petition of Kinscherff, 1976-NMCA-097, 89 N.M. 669, 556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620.

**When county assessor did not follow any statutory method of valuation** in 1976, but simply set the valuation of a shopping center back up to the 1972 figure, the decisions of the board were arbitrary and capricious, not supported by substantial evidence in the record taken as a whole, and otherwise not in accordance with law, and its orders were vacated. San Pedro S. Group v. Bernalillo Cnty. Valuation Protest Bd., 1976-NMCA-116, 89 N.M. 784, 558 P.2d 53.

**Scope of "structures and equipment" in Subsection C. —** The inclusion of Subsection C indicated that the exemption from separate valuation for the structures and equipment listed in Subsection C is not limited to structures and equipment used for the purposes of irrigation or stock-watering, but applies to all such structures and equipment. Kerr-McGee Nuclear Corp. v. Property Tax Div., 1980-NMCA-063, 95 N.M. 685, 625 P.2d 1202.

**No denial of due process in failure to adopt regulations. —** Taxpayer was not denied due process because the property tax department did not adopt regulations that listed the procedures to be followed, and identified the methods of valuation in general use by the department and the applicable factors to be included in determining the value of property, since the amended statute did not require regulations, and taxpayer had the right of discovery by deposition of all the facts necessary to defend the assessed valuation of its property. Peterson Props. v. Valencia Cnty. Valuation Protests Bd., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

**Failure to require equalization does not establish official interpretation. —** The fact that state officials have, for years, known that there are inequalities or lack of uniformity in tax assessments and have done nothing about it does not establish this as official "long-standing interpretation." It is, in essence, merely long-standing failure by respondents and their predecessors to require equalization as plainly required by the constitution and the legislative enactments. State ex rel. Castillo Corp. v. N.M. Tax Comm'n, 1968-NMSC-117, 79 N.M. 357, 443 P.2d 850.

**Honest judgment most important. —** What is most important is that the appraisers, the assessor and the protest board exercise an honest judgment based upon the information they possess or are able to acquire. First Nat'l Bank v. Bernalillo Cnty. Valuation Protest Bd., 1977-NMCA-005, 90 N.M. 110, 560 P.2d 174.

**Sovereign immunity not applicable in mandamus of assessment ratio. —** In a mandamus proceeding to require the performance of a duty plainly required under the constitution, i.e., to prescribe an assessment ratio so that property shall be uniformly

assessed in proportion to its value, the sovereign immunity doctrine is not applicable. State ex rel. Castillo Corp. v. N.M. Tax Comm'n, 1968-NMSC-117, 79 N.M. 357, 443 P.2d 850.

## II. MARKET VALUE.

### A. IN GENERAL.

**"Market value"** means a price which a purchaser, willing but not obliged to buy, would pay an owner, willing but not obliged to sell, taking into consideration all uses to which the property is adapted and might in reason be applied. Peterson Props. v. Valencia Cnty. Valuation Protests Bd., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

**Usual factors which are considered in ascertaining fair market value** of any given tract of land are its size, shape, location, topography, accessibility to roads, availability of public utilities and comparable sales, and, in a given instance, one factor may far outweigh all the rest in importance. Petition of Kinscherff, 1976-NMCA-097, 89 N.M. 669, 556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620.

**Legislature gave priority to first method of valuation,** a valuation determined by sales of comparable property. It did not do so with reference to the succeeding methods. If the legislature intended to give priority to the second method, the "income method," over the third method, the "cost method," for any reason, it would have phrased the section in language similar to the priority established in the first method of valuation. First Nat'l Bank v. Bernalillo Cnty. Valuation Protest Bd., 1977-NMCA-005, 90 N.M. 110, 560 P.2d 174.

**Proof of purchase price alone is not sufficient to fix market value** without evidence of the details of the sale. Cobb v. Otero Cnty. Assessor, 1983-NMCA-090, 100 N.M. 207, 668 P.2d 323.

**Market value not an absolute.** — Subsection B makes it clear that market value is not a given or an absolute, it is only a method of determining value. National Potash Co. v. Property Tax Div., 1984-NMCA-055, 101 N.M. 404, 683 P.2d 521.

**Explanation necessary when market value not used for valuation.** — If market value is not used as the basis for calculating assessed valuation, the assessor must explain why that approach is not appropriate, or that there is a lack of adequate market data. Protest of Plaza Del Sol Ltd. P'ship v. Assessor for Cnty. of Bernalillo, 1986-NMCA-022, 104 N.M. 154, 717 P.2d 1123.

**Past or future value not to serve as basis.** — What the fair market value of a tract may have been in the past or speculation as to what it might be in the future cannot serve as the basis for valuation. Petition of Kinscherff, 1976-NMCA-097, 89 N.M. 669, 556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620; Bakel v. Bernalillo Cnty. Assessor, 1980-NMCA-173, 95 N.M. 723, 625 P.2d 1240.

**Past market value.** — Evidence of what the fair market value of a tract may have been in the past cannot properly be utilized as the sole basis for valuation of the property for tax purposes. La Jara Land Developers, Inc. v. Bernalillo Cnty. Assessor, 1982-NMCA-006, 97 N.M. 318, 639 P.2d 605.

**Use of mass appraisal method upheld.** — The use by the county assessor of the mass appraisal methodology to value plaintiffs' undeveloped property for tax assessment purposes was permissible under this statute when the method was based on standard appraisal procedure, such as comparable sales, and the resulting valuation bore a reasonable relationship to the market value. In re Cobb, 1991-NMCA-122, 113 N.M. 251, 824 P.2d 1053, cert. denied, 113 N.M. 44, 822 P.2d 1127.

**Using one uniform percentage depreciation factor for property valuation improper.** — Any property valuation method which uses one uniform percentage depreciation factor, regardless of the age of the property, is an improper method of determining property value; such a method would not, except by mere coincidence, yield a value consistent with the fair market value of the property. Anaconda Co. v. Prop. Tax Dep't, 1979-NMCA-158, 94 N.M. 202, 608 P.2d 514, cert. denied, 94 N.M. 628, 614 P.2d 545.

**Insufficient evidence to support county assessor's method of valuation.** — Where appellant sought review of the Bernalillo county valuation protests board's valuation of appellant's commercial property, and where the county assessor testified that the assessor applies a forty-five percent limitation on operating expenses rather than applying the taxpayer's actual reported expenses, but absent data that forty-five percent is an appropriate limitation on operating expenses in this market, for this property type, and during this time period, there was insufficient evidence such that a reasonable person could conclude that the county assessor's application of the income valuation method utilized generally accepted appraisal techniques. 2727 San Pedro LLC v. Bernalillo Cty. Assessor, 2017-NMCA-008.

## B. COMPARABLE SALES METHOD.

**"Comparable property"** is property similar to the property being appraised, which has been recently sold or is currently being offered for sale in the same or competing areas. Peterson Props. v. Valencia Cnty. Valuation Protests Bd., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074; New Mexico Baptist Found. v. Bernalillo Cnty. Assessor, 1979-NMCA-102, 93 N.M. 363, 600 P.2d 309.

**"Comparable"** is defined as capable of being compared with, worthy of comparison, and thus must necessarily include dissimilarities as well as similarities. Peterson Props. v. Valencia Cnty. Valuation Protests Bd., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

**"To compare".** — In reviewing sales of other properties, "to compare" means to examine the characteristics or qualities of one or more properties for the purpose of

discovering their resemblances or differences; the aim is to show relative values by bringing out characteristic qualities, whether similar or divergent, and thus, comparisons based on sales may be made according to location, age and condition of improvements, income and expense, use, size, type of construction and in numerous other ways. Peterson Props. v. Valencia Cnty. Valuation Protests Bd., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

**Best method is use of comparable sales.** — The best method of ascertaining what a willing and informed buyer would pay a willing and informed seller in usual circumstances in light of the highest and best use to which the property may be put in the not too distant future is through the use of comparable sales. Peterson Props. v. Valencia Cnty. Valuation Protests Bd., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

**Reasonable cash market value, reflected by comparable property sales, is relevant** for determining the correct valuation of a piece of property, if there have been such sales. Peterson Props. v. Valencia Cnty. Valuation Protests Bd., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

**When comparable sales evidence not presented.** — Since the documents relied upon by a taxpayer as evidence of comparable sales are documents dealing with the sale of that very improvement whose valuation is the subject of the present dispute and the only evidence submitted by the taxpayer is the purchase price of the land in question, the taxpayer failed to present any evidence of sales of comparable property and the evidence submitted does not establish a market value under Subsection B and the statutory presumption of correctness of valuation for tax purposes still stands. N.M. Baptist Found. v. Bernalillo Cnty. Assessor, 1979-NMCA-102, 93 N.M. 363, 600 P.2d 309.

**Test of comparable sales relevancy left to court's discretion.** — The rule regarding comparable sales is one of relevancy and, not unlike the general evidentiary rule applied in all proceedings, requiring similarity of conditions. The test is usually left to the discretion of the court in light of the circumstances of each case. Peterson Props. v. Valencia Cnty. Valuation Protests Bd., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

## C. INCOME OR COST METHOD.

**When income or cost method of valuation utilized.** — Since, if reliable comparable sales data can be reasonably obtained, the comparable sales method must be used, the taxpayer has the burden to demonstrate either that comparable sales data is not reasonably obtainable or that it would be unreliable. To demonstrate a lack of reliability, the taxpayer might show that the location, access, utilities or other such factors distinguish his property from other such properties. If the taxpayer is able to show that the comparable sales method should not be utilized, then the income method or cost method must be used. Bakel v. Bernalillo Cnty. Assessor, 1980-NMCA-173, 95 N.M. 723, 625 P.2d 1240.

**Methods of valuation.** — If the "cost method" or "income method" is employed as the primary mode of ascertaining the value of property for tax purposes, the appraiser must determine that there is a lack of comparable sales data precluding utilization of the first method of valuation and support this determination by substantial evidence. La Jara Land Developers, Inc. v. Bernalillo Cnty. Assessor, 1982-NMCA-006, 97 N.M. 318, 639 P.2d 605.

**Income method inapplicable to agricultural land.** — By its plain terms, the income method set forth in this section does not apply to land classified as agricultural. Agricultural land is to be valued based on its capacity to produce, not on its actual production. Jicarilla Apache Nation v. Rio Arriba Cnty. Assessor, 2004-NMCA-055, 135 N.M. 630, 92 P.3d 642, *rev'd*, 2004-NMSC-035, 136 N.M. 630, 103 P.3d 554.

## III. EVIDENCE.

**Taxing authority may rely on any relevant evidence.** — In assessing property for taxation the taxing authority may rely on any evidence that is relevant. Assessor's evidence of a sale of a smaller tract of land in the same vicinity was substantial and supported the board's decision. Peterson Props. v. Valencia Cnty. Valuation Protests Bd., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

**Relevant evidence includes that of ratios of assessed value to market value.** — To arrive at uniformity in the assessment of property for taxation, as provided in N.M. Const., art. VIII, §§ 1 and 2, the taxing authority and the taxpayer can introduce evidence regarding the ratios of assessed values to market values as the latter are reflected in actual sales of any other real estate in the taxing district for a reasonable period prior to the assessment date. Peterson Props. v. Valencia Cnty. Valuation Protests Bd., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

**No denial of due process in exclusion of irrelevant evidence.** — Since former Subsection B of this section fixed two methods of determining market value, namely sales of comparable property and the application of generally accepted appraisal techniques, taxpayer's offer of evidence of a valuation of comparable property was not relevant and exclusion of such evidence did not deny taxpayer of due process. Peterson Props. v. Valencia Cnty. Valuation Protests Bd., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

**Appraiser's acceptance of hearsay destroys weight of his opinions.** — An expert appraiser's blanket acceptance of hearsay information and his failure to consider influencing facts in so-called "comparable sales" all but destroys any weight that might be given to his opinions. Four Hills Country Club v. Bernalillo Cnty. Property Tax Protest Bd., 1979-NMCA-141, 94 N.M. 709, 616 P.2d 422.

**Section does not give taxpayers right to determine method of valuation,** but gives the county assessor the right to use either the "income method or cost methods of

valuation." First Nat'l Bank v. Bernalillo Cnty. Valuation Protest Bd., 1977-NMCA-005, 90 N.M. 110, 560 P.2d 174.

**Taxpayer has right to discover method of valuation used** and has a right to discovery similar in scope to that granted by Rules 26 to 37 of the Rules of Civil Procedure. First Nat'l Bank v. Bernalillo Cnty. Valuation Protest Bd., 1977-NMCA-005, 90 N.M. 110, 560 P.2d 174.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Requirement of full-value real property taxation assessments, 42 A.L.R.4th 676.

## 7-36-16. Responsibility of county assessors to determine and maintain current and correct values of property.

A. County assessors shall determine values of property for property taxation purposes in accordance with the Property Tax Code and the regulations, orders, rulings and instructions of the department. Except as limited in Section 7-36-21.2 NMSA 1978, they shall also implement a program of updating property values so that current and correct values of property are maintained and shall have sole responsibility and authority at the county level for property valuation maintenance, subject only to the general supervisory powers of the director.

B. The director shall implement a program of regular evaluation of county assessors' valuation activities with particular emphasis on the maintenance of current and correct values.

C. Upon request of the county assessor, the director may contract with a board of county commissioners for the department to assume all or part of the responsibilities, functions and authority of a county assessor to establish or operate a property valuation maintenance program in the county. The contract shall be in writing and shall include provisions for the sharing of the program costs between the county and the department. The contract must include specific descriptions of the objectives to be reached and the tasks to be performed by the contracting parties. The initial term of any contract authorized under this subsection shall not extend beyond the end of the fiscal year following the fiscal year in which it is executed, but contracts may be renewed for additional one-year periods for succeeding years.

D. The department of finance and administration shall not approve the operating budget of any county in which there is not an adequate allocation of funds to the county assessor for the purpose of fulfilling his responsibilities for property valuation maintenance under this section. If the department of finance and administration questions the adequacy of any allocation of funds for this purpose, it shall consult with the department, the board of county commissioners and the county assessor in making its determination of adequacy.

E. To aid the board of county commissioners in determining whether a county assessor is operating an efficient program of property valuation maintenance and in determining the amount to be allocated to him for this function, the county assessor shall present with his annual budget request a written report setting forth improvements of property added to valuation records during the year, additions of new property to valuation records during the year, increases and decreases of valuation during the year, the relationship of sales prices of property sold to values of the property for property taxation purposes and the current status of the overall property valuation maintenance program in the county. The county assessor shall send a copy of this report to the department.

**History:** 1953 Comp., § 72-29-6, enacted by Laws 1973, ch. 258, § 18; 2000, ch. 10, § 1.

## ANNOTATIONS

**The 2000 amendment,** effective May 17, 2000 inserted "Except as limited in Section 7-36-21.2 NMSA 1978" at the beginning of the second sentence in Subsection A and substituted "shall present" for "must present" in the first sentence in Subsection E.

**Reappraisal of all comparable properties in same year not required.** — Section 72-2-21.1, (since repealed) 1953 Comp., et seq., did not require that reappraisal of all comparable properties within each county be completed within the same year. In re Miller, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142 (decided under prior law).

**Duty of assessor to view property.** — It is the duty of the assessor to make a reasonable and diligent effort to view the property in order to see that the property is adequately valued. Bloch Pitt Invs. v. Assessor of Bernalillo Cnty., 86 N.M. 589, 526 P.2d 183 (1974).

**Value is a matter of opinion,** and, when the law has provided officers upon whom the duty is imposed to make the valuation, it is the opinion of those officers to which the interests of the parties are referred. The court cannot sit in judgment upon their errors, or substitute its own opinion for the conclusions the officers of the law have reached. In re 1971 Assessment of Trinchera Ranch, 1973-NMSC-094, 85 N.M. 557, 514 P.2d 608.

**Notice as to amount of taxation is essential due process requirement** in the collection of property taxes. In re Miller, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70.

**County property valuation fund.** — In creating the county property valuation fund in 7-38-38.1C NMSA 1978, the legislature created a permanent source of additional revenue to assist county assessors in fulfilling their statutory obligations to maintain current and correct values of all property within their jurisdictions, and directed county assessors to

use those funds to achieve fair and timely reappraisal programs. The legislation does not impose any restrictions on the use of the funds other than the use be part of a property valuation program presented by the county assessor and approved by the county commission. Robinson v. Board of Comm'rs of the Cty. of Eddy, 2015-NMSC-035.

Where the Eddy county assessor sought to use funds from the county property valuation fund, 7-38-38.1C NMSA 1978, to contract with a private company for technical assistance in locating and valuing oil and gas property within Eddy county, the Eddy county commission was not prohibited from approving a contract with an independent contractor to assist the county assessor in valuing property, because the legislature, in creating the county property valuation fund, made no attempt to restrict an assessor's discretion on the use of the fund and thus intended to leave it to the professional discretion of county assessors to decide how best to achieve the statutory goal of current and correct valuation of all property within the county. Robinson v. Board of Comm'rs of the Cty. of Eddy, 2015-NMSC-035.

## 7-36-17. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 268, § 3, repealed 7-36-17 NMSA 1978, relating to limitation on increases in valuation of certain property for property taxation purposes.

## 7-36-18. Collection and publication of property valuation data.

To promote uniformity and measure overall compliance by each county with the Property Tax Code and department valuation regulations, orders, rulings, instructions, schedules and other directives, the department shall prepare and publish annually comprehensive sales-ratio studies comparing the values of property determined for property taxation purposes by each county assessor with the values of the same property as established by sales prices.

**History:** 1953 Comp., § 72-29-7, enacted by Laws 1973, ch. 258, § 19.

## 7-36-19. Valuation of major industrial and commercial properties; specialists' services furnished to county assessor by department.

At the request of a county assessor, concurred in by the board of county commissioners, the director may provide a county assessor with technical assistance services in the valuation of major industrial or commercial properties subject to valuation by the assessor. The director shall take into account the ability of the county assessor to value the property with the resources at his disposal when deciding whether the requested services should be furnished. The county shall reimburse the department for the costs incurred in the valuation of the property.

**History:** 1953 Comp., § 72-29-8, enacted by Laws 1973, ch. 258, § 20.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation §§ 254 to 284.

84 C.J.S. Taxation §§ 421 to 453.

## 7-36-20. Special method of valuation; land used primarily for agricultural purposes.

A. The value of land used primarily for agricultural purposes shall be determined on the basis of the land's capacity to produce agricultural products. Evidence of bona fide primary agricultural use of land for the tax year preceding the year for which determination is made of eligibility for the land to be valued under this section creates a presumption that the land is used primarily for agricultural purposes during the tax year in which the determination is made. If the land was valued under this section in one or more of the three tax years preceding the year in which the determination is made and the use of the land has not changed since the most recent valuation under this section, a presumption is created that the land continues to be entitled to that valuation.

B. For the purpose of this section:

(1) "agricultural products" means plants, crops, trees, forest products, orchard crops, livestock, poultry, captive deer or elk, or fish; and

(2) "agricultural use" means the:

(a) use of land for the production of agricultural products;

(b) use of land that meets the requirements for payment or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government;

(c) resting of land to maintain its capacity to produce agricultural products; or

(d) resting of land as the direct result of at least moderate drought conditions as designated by the United States department of agriculture, if the drought conditions occurred in the county within which the land is located for at least eight consecutive weeks during the previous tax year; provided that the land was used in the tax year immediately preceding the previous tax year primarily for a purpose identified pursuant to this paragraph.

C. The department shall adopt rules for determining whether land is used primarily for agricultural purposes. The rules shall provide that the use of land for the lawful

taking of game shall not be considered in determining whether land is used primarily for agricultural purposes.

D. The department shall adopt rules for determining the value of land used primarily for agricultural purposes. The rules shall:

(1) specify procedures to use in determining the capacity of land to produce agricultural products and the derivation of value of the land based upon its production capacity;

(2) establish carrying capacity as the measurement of the production capacity of land used for grazing purposes, develop a system of determining carrying capacity through the use of an animal unit concept and establish carrying capacities for the land in the state classified as grazing land;

(3) provide that land the bona fide and primary use of which is the production of captive deer or elk shall be valued as grazing land and that captive deer shall be valued and taxed as sheep and captive elk shall be valued and taxed as cattle;

(4) provide for the consideration of determinations of any other governmental agency concerning the capacity of the same or similar lands to produce agricultural products;

(5) assure that land determined under the rules to have the same or similar production capacity shall be valued uniformly throughout the state; and

(6) provide for the periodic review by the department of determined production capacities and capitalization rates used for determining annually the value of land used primarily for agricultural purposes.

E. All improvements, other than those specified in Section 7-36-15 NMSA 1978, on land used primarily for agricultural purposes shall be valued separately for property taxation purposes, and the value of these improvements shall be added to the value of the land determined under this section.

F. The owner of the land shall make application to the county assessor in a tax year in which the valuation method of this section is first claimed to be applicable to the land or in a tax year immediately subsequent to a tax year in which the land was not valued under this section. Application shall be made under oath, shall be in a form and contain the information required by department rules and shall be made no later than thirty days after the date of mailing by the assessor of the notice of valuation. Once land is valued under this section, application need not be made in subsequent tax years as long as there is no change in the use of the land.

G. The owner of land valued under this section shall report to the county assessor whenever the use of the land changes so that it is no longer being used primarily for

agricultural purposes. This report shall be made on a form prescribed by department rules and shall be made by the last day of February of the tax year immediately following the year in which the change in the use of the land occurs.

H. Any person who is required to make a report under the provisions of Subsection G of this section and who fails to do so is personally liable for a civil penalty in an amount equal to the greater of twenty-five dollars ($25.00) or twenty-five percent of the difference between the property taxes ultimately determined to be due and the property taxes originally paid for the tax years for which the person failed to make the required report.

History: 1953 Comp., § 72-29-9, enacted by Laws 1973, ch. 258, § 21; 1975, ch. 165, § 3; 1997, ch. 162, § 1; 2005, ch. 231, § 1; 2013, ch. 219, § 1; 2015, ch. 92, § 1.

## ANNOTATIONS

**Cross references.** — For agriculture generally, *see* Chapter 76 NMSA 1978.

**The 2015 amendment,** effective June 19, 2015, defined "agricultural products" and expanded the definition of "agricultural use" for property taxes; in Subsection B, added Paragraph (1); redesignated the remainder of Subsection B as Paragraph (2); in Subsection B, Paragraph (2), after "'agricultural use' means the", added the designation Subsection B, Paragraph (2)(a); after "use of land for the production of", deleted "plants, crops, trees, forest products, orchard crops, livestock, poultry, captive deer or elk, or fish. The term also includes the" and added "agricultural products"; added the designation Subsection B, Paragraph (2)(b) to the remaining language of former Subsection B; added Subsection B, Paragraphs (2)(c) and (2)(d); and in Subsection F, after "owner of the land", deleted "must" and added "shall", and after "department rules and", deleted "must" and added "shall".

**Applicability.** — Laws 2015, ch. 92, § 2 provided that the provisions of Laws 2015, ch. 92, § 1 apply to the 2016 and subsequent property tax years.

**The 2013 amendment,** effective June 14, 2013, provided that an application to use the valuation method for land used primarily for agricultural purposes be made no later than thirty days after the date of mailing by the assessor of the notice of valuation; and in Subsection F, in the second sentence, after "and must be made no later than", deleted "the last day of February of the tax year" and added "thirty days after the date of mailing by the assessor of the notice of valuation".

**The 2005 amendment,** effective April 6, 2005, in Subsection B, defined "agricultural use" to include production of captive deer or elk; in Subsection C, provided that the rules shall provide that the use of land for lawful taking of game shall not be considered in determining whether land is used primarily for agricultural purposes; and added Subsection D(3) to provide that the rules shall provide that land primarily used for the

production of captive deer or elk shall be valued as grazing land, that captive deer shall be valued as sheep and that captive elk shall be valued as cattle.

**Saving clauses.** — Laws 2005, ch. 231, § 2, provided that nothing in this 2005 act shall affect the authority of the state game commission or the director of the department of game and fish.

**The 1997 amendment,** June 20, 1997, rewrote Subsection A; substituted "7-36-15 NMSA 1978" for "72-29-5 NMSA 1953" in Subsection E; deleted the last sentence in the introductory paragraph of Subsection F; deleted Paragraphs F(1) and (2); deleted the closing paragraph of Subsection F; and added Subsections G and H.

**Elk herd was not livestock** for purposes of agricultural classification of property, and, although petitioner's agreement with federal government was proper soil conservation agreement, comparisons of income from multiple uses of property was reasonable proxy for determining that agricultural use was not primary. Jicarilla Apache Nation v. Rodarte, 2004-NMSC-035, 136 N.M. 630, 103 P.3d 554, *rev'g* 2004-NMCA-055, 135 N.M. 630, 92 P.3d 642.

**Distinction between subdivided agricultural lands not unconstitutional.** — Distinction drawn by 72-2-14.1, 1953 Comp., between subdivided and unsubdivided agricultural land, for tax purposes, did not offend N.M. Const., art. VIII, § 1 and did not violate due process. Property Appraisal Dep't v. Ransom, 1973-NMCA-015, 84 N.M. 637, 506 P.2d 794 (decided under prior law).

**This section establishes special method of valuation for land** used primarily for agricultural purposes, determined on the basis of the land's capacity to produce agricultural products. This "Green Belt" law is clearly an exception to the general mode of property valuation for tax purposes established by the Property Tax Code and the New Mexico constitution, i.e., market value. County of Bernalillo v. Ambell, 1980-NMSC-062, 94 N.M. 395, 611 P.2d 218.

**Agricultural land is to be valued based on its capacity to produce,** not on its actual production. Jicarilla Apache Nation v. Rio Arriba Cnty. Assessor, 2004-NMCA-055, 135 N.M. 630, 92 P.3d 642, *rev'd* 2004-NMSC-035, 136 N.M. 630, 103 P.3d 554.

**Legislative intent** behind this special method of property tax valuation is to aid the small subsistence farmers in the state. County of Bernalillo v. Ambell, 1980-NMSC-062, 94 N.M. 395, 611 P.2d 218.

**Legislative intent.** — A broad reading of "agricultural use" so as to entitle owners of residential, yet pastoral, lands generally to tax relief is inconsistent with the plain language of this section; the section evinces a legislative intent to deny tax relief to those who demonstrate mere passive or incidental cultivation of their lands. Alexander v. Anderson, 1999-NMCA-021, 126 N.M. 632, 973 P.2d 884.

**Crops produced for sale or home consumption.** — While growing alfalfa, fruits, nuts, and vegetables may constitute producing crops, an applicant for exemption is required to demonstrate an objective intent to produce a crop for sale or home consumption. Alexander v. Anderson, 1999-NMCA-021, 126 N.M. 632, 973 P.2d 884.

**"Home consumption" construed.** — Grazing of recreational horses on taxpayers' property did not satisfy the regulatory provision (3 NMAC 6.5.27.1.1) for "home consumption." Alexander v. Anderson, 1999-NMCA-021, 126 N.M. 632, 973 P.2d 884.

**Regulation upheld.** — Promulgation of a regulation (3 NMAC 6.5.27.1.1) to implement the "agricultural use" exemption of this section is a legal exercise of delegated legislative authority and the regulation is consistent with this section's manifest intent. Alexander v. Anderson, 1999-NMCA-021, 126 N.M. 632, 973 P.2d 884.

**Comparable sales wrong criteria under this section.** — County assessors using comparable sales instead of agricultural purposes were using the wrong criteria for determining tax on grazing land under this section. In re Armijo, 1976-NMCA-032, 89 N.M. 131, 548 P.2d 93.

**Special valuation not applicable once land changed to nonagricultural use.** — Once a property's use has changed from agricultural to nonagricultural, there is no longer the need to give the property owner special tax treatment; the legislature did not desire to give special treatment to former owners of agricultural land even after they voluntarily submit to reclassification of their land for property tax purposes. County of Bernalillo v. Ambell, 1980-NMSC-062, 94 N.M. 395, 611 P.2d 218.

**Hypothetical or speculative values not basis.** — Classification or assessment of property for tax purposes premised upon hypothetical or speculative values believed, ultimately or at some later time, to be or become the true market value of such land cannot legitimately be the basis of determining its value. Gerner v. State Tax Comm'n, 1963-NMSC-022, 71 N.M. 385, 378 P.2d 619.

**Grazing land being held for lots.** — Classification and valuation of property suitable for grazing purposes at 10 times the valuation of other property of the same character and quality and similarly situated because of its classification as lots held for speculation for oil or other purposes, absent any evidence of such speculative purposes, was so excessive and discriminatory as to entitle taxpayer to relief, despite fact that some other owners of like tracts were similarly assessed or that these lands, while similar to grazing lands, were not actually used for grazing purposes. Gerner v. State Tax Comm'n, 1963-NMSC-022, 71 N.M. 385, 378 P.2d 619.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Validity, construction and effect of state statutes affording preferential property tax treatment to land use for agricultural purposes, 98 A.L.R.3d 916.

## 7-36-21. Special method of valuation; livestock.

A. All livestock located in the state on January 1 of the tax year shall be valued for property taxation purposes as of January 1.

B. All livestock not located in the state on January 1 but brought into the state and located there for more than twenty days subsequent to January 1 shall be valued for property taxation purposes as of the first day of the month following the month in which they have remained in the state for more than twenty days.

C. The owner of livestock subject to valuation for property taxation purposes shall report the livestock for valuation to the county assessor of the county in which they are located on the valuation date specified in Subsection A or B of this section. However, if an importation or movement report is made by the livestock board under the provisions of Section 7-38-45 NMSA 1978, the owner of livestock is relieved of his responsibility to report the livestock covered by the livestock board report, and that report fulfills the owner's responsibility for reporting the livestock under this section. The owner's report shall be in a form and contain the information required by department regulations and shall be made no later than:

(1) the last day of February for livestock required to be valued as of the first day of January or February of the tax year; or

(2) ten days after the valuation date determined under Subsection B of this section for livestock required to be valued as of dates other than those in Paragraph (1) of this subsection.

D. The department shall establish for each tax year the various classes of livestock and the value of each class. This determination shall be implemented by an order of the director, and the order shall be made no later than December 1 of the year prior to the tax year to which the classification and values apply.

E. The department shall adopt regulations for the allocation of value of livestock, which regulations shall provide for:

(1) a basic allocation formula that prorates value on the basis of the amount of time that livestock are in the state and subject to valuation for property taxation purposes;

(2) determining proration of value under Paragraph (1) of this subsection using estimates of the amount of time that livestock will be in the state to cover those situations in which livestock are imported for an indeterminate time during a tax year or in which resident livestock are exported for an indeterminate time during a tax year but are returned during the same tax year; and

(3) a method of allocating value of livestock, both resident and transient, among different governmental units when the livestock range on land in more than one governmental unit.

F. Any person who intentionally refuses to make a report required of him under this section or who knowingly makes a false statement in a report required under this section is guilty of a misdemeanor and shall be punished by the imposition of a fine of not more than one thousand dollars ($1,000).

G. Any person who fails to make a report required of him under this section is liable for a civil penalty in an amount equal to five percent of the property taxes ultimately determined to be due on the property for the tax year or years for which he failed to make the required report.

H. Any person who intentionally refuses to make a report required of him under this section with the intent to evade any tax or who fails to make a report required of him under this section with the intent to evade any tax is liable for a civil penalty in an amount equal to twenty-five percent of the property taxes ultimately determined to be due on the property for the tax year or years for which he refused or failed to make the required report.

I. The civil penalties authorized under Subsections G and H of this section shall be imposed and collected at the time and in the manner that the tax is imposed and collected. In order to assist in the imposition and collection of the penalties, the person having responsibility for determining the value of the property shall make an entry in the valuation records indicating the liability for any penalties due under this section.

**History:** 1953 Comp., § 72-29-10, enacted by Laws 1973, ch. 258, § 22; 1975, ch. 115, § 1.

### ANNOTATIONS

**Cross references.** — For animals and animal industry, *see* 77-1-1 NMSA 1978 et seq.

**Responsibility for valuation.** — Subsection D of this section does not allocate valuation of livestock responsibility to the division; instead, that section simply requires the division to supervise the assessor by establishing classes of livestock and values for those classes of livestock. While the division must establish general criteria for valuing livestock, the county assessor does the actual valuation. Zwaagstra v. DelCurto, 1992-NMCA-087, 114 N.M. 263, 837 P.2d 457.

## 7-36-21.1. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1985 (1st S.S.), ch. 12, § 2 repealed 7-36-21.1, as amended by Laws 1983, ch. 213, § 22, relating to the special method of valuation for residential property, effective on January 1, 1986. For present provisions on limitations on property tax rates on residential property, *see* 7-37-7.1 NMSA 1978.

## 7-36-21.2. Limitation on increases in valuation of residential property.

A. Residential property shall be valued at its current and correct value in accordance with the provisions of the Property Tax Code; provided that for the 2001 and subsequent tax years, the value of a property in any tax year shall not exceed the higher of one hundred three percent of the value in the tax year prior to the tax year in which the property is being valued or one hundred six and one-tenth percent of the value in the tax year two years prior to the tax year in which the property is being valued. This limitation on increases in value does not apply to:

(1) a residential property in the first tax year that it is valued for property taxation purposes;

(2) any physical improvements, except for solar energy system installations, made to the property during the year immediately prior to the tax year or omitted in a prior tax year; or

(3) valuation of a residential property in any tax year in which:

(a) a change of ownership of the property occurred in the year immediately prior to the tax year for which the value of the property for property taxation purposes is being determined; or

(b) the use or zoning of the property has changed in the year prior to the tax year.

B. If a change of ownership of residential property occurred in the year immediately prior to the tax year for which the value of the property for property taxation purposes is being determined, the value of the property shall be its current and correct value as determined pursuant to the general valuation provisions of the Property Tax Code.

C. To assure that the values of residential property for property taxation purposes are at current and correct values in all counties prior to application of the limitation in Subsection A of this section, the department shall determine for the 2000 tax year the sales ratio pursuant to Section 7-36-18 NMSA 1978 or, if a sales ratio cannot be determined pursuant to that section, conduct a sales-ratio analysis using both independent appraisals by the department and sales. If the sales ratio for a county for the 2000 tax year is less than eighty-five, as measured by the median ratio of value for property taxation purposes to sales price or independent appraisal by the department, the county shall not be subject to the limitations of Subsection A of this section and shall conduct a reassessment of residential property in the county so that by the 2003 tax year, the sales ratio is at least eighty-five. After such reassessment, the limitation on increases in valuation in this section shall apply in those counties in the earlier of the 2004 tax year or the first tax year following the tax year that the county has a sales ratio of eighty-five or higher, as measured by the median ratio of value for property taxation

purposes to sales value or independent appraisal by the department. Thereafter, the limitation on increases in valuation of residential property for property taxation purposes in this section shall apply to subsequent tax years in all counties.

D. The provisions of this section do not apply to residential property for any tax year in which the property is subject to the valuation limitation in Section 7-36-21.3 NMSA 1978.

E. As used in this section, "change of ownership" means a transfer to a transferee by a transferor of all or any part of the transferor's legal or equitable ownership interest in residential property except for a transfer:

(1) to a trustee for the beneficial use of the spouse of the transferor or the surviving spouse of a deceased transferor;

(2) to the spouse of the transferor that takes effect upon the death of the transferor;

(3) that creates, transfers or terminates, solely between spouses, any co-owner's interest;

(4) to a child of the transferor, who occupies the property as that person's principal residence at the time of transfer; provided that the first subsequent tax year in which that person does not qualify for the head of household exemption on that property, a change of ownership shall be deemed to have occurred;

(5) that confirms or corrects a previous transfer made by a document that was recorded in the real estate records of the county in which the real property is located;

(6) for the purpose of quieting the title to real property or resolving a disputed location of a real property boundary;

(7) to a revocable trust by the transferor with the transferor, the transferor's spouse or a child of the transferor as beneficiary; or

(8) from a revocable trust described in Paragraph (7) of this subsection back to the settlor or trustor or to the beneficiaries of the trust.

F. As used in this section, "solar energy system installation" means an installation that is used to provide space heat, hot water or electricity to the property in which it is installed and is:

(1) an installation that uses solar panels that are not also windows;

(2) a dark-colored water tank exposed to sunlight; or

(3) a non-vented trombe wall.

History: Laws 2000, ch. 10, § 2; 2001, ch. 321, § 1; 2003, ch. 118, § 1; 2010, ch. 30, § 1.

## ANNOTATIONS

**The 2010 amendment,** effective May 19, 2010, in Subsection A(2), added "except for solar energy system installations,"; in Subsection E(4), after "who occupies the property as", changed "his" to "that person's"; and added Subsection F.

**Applicability.** — Laws 2010, ch. 30, § 1 provided that the provisions of Laws 2010, ch. 30, § 1 are applicable to property tax years beginning on or after January 1, 2010.

**The 2003 amendment,** effective June 20, 2003, deleted former Paragraphs (2) and (3) from Subsection E, defining "net new value" and "prior year value", and redesignated the remaining Paragraphs of Subsection E.

**The 2001 amendment,** effective April 5, 2001, inserted "or omitted in a prior tax year" in Paragraph A(2); In Subsection C, substituted the language beginning "the department shall determine for the 2000 tax year" to the end of the subsection for that former language that provided for the method of determination if a county was not subject to the limitation in Subsection A; added Subsection D; and redesignated Subsection D as E.

**Constitutional valuation limitations.** — Article VIII, Section 1 of the New Mexico Constitution limits the legislature’s existing plenary authority to impose valuation limitations based on taxpayer characteristics to the three enumerated characteristics of age, income, and owner-occupancy. It does not impose any restrictions on the legislature’s authority to impose limitations in valuation increases based on its classification of residential property. Zhao v. Montoya, 2014-NMSC-025, *aff'g in part*, *rev'g in part* 2012-NMCA-056, 280 P.3d 918.

**Statute does not violate the New Mexico Constitution.** — Section 7-36-21.2 NMSA 1978 does not violate the New Mexico Constitution because it creates an authorized class based on the nature of the property and not on the taxpayer and it does not violate the equal and uniform clause of Article VIII, Section 1 of the New Mexico Constitution because it furthers the legitimate state interest of fostering neighborhood preservation and stability by permitting older owners to pay progressively less taxes than new owners. Zhao v. Montoya, 2014-NMSC-025, *aff'g in part*, *rev'g in part* 2012-NMCA-056, 280 P.3d 918.

Where a property owner purchased a residential property in 2007 that had been assessed and valued at $243,786; in 2008 the property was valued at $362,600; another property owner purchased a new home "around the corner" from the owner’s old home; in 2009, the old home was valued at $553,700 and the new home was valued

at $902,500; and the owners claimed that they were entitled to the three percent limitation on increase in valuation that applied to other properties in the area that had not changed ownership, that 7-36-21.2 NMSA 1978 was unconstitutional because it created an unauthorized class of residential property taxpayers based solely upon the time of acquisition, not on the constitutionally permissible classifications of owner-occupancy, age or income, and violated the equal and uniform clause of Article VIII, Section 1 of the New Mexico Constitution, 7-36-21.2 NMSA 1978 was not unconstitutional because it created an authorized class based on the nature of property and not the taxpayer and because it furthered the legitimate state interest of fostering neighborhood preservation and stability by permitting older owners to pay progressively less taxes than new owners. Zhao v. Montoya, 2014-NMSC-025, *aff'g in part*, *rev'g in part* 2012-NMCA-056, 280 P.3d 918.

**Valuation methods did not create a new class of taxpayers. —** The different valuation methods under 7-36-21.2 NMSA 1978 for newly sold residential property and residential property owned more than a year do not create a new class of taxpayer in violation of Paragraph B of Article VIII, Section 1 of the constitution of New Mexico because 7-36-21.2 NMSA 1978 limits revaluation for taxation purposes based on owner-occupant status. Zhao v. Montoya, 2012-NMCA-056, 280 P.3d 918, *aff'd in part*, *rev'd in part*, 2014-NMSC-025.

Where homeowners bought and occupied new homes and in the year following their purchase, the county valued their property at significantly greater amounts for tax purposes than the county had valued the property for the previous owners; as a result of the revaluation, the property tax assessment for the property significantly increased; and the homeowners claimed that 7-36-21.2 NMSA 1978 was unconstitutional because it created a new class of taxpayer based on the time of acquisition of property, 7-36-21.2 NMSA 1978 did not create a new class of taxpayer because the homeowners did not obtain the benefit of the limitation of increases in assessed value until they purchased the property, at which time, the homeowners became members of the class of owner-occupants to whom the limitation applies. Zhao v. Montoya, 2012-NMCA-056, 280 P.3d 918, *aff'd in part, rev'd in part*, 2014-NMSC-025.

## 7-36-21.3. Limitation on increase in value for single-family dwellings occupied by low-income owners sixty-five years of age or older or disabled; requirements; penalties.

A. For the 2001 and subsequent tax years, the valuation for property taxation purposes of a single-family dwelling owned and occupied by a person who is sixty-five years of age or older and whose modified gross income, as defined in the Income Tax Act [Chapter 7, Article 2 NMSA 1978], for the prior taxable year did not exceed the greater of eighteen thousand dollars ($18,000) or the amount calculated pursuant to Subsection I of this section shall not be greater than the valuation of the property for property taxation purposes in the:

(1) 2001 tax year;

(2) year in which the owner's sixty-fifth birthday occurs, if that is after 2001; or

(3) tax year following the tax year in which an owner who turns sixty-five or is sixty-five years of age or older first owns and occupies the property, if that is after 2001.

B. For the 2009 and subsequent tax years, the valuation for property taxation purposes of a single-family dwelling owned and occupied by a person who is sixty-five years of age or older or disabled and whose modified gross income, as defined in the Income Tax Act, for the prior taxable year did not exceed the greater of thirty-two thousand dollars ($32,000) or the amount calculated pursuant to Subsection I of this section shall not be greater than the valuation of the property for property taxation purposes in:

(1) the 2009 tax year, if the person owns and occupies the property in the 2009 tax year;

(2) the tax year in which the owner's sixty-fifth birthday occurs, if that is after 2009; or

(3) the tax year following the tax year in which an owner who is sixty-five years of age or older first owns and occupies the property, if that is after 2009.

C. For the 2003 and subsequent tax years, the valuation for property taxation purposes of a single-family dwelling owned and occupied by a person who is disabled and whose modified gross income, as defined in the Income Tax Act, for the prior taxable year did not exceed the greater of eighteen thousand dollars ($18,000) or the amount calculated pursuant to Subsection I of this section shall not be greater than the valuation of the property for property taxation purposes in the:

(1) 2003 tax year;

(2) year in which the owner is determined to be disabled, if that is after 2003; or

(3) tax year following the tax year in which an owner who is disabled or who is determined in that year to be disabled first owns and occupies the property, if that is after 2003.

D. An owner who is entitled to a limitation in valuation pursuant to more than one subsection of this section may designate the subsection pursuant to which the limitation shall be applied.

E. The limitation of value specified in Subsections A, B and C of this section shall be claimed in order to be allowed. The limitations may be claimed by filing proof of eligibility with the county assessor on an application form for the limitation furnished by the assessor. The application form shall be designed by the department and shall provide

for proof of age or disability, occupancy and income eligibility. An owner who applies for the limitation of value specified in this section and files proof of income eligibility for the three consecutive years immediately prior to the tax year for which the application is made need not claim the limitation for subsequent tax years if there is no change in eligibility. The county assessor shall apply that limitation automatically in subsequent tax years until a change in eligibility occurs.

F. An owner who has claimed and been allowed the limitation of value specified in this section for the three consecutive tax years immediately prior to the 2014 tax year need not claim the limitation for subsequent tax years if there is no change in eligibility. The county assessor shall apply that limitation automatically in subsequent tax years until a change in eligibility occurs.

G. A person who has had a limitation applied to a tax year and subsequently becomes ineligible for the limitation because of a change in the person's status or income or a change in the ownership of the property against which the limitation was applied shall notify the county assessor of the loss of eligibility for the limitation by the last day of February of the tax year immediately following the year in which loss of eligibility occurs.

H. A person who knowingly violates the provisions of this section by intentionally claiming and receiving the benefit of a limitation to which the person is not entitled or who fails to comply with the provisions of Subsection G of this section shall be liable for all taxes due, interest and a civil penalty of no more than three times the amount of additional taxes due.

I. For the 2002 tax year and each subsequent tax year, the maximum amount of modified gross income in Subsections A, B and C of this section shall be adjusted to account for inflation. The department shall make the adjustment by multiplying the maximum amount for tax year 2000 by a fraction, the numerator of which is the consumer price index ending during the prior tax year and the denominator of which is the consumer price index ending in tax year 2000. The result of the multiplication shall be rounded down to the nearest one hundred dollars ($100), except that if the result would be an amount less than the corresponding amount for the preceding tax year, then no adjustment shall be made. For purposes of this subsection, "consumer price index" means the consumer price index for all urban consumers published by the United States department of labor for the month ending September 30. The department shall publish annually the amount determined by the calculation and distribute it to each county assessor no later than December 1 of each tax year.

J. The limitation of value specified in Subsections A, B and C of this section does not apply to:

(1) a change in valuation resulting from any physical improvements made to the property during the year immediately prior to the tax year or a change in the

permitted use or zoning of the property during the year immediately prior to the tax year; or

(2) a residential property in the first tax year that is valued for property taxation purposes.

K. As used in this section, "disabled" means a person who has been determined to be blind or permanently disabled with medical improvement not expected pursuant to 42 USCA 421 for purposes of the federal Social Security Act or is determined to have a permanent total disability pursuant to the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978].

History: Laws 2000, ch. 21, § 1; 2001, ch. 321, § 2; 2003, ch. 78, § 1; 2008, ch. 26, § 1; 2013, ch. 161, § 1.

**ANNOTATIONS**

**The 2013 amendment,** effective June 14, 2013, provided for an automatic application of the limitation on increase in value for single-family dwellings occupied by low-income owners sixty-five years of age or disabled; provides for penalties; in the title, added "requirements; penalties"; deleted former Subsection E, which provided for the application for the limitation of value; and added Subsections E through H.

**The 2008 amendment,** effective May 14, 2008, added Subsections B and D.

**The 2003 amendment,** effective June 20, 2003, in the section heading, substituted "low-income owners" for "owner" near the middle and added "or disabled" at the end; added present Subsection B and redesignated subsequent subsections accordingly; in present Subsection C, substituted "Subsections A and B" for "Subsection A" near the beginning and inserted "or disability" following "proof of age" near the end; substituted "Subsections A and B" for "Subsection A" near the beginning of Subsection D and near the middle of Subsection E; and added present Subsection F.

**The 2001 amendment,** effective April 5, 2001; in Subsection A, substituted "did not exceed the greater of eighteen thousand dollars ($18,000) or the amount calculated pursuant to Subsection C of this section" for "did not exceed eighteen thousand dollars ($18,000)" added Paragraph A(3); deleted "at the time notices of valuation are sent out by the assessor pursuant to Section 7-38-20 NMSA 1978" at the end of the first sentence in Subsection B and added Subsections C and D.

## 7-36-22. Mineral property; definitions and classifications for valuation purposes.

As used in this article, "mineral property" does not include oil and gas property or productive copper mineral property and means:

A. "class one productive mineral property", which means mineral lands, all mineral reserves and interests in minerals in mineral lands and all severed mineral products from mineral lands when the mineral lands are held under private ownership in fee and the property is mined or operated in good faith for its mineral values with a reasonable degree of continuity during the year preceding the tax year in which its value is determined and to an extent in keeping with the market demand and conditions affecting the extraction and disposition of the product;

B. "class one nonproductive mineral property", which means mineral lands, all mineral reserves and interests in minerals in mineral lands and all severed mineral products from mineral lands when the mineral lands are held under private ownership in fee and the property is known to contain minerals in commercially workable quantities of such a character as add present value to the land in addition to its values for other purposes but is not operated so as to fall in the class of class one productive mineral property;

C. "class two mineral property", which means the severed mineral products from mineral lands held by possessory title under the laws of the United States; and

D. "class three mineral property", which means severed mineral products from leasehold or contract mineral rights in mineral lands, the fee of which is vested in the United States or the state.

**History:** 1953 Comp., § 72-29-11, enacted by Laws 1973, ch. 258, § 23; 1975, ch. 218, § 2; 1990, ch. 125, § 4.

## ANNOTATIONS

**Cross references.** — For mines and mining, *see* Chapter 69 NMSA 1978.

**The 1990 amendment,** effective March 7, 1990, inserted "for productive copper mineral property" in the introductory language.

**Nonseverability.** — Laws 1990, ch. 125, § 19 provided that the provisions of the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978] and the corresponding amendments made in that act to the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] are not severable.

**Neither supreme court nor district court may reclassify, revalue or reassess property** improperly classified by taxing officials and, consequently, assess at an excessive valuation. Gerner v. State Tax Comm'n, 1963-NMSC-022, 71 N.M. 385, 378 P.2d 619.

**Negative mineral property production figure disallowed.** — The statutory requirement of allocating the net taxable value of each item of property used in connection with mineral property prevents the use of the negative value for mineral

property production to reduce the valuation of property valued under Section 7-36-33 NMSA 1978; therefore, the taxpayer cannot use a negative figure for mineral property production to reduce the positive value of property used in connection with mineral property. U.V. Indus., Inc. v. Property Tax Div. of Taxation & Revenue Dep't, 1979-NMCA-147, 93 N.M. 651, 603 P.2d 1108.

**Valuation to be fixed by standards.** — To have uniformity and equality in a form of tax, the valuations must be established by some standard; and after valuations are fixed, the taxes based upon such valuations must be levied by a standard. It is only thus that each taxpayer may bear his fair share of the burden of government. Gerner v. State Tax Comm'n, 1963-NMSC-022, 71 N.M. 385, 378 P.2d 619.

**Regulation based upon taxpayer's federal tax treatment of property.** — Regulation providing that, if a taxpayer attributed development expenditures to a particular piece of property under 26 USCS § 616, the property was rebuttably presumed, for the next 10 years, to contain minerals in such quantities and character so as to classify the property as class one nonproductive mineral property under Subsection B, was a valid regulation in that it was not arbitrary because the taxpayer would have opportunity to present facts to rebut the presumption; in that there was substantial evidence to support the regulation; and in that the regulation was not substantive, since it announced a procedure for classifying the property based upon the taxpayer's treatment of the property for federal tax purposes. Santa Fe Pac.R.R. v. Property Tax Dep't, 1976-NMCA-071, 89 N.M. 446, 553 P.2d 726 (Ct. App. 1976).

**Law reviews.** — For comment, "Approaches to State Taxation of the Mining Industry," see 10 Nat. Resources J. 156 (1970).

For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M.L. Rev. 69 (1976-77).

## 7-36-23. Special method of valuation; mineral property and property used in connection with mineral property; exception for potash and uranium mineral property and property used in connection with potash and uranium mineral property.

A. The provisions of this section apply to the valuation of all mineral property and property used in connection with mineral property except potash and uranium mineral property and property used in connection with potash and uranium mineral property, the methods of valuation for which are provided in Sections 7-36-24 and 7-36-25 NMSA 1978.

B. The following kinds of property held or used in connection with mineral property shall be valued under the methods of valuation required by the Property Tax Code:

(1) improvements, equipment, materials, supplies and other personal property held or used in connection with all classes of mineral property; "improvements" as used in this section includes surface and subsurface structures, but does not include pits, shafts, drifts and other similar artificial changes in the physical condition of the surface or subsurface of the earth produced solely by the removal or rearrangement of earth or minerals for the purpose of exposing or removing ore from a mine; and

(2) the surface value for agricultural or other purposes of class one productive or nonproductive mineral property when the surface interest is held in the same ownership as the mineral interests.

C. The value for property taxation purposes of class one productive mineral property is an amount equal to three hundred percent of the annual net production value of the mineral property.

D. The value for property taxation purposes of class two and class three mineral property is an amount equal to three hundred percent of the annual net production value.

E. The value for property taxation purposes of class one nonproductive mineral property shall be determined by applying a per acre value to the surface acres of the property being valued. The per acre value of class one nonproductive mineral property shall be determined under regulations adopted by the department, which regulations shall establish a per acre value based upon bonus bids accepted by the commissioner of public lands for the latest one year period in which bonus bids were accepted for the sale of mineral leases, which per acre value may be determined by geographical areas.

F. For purposes of this section, "annual net production value" means either:

(1) the average of five years' net production value from the mineral property for the five years immediately preceding the tax year in which value is being determined, or so much of the period during which the property has been in operation, with each year's net production value being determined by taking the year's market value of production of all minerals, including any bonus or subsidy payments, and deducting from that value:

(a) any royalties paid or due the United States, the state or any Indian tribe, Indian pueblo or Indian who is a ward of the United States;

(b) the direct costs, exclusive of depreciation, determined under generally accepted accounting principles consistently applied by the taxpayer, of extracting, milling, treating, reducing, transporting and selling the minerals; and

(c) the costs of depreciation, determined under generally accepted accounting principles consistently applied by the taxpayer, of property actually used in the extracting, milling, treating, reducing and transporting of the minerals; or

(2) the net production value from the mineral property for the year immediately preceding the tax year in which value is being determined, with that year's net production value being determined by taking the year's market value of production of all minerals, including any bonus or subsidy payments, and deducting from that value:

(a) any royalties paid or due the United States, the state or any Indian tribe, Indian pueblo or Indian who is a ward of the United States;

(b) the direct costs, exclusive of depreciation, determined under generally accepted accounting principles consistently applied by the taxpayer, of extracting, milling, treating, reducing, transporting and selling the minerals; and

(c) the cost of depreciation, determined under generally accepted accounting principles consistently applied by the taxpayer, of property actually used in the extracting, milling, treating, reducing and transporting of the minerals.

G. Annual net production value shall be determined under Paragraph (1) of Subsection F of this section unless the taxpayer elects to have it determined under Paragraph (2) of that subsection. To be effective, an election must be exercised by written notification to the department at the time the mineral property is reported to the department for valuation in a tax year. Once an election is exercised, a taxpayer may not change from the elected method without the prior approval of the department.

H. The department shall adopt regulations specifying procedures to be followed under, and the details of, the method for valuation of mineral property specified in this section.

**History:** 1953 Comp., § 72-29-12, enacted by Laws 1973, ch. 258, § 24; 1975, ch. 165, § 4.

## ANNOTATIONS

**Cross references.** — For mines and mining, *see* Chapter 69 NMSA 1978.

**Fair market value** is theoretically what a willing seller would take and a willing buyer offer. Kaiser Steel Corp. v. Property Appraisal Dep't, 1976-NMCA-071, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

**Payments to be included in market value.** — Portions of former 72-6-7(6), 1953 Comp., are pertinent as the market value is to include bonus or subsidy payments and there is evidence that the royalty payments fall into that category; however, amounts paid for improvements are not to be included as part of the costs, and depreciation on such improvements should also not be included. Kaiser Steel Corp. v. Property Appraisal Dep't, 1976-NMCA-071, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

**Market price as exchange value.** — As to the price between a fictional seller and buyer, the market price of a commodity is the exchange value and it is determined by the demand for it in relation to the supply and is proved, when possible, by actual sales. Kaiser Steel Corp. v. Property Appraisal Dep't, 1976-NMCA-071, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

**Essential factors in determining market value** are the existence of a demand and the accessibility of a market. Without a demand a rich natural resource may lie dormant and be commercially valueless. Create an active demand and the same deposit may find a ready market. Similarly, proximity to market may be a determining factor. Kaiser Steel Corp. v. Property Appraisal Dep't, 1976-NMCA-071, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

**Determination of market value of average annual output,** less the actual cost, over the period of years involved requires an averaging of the costs. Kaiser Steel Corp. v. Property Appraisal Dep't, 1976-NMCA-071, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

**Legislative intention** to authorize deduction must be clearly and unambiguously expressed in the statute. Kaiser Steel Corp. v. Property Appraisal Dep't, 1976-NMCA-071, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

**Separate taxation of severed mineral estates required.** — Former New Mexico statutory provisions required the separate taxation of severed mineral estates and the public policy of this state was to tax separately the severed mineral rights from the remainder of the fee when in different ownerships. Kaye v. Cooper Grocery Co., 1957-NMSC-049, 63 N.M. 36, 312 P.2d 798.

**Even after conveyance of fractional undivided interest** in the minerals, the entire mineral estate should be separately assessed and taxed as a unit. Kaye v. Cooper Grocery Co., 1957-NMSC-049, 63 N.M. 36, 312 P.2d 798.

**Partial severance considered complete severance.** — For assessment purposes, a partial severance conveyance is to be considered a complete severance of the mineral estate. Kaye v. Cooper Grocery Co., 1957-NMSC-049, 63 N.M. 36, 312 P.2d 798.

**Duty of tenant in common to pay entire assessment.** — The surface owner who has retained an undivided mineral interest becomes a tenant in common as to the mineral estate with his transferee of an undivided mineral interest, and as tenants in common each had the duty to pay the entire assessment on the mineral estate with a right of contribution against his cotenant for a proportionate part. Kaye v. Cooper Grocery Co., 1957-NMSC-049, 63 N.M. 36, 312 P.2d 798.

**Owner of mineral estate will not lose interest through tax sale.** — When the entire mineral estate has been conveyed by the surface owner and the mineral deed has been recorded prior to the assessment for the tax year, the owner of the mineral estate will

not lose his interest through a tax sale unless the mineral estate has been separately assessed and the sale is had for the purpose of recovering delinquent taxes assessed against the mineral estate. Kaye v. Cooper Grocery Co., 1957-NMSC-049, 63 N.M. 36, 312 P.2d 798.

**Negative mineral property production figure disallowed.** — The statutory requirement of allocating the net taxable value of each item of property used in connection with mineral property prevents the use of the negative value for mineral property production to reduce the valuation of property valued under Section 7-36-33 NMSA 1978; therefore, the taxpayer cannot use a negative figure for mineral property production to reduce the positive value of property used in connection with mineral property. U.V. Indus., Inc. v. Prop. Tax Div. of Taxation & Revenue Dep't, 1979-NMCA-147, 93 N.M. 651, 603 P.2d 1108.

**Regulation modifying statutory determination of annual net production contrary to section.** — Regulation providing that the property tax department would not permit the use of minus figures for a particular year's net production value in calculating the average of five years' net production value was contrary to the provisions of Subsection F because the property tax department had no authority to adopt regulations modifying the statutory provision for determining the annual net production value. Santa Fe Pac.R.R. v. Prop. Tax Dep't, 1976-NMCA-071, 89 N.M. 446, 553 P.2d 726.

**Regulation for geographical variance multiplier set aside.** — Regulation providing for the use of a multiplier of 100 and of a quotient derived by dividing the total of the bonus bids by the number of acres leased by competitive bidding within a county was set aside since the provision in Subsection E for geographical variance did not support use of such multiplier because the evidence was that procedures for implementing such a variance had not been developed by property tax department. Santa Fe Pac.R.R. v. Prop. Tax Dep't, 1976-NMCA-071, 89 N.M. 446, 553 P.2d 726.

**Burden of proof was on contestant** and was both the burden of producing evidence and the burden of persuasion which was, in this case, where the validity of the state's valuation is in issue, not the burden of showing the correct valuation but to show the state's valuation was erroneous. However, an asserted failure in contestant's burden of persuasion does not require that the court uphold the state's valuation when that valuation is not supported by substantial evidence. Kaiser Steel Corp. v. Property Appraisal Dep't, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

**Finding not supported by evidence inference.** — Since the market value of the mine run coal was based on evidence of sales of 4% and 9% of production at $8.50 per ton, this evidence did not support an inference that 96% and 91% of production had a market value of $8.50 per ton absent evidence of a market at that price and, therefore, the finding utilizing a market value of $8.50 per ton for all mine run coal was not supported by substantial evidence. Kaiser Steel Corp. v. Property Appraisal Dep't, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

**Law reviews.** — For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M.L. Rev. 69 (1976-77).

For article, "Nonneutral Features of Energy Taxation," see 20 Nat. Resources J. 853 (1980).

## 7-36-24. Special method of valuation; mineral property and property used in connection with mineral property when the primary production from the mineral property is potash.

A. The provisions of this section apply to valuation of all mineral property and property used in connection with mineral property when the primary production from the mineral property is potash.

B. The value for property taxation purposes of improvements, equipment, materials, supplies and other personal property held or used in connection with all classes of potash mineral property is an amount equal to the market value of all mineral production from the potash mineral property for the prior year, less any royalties paid or due the United States, the state or any Indian tribe, Indian pueblo or Indian who is a ward of the United States. "Improvements" as used in this section includes surface and subsurface structures, but does not include pits, shafts, drifts and other similar artificial changes in the physical condition of the surface or subsurface of the earth produced solely by the removal or rearrangement of earth or minerals for the purpose of exposing or removing ore from a mine.

C. The value for property taxation purposes of the surface value for agricultural or other purposes held in connection with class one productive or nonproductive potash mineral property, when the surface interest is held in the same ownership as the mineral interests, shall be determined under the methods of valuation required by the Property Tax Code.

D. The value for property taxation purposes of class one productive potash mineral property is an amount equal to fifty percent of the market value of all mineral production from the potash mineral property for the prior year.

E. The value for property taxation purposes of class two and class three potash mineral property is an amount equal to fifty percent of the amount derived by deducting from the market value of all mineral production from the potash mineral property for the prior year any royalties paid or due the United States, the state or any Indian tribe, Indian pueblo or Indian who is a ward of the United States.

F. The value for property taxation purposes of class one nonproductive potash mineral property shall be determined under Subsection E of Section 7-36-23 NMSA 1978.

G. If a taxpayer severs potash in one or more governmental units and processes the severed potash in another governmental unit, the value of all interests in minerals shall be allocated to the governmental unit or units in which the potash is severed, and the value of improvements, equipment, materials, supplies and personal property shall be allocated among the governmental units in which the property is located on the basis of the original cost of the property.

H. The department shall adopt regulations specifying procedures to be followed under, and the details of, the method for valuation of potash mineral property specified in this section. The department shall also adopt regulations for the allocation of values of potash mineral property among the governmental units.

**History:** 1953 Comp., § 72-29-13, enacted by Laws 1973, ch. 258, § 25; 1975, ch. 165, § 5.

## ANNOTATIONS

**Cross references.** — For gross value of potash for severance tax, *see* 7-26-4 NMSA 1978.

For mines and mining, *see* Chapter 69 NMSA 1978.

**Constitutionality.** — This section does not violate N.M. Const., art. VIII, § 1 by using production of previous year as base value of mineral property to calculate present year's taxes, nor does it create an irrebutable presumption of value in violation of federal due process clause. Nat'l Potash Co. v. Property Tax Div., 1984-NMCA-055, 101 N.M. 404, 683 P.2d 521.

**Fair market value** is theoretically what a willing seller would take and a willing buyer offer. Kaiser Steel Corp. v. Property Appraisal Dep't, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

**Market price as exchange value.** — As to the price between a fictional seller and buyer, the market price of a commodity is the exchange value and it is determined by the demand for it in relation to the supply, and is proved, when possible, by actual sales. Kaiser Steel Corp. v. Property Appraisal Dep't, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

**Essential factors in determining market value** are the existence of a demand and the accessibility of a market. Kaiser Steel Corp. v. Prop. Appraisal Dep't, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

**Valuation of potash fines when no commercial market.** — Although without commercial market, potash "fines" were to be valued for tax purposes and market value was exchange value of "fines" between corporation which produced "fines" and subsequent processor of fines. International Minerals & Chem. Corp. v. Property

Appraisal Dep't, 1971-NMCA-170, 83 N.M. 402, 492 P.2d 1265, cert. denied, 83 N.M. 395, 492 P.2d 1258.

**Burden of proof was on contestant** and was both the burden of producing evidence and the burden of persuasion which was, in this case, where the validity of the state's valuation is in issue, not the burden of showing the correct valuation but to show the state's valuation was erroneous. However, an asserted failure in contestant's burden of persuasion does not require that the court uphold the state's valuation when that valuation is not supported by substantial evidence. Kaiser Steel Corp. v. Property Appraisal Dep't, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

**Finding not supported by evidence inference.** — Since the market value of the mine run coal was based on evidence of sales of 4% and 9% of production at $8.50 per ton, this evidence did not support an inference that 96% and 91% of production had a market value of $8.50 per ton absent evidence of a market at that price and, therefore, the finding utilizing a market value of $8.50 per ton for all mine run coal was not supported by substantial evidence. Kaiser Steel Corp. v. Property Appraisal Dep't, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

## 7-36-25. Special method of valuation; mineral property and property used in connection with mineral property when the primary production from the mineral property is uranium.

A. The provisions of this section apply to the valuation of all mineral property and property used in connection with mineral property when the primary production from the mineral property is uranium.

B. The following kinds of property held or used in connection with uranium mineral property shall be valued under the methods of valuation required by the Property Tax Code:

(1) improvements, equipment, materials, supplies and other personal property held or used in connection with all classes of uranium mineral property; "improvements" as used in this section includes surface and subsurface structures, but does not include pits, shafts, drifts or other similar artificial changes in the physical condition of the surface or subsurface of the earth produced solely by the removal or rearrangement of earth or minerals for the purpose of exposing or removing ore from a mine; and

(2) the surface value for agricultural or other purposes of class one productive or nonproductive uranium mineral property when the surface interest is held in the same ownership as the mineral interests.

C. The value for property taxation purposes of class one productive, class two and class three uranium mineral property is the annual net production value of the uranium mineral property.

D. The value for property taxation purposes of class one nonproductive uranium mineral property shall be determined under Subsection E of Section 7-36-23 NMSA 1978.

E. For the purposes of this section, the "annual net production value" means:

(1) the sales price of uranium-bearing material disposed of as ore or solution, less fifty percent of that sales price as a deduction for the cost of producing and bringing the output to the surface and of transporting and selling it; or

(2) in the case of uranium-bearing material not disposed of as ore or solution but processed or beneficiated (other than by sizing and blending), regardless of the form in which the product is actually disposed of, the value of $U_3O_8$ contained in ore or solution determined on the basis of the $U_3O_8$ content of the ore or solution at fifty percent of the taxpayer's average unit sales price during the preceding calendar year of $U_3O_8$ contained in the concentrate form commonly known as "yellowcake" (or if the uranium concentrate has not been sold in the preceding calendar year, at fifty percent of the representative sales price for $U_3O_8$ contained in the concentrate form commonly known as "yellowcake" at the place and time of processing or beneficiation into that concentrate), plus fifty percent of the representative sales price of all other minerals produced and saved from such uranium-bearing material, less fifty percent of the value as a deduction for the cost of producing and bringing the output to the surface from an underground mine.

F. In determining annual net production value of class two and class three uranium mineral property, a deduction may be taken for royalties paid or due the United States, the state or any Indian tribe, Indian pueblo or Indian who is a ward of the United States, but the deduction allowed by this subsection must be subtracted from one hundred percent of the applicable sales price before applying any other reductions in or deductions from that sales price.

**History:** 1953 Comp., § 72-29-14, enacted by Laws 1973, ch. 258, § 26; 1975, ch. 165, § 6; 1982, ch. 29, § 1.

## ANNOTATIONS

**Cross references.** — For severance tax on uranium, *see* 7-26-7 NMSA 1978.

For mines and mining, *see* Chapter 69 NMSA 1978.

**Section deemed constitutional.** — Since the classification, in Subsection E, distinguishing open-pit mines from underground mines is reasonable and the tax imposed by this section is uniform and equal on all subjects of a class, this section is constitutional. Anaconda Co. v. Property Tax Dep't, 1979-NMCA-158, 94 N.M. 202, 608 P.2d 514, cert. denied, 94 N.M. 628, 614 P.2d 545.

**There is reasonable basis for division of mines for tax purposes** into the classes of underground and open-pit mines: the basis for the classification is the difference between the cost of producing and bringing uranium ore to the surface in the two types of mines; since this cost is greater in underground than in open-pit mines, it was within the legislature's power to provide a tax deduction to underground mines that it did not grant to open-pit mines. Anaconda Co. v. Property Tax Dep't, 1979-NMCA-158, 94 N.M. 202, 608 P.2d 514, cert. denied, 94 N.M. 628, 614 P.2d 545.

**Fair market value** is theoretically what a willing seller would take and a willing buyer offer. Kaiser Steel Corp. v. Property Appraisal Dep't, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

**Market price as exchange value.** — As to the price between a fictional seller and buyer, the market price of a commodity is the exchange value and it is determined by the demand for it in relation to the supply and is proved, when possible, by actual sales. Kaiser Steel Corp. v. Property Appraisal Dep't, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

**Essential factors in determining market value** are the existence of a demand and the accessibility of a market. Kaiser Steel Corp. v. Property Appraisal Dep't, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

**Materials incorporated into underground mining structures included in valuation base.** — Tangible materials incorporated into underground mining structures, such as roof bolts, concrete, steel mesh, timbers and reinforcing rods, are materials included in the valuation base. Kerr-McGee Nuclear Corp. v. Property Tax Div., 1980-NMCA-063, 95 N.M. 685, 625 P.2d 1202.

**Materials in shafts and drifts necessary to extraction of minerals not included in valuation.** — The lining or bracing of shafts and drifts in a mine, as well as ventilation air shafts, leach holes and other shafts necessary to the extraction of minerals, are exempt from valuation under Subsection B(1). Kerr-McGee Nuclear Corp. v. Property Tax Div., 1980-NMCA-063, 95 N.M. 685, 625 P.2d 1202.

**Burden of proof was on contestant** and was both the burden of producing evidence and the burden of persuasion which was, in this case, where the validity of the state's valuation is in issue, not the burden of showing the correct valuation but to show that the state's valuation was erroneous. However, an asserted failure in contestant's burden of persuasion does not require that the court uphold the state's valuation when that valuation is not supported by substantial evidence. Kaiser Steel Corp. v. Property Appraisal Dep't, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

**Finding not supported by evidence inference.** — Since the market value of the mine run coal was based on evidence of sales of 4% and 9% of production at $8.50 per ton, this evidence did not support an inference that 96% and 91% of production had a

market value of $8.50 per ton absent evidence of a market at that price and, therefore, the finding utilizing a market value of $8.50 per ton for all mine run coal was not supported by substantial evidence. Kaiser Steel Corp. v. Property Appraisal Dep't, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

**Law reviews.** — For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M.L. Rev. 69 (1976-77).

For article, "Nonneutral Features of Energy Taxation," see 20 Nat. Resources J. 853 (1980).

For article, "Evaluating Congressional Limits on a State's Severance Tax Equity Interest in Its Natural Resources: An Essential Responsibility for the Supreme Court," see 11 Nat. Resources J. 673 (1982).

## 7-36-26. Special method of valuation; manufactured homes.

A. The owner of a manufactured home subject to valuation for property taxation purposes shall report the manufactured home annually for valuation to the county assessor of the county in which the manufactured home is located on January 1. The report shall be in a form and contain the information required by department regulation and shall be made no later than the last day of February of the tax year in which the property is subject to valuation.

B. The valuation method used for determining the value of manufactured homes for property taxation purposes shall be a cost method applying generally accepted appraisal techniques and shall generally provide for:

(1) the determination of initial cost of a manufactured home based upon classifications of manufactured homes and sales prices for the various classifications;

(2) deductions from initial cost for allowable depreciation, which allowances for depreciation shall be developed by the division; and

(3) deduction from initial cost of other justifiable factors, including but not limited to functional and economic obsolescence.

C. Whether or not the presence of a manufactured home is declared and reported by the owner to a county assessor as required by this section, the county assessor shall determine the value for property taxation purposes of each manufactured home located in the county and subject to valuation. County assessors shall use the information required to be furnished them under Sections 66-6-10 and 66-7-413 NMSA 1978 to assure that accurate records of locations of manufactured homes are maintained.

D. Any person who intentionally refuses to make a report required of him under this section or who knowingly makes a false statement in a report required under this

section is guilty of a misdemeanor and shall be punished by the imposition of a fine of not more than one thousand dollars ($1,000).

E. Any person who fails to make a report required of him under this section is liable for a civil penalty in an amount equal to five percent of the property taxes ultimately determined to be due on the property for the tax year or years for which he failed to make the required report.

F. Any person who intentionally refuses to make a report required of him under this section with the intent to evade any tax or who fails to make a report required of him under this section with the intent to evade any tax is liable for a civil penalty in an amount equal to twenty-five percent of the property taxes ultimately determined to be due on the property for the tax year or years for which he refused or failed to make the required report.

G. The civil penalties authorized under Subsections E and F of this section shall be imposed and collected at the time and in the manner that the tax is imposed and collected. In order to assist in the imposition and collection of the penalties, the assessor having responsibility for determining the value of the property shall make an entry in the valuation records indicating the liability for any penalties due under this section.

**History:** 1953 Comp., § 72-29-15, enacted by Laws 1973, ch. 258, § 27; 1975, ch. 165, § 7; 1983, ch. 295, § 2; 1991, ch. 166, § 6.

## ANNOTATIONS

**Cross references.** — For deduction from gross receipts tax of receipts for lease of mobile home, *see* 7-9-53 NMSA 1978.

For definition of "division," *see* 7-35-2 NMSA 1978.

For notification to department of motor vehicles of unpaid property tax on mobile homes, *see* 7-38-52 NMSA 1978.

**The 1991 amendment,** effective June 14, 1991, in Subsection A, deleted "as defined in Section 66-1-4 NMSA 1978" following "manufactured home" the first time the reference appears in the first sentence and substituted "department" for "division" in the second sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation § 211.

Classification, as real estate or personal property, of mobile homes or trailers for purposes of state or local taxation, 7 A.L.R.4th 1016.

## 7-36-27. Special method of valuation; pipelines, tanks, sales meters and plants used in the processing, gathering, transmission, storage, measurement or distribution of oil, natural gas, carbon dioxide or liquid hydrocarbons.

A. All pipelines, tanks, sales meters and plants used in the processing, gathering, transmission, storage, measurement or distribution of oil, natural gas, carbon dioxide or liquid hydrocarbons subject to valuation for property taxation purposes shall be valued in accordance with the provisions of this section.

B. As used in this section:

(1) "construction work in progress" means the total of the balances of work orders for pipelines, plants, large industrial sales meters and tanks, in the process of construction on the last day of the preceding calendar year, exclusive of land and land rights and equipment, machinery or devices that are used or are available for use to construct pipelines, plants, large industrial sales meters and tanks but that are not incorporated into the pipelines, plants, large industrial sales meters or tanks;

(2) "depreciation" means straight line depreciation over the useful life of the item of property;

(3) "direct customer distribution pipeline" means a low or intermediate pressure distribution system pipeline of four inches or smaller diameter situated in urban areas;

(4) "economic obsolescence" means, with respect to valuation for property taxation purposes, loss in value of a property caused by unfavorable economic influences or factors outside of the property; "economic obsolescence" is a loss in value in addition to a loss in value attributable to physical depreciation;

(5) "functional obsolescence" means, with respect to valuation for property taxation purposes, loss in value of a property caused by functional inadequacies or deficiencies caused by factors within the property; "functional obsolescence" is a loss in value in addition to a loss in value attributable to physical depreciation;

(6) "large industrial sales meter" means a sales meter having an installed tangible property cost in excess of two thousand five hundred dollars ($2,500);

(7) "other justifiable factors" includes, but is not limited to, functional obsolescence and economic obsolescence;

(8) "pipeline" means all pipe, appurtenances and devices used in systems for gathering, transmission or distribution, but excludes sales meters, a pipeline operated

exclusively for and constituting a part of a plant and a direct customer distribution pipeline;

(9) "plant" means any refinery, gasoline plant, extraction plant, purification plant, compressor or pumping station or similar plant, including all structures, equipment, pipes and other related facilities, excluding residential housing, office buildings and warehouses;

(10) "sales meter" means the meter, regulator and all appurtenances and devices used for measuring sales to customers and includes the service pipe to the customer's property line from the point of connection with the pipeline;

(11) "schedule value" means a fixed value of an individual property unit within a mass of similar or like units established by determining the total tangible property cost of a substantial sample of such property and deducting therefrom an average related accumulated provision for depreciation and allocating a proportionate part of the remainder to individual taxable property units;

(12) "tangible property cost" means the actual cost of acquisition or construction of property, excluding construction work in progress, including additions, retirements, adjustments and transfers, but without deduction of related accumulated provision for depreciation, amortization or other purposes and excluding any amount attributable to oil or gas reserves dedicated to such item of property; and

(13) "tank" means any storage tank or container, other than a natural reservoir, for storage that is not a component part of a plant.

C. Sales meters, other than large industrial sales meters, shall be valued as follows:

(1) the department may periodically determine the average tangible property cost of a substantial sample of sales meters in general use in the state;

(2) such average tangible property cost shall then be reduced by the average related accumulated provision for depreciation applicable to the sample of sales meters; and

(3) from the determinations pursuant to Paragraphs (1) and (2) of this subsection, a schedule of value for sales meters for property taxation purposes shall be determined and set forth in a rule adopted by the department.

D. Pipelines, direct customer distribution pipelines, large industrial sales meters, tanks and plants shall be valued as follows:

(1) the valuation authority shall first establish the tangible property cost of each item of property;

(2) from such tangible property cost shall be deducted the related accumulated provision for depreciation and any other justifiable factors that further affect the tangible property value of each item of property; and

(3) notwithstanding the determination of value for property taxation purposes in Paragraphs (1) and (2) of this subsection, the value for property taxation purposes of each item of property valued under this subsection shall not be less than twenty percent of the tangible property cost of such item of property.

E. Construction work in progress shall be valued at fifty percent of the amount expended and entered upon the accounting records of the taxpayer as of December 31 of the preceding year as construction work in progress.

F. Each item of property having a taxable situs in the state and valued under this section shall have its net taxable value allocated to the governmental units in which the property is located.

G. A reduction in value asserted by a taxpayer as attributable to economic obsolescence or functional obsolescence shall contain an obsolescence factor along with a brief statement of the facts that support the reduction, together with supporting documentation. The documentation may include items such as monthly throughput volumes from the prior year; comparisons to a documented industry standard; comparisons to a close competitor; and an engineer's or appraiser's valuation. The department may adopt rules that include other types of objective evidence of functional obsolescence or economic obsolescence.

H. If the department determines that a taxpayer has not established, based on the brief statement of facts and the supporting documentation provided, that the reduction for functional obsolescence or economic obsolescence is in accordance with the law or rules adopted by the department, the department shall notify the taxpayer of the department's determination in writing setting forth the reasons for its determination and specifying the supporting information that the department requires. The department shall provide the notice by April 1 or thirty days after the return is filed but no later than April 15 of the tax year. If the taxpayer does not file the report by March 15 of the property tax year, the department shall not be required to furnish a timely notice of deficiency by April 15 of the property tax year. In the case of properties regulated by the federal energy regulatory commission, the notice of deficiency shall be provided to the taxpayer within fifteen days after the filing of the report and the taxpayer shall then have ten days within which to correct the deficiency.

I. The department shall adopt rules to implement the provisions of this section.

History: Laws 1973, ch. 258, § 28; 1953 Comp., § 72-29-16; Laws 1975, ch. 165, § 8; 1982, ch. 28, § 4; 1985, ch. 109, § 5; 2007, ch. 273, § 1.

**ANNOTATIONS**

**Cross references.** — For pipelines generally, *see* 70-3-1 to 70-3-20 NMSA 1978.

For liens on wells and pipelines, *see* 70-4-1 to 70-4-15 NMSA 1978.

**The 2007 amendment,** effective July 1, 2007, added new definitions for "economic obsolescence" and "functional obsolescence" in Paragraphs (4) and (5) of Subsection B and added Subsections G and H.

**Applicability.** — Laws 2007, ch. 273, § 3 provided that Laws 2007, ch. 273, §§ 1 and 2 apply to property tax years beginning on or after January 1, 2008.

## 7-36-28. Special method of valuation; pipelines, tanks, collection systems, meters, plants and hydrants used in the collection, transmission, storage, treatment, discharge, measurement or distribution of water or wastewater.

A. Except as provided in Subsection F [G] of this section, all pipelines, tanks, meters, lift stations, treatment facilities, plants and hydrants used in the collection, transmission, storage, measurement, treatment, discharge or distribution of water or wastewater subject to valuation for property taxation purposes shall be valued in accordance with the provisions of this section.

B. As used in this section:

(1) "commercial water property" means privately owned pipelines, tanks, meters, plants, hydrants, materials and supplies, whether in service, in stock or under construction, owned and operated as a utility for the purpose of transmitting, storing, measuring or distributing water for sale to the consuming public, excluding general buildings and improvements;

(2) "commercial wastewater property" means privately owned pipelines, collection systems, lift stations, meters, treatment facilities, materials and supplies, whether in service, in stock or under construction, owned and operated as a utility for the purpose of collecting, transmitting, measuring, treating or discharging wastewater used for the purpose of providing wastewater service to the public, excluding general buildings and improvements;

(3) "depreciation" means straight line depreciation over the useful life of the item of property;

(4) "general buildings and improvements" means buildings of the nature of offices, residential housing, warehouses, shops and associated improvements in general use by the taxpayer but not directly associated with the collection, transmission, storage, measurement, treatment, discharge or distribution of water or wastewater;

(5) "gallons" means the measurement of water sold or the measurement of wastewater discharged to a third party's treatment facility or the measurement of wastewater treated and discharged;

(6) "revenue" means gross utility operating revenue;

(7) "closed system" means a commercial water system in which water is gathered primarily by wells and stored in closed reservoirs and tanks; and

(8) "combination system" means a commercial water system in which water is gathered both in open reservoirs and by wells and is stored both in open reservoirs and closed reservoirs and tanks.

C. The value of commercial water property shall be determined as follows:

(1) a factor of two and forty-nine one hundredths per thousand gallons is to be used for a closed system and three and twenty-five one hundredths is to be used for a combination system;

(2) the department shall determine the type of system into which the taxpayer's commercial water properties should be categorized;

(3) the department shall then ascertain the number of thousand gallons sold to consumers by the taxpayer during each of the three immediately preceding calendar years and the taxpayer's water revenue from the immediately preceding calendar year;

(4) a simple average of the three-year thousand gallon sales shall be computed and compared to the actual thousand gallons sold to consumers during the immediately preceding calendar year. The higher of the average thousand gallons or the immediately preceding year's actual thousand gallons shall be the basis for value calculations;

(5) the thousand gallon figure determined in Paragraph (4) of this subsection shall then be multiplied by the appropriate per thousand gallon factor from Paragraph (1) of this subsection. The result of this calculation is the value of commercial water property for property taxation purposes; and

(6) notwithstanding the calculations provided for in Paragraphs (1) through (5) of this subsection, the value of the taxpayer's commercial water property shall not be greater than four and one-half times the revenue derived during the immediately preceding calendar year from the operation of the commercial water property.

D. The value of commercial wastewater property shall be determined as follows:

(1) a factor of two and forty-nine one hundredths per thousand gallons shall be used;

(2) the department shall then ascertain the number of thousand gallons wastewater discharged to a third party's treatment facility or the number of thousand gallons wastewater treated and discharged during each of the three immediately preceding calendar years and the taxpayer's wastewater revenue from the immediately preceding calendar year;

(3) a simple average of the three-year thousand gallons shall be computed and compared to the actual thousand gallons during the immediately preceding calendar year. The higher of the average thousand gallons or the immediately preceding year's actual thousand gallons shall be the basis for value calculations;

(4) the thousand gallon figure determined in Paragraph (3) of this subsection shall then be multiplied by the factor provided in Paragraph (1) of this subsection. The result of this calculation is the value of commercial wastewater property for property taxation purposes; and

(5) notwithstanding the calculations provided for in this subsection, the value of the taxpayer's commercial wastewater property shall not be greater than four and one-half times the revenue derived during the immediately preceding calendar year from the operation of the commercial wastewater property.

E. Each item of property having a taxable situs in the state and valued pursuant to this section shall have its net taxable value allocated to the governmental units in which the property is located on the basis of the percentage of the taxpayer's total investment in each governmental unit.

F. The department shall adopt regulations to implement the provisions of this section.

G. Commercial water property owned or sold by a nonprofit mutual domestic water association is exempt from valuation for property taxation purposes.

History: Laws 1973, ch. 258, § 29; 1953 Comp., § 72-29-17; Laws 1975, ch. 165, § 9; 1978 Comp., § 7-36-28; 2009, ch. 246, § 1; 2009, ch. 247, § 1.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. The reference to "Subsection F" in Subsection A, appears to refer to Subsection G, which was former Subsection F prior to the 2009 amendment.

**2009 Multiple Amendments.** — Laws 2009, ch. 246, § 1 and Laws 2009, ch. 247, § 1 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2009, ch. 247, § 1, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2009,

ch. 246, § 1 and Laws 2009, ch. 247, § 1 are described below. To view the session laws in their entirety, *see* the 2009 session laws on *NMOneSource.com*.

**Laws 2009, ch. 247, § 1,** effective April 7, 2009, in Subsection A, after "tanks", deleted "sales", after "meters", added "lift stations, treatment facilities"; after "used in the", added "collection"; after "measurement", added "treatment, discharge"; and after "distribution of water", added "or wastewater"; added Paragraph (2) of Subsection B; in Paragraph (4) of Subsection B, after "associated with the", added "collection"; after "measurement", added "treatment, discharge"; and after "distribution of water", added "or wastewater"; in Paragraph (5) of Subsection B, after "water sold", added the remainder of the sentence; in Paragraph (3) of Subsection C, after “taxpayer's, added "water"; in Paragraph (5) of Subsection C, after "purposes;", added "and"; in Paragraph (6) of Subsection C, after "provided for", deleted "above" and added "in Paragraphs (1) through (5) of this subsection"; added Subsection D; in Subsection E, after "valued", deleted "under" and added "pursuant to"; and in Subsection F, after "regulations", deleted "under Section 72-31-88 NMSA 1953".

**Laws 2009, ch. 246, § 1,** effective June 19, 2009, in Subsection A, added "Except as provided in Subsection F of this section"; in Paragraph (5) of Subsection C, after "purposes;", added "and"; in Subsection E, after "regulations", deleted "under Section 72-31-88 NMSA 1953"; and added Subsection F.

## 7-36-29. Special method of valuation; property used for the generation, transmission or distribution of electric power or energy.

A. All property used for the generation, transmission or distribution of electric power or energy subject to valuation for property taxation purposes shall be valued in accordance with the provisions of this section.

B. As used in this section:

(1) "depreciation" means straight line depreciation over the useful life of the item of property;

(2) "electric plant" means all property situated in this state used or useful for the generation, transmission or distribution of electric power or energy, but does not include land, land rights, general buildings and improvements, construction work in progress, materials and supplies and licensed vehicles;

(3) "construction work in progress" means the total of the balances of work orders for an electric plant in process of construction on the last day of the preceding calendar year exclusive of land, land rights and licensed vehicles;

(4) "general buildings and improvements" means buildings of the nature of offices, residential housing, warehouses, shops and associated improvements in

general use by the taxpayer and not directly associated with generation, transmission or distribution of electric power or energy;

(5) "materials and supplies" means the cost, including sales, use and excise taxes, and transportation costs to point of delivery in this state, less purchases and trade discounts, of all unapplied material and supplies on hand in this state as of December 31 of the preceding calendar year; and

(6) "tangible property cost" means the actual cost of acquisition or construction of property, including additions, retirements, adjustments and transfers, but without deduction of related accumulated provision for depreciation, amortization or other purposes; "tangible property cost" excludes the cost of property contributed to, or acquired with funds contributed to, a utility by or on behalf of a ratepayer or potential ratepayer for the expansion, improvement or replacement of property used for the transmission or distribution of electric power of the utility.

C. An electric plant shall be valued as follows:

(1) the department shall determine the tangible property cost of the electric plant;

(2) such tangible property cost shall then be reduced by the related accumulated provision for depreciation and any other justifiable factors, including functional and economic obsolescence, such as the limitation on the use of the property based on the available reserves committed to the property; and

(3) notwithstanding the foregoing determination of value for property taxation purposes, the value for property taxation purposes of an electric plant shall not be less than twenty percent of the tangible property cost of the electric plant.

D. The value of construction work in progress shall be fifty percent of the amount expended and entered upon the accounting records of the taxpayer as of December 31 of the preceding calendar year as construction work in progress.

E. The value of materials and supplies shall be the tangible property cost for such property as of December 31 of the preceding calendar year.

F. Each item of property having a taxable situs in the state and valued under this section shall have its net taxable value allocated to the governmental units in which the property is located.

G. The department shall adopt regulations under Section 7-38-88 NMSA 1978 [repealed] to implement the provisions of this section.

**History:** Laws 1973, ch. 258, § 30; 1953 Comp., § 72-29-18, repealed and reenacted by Laws 1975, ch. 165, § 10; 2016, ch. 49, § 1.

**ANNOTATIONS**

**Bracketed material.** — Laws 1991, ch. 166, § 14 repealed 7-38-88 NMSA 1978, effective June 14, 1991.

**The 2016 amendment,** effective May 18, 2016, provided that a contribution made to a utility for the expansion, improvement or replacement of service or a facility of the utility is not subject to valuation for property tax purposes; in the catchline, deleted "electrical" and added "electric"; in Subsection A, after "transmission or distribution of", deleted "electrical" and added "electric"; in Subsection B, Paragraph (4), after "transmission or distribution of", deleted "electrical" and added "electric", deleted former Paragraph 6 and redesignated former Paragraph (7) as Paragraph (6), in Paragraph (6), after "amortization or other purposes", added "'tangible property cost' excludes the cost of property contributed to, or acquired with funds contributed to, a utility by or on behalf of a ratepayer or potential ratepayer for the expansion, improvement or replacement of property used for the transmission or distribution of electric power of the utility"; and in Subsection C, Paragraph (1), after "cost of", added "the", and in Paragraph (2), after "justifiable factors", added "including functional and economic obsolescence, such as the limitation on the use of the property based on the available reserves committed to the property".

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation §§ 439 to 442.

84 C.J.S. Taxation § 207.

## 7-36-30. Special methods of valuation; property that is part of a communications system.

A. All property that is part of a communications system and is subject to valuation for property taxation purposes shall be valued in accordance with the provisions of this section.

B. As used in this section:

(1) "communications system" means a system for the transmission and reception of information by the use of electronic, magnetic or optical means or any combination thereof and which system or any portion thereof is available for use by another person for consideration;

(2) "depreciation" means straight line depreciation over the useful life of the item of property;

(3) "other justifiable factors" includes but is not limited to wear and tear of the property not covered by depreciation, inadequacy, changes in demand and

requirements of public authorities attributable to the applicable decrease in value and functional or economic obsolescence;

(4) "plant" means all tangible property located in this state and used or useful for the provision of communication service as reflected by the uniform system of accounting in use by the taxpayer, but does not include construction work in progress or materials and supplies;

(5) "construction work in progress" means the total of the balance of work orders for plant in process of construction on the last day of the preceding calendar year, exclusive of land and land rights;

(6) "tangible property cost" means the actual cost of acquisition or construction of property, including additions, retirements, adjustments and transfers, but without deduction of related accumulated provision for depreciation, amortization or other purposes; and

(7) "materials and supplies" means the cost, including sales, use and excise taxes, and transportation costs to point of delivery in this state, less purchases and trade discounts, of all unapplied materials and supplies on hand in this state as of December 31 of the preceding calendar year.

C. Each taxpayer having property subject to valuation under this section shall elect to have that property valued by the department in accordance with either Subsection D or Subsection F of this section. The election shall be effective for subsequent property tax years unless prior permission of the secretary is obtained to change the election for good cause shown. A taxpayer may not seek permission to change an election unless the prior election has been effective for at least three consecutive property tax years. The secretary shall find that good cause exists to change the election upon a showing satisfactory to the secretary by the taxpayer that:

(1) the net result of all amendments to the property tax statutes and regulations with effective dates commencing within the property tax year has a substantial adverse effect on the valuation for property tax purposes under the alternative elected for the property for that year relative to what the valuation for property tax purposes would have been under the other alternative in the absence of the amendments;

(2) the net result of all changes in law or circumstances but excluding acquisition or sale of property subject to valuation under this section, including changes which do not affect property tax liability, occurring within the property tax year has a substantial adverse effect on the valuation for property tax purposes under the alternative elected for the property for that year relative to what the valuation for property tax purposes for the property would have been under the other alternative in the absence of the changes; or

(3) changes in property tax statutes or regulations which are effective prior to the property tax year have a substantial adverse effect on the valuation for property tax purposes under the alternative elected for the property relative to what the valuation for property tax purposes would have been under the other alternative.

D. Communications system property valued under this subsection shall be valued in accordance with Paragraphs (1), (2) and (3) of this subsection:

(1) plant shall be valued in the following manner:

(a) the department shall first establish the tangible property cost of the plant;

(b) from such tangible property cost shall be deducted the related accumulated provision for depreciation and other justifiable factors; and

(c) notwithstanding the foregoing determination of value for property taxation purposes, the value for property taxation purposes of the plant shall not be less than twenty percent of the tangible property cost of the plant;

(2) construction work in progress shall have a value for property taxation purposes equal to fifty percent of the actual amounts expended and entered upon the accounting records of the taxpayer as of December 31 of the preceding calendar year for construction work in progress; and

(3) the value of materials and supplies shall be the tangible property cost for such property as of December 31 of the preceding calendar year.

E. Each item of property having a taxable situs in the state and valued under this section shall have its net taxable value allocated to the governmental units in which the property is located.

F. Communications system property valued under this subsection shall be valued using one or more or a combination of the following methods of valuation and applying the unit rule of appraisal to the property:

(1) capitalization of earnings;

(2) market value of stock and debt; or

(3) cost less depreciation and obsolescence.

G. The department shall adopt regulations under Section 7-38-88 NMSA 1978 [repealed] to implement the provisions of this section.

**History:** 1978 Comp., § 7-36-30, enacted by Laws 1975, ch. 165, § 11; 1985, ch. 109, § 6; 1987, ch. 206, § 1; 1989, ch. 112, § 1.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1991, ch. 166, § 14 repealed 7-38-88 NMSA 1978, referred to in Subsection G. For present comparable provisions, *see* 9-11-6.2 NMSA 1978.

**The 1989 amendment,** effective January 1, 1990, added Subsection C; added the introductory paragraph of Subsection D; designated the introductory paragraph of former Subsection C as Subsection D(1); redesignated former Subsections C(1) through C(3) as Subparagraphs (a) through (c) of Subsection D(1); redesignated former Subsections D through F as Subsections D(2), D(3) and E; deleted former Subsection G, relating to election of alternate valuation; redesignated former Subsection H as Subsection F, while substituting all of the language of the introductory paragraph preceding "using" for "The department shall, at the election of a taxpayer value communications system property"; deleted former Subsection I, relating to adoption of regulations providing for allocation of net taxable values of communications system property to the state and governmental units; and redesignated former Subsection J as Subsection G.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation §§ 416 to 420.

84 C.J.S. Taxation § 183.

## 7-36-31. Special method of valuation; operating railroad property.

A. All property owned or leased and used by an operating railroad in its operation if the operating railroad has operations in New Mexico is subject to valuation for property taxation purposes and shall be valued in accordance with the provisions of this section, except for land and land rights other than operating railroad rights-of-way, sidings and marshalling yards and general buildings and improvements determined not to be an active part of an operating railroad.

B. The division shall value operating railroad property using the following methods of valuation and applying the unit rule of appraisal to the property:

(1) capitalization of earnings;

(2) market value of stock and debt; or

(3) original cost less depreciation and obsolescence.

C. The division may use one or more, or a combination of, the methods of valuation specified in Paragraphs (1), (2) and (3) of Subsection B of this section in valuing operating railroad property.

D. Land, land rights other than operating railroad rights-of-way, sidings and marshalling yards, general buildings and improvements determined not to be an active part of an operating railroad shall be valued under the provisions of this article of the Property Tax Code applicable to the property.

E. The division shall adopt regulations providing for the allocation of net taxable values of operating railroad property to New Mexico and to the governmental units within the state.

F. The division shall adopt regulations pursuant to Section 7-38-88 NMSA 1978 [repealed] to implement the methods of valuation for operating railroad property specified in this section.

**History:** Laws 1973, ch. 258, § 32; 1953 Comp., § 72-29-20; Laws 1985, ch. 109, § 7.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1991, ch. 166, § 14 repealed 7-38-88 NMSA 1978, referred to in Subsection F. For present comparable provisions, *see* 9-11-6.2 NMSA 1978.

**Cross references.** — For tax levied in lieu of property taxes on railroad car companies, *see* 7-11-3 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation §§ 402 to 405.

84 C.J.S. Taxation § 221 et seq.

## 7-36-32. Special method of valuation; commercial aircraft.

A. All commercial aircraft used by commercial airline companies in the operation of their businesses and subject to valuation for property taxation purposes shall be valued in accordance with the provisions of this section.

B. The department shall value commercial aircraft as follows:

(1) all gasoline engine propeller driven aircraft shall be valued at ten percent of original cost regardless of age; and

(2) all jet propelled aircraft shall have an assumed life of twelve years and shall be valued by deducting from eighty percent of the original cost of the aircraft depreciation computed on a monthly basis, but no aircraft valued under this paragraph shall have computed a value of less than twenty percent of its original cost.

C. The department shall adopt regulations providing for the allocation of net taxable values of commercial aircraft to New Mexico and to the governmental units in the state, which regulations shall include allocation factors related to ground time in New Mexico compared to total ground time within the airline system and flight time over New Mexico compared to total flight time within the airline system, exclusive of flight time outside the continental limits of the United States.

D. The department shall adopt regulations pursuant to Section 7-38-88 NMSA 1978 [repealed] to implement the method of valuation of commercial aircraft specified in this section.

**History:** Laws 1973, ch. 258, § 33; 1953 Comp., § 72-29-21; Laws 1975, ch. 165, § 13.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1991, ch. 166, § 14 repealed 7-38-88 NMSA 1978, referred to in Subsection D. For present comparable provisions, *see* 9-11-6.2 NMSA 1978.

**Department determines property tax valuation of commercial aircraft** by allocating a portion of the net book value of the aircraft to New Mexico based on the flight time over, and ground time in, New Mexico as a percentage of total flight and ground time of the aircraft for the preceding year. Fed. Express Corp. v. Abeyta, 2004-NMCA-011, 135 N.M. 37, 84 P.3d 85, cert. granted, 2004-NMCERT-001, 135 N.M. 160, 85 P.3d 802.

## 7-36-33. Special method of valuation; certain industrial and commercial personal property.

A. The following kinds of property shall be valued for property taxation purposes in accordance with the provisions of this section;

(1) all property used in connection with mineral property and defined in Paragraph (1) of Subsection B of Section 7-36-23 NMSA 1978 and Paragraph (1) of Subsection B of Section 7-36-25 NMSA 1978;

(2) all industrial, manufacturing, construction and commercial machinery, equipment, furniture, materials and supplies subject to valuation for property taxation purposes and not subject to valuation under the provisions of Sections 7-36-22 through 7-36-32 NMSA 1978;

(3) all other business personal property subject to valuation for property taxation purposes and not subject to valuation under the provisions of Sections 7-36-22 through 7-36-32 NMSA 1978; and

(4) construction work in progress that includes any of the items of property specified in Paragraphs (1), (2) or (3) of this subsection.

B. As used in this section:

(1) "depreciation" means the straight line method of computing the depreciation allowance over the useful life of the item of property;

(2) "useful life of the item of property" means the "class life" for same or similar kinds of property as defined and used in Section 167 of the United States Internal Revenue Code of 1954, as amended or renumbered;

(3) "other justifiable factors" includes, but is not limited to, functional and economic obsolescence;

(4) "schedule value" means a fixed value of an individual property unit within a mass of similar or like units established by determining the average unit tangible property cost of a substantial sample of such property and deducting therefrom an average related accumulated provision for depreciation per unit and an average of other justifiable factors per unit;

(5) "tangible property cost" means the actual cost of acquisition or construction of property including additions, retirements, adjustments and transfers, but without deduction of related accumulated provision for depreciation, amortization or other purposes; and

(6) "construction work in progress" means the total of the balance of work orders for property in process of construction on the last day of the preceding calendar year but does not include the equipment, machinery or devices used or available to construct such property but not incorporated therein.

C. The value of individual items of property subject to valuation under this section, except construction work in progress, shall be determined as follows:

(1) the valuation authority shall first establish the tangible property cost of each item of property;

(2) from the tangible property cost shall be deducted the related accumulated provision for depreciation and any other justifiable factors; and

(3) notwithstanding the foregoing determination of value for property taxation purposes, the value for property taxation purposes of each item of property valued under this subsection shall never be less than twelve and one-half percent of the tangible property cost of such item of property so long as the property is used and useful in a business activity.

D. Construction work in progress shall be valued at fifty percent of the actual amounts expended and entered upon the accounting records of the taxpayer as of December 31 of the preceding calendar year as construction work in progress.

E. The division may establish a schedule value for the same or similar kinds of property to be valued under Subsection C of this section for property taxation purposes. In arriving at a schedule value, the division shall:

(1) determine the average unit tangible property cost of a substantial sample of the same or similar kinds of property;

(2) such unit average tangible property cost shall then be reduced by the average related accumulated provision for depreciation per unit applicable to the sample of the same or similar kinds of property and shall then be further reduced by an average of other justifiable factors per unit applicable to the same or similar kinds of property; and

(3) from the foregoing determination a schedule value for the same or similar kinds of property shall be determined and set forth in a regulation adopted pursuant to Section 7-38-88 NMSA 1978 [repealed].

F. The division shall adopt a schedule value for the following kinds of property:

(1) drilling rigs; and

(2) large off-the-road highway construction equipment.

G. Each item of property having a taxable situs in the state and valued under this section shall have its net taxable value allocated to the governmental unit in which the property is located.

H. The division shall adopt regulations under Section 7-38-88 NMSA 1978 [repealed] to implement the provisions of this section.

**History:** 1953 Comp., § 72-29-22, enacted by Laws 1975, ch. 165, § 14; 1982, ch. 28, § 5.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1991, ch. 166, § 14 repealed 7-38-88 NMSA 1978, referred to in Subsections E and H. For present comparable provisions, *see* 9-11-6.2 NMSA 1978.

**Cross references.** — For Section 167 of the Internal Revenue Code, *see* 26 U.S.C. § 167.

**Uranium mine development costs** are tangible property costs subject to taxation. Kerr-McGee Nuclear Corp. v. Property Tax Div., 1980-NMCA-063, 95 N.M. 685, 625 P.2d 1202.

Such things as labor, engineer and geological analysis, utility bills and equipment rental fees relating to the development and operation of a uranium mine are tangible property costs under this section. Kerr-McGee Nuclear Corp. v. Property Tax Div., 1980-NMCA-063, 95 N.M. 685, 625 P.2d 1202.

**Negative mineral property production figure disallowed.** — The statutory requirement of allocating the net taxable value of each item of property used in connection with mineral property prevents the use of the negative value for mineral property production to reduce the valuation of property valued under this section; therefore, the taxpayer cannot use a negative figure for mineral property production to reduce the positive value of property used in connection with mineral property. U.V. Indus., Inc. v. Property Tax Div. of Taxation & Revenue Dep't, 1979-NMCA-147, 93 N.M. 651, 603 P.2d 1108.

**Showing required for claim of obsolescence.** — Not every decision to abandon property gives rise to a claim for obsolescence: a taxpayer must show that ordinary depreciation will not sufficiently restore the cost of the property before its usefulness is over. Anaconda Co. v. Property Tax Dep't, 1979-NMCA-158, 94 N.M. 202, 608 P.2d 514, cert. denied, 94 N.M. 628, 614 P.2d 545 (1980).

**Burden is on taxpayer to prove amount of deduction for obsolescence** to which it is entitled; such a deduction will not be granted when the taxpayer fails to prove the connection between the degree of obsolescence and the amount of the deduction claimed. Anaconda Co. v. Property Tax Dep't, 1979-NMCA-158, 94 N.M. 202, 608 P.2d 514, cert. denied, 94 N.M. 628, 614 P.2d 545 (1980).

# ARTICLE 37
# Imposition of Property Tax

## 7-37-1. Provisions for imposition of tax; applicability.

The provisions of Chapter 7, Article 37 NMSA 1978 apply to and govern the imposition of the property tax. Except for Sections 7-37-7 and 7-37-7.1 NMSA 1978, the provisions of that article do not apply to:

A. impositions or levies of taxes on specific classes of property authorized by laws outside of the Property Tax Code; and

B. special benefit assessments authorized by laws outside of the Property Tax Code.

**History:** 1953 Comp., § 72-30-1, enacted by Laws 1973, ch. 258, § 34; 1986, ch. 32, § 7.

**ANNOTATIONS**

**Cross references.** — For elderly homeowners' maximum property tax liability and income tax credit or refund for excess, *see* 7-2-18 NMSA 1978.

For exclusive ad valorem taxes on interests in oil, natural gas or liquid hydrocarbon production units, *see* 7-32-5, 7-34-5 NMSA 1978.

**Law reviews.** — For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

For article, "New Mexico Taxes: Taking Another Look," see 32 N.M.L. Rev. 351 (2002).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** What are educational institutions or schools within state property tax exemption provisions, 34 A.L.R.4th 698.

## 7-37-2. Imposition of the tax.

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.

**History:** 1953 Comp., § 72-30-2, enacted by Laws 1973, ch. 258, § 35; 1982, ch. 28, § 6.

## 7-37-3. Tax ratio established.

The tax ratio is thirty-three and one-third percent.

**History:** 1953 Comp., § 72-30-3, enacted by Laws 1973, ch. 258, § 36.

## 7-37-4. Head-of-family exemption.

A. Up to two thousand dollars ($2,000) of the taxable value of residential property subject to the tax is exempt from the imposition of the tax if the property is owned by the head of a family who is a New Mexico resident or if the property is held in a grantor trust established under Sections 671 through 677 of the Internal Revenue Code, as those sections may be amended or renumbered, by a head of a family who is a New Mexico resident. The exemption allowed shall be in the following amounts for the specified property tax years:

(1) for the property tax years 1989 and 1990, the exemption shall be eight hundred dollars ($800);

(2) for the property tax years 1991 and 1992, the exemption shall be one thousand four hundred dollars ($1,400); and

(3) for the 1993 and subsequent tax years, the exemption shall be two thousand dollars ($2,000).

B. The exemption shall be deducted from taxable value of property to determine net taxable value of property.

C. The head-of-family exemption shall be applied only if claimed and allowed in accordance with Section 7-38-17 NMSA 1978 and regulations of the department.

D. As used in this section, "head of a family" means an individual New Mexico resident who is either:

(1) a married person, but only one spouse in a household may qualify as a head of a family;

(2) a widow or a widower;

(3) a head of household furnishing more than one-half the cost of support of any related person;

(4) a single person, but only one person in a household may qualify as a head of family; or

(5) a member of a condominium association or like entity who pays property tax through the association.

E. A head of a family is entitled to the exemption allowed by this section only once in any tax year and may claim the exemption in only one county in any tax year even though the claimant may own property subject to valuation for property taxation purposes in more than one county.

**History:** 1953 Comp., § 72-30-4, enacted by Laws 1973, ch. 258, § 37; 1983, ch. 219, § 1; 1989, ch. 81, § 1; 1991, ch. 228, § 1; 1993, ch. 343, § 1.

## ANNOTATIONS

**Cross references.** — For constitutional provision as to head of family exemption, *see* N.M. Const., art. VIII, § 5.

For Sections 671 to 677 of the Internal Revenue Code, *see* 26 U.S.C. §§ 671 to 677.

**The 1993 amendment,** effective June 18, 1993, added Paragraph (5) of Subsection D.

**The 1991 amendment,** effective June 14, 1991, added the language beginning "or if the property" at the end of the first sentence in Subsection A.

**The 1989 amendment,** effective June 16, 1989, in Subsection A substituted "up to two thousand dollars ($2,000)" for "Two hundred dollars ($200)" in the first sentence of the introductory paragraph, added the second sentence of the introductory paragraph, and added Paragraphs (1) and (3); designated the former second sentence of Subsection A as Subsection B; redesignated former Subsection B as Subsection C, while substituting "department" for "division"; and redesignated former Subsections C and D as Subsections D and E.

## 7-37-5. Veteran exemption.

A. Up to four thousand dollars ($4,000) of the taxable value of property, including the community or joint property of husband and wife, subject to the tax is exempt from the imposition of the tax if the property is owned by a veteran or the veteran's unmarried surviving spouse if the veteran or surviving spouse is a New Mexico resident or if the property is held in a grantor trust established under Sections 671 through 677 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered, by a veteran or the veteran's unmarried surviving spouse if the veteran or surviving spouse is a New Mexico resident. The exemption shall be deducted from the taxable value of the property to determine the net taxable value of the property. The exemption allowed shall be in the following amounts for the specified tax years:

(1) for tax year 2004, the exemption shall be three thousand dollars ($3,000);

(2) for tax year 2005, the exemption shall be three thousand five hundred dollars ($3,500); and

(3) for tax year 2006 and each subsequent tax year, the exemption shall be four thousand dollars ($4,000).

B. The veteran exemption shall be applied only if claimed and allowed in accordance with Section 7-38-17 NMSA 1978 and regulations of the department. For taxpayers who became eligible for a veteran exemption due to the approval of the amendment to Article 8, Section 5 of the constitution of New Mexico in November 2004, a county assessor shall, at the time of determining the net taxable value of the taxpayer's property for the 2005 property tax year, in addition to complying with the provisions of Section 7-38-17 NMSA 1978, determine the net taxable value of the taxpayer's property that would result from the application of the veteran exemption for the 2004 property tax year had the deadline for applying for the veteran exemption in 2004 occurred after the amendment was certified. The veteran exemption for 2004 shall not be credited against the 2005 property value of a taxpayer until the taxpayer has paid in full the taxpayer's property tax liability for the 2004 property tax year.

C. As used in this section, "veteran" means an individual who:

(1) has been honorably discharged from membership in the armed forces of the United States; and

(2) except as provided in this section, served in the armed forces of the United States on active duty continuously for ninety days.

D. For the purposes of Subsection C of this section, a person who would otherwise be entitled to status as a veteran except for failure to have served in the armed forces continuously for ninety days is considered to have met that qualification if the person served for less than ninety days and the reason for not having served for ninety days was a discharge brought about by service-connected disablement.

E. For the purposes of Subsection C of this section, a person has been "honorably discharged" unless the person received either a dishonorable discharge or a discharge for misconduct.

F. For the purposes of this section, a person whose civilian service has been recognized as service in the armed forces of the United States under federal law and who has been issued a discharge certificate by a branch of the armed forces of the United States shall be considered to have served in the armed forces of the United States.

**History:** 1953 Comp., § 72-30-5, enacted by Laws 1973, ch. 258, § 38; 1975, ch. 3, § 1; 1975, ch. 77, § 1; 1977, ch. 140, § 1; 1977, ch. 168, § 1; 1981, ch. 187, § 1; 1983, ch. 330, § 1; 1986, ch. 104, § 1; 1989, ch. 236, § 1; 1989, ch. 353, § 1; 1991, ch. 228, § 2; 1992, ch. 68, § 1; 2000, ch. 17, § 1; 2003, ch. 57, § 1; 2005, ch. 230, § 1.

## ANNOTATIONS

**Cross references.** — For definition of "department", *see* 7-35-2 NMSA 1978.

For constitutional provision as to veteran exemption, *see* N.M. Const., art. VIII, § 5.

For Sections 671 to 677 of the Internal Revenue Code, *see* 26 U.S.C. §§ 671 to 677.

**The 2005 amendment,** effective April 6, 2005, in Subsection A, deleted the former exemptions for tax years 2003 and prior years; in Subsection B, provided that for taxpayers who have become eligible for a veteran exemption under Article 8, Section 5 of the New Mexico constitution as amended in November 2004, a county assessor shall, when determining the net taxable value of property for 2005, determine the veteran exemption for 2004 under the constitutional amendment and credit the 2004 exemption against the 2005 property value after the taxpayer has paid the tax liability for 2004; in Subsection C(2), added the exception ; and in Subsection C(3), deleted the former provision that a "veteran" was defined to mean a person who served in the armed forces during an armed conflict prior to World War I, World War I, World War II, the Korean conflict, the Vietnam conflict, the Grenada conflict or the Persian gulf conflict.

**The 2003 amendment,** effective March 20, 2003, in Subsection A, substituted "Up to four thousand dollars ($4,000)" for "Two thousand dollars ($2,000)" at the beginning, in the introductory paragraph, added the last sentence; and added Paragraphs (1) to (5).

**The 2000 amendment,** effective May 17, 2000, inserted new Subsection C(3)(f), and redesignated former Subsection C(3)(f) as C(3)(g).

**The 1992 amendment,** effective May 20, 1992, added Subsection C(3)(f).

**The 1991 amendment,** effective June 14, 1991, added the language beginning "or if the property" at the end of the first sentence in Subsection A.

**The 1989 amendment,** effective June 16, 1989, in Subsection B, substituted "department" for "division"; in Subsection C, corrected a misspelling in Paragraph (2); and added Subsection F. Laws 1989, ch. 236 enacted identical amendments to this section. The section was set out as amended by Laws 1989, ch. 353, § 1. *See* 12-1-8 NMSA 1978.

**This section violates equal protection clause** of the fourteenth amendment by limiting a tax exemption to those Vietnam veterans who resided in the state before May 8, 1976. Hooper v. Bernalillo Cnty. Assessor, 472 U.S. 612, 105 S. Ct. 2862, 86 L. Ed. 2d 487 (1985) (decided under prior law).

**Law reviews.** — For note, "New Mexico Vietnam Veterans' Property Tax Exemption and Judicial Review in Equal Protection Analysis: Hooper v. Bernalillo Cnty. Assessor," see 15 N.M.L. Rev. 389 (1985).

For article, "More Equal Than Others: The Burger Court and the Newly Arrived State Resident," see 19 N.M.L. Rev. 329 (1989).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 71 Am. Jur. 2d State and Local Taxation § 334.

Constitutionality, construction and application of state statutes relating to exemption from taxation of amounts paid as pensions, car risk insurance, compensation, bonus or other relief for veterans of World War, 116 A.L.R. 1437.

4 C.J.S. Taxation § 261 et seq.

## 7-37-5.1. Disabled veteran exemption.

A. As used in this section:

(1) "disabled veteran" means an individual who:

(a) has been honorably discharged from membership in the armed forces of the United States or has received a discharge certificate from a branch of the armed forces of the United States for civilian service recognized pursuant to federal law as service in the armed forces of the United States; and

(b) has been determined pursuant to federal law to have a one hundred percent permanent and total service-connected disability; and

(2) "honorably discharged" means discharged from the armed forces pursuant to a discharge other than a dishonorable or bad conduct discharge.

B. The property of a disabled veteran, including joint or community property of the veteran and the veteran's spouse, is exempt from property taxation if it is occupied by the disabled veteran as the veteran's principal place of residence. Property held in a grantor trust established under Sections 671 through 677 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered, by a disabled veteran or the veteran's surviving spouse is also exempt from property taxation if the property otherwise meets the requirements for exemption in this subsection or Subsection C of this section.

C. The property of the surviving spouse of a disabled veteran is exempt from property taxation if:

(1) the surviving spouse and the disabled veteran were married at the time of the disabled veteran's death; and

(2) the surviving spouse continues to occupy the property continuously after the disabled veteran's death as the spouse's principal place of residence.

D. Upon the transfer of the principal place of residence of a disabled veteran or of a surviving spouse of a disabled veteran entitled to and granted a disabled veteran exemption, the disabled veteran or the surviving spouse may choose to:

(1) maintain the exemption for that residence for the remainder of the year, even if the residence is transferred during the year; or

(2) remove the exemption for that residence and apply it to the disabled veteran's or the disabled veteran's surviving spouse's new principal place of residence, regardless of whether the exemption was applied for and claimed within thirty days of the mailing of the county assessor's notice of valuation made pursuant to the provisions of Section 7-38-20 NMSA 1978.

E. The exemption provided by this section may be referred to as the "disabled veteran exemption".

F. The disabled veteran exemption shall be applied only if claimed and allowed in accordance with Section 7-38-17 NMSA 1978 and the rules of the department.

G. The veterans' services department shall assist the department and the county assessors in determining which veterans qualify for the disabled veteran exemption.

History: Laws 2000, ch. 92, § 1; 2000, ch. 94, § 1; 2003, ch. 29, § 1; 2003, ch. 57, § 2; 2004, ch. 19, § 21; 2015, ch. 126, § 1.

**ANNOTATIONS**

**Cross references.** — For the veteran's services department, *see* 9-22-4 NMSA 1978.

For the authorization of tax rates, *see* 7-37-7 NMSA 1978.

For claiming exemptions, *see* 7-38-17 NMSA 1978.

For constitutional provision as to disabled veteran exemption, *see* N.M. Const., art. VIII, § 15.

For Sections 671 to 677 of the Internal Revenue Code, *see* 26 U.S.C. §§ 671 to 677.

**The 2015 amendment,** effective June 19, 2015, provided that a disabled veteran's property tax exemption may remain on a transferred residence for the remainder of the year or may be applied to the disabled veteran's or the disabled veteran's surviving spouse's new principal place of residence; in Subsection B, after "occupied by the disabled veteran as", deleted "his" and added "the veteran's"; and added a new Subsection D and redesignated the succeeding subsections accordingly.

**Applicability.** — Laws 2015, ch. 126, § 2 provided that the provisions of Laws 2015, ch. 126, § 1 apply to taxable years beginning on or after January 1, 2016.

**The 2004 amendment,** effective May 19, 2004, amended Subsection F of this section to change "veterans' service commission" to "veterans' services department".

**The 2003 amendment,** effective March 20, 2003, and applicable to the 2003 and subsequent tax years, in Subparagraph A(1)(b), inserted "one hundred percent"; and in Subsection B, deleted "and has been especially adapted to his disability using a grant for specially adapted housing granted to the veteran by the federal government based on his permanent and total service-connected disability" at the end of the first sentence. Laws 2003, ch. 29, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 2003, ch. 57, § 2. *See* 12-1-8 NMSA 1978.

## 7-37-5.2. Deleted.

**ANNOTATIONS**

**Compiler's notes.** — Section 7-37-5.2 NMSA 1978, as enacted by Laws 2007, ch. 167, § 1, which provided that the property of a veterans' organization was exempt from property tax, was deleted by the compiler. Laws 2007, ch. 167, § 3 provided that the act would become effective upon the certification by the secretary of state that the constitution of New Mexico was amended as proposed by a joint resolution of the first session of the forty-eighth legislature entitled, "A JOINT RESOLUTION PROPOSING AN AMENDMENT TO ARTICLE 8 OF THE CONSTITUTION OF NEW MEXICO TO PROVIDE A PROPERTY TAX EXEMPTION FOR PROPERTY OF A VETERANS' ORGANIZATION CHARTERED BY THE UNITED STATES CONGRESS AND USED BY A LOCAL, STATE OR FEDERAL GOVERNMENTAL ENTITY FOR EVENTS OR BY NONPROFIT COMMUNITY ORGANIZATIONS OR OTHER VETERANS' ORGANIZATIONS" (Laws 2007, H.J.R. No. 16). That joint resolution was not passed by the legislature. Therefore, Laws 2007, ch. 167, § 1 did not become effective.

## 7-37-5.3. Veterans' organization exemption.

The property of a veterans' organization chartered by the United States congress and that is used primarily for the benefit of veterans and their families is exempt from property taxation. The exemption provided by this section may be referred to as the "veterans' organization exemption". The veterans' organization exemption shall be applied only if claimed and allowed pursuant to Section 7-38-17 NMSA 1978 and the rules of the department. The veterans' services department shall assist the taxation and revenue department and the county assessors in determining which veterans' organizations qualify for the veterans' organization exemption.

History: Laws 2011, ch. 102, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2011, ch. 102, § 3 provided that the provisions of Laws 2011, ch. 102, § 1 apply to taxable years beginning on or after January 1, 2012.

## 7-37-5.4. Property owned by a disabled veteran is exempt from a special benefit assessment.

A. Property owned by a disabled veteran, including joint or community property of the veteran and the veteran's spouse, is exempt from the imposition of a special benefit assessment if the property is occupied by the disabled veteran as the veteran's principal place of residence. Property held in a grantor trust established under Sections 671 through 677 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered, by a disabled veteran or the veteran's surviving spouse is also exempt

from the imposition of a special benefit assessment if the property otherwise meets the requirements for exemption in this subsection or Subsection B of this section.

B. The property of the surviving spouse of a disabled veteran is exempt from the imposition of a special benefit assessment if:

(1) the surviving spouse and the disabled veteran were married at the time of the disabled veteran's death;

(2) the surviving spouse continues to occupy the property continuously after the disabled veteran's death as the spouse's principal place of residence; and

(3) the surviving spouse has remained unmarried since the time of the disabled veteran's death.

C. For purposes of this section:

(1) "disabled veteran" means an individual who:

(a) has been honorably discharged from membership in the armed forces of the United States or has received a discharge certificate from a branch of the armed forces of the United States for civilian service recognized pursuant to federal law as service in the armed forces of the United States; and

(b) has been determined pursuant to federal law to have a one hundred percent permanent and total service-connected disability;

(2) "honorably discharged" means discharged from the armed forces pursuant to a discharge other than a dishonorable or bad conduct discharge; and

(3) "special benefit assessment" means an assessment or levy authorized by law for benefits, damages, construction, improvements or maintenance on property that is specially benefited by the benefits, damages, construction, improvements or maintenance; and includes an assessment or levy authorized by The Conservancy Act of New Mexico [73-14-1 NMSA 1978], the Public Improvement District Act [Chapter 5, Article 11 NMSA 1978], the Tax Increment for Development Act [Chapter 5, Article 15 NMSA 1978] and other similar laws outside the Property Tax Code.

History: Laws 2015, ch. 115, § 1.

## ANNOTATIONS

**Cross references.** — For the Internal Revenue Code of 1986, *see* 26 U.S.C.

**Effective dates.** — Laws 2015, ch. 115 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

## 7-37-6. Rate of tax cumulative; determination; governmental units' entitlement to tax.

A. The rate of the tax is cumulative and shall be determined for application against any property in a tax year by adding all of the rates authorized by this article and set by the department of finance and administration for the use of the governmental units to which the net taxable value of the property is allocated.

B. Each governmental unit that is authorized a rate under this article is entitled to that portion of the tax collected by applying the governmental unit's rate set for the tax year to the net taxable value of property allocated to the governmental unit.

C. For the purposes of this section and Section 7-37-7 NMSA 1978, the net taxable value of all property subject to the tax is considered allocated to the state when determining or applying tax rates authorized for the use of the state.

**History:** 1953 Comp., § 72-30-6, enacted by Laws 1973, ch. 258, § 39.

**ANNOTATIONS**

**Law reviews.** — For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

## 7-37-7. Tax rates authorized; limitations.

A. The tax rates specified in Subsection B of this section are the maximum rates that may be set by the department of finance and administration for the use of the stated governmental units for the purposes stated in that subsection. The tax rates set for residential property for county, school district or municipal general purposes or for the purposes authorized in Paragraph (2) of Subsection C of this section shall be the same as the tax rates set for nonresidential property for those governmental units for those purposes unless different rates are required because of limitations imposed by Section 7-37-7.1 NMSA 1978. The department of finance and administration may set a rate at less than the maximum in any tax year. In addition to the rates authorized in Subsection B of this section, the department of finance and administration shall also determine and set the necessary rates authorized in Subsection C of this section. The tax rates authorized in Paragraphs (1), (3) and (4) of Subsection C of this section shall be set at the same rate for both residential and nonresidential property. Rates shall be set after the governmental units' budget-making and approval process is completed and shall be set in accordance with Section 7-38-33 NMSA 1978. Orders imposing the rates set for all units of government shall be made by the boards of county commissioners after rates are set and certified to the boards by the department of finance and

administration. The department of finance and administration shall also certify the rates set for nonresidential property in governmental units to the department for use in collecting taxes imposed under the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978], the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978] and the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978].

B. The following tax rates for the indicated purposes are authorized:

(1) for the use of each county for general purposes for the 1987 and subsequent property tax years, a rate of eleven dollars eighty-five cents ($11.85) for each one thousand dollars ($1,000) of net taxable value of both residential and nonresidential property allocated to the county;

(2) for the use of each school district for general operating purposes, a rate of fifty cents ($.50) for each one thousand dollars ($1,000) of net taxable value of both residential and nonresidential property allocated to the school district; and

(3) for the use of each municipality for general purposes for the 1987 and subsequent property tax years, a rate of seven dollars sixty-five cents ($7.65) for each one thousand dollars ($1,000) of net taxable value of both residential and nonresidential property allocated to the municipality.

C. In addition to the rates authorized in Subsection B of this section, there are also authorized:

(1) those rates or impositions authorized under provisions of law outside of the Property Tax Code that are for the use of the governmental units indicated in those provisions and are for the stated purpose of paying principal and interest on a public general obligation debt incurred under those provisions of law;

(2) those rates or impositions authorized under provisions of law outside of the Property Tax Code that are for the use of the governmental units indicated in those provisions, are for the stated purposes authorized by those provisions and have been approved by the voters of the governmental unit in the manner required by law;

(3) those rates or impositions necessary for the use of a governmental unit to pay a tort or workers' compensation judgment for which a county, municipality or school district is liable, subject to the limitations in Subsection B of Section 41-4-25 NMSA 1978, but, except as provided in Paragraph (4) of this subsection, no rate or imposition shall be authorized to pay any judgment other than one arising from a tort or workers' compensation claim; and

(4) those rates or impositions ordered by a court pursuant to Section 22-24-5.5 NMSA 1978 and for the use of a school district to pay a judgment pursuant to that section.

D. The rates and impositions authorized under Subsection C of this section shall be on the net taxable value of both residential and nonresidential property allocated to the unit of government specified in the provisions of the other laws or the judgments.

History: 1953 Comp., § 72-30-7, enacted by Laws 1973, ch. 258, § 40; 1974, ch. 92, § 6; 1975, ch. 132, § 1; 1981, ch. 176, § 2; 1986, ch. 20, § 110; 1990, ch. 125, § 5; 2004, ch. 125, § 3.

**ANNOTATIONS**

**Cross references.** — For constitutional provision as to property tax limits and exceptions, *see* N.M. Const., art. VIII, § 2.

**The 2004 amendment,** effective May 19, 2004, in Subsection A, deleted "and" after "Paragraph (1)," and added a reference to Paragraph (4) of Subsection C of this section after the reference to Paragraph (3); in Subsection C, Paragraph (3), added a reference to Paragraph (4) and added a new Paragraph (4); and in Subsection D, added "or the judgments" at the end of the subsection.

**The 1990 amendment,** effective March 7, 1990, in Subsection A, inserted "school district" and "or for the purposes authorized in Paragraph (2) of Subsection C of this section" in the second sentence, "Paragraphs (1) and (3) of" in the fifth sentence, and "and the Copper Production Ad Valorem Tax Act" in the last sentence; in Paragraphs (1) and (3) of Subsection B, deleted former Subparagraph (a) in both paragraphs, relating to the tax rate for the 1986 property tax year and deleted the former Subparagraph (b) designations; and, in Subsection C, substituted "workers' compensation" for "workmen's compensation" in two places in Paragraph (3).

**Law reviews.** — For article, "An Inter-governmental Approach to Tax Reform," see 4 N.M. L. Rev. 189 (1974).

## 7-37-7.1. Additional limitations on property tax rates.

A. Except as provided in Subsections D and E of this section, in setting the general property tax rates for residential and nonresidential property authorized in Subsection B of Section 7-37-7 NMSA 1978, the other rates and impositions authorized in Paragraphs (2) and (3) of Subsection C of Section 7-37-7 NMSA 1978, except the portion of the rate authorized in Paragraph (1) of Subsection A of Section 4-48B-12 NMSA 1978 used to meet the requirements of Section 27-10-4 NMSA 1978, and benefit assessments authorized by law to be levied upon net taxable value of property, assessed value or a similar term, 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 either residential or nonresidential property in a particular governmental unit in excess of the sum of a dollar amount derived by multiplying the appropriate growth control factor by the revenue due from the imposition on residential or nonresidential property, as appropriate, for the prior property tax year

in the governmental unit of the rate, imposition or assessment for the specified purpose plus, for the calculation for the rate authorized for county operating purposes by Subsection B of Section 7-37-7 NMSA 1978 with respect to residential property, any applicable tax rebate adjustment. The calculation described in this subsection shall be separately made for 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 the rates for nonresidential property that would have been imposed but for the limitations in this section. As used in this section, "growth control factor" is a percentage equal to the sum of "percent change I" plus V where:

$$(1) \quad V = \frac{\textbf{(base year value + net new value),}}{\text{base year value}}$$

expressed as a percentage, but if the percentage calculated is less than one hundred percent, then V shall be set and used as one hundred percent;

(2) "base year value" means the value for property taxation purposes of all residential or nonresidential property, as appropriate, subject to valuation under the Property Tax Code in the governmental unit for the specified purpose in the prior property tax year;

(3) "net new value" means the additional value of residential or nonresidential property, as appropriate, for property taxation purposes placed on the property tax schedule in the current year resulting from the elements in Subparagraphs (a) through (d) of this paragraph reduced by the value of residential or nonresidential property, as appropriate, removed from the property tax schedule in the current year and, if applicable, the reductions described in Subparagraph (e) of this paragraph:

(a) residential or nonresidential property, as appropriate, valued in the current year that was not valued at all in the prior year;

(b) improvements to existing residential or nonresidential property, as appropriate;

(c) additions to residential or nonresidential property, as appropriate, or values that were omitted from previous years' property tax schedules even if part or all of the property was included on the schedule, but no additions of values attributable to valuation maintenance programs or reappraisal programs shall be included;

(d) additions to nonresidential property due to increases in annual net production values of mineral property valued in accordance with Section 7-36-23 or 7-

36-25 NMSA 1978 or due to increases in market value of mineral property valued in accordance with Section 7-36-24 NMSA 1978; and

(e) reductions to nonresidential property due to decreases in annual net production values of mineral property valued in accordance with Section 7-36-23 or 7-36-25 NMSA 1978 or due to decreases in market value of mineral property valued in accordance with Section 7-36-24 NMSA 1978; and

(4) "percent change I" means a percent not in excess of five percent that is derived by dividing the annual implicit price deflator index for state and local government purchases of goods and services, as published in the United States department of commerce monthly publication entitled "survey of current business" or any successor publication, for the calendar year next preceding the prior calendar year into the difference between the prior year's comparable annual index and that next preceding year's annual index if that difference is an increase, and if the difference is a decrease, the "percent change I" is zero. In the event that the annual implicit price deflator index for state and local government purchases of goods and services is no longer prepared or published by the United States department of commerce, the department shall adopt by regulation the use of any comparable index prepared by any agency of the United States.

B. If, as a result of the application of the limitation imposed under Subsection A of this section, a property tax rate for residential or nonresidential property, as appropriate, authorized in Subsection B of Section 7-37-7 NMSA 1978 is reduced below the maximum rate authorized in that subsection, no governmental unit or entity authorized to impose a tax rate under Paragraph (2) of Subsection C of Section 7-37-7 NMSA 1978 shall impose any portion of the rate representing the difference between a maximum rate authorized under Subsection B of Section 7-37-7 NMSA 1978 and the reduced rate resulting from the application of the limitation imposed under Subsection A of this section.

C. If the net new values necessary to make the computation required under Subsection A of this section are not available for any governmental unit at the time the calculation must be made, the department of finance and administration shall use a zero amount for net new values when making the computation for the governmental unit.

D. Any part of the maximum tax rate authorized for each governmental unit for residential and nonresidential property by Subsection B of Section 7-37-7 NMSA 1978 that is not imposed for a governmental unit for any property tax year for reasons other than the limitation required under Subsection A of this section may be authorized by the department of finance and administration to be imposed for that governmental unit for residential and nonresidential property for the following tax year subject to the restriction of Subsection D of Section 7-38-33 NMSA 1978.

E. If the base year value necessary to make the computation required under Subsection A of this section is not available for any governmental unit at the time the

calculation must be made, the department of finance and administration shall set a rate for residential and nonresidential property that will produce in that governmental unit a dollar amount that is not in excess of the property tax revenue due for all property for the prior property tax year for the specified purpose of that rate in that governmental unit.

F. For the purposes of this section:

(1) "nonresidential property" does not include any property upon which taxes are imposed pursuant to the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978], the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978] or the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978]; and

(2) "tax rebate adjustment" means, for those counties that have an ordinance in effect providing the property tax rebate pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] for the property tax year and that have not imposed for the property tax year either a property tax, the revenue from which is pledged for payment of the income tax revenue reduction resulting from the provision of the property tax rebate, or a property transfer tax, the estimated amount of the property tax rebate to be allowed with respect to the property tax year, and for any other governmental unit or purpose, zero; provided that any estimate of property tax rebate to be allowed is subject to review for appropriateness and approval by the department of finance and administration.

**History:** 1978 Comp., § 7-37-7.1, enacted by Laws 1979, ch. 268, § 1; 1981, ch. 37, § 66; 1983, ch. 213, § 23; 1985 (1st S.S.), ch. 12, § 1; 1986, ch. 32, § 8; 1989, ch. 198, § 2; 1990, ch. 125, § 6; 1991, ch. 212, § 17; 1994, ch. 111, § 4.

## ANNOTATIONS

**The 1994 amendment,** effective July 1, 1994, in Subsection A, substituted "27-10-4 NMSA 1978" for "4 of the Statewide Health Care Act," substituted "either residential or" for "residential and," added "the sum of" preceding "a dollar amount," added "appropriate" preceding "growth control factor," substituted "or nonresidential property, as appropriate" for "and nonresidential property," added language from "plus, for" to the end of the first sentence, and substituted "made for" for "applied to" in the second sentence; substituted "or nonresidential property, as appropriate" for "and nonresidential property," in Paragraph A(2), twice in Paragraph A(3), and once each in Subparagraphs A(3)(a), A(3)(b) and A(3)(c); added "to nonresidential property" in Subparagraphs A(3)(d) and A(3)(e); substituted "or nonresidential property, as appropriate" for "and nonresidential property," in Paragraph B; redesignated language in Subsection F as Paragraph F(1) and added "; and" at the end of the paragraph; and added Paragraph F(2).

**The 1991 amendment,** effective July 1, 1991, inserted "except the portion of the rate authorized in Paragraph (1) of Subsection A of Section 4-48B-12 NMSA 1978 used to meet the requirements of Section 4 of the Statewide Health Care Act" in the first sentence in Subsection A.

**The 1990 amendment,** effective March 7, 1990, inserted "or the Copper Production Ad Valorem Tax Act" in Subsection F and made several minor stylistic changes throughout the section.

**The 1989 amendment,** effective June 16, 1989, in Subsection A substituted "the rates for nonresidential property" for "those" in the fourth sentence of the introductory paragraph, rewrote the former fifth and sixth sentences of the introductory paragraph so as to constitute the fifth sentence and Paragraph (1), redesignated former Paragraphs (1) through (3) as Paragraphs (2) through (4), in Paragraph (3) inserted "if applicable, the reductions described in" in the introductory paragraph, and in Paragraph (4) substituted "implicit price deflator" for "general business indicator" in the first and second sentences and substituted "department" for "division" in the second sentence; twice substituted "impose" for "levy" in Subsection B; and added all of the language of Subsection D beginning with "subject".

**Application to 1979 tax year not unconstitutionally retroactive.** — Application of this section, which became law on April 4, 1979, to the 1979 tax year, when notice of taxes due and payable were required to be mailed by April 1, 1979, is not unconstitutionally retroactive. Hansman v. Bernalillo Cnty. Assessor, 1980-NMCA-088, 95 N.M. 697, 625 P.2d 1214.

**Comparative sales of nonresidential properties not basis for valuation.** — This section precludes valuation of residential property for tax purposes based on comparative sales of nonresidential properties. Landmark, Ltd. v. Bernalillo Cnty. Assessor, 1985-NMCA-032, 103 N.M. 65, 702 P.2d 1010 (decided under former 7-36-21.1 NMSA 1978).

## 7-37-8. School tax rates.

No later than August 15 of each year, the state department of public education shall submit to the secretary of finance and administration the property tax rates for the succeeding tax year for each school district and the commission on higher education [higher education department] shall submit to the secretary of finance and administration the property tax rates for the succeeding tax year for each technical and vocational district, area vocational school district, junior college district and branch community college district. The rates required to be submitted pursuant to this section shall separately state by county and by school district the rate to be levied for operational purposes and the rate to be levied for payment of principal and interest on general obligation debt issued or entered into by the district.

**History:** 1978 Comp., § 7-37-8, enacted by Laws 1978, ch. 128, § 1; 1983, ch. 301, § 12; 1988, ch. 64, § 1; 1997, ch. 193, § 17.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 2005, ch. 289, § 29 abolished the commission on higher education and provided that all references in law to the commission on higher education shall be construed to be references to the higher education department.

**Cross references.** — For the Education Technology Equipment Act, *see* Chapter 6, Article 15A NMSA 1978.

**The 1997 amendment,** effective April 10, 1997, substituted "payment of principal and interest on general obligation debt issued or entered into by the district" for "principal and interest on general obligation bonds issued by the district" at the end of the section.

# ARTICLE 38
# Administration and Enforcement of Property Taxes

## 7-38-1. Applicability.

This article applies to the administration and enforcement of all taxes imposed under the Property Tax Code.

**History:** 1953 Comp., § 72-31-1, enacted by Laws 1973, ch. 258, § 41.

**ANNOTATIONS**

**Ultimate responsibility for taxes rests upon property owner.** — A review of New Mexico statutes pertaining to assessment and collection of taxes demonstrates that the ultimate responsibility for payment rests upon the property owner. Bailey v. Barranca, 1971-NMSC-074, 83 N.M. 90, 488 P.2d 725.

**Duty on assessor where owner refuses to declare property.** — In the event of a refusal of any person, owning or in control of any property, to declare the same as required, the duty then rests upon the assessor to make a true and complete list of the property. McKay v. Espinosa, 1958-NMSC-144, 65 N.M. 241, 335 P.2d 567.

**Assumption is that owner made assessment.** — Only when the owner fails to make a declaration of all his property is the assessor given the duty of supplying one for him. There being no evidence to the contrary, it will be assumed in compliance with the law that the questioned assessment was not made by the assessor but was actually made by the assessee. McKay v. Espinosa, 1958-NMSC-144, 65 N.M. 241, 335 P.2d 567.

**Law reviews.** — For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

For 1986-88 survey of New Mexico law of real property, 19 N.M.L. Rev. 751 (1990).

## 7-38-2. Investigative authority and powers.

A. The director may issue subpoenas, returnable in not less than ten days, to require the production of any pertinent records or to require any person to appear and testify under oath concerning the subject matter of an inquiry for the purposes of:

(1) determining whether property is subject to property taxation;

(2) establishing or determining the value of any property for property taxation purposes;

(3) determining the extent of liability for and the amount of any property tax due from any person; and

(4) enforcing any statute administered by the department or administered by county officers under the supervision of the department.

B. At any time after the service of a subpoena and prior to its return date, a person to whom a subpoena is issued may file an action in the district court to quash the subpoena on the grounds that it was improperly issued.

C. In order to carry out their respective responsibilities under the Property Tax Code, county assessors and their employees, and the director and employees of the department may at reasonable times and after displaying identity credentials:

(1) with the permission of a property owner or his authorized agent, examine those records that relate to the valuation of the property; and

(2) with the permission of a property owner or his authorized agent, enter or inspect any property that is subject to valuation for property taxation purposes.

D. If a person fails to appear, produce records or refuses to testify in response to a subpoena issued under Subsection A, or if a person refuses permission to allow examination of records, entry or inspection of property authorized under Subsection C, the director, or the county assessor in the case where he or his employees have been refused examination, entry or inspection, may invoke the aid of the district court by filing an action to require appearance or testimony or to allow examination, entry or inspection. The court may, after notice, hearing and good cause shown, require the person to appear and testify, to produce records, to allow examination of records or to allow entry or inspection of property. If the person fails to comply with the court's order, the court may punish him for contempt.

**History:** 1953 Comp., § 72-31-2, enacted by Laws 1973, ch. 258, § 42.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 72 Am. Jur. 2d State and Local Taxation §§ 704 to 752.

84 C.J.S. Taxation § 462 et seq.

## 7-38-3. Information reports.

For the purpose of establishing or determining the value of property for property taxation purposes, the director may promulgate regulations requiring any property owner or his authorized agent to report information concerning the property to the department or the county assessor at the times and in the manner required by the director.

**History:** 1953 Comp., § 72-31-3, enacted by Laws 1973, ch. 258, § 43.

## 7-38-4. Confidentiality of information.

A. Except as specifically authorized in this section or as otherwise provided by law, it is unlawful for the secretary, any employee or any former employee of the department to reveal to any person other than the secretary, an employee of the department, a county assessor or an employee of a county assessor any information gained during his employment about a specific property or a property taxpayer gained as a result of a report or information furnished the department or a county assessor by a taxpayer or as a result of an examination of property or records of a taxpayer. Except as specifically authorized in this section or as otherwise provided by law, it is unlawful for any county assessor or any employee or former employee of a county assessor to reveal to any person other than county assessors or their employees or the secretary or an employee of the department any information furnished by the department about a specific property or property owner or any other information gained during that person's employment about a specific property or a property taxpayer gained as a result of a report or information furnished the department or a county assessor by a taxpayer or as a result of an examination of property or records of a taxpayer. Information described in this subsection may be released:

(1) that is limited to the information contained in those valuation records that are public records and the identity of the owner or person in possession of the property;

(2) to an authorized representative of another state; provided that the receiving state has entered into a written agreement with the department to use the information for tax purposes only;

(3) to a state district or appellate court or a federal court or county valuation protests board:

(a) in response to an order made in an action relating to taxation in which the state or a governmental unit is a party and in which the information is material to the inquiry; or

(b) in any action in which the department or a county is attempting to enforce the provisions of the Property Tax Code or to collect a property tax or in any matter in which the taxpayer has put the taxpayer's own property valuation or liability for taxes at issue;

(4) to the property owner or a representative authorized in writing by the owner to obtain the information;

(5) if used for statistical purposes in a way that the information revealed is not identified or identifiable as applicable to any property owner or person in possession of the property;

(6) to a representative of the secretary of the treasury or the secretary's delegate pursuant to the terms of a reciprocal agreement entered into with the federal government for exchange of such information; or

(7) to the multistate tax commission or its authorized representative; provided that the information is used for tax purposes only and is disclosed by the multistate tax commission only to states which have met the requirements of Paragraph (2) of this subsection.

B. The secretary, any employee or any former employee of the department or any other person subject to the provisions of this section who willfully releases information in violation of this section is guilty of a misdemeanor and shall be fined not more than one thousand dollars ($1,000) or imprisoned for a definite term of less than one year or both. Any person convicted of a violation of this section shall not be employed by the state for a period of five years after the date of conviction.

**History:** 1953 Comp., § 72-31-4, enacted by Laws 1973, ch. 258, § 44; 1977, ch. 249, § 61; 1982, ch. 28, § 7; 1986, ch. 20, § 113; 1990, ch. 22, § 2; 1991, ch. 166, § 7.

## ANNOTATIONS

**The 1991 amendment,** effective June 14, 1991, in Subsection A, rewrote the second sentence which read "Except as specifically authorized in this section or as otherwise provided by law, it is unlawful for county assessors and their employees and former employees to reveal to any person other than county assessors or their employees any information furnished by the department about a specific property or property owner"

and, in Paragraph (1), inserted "that are public records" and made a minor stylistic change.

**The 1990 amendment,** effective May 16, 1990, in Paragraph (3) of Subsection A, added the Subparagraph designation "(a)" and added Subparagraph (b).

**Nondisclosure held proper.** — Board did not err in failing to sanction assessor who refused to comply with taxpayers' discovery request, where the assessor showed that such discovery might have compromised confidential data about other property owners, and where it did not appear that taxpayers' protest proceedings were prejudiced by assessor's refusal to grant them access to the information. Hannahs v. Anderson, 1998-NMCA-152, 126 N.M. 1, 966 P.2d 168, cert. denied, 126 N.M. 532, 972 P.2d 351.

**Remedy for denial of access to assessment records.** — Taxpayers who believed that assessor wrongfully denied them access to public records should have pursued the remedies provided in this section. Hannahs v. Anderson, 1998-NMCA-152, 126 N.M. 1, 966 P.2d 168, cert. denied, 126 N.M. 532, 972 P.2d 351.

## 7-38-5. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1982, ch. 28, § 31, repealed 7-38-5 NMSA 1978, relating to the allocation of responsibility for the valuation of property. For present provisions, *see* 7-36-2 NMSA 1978, effective May 15, 1982.

## 7-38-6. Presumption of correctness.

Values of property for property taxation purposes determined by the division or the county assessor are presumed to be correct. Determinations of tax rates, classification, allocations of net taxable values of property to governmental units and the computation and determination of property taxes made by the officer or agency responsible therefor under the Property Tax Code are presumed to be correct.

**History:** 1953 Comp., § 72-31-6, enacted by Laws 1973, ch. 258, § 46; 1981, ch. 37, § 67.

**ANNOTATIONS**

**Assessor's valuation sufficient evidence to support decision.** — Since the assessor's valuation is presumed to be correct, it is sufficient evidence, where uncontradicted, to support the board's decision. Peterson Props. v. Valencia Cnty. Valuation Protests Bd., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

**Application of presumption.** — The question whether property is entitled to the special valuation method in Section 7-36-20 NMSA 1978 is a question of classification;

property that is classified as agricultural is entitled to the benefit of that section, whereas other property is not. Jicarilla Apache Nation v. Rodarte, 2004-NMSC-035, 136 N.M. 630, 103 P.3d 554, *rev'g* 2004-NMCA-055, 135 N.M. 630, 92 P.3d 642.

Presumption in this section is applicable only to the value of property and inapplicable when the question is whether a taxpayer is entitled to the special method of valuation provided for in 7-36-20 NMSA 1978. Jicarilla Apache Nation v. Rio Arriba Cnty. Assessor, 2004-NMCA-055, 135 N.M. 630, 92 P.3d 642, *rev'd* 2004-NMSC-035, 136 N.M. 630, 103 P.3d 554.

**Presumption is rebuttable** and is best characterized as a prima facie inference in that it shifts the burden of going forward with the evidence to the taxpayer to prove the contrary. Petition of Kinscherff, 1976-NMCA-097, 89 N.M. 669, 556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620; N.M. Baptist Found. v. Bernalillo Cnty. Assessor, 1979-NMCA-102, 93 N.M. 363, 600 P.2d 309.

**Presumption of correctness can be overcome by taxpayer's showing** that an assessor did not follow the statutory provisions of the act or by presenting evidence tending to dispute the factual correctness of the valuation. N.M. Baptist Found. v. Bernalillo Cnty. Assessor, 1979-NMCA-102, 93 N.M. 363, 600 P.2d 309; La Jara Land Developers, Inc. v. Bernalillo County Assessor, 1982-NMCA-006, 97 N.M. 318, 639 P.2d 605.

**Overcoming the statutory presumption of correctness afforded to the assessor's valuation.** — Where appellant sought review of the Bernalillo county valuation protests board's (protests board) valuation of appellant's commercial property, where appellant offered evidence of value tending to dispute the factual correctness of the county assessor's method of valuation, where the county assessor did not offer expert testimony disputing that appellant's method of valuation was a generally accepted appraisal technique, and where neither the protests board nor the district court ruled that appellant failed to overcome the statutory presumption of correctness afforded to the assessor's valuation, the appellant overcame the statutory presumption of correctness and the burden shifted to the assessor to prove that his or her method of valuation utilized a generally accepted appraisal technique. 2727 San Pedro LLC v. Bernalillo Cty. Assessor, 2017-NMCA-008.

**Since taxpayer overcame presumption, burden rested on assessor.** — This presumption is rebuttable and is best characterized as a prima facie inference in that it shifts the burden of going forward with the evidence to the taxpayer to prove the contrary; where taxpayer's protest and evidence overcame the presumption the burden rested on the county assessor to meet the contentions of the taxpayer. San Pedro S. Group v. Bernalillo Cnty. Valuation Protest Bd., 1976-NMCA-116, 89 N.M. 784, 558 P.2d 53.

**Since taxpayer overcame presumption, burden rested on assessor.** — While the county assessor's valuation is presumed to be correct, this presumption is rebuttable,

and, once rebutted, the burden shifts to the county assessor to show the correct valuation. Bakel v. Bernalillo Cnty. Assessor, 1980-NMCA-173, 95 N.M. 723, 625 P.2d 1240; Protest of Plaza Del Sol Ltd. P'ship v. Assessor for Cnty. of Bernalillo, 1986-NMCA-022, 104 N.M. 154, 717 P.2d 1123.

This section places the burden on the taxpayer to overcome the presumption of correctness, but, the burden shifted to the county assessor to show a correct valuation once that burden of correctness is overcome. Cibola Energy Corp. v. Roselli, 1987-NMCA-055, 105 N.M. 774, 737 P.2d 555.

Since taxpayer's valuation is supported by the whole record in that after rebutting the assessor's valuation and presenting a prima facie case for its own valuation the board failed to rebut taxpayer's appraisal, the decision of the board will be reversed and remanded with instructions that the board enter judgment for taxpayer in favor of its valuations. Cibola Energy Corp. v. Roselli, 1987-NMCA-055, 105 N.M. 774, 737 P.2d 555.

**Taxpayer effectively rebutted presumption.** — Since taxpayers presented uncontradicted evidence that access to their property was physically blocked and also offered the only substantial evidence of the fair market value of the property in the form of testimony by a real estate appraiser that because of the lack of access the highest and best use that the property could be put to was as grazing land by one of the adjoining landowners, and that as such it had a fair market value of $18.00 per acre, or $2034 and $5022 respectively for the two tracts, they effectively rebutted the presumption of this section that the county assessor's valuations of $313,875 and $169,500 were correct. Petition of Kinscherff, 1976-NMCA-097, 89 N.M. 669, 556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620.

**When presumption unrebutted by lack of comparable sales evidence.** — Since the documents relied upon by a taxpayer as evidence of comparable sales are documents dealing with the sale of that very improvement whose valuation is the subject of the present dispute and the only evidence submitted by the taxpayer failed to present any evidence of sales of comparable property and the evidence submitted does not establish a market value under Section 7-36-15B NMSA 1978 and the statutory presumption of correctness still stands. N.M. Baptist Found. v. Bernalillo Cnty. Assessor, 1979-NMCA-102, 93 N.M. 363, 600 P.2d 309.

**Presumption of assessor's valuation not overcome.** — Since taxpayer failed to present any evidence of sales of comparable property or evidence of value based on generally accepted appraisal techniques, and its only evidence, the purchase price of its land in question, did not establish a market value under Section 7-36-15 NMSA 1978, the presumption of the correctness of the assessor's valuation was not overcome. Peterson Props. v. Valencia Cnty. Valuation Protests Bd., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

**Failure to overcome presumption.** — Taxpayers' offer of the price for which they had purchased the property in question as evidence of fair market value failed to overcome the presumption of the correctness of the assessor's valuation where the sales price was not the result of an arms'-length transaction because of the taxpayers' mailing campaign to convince landowners to sell their property to the taxpayers at below market prices. In re Cobb, 1991-NMCA-122, 113 N.M. 251, 824 P.2d 1053, cert. denied, 113 N.M. 44, 822 P.2d 1127.

Taxpayers challenge of their property assessment, which proposed an alternative assessment method, failed to present sufficient evidence to overcome the presumption that the original assessment was correct. Hannahs v. Anderson, 1998-NMCA-152, 126 N.M. 1, 966 P.2d 168, cert. denied, 126 N.M. 532, 972 P.2d 351.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 72 Am. Jur. 2d State and Local Taxation §§ 713, 780.

## 7-38-7. Valuation date.

All property subject to valuation for property taxation purposes shall be valued as of January 1 of each tax year, except that livestock shall be valued as of the date and in the manner prescribed under Section 7-36-21 NMSA 1978 and tangible personal property of construction contractors shall be valued as of the date and in the manner prescribed under Section 1 [7-38-7.1 NMSA 1978] of this act.

**History:** 1953 Comp., § 72-31-7, enacted by Laws 1973, ch. 258, § 47; 1997, ch. 68, § 2.

**ANNOTATIONS**

**Compiler's notes.** — The phrase "this act" at the end of the section refers to Laws 1997, ch. 68, which amended this section.

**The 1997 amendment,** effective June 20, 1997, substituted "7-36-21" and the language following it for "72-29-10 NMSA 1953" at the end of the section.

**Appropriate time period to establish exemption status.** — The prior calendar year is the appropriate time period upon which to base a property's exemption status, and January 1 is the appropriate "cutoff date" under Article VIII, Section 3 of the New Mexico Constitution. CAVU Co. v. Martinez, 2014-NMSC-029, *aff'g in part*, *rev'g in part* 2013-NMCA-050, 302 P.3d 126.

**Evidence of the use of property on the valuation date.** — The valuation date of January 1 sets a cut-off date to avoid reclassification of property throughout the tax year. It does not specify the date on which the property's use defines its status for the remainder of the year and does not limit the evidence that can be considered in determining the status of property to the property's use on January 1. Property does not

have to be in active use for exempt purposes on January 1 in order for an exemption to apply and evidence of the prior use of the property should be considered. CAVU Co. v. Martinez, 2013-NMCA-050, 302 P.3d 126, cert. granted, 2013-NMCERT-004.

Where the taxpayer's property was used as a school until May 2008, the property ceased to be used actively as a school after May, 2008 and was not used actively as a school again until August 2010 when the fall semester began; the property was not used for educational purposes on January 1, 2010; and the district court held that January 1 is the point at which the status of property is determined for purposes of qualifying for an exemption from taxation and that the taxpayer's property was not exempt for the 2010 tax year because the property was not used for educational purposes on January 1, 2010, the district court erred in interpreting Section 7-38-7 NMSA 1978 too narrowly and should have considered the use of the property prior to January 1, 2010. CAVU Co. v. Martinez, 2013-NMCA-050, 302 P.3d 126, cert. granted, 2013-NMCERT-004.

**Exclusive reliance on evidence of prior year comparable sales was reasonable.** — With respect to comparable sales, the legislature intended assessors and protests boards to consider only data available on January 1 of the tax year of the valuation notice. AMREP Sw., Inc. v. Sandoval Cnty. Assessor, 2012-NMCA-082, 284 P.3d 1118.

Where the county valuation protests board refused to consider the taxpayer's comparable 2009 sales evidence and relied exclusively on comparable 2008 sales for the valuation of the taxpayer's property for the 2009 tax year based on the board's interpretation of statutory and administrative code provisions that required property to be valued using only data available on January 1, 2009, the board's interpretation of the statutory and administrative code provisions was reasonable. AMREP Sw., Inc. v. Sandoval Cnty. Assessor, 2012-NMCA-082, 284 P.3d 1118.

**Past or future value not to serve as basis.** — What the fair market value of a tract may have been in the past or speculation as to what it might be in the future cannot serve as the basis for valuation. Petition of Kinscherff, 1976-NMCA-097, 89 N.M. 669, 556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620; Bakel v. Bernalillo Cnty. Assessor, 1980-NMCA-173, 95 N.M. 723, 625 P.2d 1240.

**Tax liability whether or not property evaluation done on time.** — When property is evaluated in accordance with the law, the taxpayer is liable for payment, whether or not the evaluation is done on time, just so long as the value determined reflects the value as of January 1st of the tax year. Hansman v. Bernalillo Cnty. Assessor, 1980-NMCA-088, 95 N.M. 697, 625 P.2d 1214.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 72 Am. Jur. 2d State and Local Taxation § 753.

Sale price of real property as evidence in determining value for tax assessment purpose, 89 A.L.R.3d 1126.

84 C.J.S. Taxation §§ 436, 437.

## 7-38-7.1. Valuation date; tangible personal property; construction contractors.

A. All tangible personal property of construction contractors located in the state shall be valued for property taxation purposes as of January 1, except as provided in Subsection B of this section.

B. All tangible personal property of construction contractors not located in the state on January 1 but brought into the state and located there for more than twenty days subsequent to January 1 shall be valued for property taxation purposes as of the first day of the month following the month in which they have remained in the state for more than twenty days.

C. The construction contractor whose tangible personal property is subject to valuation for property taxation purposes shall report the property for valuation to the entity having responsibility for valuation of the property in accordance with Section 7-36-2 NMSA 1978 on the valuation date specified in Subsection A or B of this section and shall include in the report the actual or estimated time period during which the property has been and will be located in the state. The contractor's report shall be in a form and contain the information required by the department regulations and shall be made no later than:

(1) the last day of February for tangible personal property required to be valued as of the first day of January of the tax year; or

(2) ten days after the valuation date determined under Subsection B of this section for tangible personal property required to be valued as of a date other than that in Paragraph (1) of this subsection.

D. The department shall adopt regulations for the allocation of the value of tangible personal property of construction contractors, which regulations shall provide for:

(1) a basic allocation formula that prorates value on the basis of the amount of time that the tangible personal property is in the state and subject to valuation for property taxation purposes;

(2) determining proration of value under Paragraph (1) of this subsection using estimates of the amount of time that the tangible personal property will be in the state to cover those situations in which tangible personal property is imported for an indeterminate time during a tax year; and

(3) a method of allocating the value of the tangible personal property among different governmental units when the tangible personal property is located in more than one governmental unit.

E. Any person who intentionally refuses to make a report required of him under this section or who knowingly makes a false statement in a report required under this section is guilty of a misdemeanor and shall be punished by imposition of a fine of not more than one thousand dollars ($1,000).

F. Any person who fails to make a report required of him under this section is liable for a civil penalty in an amount equal to five percent of the property taxes ultimately determined to be due on the property for the tax year or years for which he failed to make the required report.

G. Any person who intentionally refuses to make a report required of him under this section with the intent to evade any tax or who fails to make a report required of him under this section with the intent to evade any tax is liable for a civil penalty in an amount equal to twenty-five percent of the property taxes ultimately determined to be due on the property for the tax year or years for which he refused or failed to make the required report.

H. The civil penalties authorized under Subsections F and G of this section shall be imposed and collected at the time and in the manner that the tax is imposed and collected. In order to assist in the imposition and collection of the penalties, the person having responsibility for determining the value of the property shall make an entry in the valuation records indicating the liability for any penalties due under this section.

**History:** Laws 1997, ch. 68, § 1.

**ANNOTATIONS**

## 7-38-8. Reporting of property for valuation; penalties for failure to report.

A. All property subject to valuation for property taxation purposes by the department shall be reported annually to the department. The report required by this subsection shall be made by the owner of the property or such other person as may be authorized by rules of the department. The report shall be in a form and contain the information required by rules of the department. It shall be made not later than the last day of February in the tax year in which the property is subject to valuation. Claims of economic obsolescence or functional obsolescence on properties not regulated by the federal government shall be made at the time the annual report is filed; however, the department shall accept supplements to the annual report containing claims of economic obsolescence or functional obsolescence on properties regulated by the federal energy regulatory commission or its successor agency at the time the annual commission report becomes available, but no later than April 15 of the tax year or at a later time allowed by an extension granted by the department. In the case of the failure or refusal to file the report required under this subsection, the department shall determine the value of the property subject to valuation from the best information available.

B. Except as provided in Subsection D of this section, all property subject to valuation for property taxation purposes by the county assessor shall be reported as follows:

(1) property valued in the 1974 tax year by the county assessor need not be reported for any subsequent tax year unless required to be reported under Paragraph (3) of this subsection;

(2) property not valued in the 1974 tax year by the county assessor but that becomes subject to valuation by the county assessor in any subsequent tax year shall be reported to the county assessor not later than the last day of February of the tax year in which it becomes subject to valuation, but such property need not be reported for any year subsequent to the year in which initially reported unless required to be reported under Paragraph (3) of this subsection;

(3) property once valued by a county assessor in a tax year, but which is not valued for a year subsequent to the year of initial valuation because it is not subject to valuation for that subsequent year by the county assessor, shall be reported to the county assessor not later than the last day of February in a tax year in which it again becomes subject to valuation by the county assessor; and

(4) reports required under Paragraphs (2) and (3) of this subsection shall be in a form and contain the information required by rules of the department.

C. Not later than the last day of February of each tax year, every owner of real property who made, or caused to be made, in the preceding calendar year improvements costing more than ten thousand dollars ($10,000) to that real property shall report to the county assessor the property improved, the improvements made, the cost of the improvements and such other information as the department may require.

D. Manufactured homes, livestock and land used for agricultural purposes shall be reported for valuation for property taxation purposes to the county assessor at the times and in the manner prescribed under Sections 7-36-26, 7-36-21 and 7-36-20 NMSA 1978 and rules promulgated by the department.

E. Property subject to valuation by the county assessor for property taxation purposes and improvements to such property that are required to be reported under Subsection C of this section shall be reported to the county assessor of the county in which the property is required to be valued under Section 7-36-14 NMSA 1978. Reports shall be made either by the owner of the property, the owner's authorized agent or any person having control or management of the property and shall be in a form and contain the information required by rules of the department.

F. Reports required by this section shall be made by the declarant under oath, and the secretary, employees of the department, the assessor and the assessor's employees are empowered to administer oaths for this purpose.

G. A person who intentionally refuses to make a report required under the provisions of Subsection A, B or C of this section or who knowingly makes a false statement in a report required under the provisions of Subsection A, B or C of this section is guilty of a misdemeanor and upon conviction shall be punished by the imposition of a fine of not more than one thousand dollars ($1,000).

H. A person who fails to make a report required under the provisions of Subsection A or B of this section is liable for a civil penalty in an amount equal to five percent of the property taxes ultimately determined to be due on the property for the tax year or years for which the person failed to make the required report.

I. A person who intentionally refuses to make a report required under the provisions of Subsection A or B of this section with the intent to evade any tax or who fails to make a report required under the provisions of Subsection A or B of this section with the intent to evade any tax is liable for a civil penalty in an amount equal to twenty-five percent of the property taxes ultimately determined to be due on the property for the tax year or years for which the person refused or failed to make the required report.

J. A person who is required to make a report under the provisions of Subsection C of this section and who fails to do so is personally liable for a civil penalty in an amount equal to the greater of twenty-five dollars ($25.00) or twenty-five percent of the difference between the property taxes ultimately determined to be due and the property taxes originally paid for the tax year or years for which the person failed to make the required report. This penalty shall not be considered a delinquent property tax, and the provisions of the Property Tax Code for the enforcement and collection of delinquent property taxes through the sale of the property do not apply. However, the county treasurer may use all other methods provided by law to collect the property tax or penalty due. Notwithstanding any other provision of the Property Tax Code, amounts collected pursuant to the penalty provided by this subsection shall be distributed among jurisdictions imposing tax on the property in the same proportion as the amount of tax ultimately determined to be due for the jurisdiction bears to the total due for all such jurisdictions.

K. The civil penalties authorized under Subsections H and I of this section shall be imposed and collected at the time and in the manner that the tax is imposed and collected. In order to assist in the imposition and collection of the penalties, the persons having responsibility for determining the value of the property shall make an entry in the valuation records indicating the liability for any penalties due under this section.

L. For the purposes of this section:

(1) "improvement" means the construction of any new structure permanently affixed to the land or the repair, rehabilitation or alteration of an existing structure permanently affixed to the land that, for property used for any commercial purpose, is required or allowed to be capitalized under the Internal Revenue Code and, for other properties, any similar construction, repair, rehabilitation or alteration; and

(2) "owner of real property" includes every owner of improvements who does not own the land upon which the improvements are made.

History: 1953 Comp., § 72-31-8, enacted by Laws 1973, ch. 258, § 48; 1974, ch. 92, § 7; 1985, ch. 109, § 8; 1991, ch. 213, § 1; 2007, ch. 273, § 2.

## ANNOTATIONS

**Cross references.** — For county assessors, *see* Chapter 4, Article 39 NMSA 1978.

**The 2007 amendment,** effective July 1, 2007, provided that claims of economic obsolescence or functional obsolescence on property not regulated by the federal government shall be made at the time the annual report is filed, except that the department may accept supplements containing such claims on property regulated by the federal energy regulatory commission.

**Applicability.** — Laws 2007, ch. 273, § 3 provided that Laws 2007, ch. 273, §§ 1 and 2 apply to property tax years beginning on or after January 1, 2008.

**The 1991 amendment,** effective January 1, 1992, substituted "department" for "division" throughout the section; added Subsections C, J and L; redesignated former Subsections C to H as Subsections D to I and Subsection I as K; inserted "and improvements to such property that are required to be reported under Subsection C of this section" in the first sentence in Subsection E; inserted "upon conviction" near the end of Subsection G; and made related and minor stylistic changes throughout the section.

**Property owner's responsibility to pay tax.** — The ultimate responsibility for the payment of property taxes rests upon the property owner. Worman v. Echo Ridge Homes Coop., 1982-NMSC-081, 98 N.M. 237, 647 P.2d 870.

**Property owner is required to make declaration** of all property subject to taxation annually. Bailey v. Barranca, 1971-NMSC-074, 83 N.M. 90, 488 P.2d 725.

**Duty of property owner.** — Property owner has affirmative duty to declare his property. State ex rel. Prop. Appraisal Dep't v. Sierra Life Ins. Co., 1977-NMSC-023, 90 N.M. 268, 562 P.2d 829.

**Description of property in declaration.** — In declaring his real property, the taxpayer is required to describe the property in such a manner as would be sufficient in a deed to identify the property so that title thereto would pass. Bloch Pitt Invs. v. Assessor of Bernalillo Cnty., 1974-NMSC-073, 86 N.M. 589, 526 P.2d 183.

**Applicability of nonrendition penalty.** — When the taxpayer failed to report a complete list of all taxable personal property, the 25% nonrendition penalty provided in Subsection I could only be imposed on the property the taxpayer failed to report, not on

the portion that was properly reported. Zwaagstra v. Board of Cnty. Comm'rs, 1995-NMCA-047, 119 N.M. 675, 894 P.2d 1031.

**Stipulation fixes property values for one year only.** — A stipulation fixing property tax values for a specific year is not binding for any following tax year; it is res judicata only for the year in question. Protest of Plaza Del Sol Ltd. P'ship v. Assessor for Cnty. of Bernalillo, 1986-NMCA-022, 104 N.M. 154, 717 P.2d 1123.

**Statutes relating to undeclared property not applicable to that inadequately valued.** — Since property was declared and listed on the tax rolls by proper description and was valued, although the value fixed by the assessor was inadequate, sections of the statutes which relate to property which has not been declared, listed on the tax rolls and valued have no application. Bloch Pitt Invs. v. Assessor of Bernalillo Cnty., 1974-NMSC-073, 86 N.M. 589, 526 P.2d 183.

**Law reviews.** — For comment, "Ad Valorem Taxes - Omitted Property and Improvements - Assessments," see 6 Nat. Resources J. 105 (1966).

## 7-38-8.1. Division to adopt regulations to require reporting of exempt property.

The division shall adopt regulations to insure that all real property owned by any nongovernmental entity and claimed to be exempt from property taxation under the provisions of Paragraph (1) of Subsection B of Section 7-36-7 NMSA 1978 shall be reported for valuation purposes to the appropriate valuation authority. These regulations shall include provisions for initial reporting of the property and claiming of the exempt status pursuant to Subsection C of Section 7-38-17 NMSA 1978.

**History:** 1978 Comp., § 7-38-8.1, enacted by Laws 1982, ch. 28, § 8.

**ANNOTATIONS**

**Inspection and interviews.** — After a private museum claims an exemption from property tax, this section does not require the county tax assessor to conduct an on-site inspection and interviews, relating to the museum's educational programs. Georgia O'Keeffe Museum v. County of Santa Fe, 2003-NMCA-003, 133 N.M. 297, 62 P.3d 754.

## 7-38-9. Description of property for property taxation purposes.

A. Property shall be described for property taxation purposes by a description sufficiently adequate and accurate to identify it. Real property shall be described under a uniform system of real property description in accordance with regulations of the department. The department shall promulgate regulations establishing a uniform system of real property description to be used by the department and all assessors. The system shall include requirements for a comprehensive mapping or geographic information

system, the use of uniform property record documents and uniform coding of real property descriptions.

B. Real property that has been valued for property taxation purposes prior to the effective date of the Property Tax Code by a description consisting of a mere reference to the time and place of filing or recording in the office of the county clerk of any map or other instrument describing the property with sufficient preciseness to permit its identification shall be considered to have been sufficiently described for property taxation purposes. All prior assessments, records and instruments maintained or issued by property taxation officers which describe the property by such a reference are validated and given the same force and effect as if a description of the property had been used that would comply with this section.

**History:** 1953 Comp., § 72-31-9, enacted by Laws 1973, ch. 258, § 49; 1999, ch. 215, § 1.

## ANNOTATIONS

**The 1999 amendment,** effective June 18, 1999, in the last sentence in Subsection A substituted "shall" for "must" and inserted "or geographic information system".

**Adequate and proper description of real estate** is essential to taxation. Otero v. Sandoval, 1956-NMSC-008, 60 N.M. 444, 292 P.2d 319.

**Insufficient description presents jurisdictional defect.** — An erroneous description may be corrected, but a totally insufficient description presents a jurisdictional defect. Otero v. Sandoval, 1956-NMSC-008, 60 N.M. 444, 292 P.2d 319.

**Description in declaration must be sufficient to pass title.** — In declaring his real property, the taxpayer is required to describe the property in such a manner as would be sufficient in a deed to identify the property so that title thereto would pass. Bloch Pitt Invs. v. Assessor of Bernalillo Cnty., 1974-NMSC-073, 86 N.M. 589, 526 P.2d 183.

**Must be able to locate property by description.** — The property must be so described that it would enable one to locate it on the ground without resort to or aid of data other than that contained in and pointed to by the description itself. McKay v. Espinosa, 1958-NMSC-144, 65 N.M. 241, 335 P.2d 567.

**Incorrect notation of land in certain school district not essential.** — A notation on the tax roll, indicating that the land was in a particular school district, was not an essential part of the listing of the property for taxation and did not affect the validity of the tax sale, though the land was not in fact in such school district. Greene v. Esquibel, 1954-NMSC-039, 58 N.M. 429, 272 P.2d 330.

**Aid of extrinsic evidence makes description sufficient.** — When there is uncertainty in description, if through the aid of extrinsic evidence, together with data afforded by the

description itself such uncertainty is resolved, the description will be considered sufficient. Otero v. Sandoval, 1956-NMSC-008, 60 N.M. 444, 292 P.2d 319.

**Judicial notice that half section contains 320 acres.** — Supreme court will take judicial notice that half section of land according to congressional subdivisions contains 320 acres instead of 160 acres. McKay v. Espinosa, 1958-NMSC-144, 65 N.M. 241, 335 P.2d 567.

**Phrase "160 acres"** does not invalidate a description otherwise sufficient. McKay v. Espinosa, 1958-NMSC-144, 65 N.M. 241, 335 P.2d 567.

**Description of land only as "NE 1/4 160 acres"** without mention of section, township, range or school district formed no basis for assessment and levy under statute requiring description which would form basis in deed to pass title and no title could pass by the tax deed description. Otero v. Sandoval, 1956-NMSC-008, 60 N.M. 444, 292 P.2d 319.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 72 Am. Jur. 2d State and Local Taxation § 734.

84 C.J.S. Taxation § 587 et seq.

## 7-38-10. Department may insure compliance with mapping and description of real property regulations by departmental installation of required system; reimbursement by county of costs incurred.

Whenever the director determines that it is necessary to insure compliance with departmental regulations relating to comprehensive mapping or geographic information systems and real property description or to correct county deficiencies in this regard, he shall order the installation by the department of the necessary maps and other increments of the property description system in the county. The director may require the county to reimburse the department for costs incurred by the department in the installation or correction of a property description system.

**History:** 1953 Comp., § 72-31-10, enacted by Laws 1973, ch. 258, § 50; 1999, ch. 215, § 2.

**ANNOTATIONS**

**The 1999 amendment,** effective June 18, 1999, inserted "or geographic information systems" in the first sentence.

## 7-38-11. Property reported in the wrong county.

If property is reported for valuation for property taxation purposes in a county different from the county in which it is required to be reported by law and the regulations

of the department, the county assessor to whom the erroneous report is made shall send a copy of the report to the county assessor of the county in which the report is required to be made and shall, at the same time, notify the person making the erroneous report of his obligation to make the required report to the appropriate county. A person making a report to the wrong county assessor is not relieved of his responsibility to make the required report to the correct county assessor because of the provisions of this section.

**History:** 1953 Comp., § 72-31-11, enacted by Laws 1973, ch. 258, § 51.

## 7-38-12. Property transfers; copies of documents to be furnished to assessor; penalty for violation.

A. Whenever a deed or real estate contract transferring an interest in real property is received by a county clerk for recording, a copy of the deed or real estate contract shall be given to the county assessor by the clerk.

B. A county clerk who willfully fails to comply with this section is guilty of a petty misdemeanor, punishable in accordance with the Criminal Code [Chapter 30 NMSA 1978].

**History:** Laws 1973, ch. 258, § 52; 1953 Comp., § 72-31-12; Laws 1974, ch. 92, § 8; 1982, ch. 28, § 9.

## 7-38-12.1. Residential property transfers; affidavit to be filed with assessor.

A. After January 1, 2004, a transferor or the transferor's authorized agent or a transferee or the transferee's authorized agent presenting for recording with a county clerk a deed, real estate contract or memorandum of real estate contract transferring an interest in real property classified as residential property for property taxation purposes shall also file with the county assessor within thirty days of the date of filing with the county clerk an affidavit signed and completed in accordance with the provisions of Subsection B of this section.

B. The affidavit required for submission shall be in a form approved by the department and signed by the transferors or their authorized agents or the transferees or their authorized agents of any interest in residential real property transferred by deed or real estate contract. The affidavit shall contain only the following information to be used only for analytical and statistical purposes in the application of appraisal methods:

(1) the complete names of all transferors and transferees;

(2) the current mailing addresses of all transferors and transferees;

(3) the legal description of the real property interest transferred as it appears in the document of transfer;

(4) the full consideration, including money or any other thing of value, paid or exchanged for the transfer and the terms of the sale including any amount of seller incentives; and

(5) the value and a description of personal property that is included in the sale price.

C. Upon receipt of the affidavit required by Subsection A of this section, the county assessor shall place the date of receipt on the original affidavit and on a copy of the affidavit. The county assessor shall retain the original affidavit as a confidential record and as proof of compliance and shall return the copy marked with the date of receipt to the person presenting the affidavit. The assessor shall index the affidavits in a manner that permits cross-referencing to other records in the assessor's office pertaining to the specific property described in the affidavit. The affidavit and its contents are not part of the valuation record of the assessor.

D. The affidavit required by Subsection A of this section shall not be required for:

(1) a deed transferring nonresidential property;

(2) a deed that results from the payment in full or forfeiture by a transferee under a recorded real estate contract or recorded memorandum of real estate contract;

(3) a lease of or easement on real property, regardless of the length of term;

(4) a deed, patent or contract for sale or transfer of real property in which an agency or representative of the United States, New Mexico or any political subdivision of the state is the named grantor or grantee and authorized transferor or transferee;

(5) a quitclaim deed to quiet title or clear boundary disputes;

(6) a conveyance of real property executed pursuant to court order;

(7) a deed to an unpatented mining claim;

(8) an instrument solely to provide or release security for a debt or obligation;

(9) an instrument that confirms or corrects a deed previously recorded;

(10) an instrument between husband and wife or parent and child with only nominal actual consideration therefor;

(11) an instrument arising out of a sale for delinquent taxes or assessments;

(12) an instrument accomplishing a court-ordered partition;

(13) an instrument arising out of a merger or incorporation;

(14) an instrument by a subsidiary corporation to its parent corporation for no consideration, nominal consideration or in sole consideration of the cancellation or surrender of the subsidiary's stock;

(15) an instrument from a person to a trustee or from a trustee to a trust beneficiary with only nominal actual consideration therefor;

(16) an instrument to or from an intermediary for the purpose of creating a joint tenancy estate or some other form of ownership; or

(17) an instrument delivered to establish a gift or a distribution from an estate of a decedent or trust.

E. The affidavit required by Subsection A of this section shall not be construed to be a valuation record pursuant to Section 7-38-19 NMSA 1978.

F. Prior to November 1, 2003, the department shall print and distribute to each county assessor affidavit forms for distribution to the public upon request.

History: Laws 2003, ch. 118, § 2; 2005, ch. 24, § 1.

**ANNOTATIONS**

**The 2005 amendment,** effective June 17, 2005, provided that a transferor or transferee or their agents who record deeds, real estate contracts and memorandum of real estate contracts that transfer interest in residential property for residential taxation purposes shall file an affidavit with the county assessor in a form approved by the taxation and revenue department, which shall include the terms of the sale, including the amount of seller incentives; provided that the county assessor shall place the date of receipt on a copy of the affidavit and give the copy of the affidavit to the person presenting the affidavit; and provided that this section does not apply to a deed transferring nonresidential property.

## 7-38-12.2. Penalties.

A. A person who intentionally refuses to make a required report within the time period specified under the provisions of Section 7-38-12.1 NMSA 1978 or who knowingly makes a false statement on an affidavit required under the provisions of Section 7-38-12.1 NMSA 1978 is guilty of a misdemeanor and upon conviction shall be punished by the imposition of a fine of not more than one thousand dollars ($1,000).

B. The secretary, any employee or any former employee of the department or any other person subject to the provisions of Section 7-38-12.1 NMSA 1978 who willfully releases information in violation of that section, except as provided in Section 7-38-4 NMSA 1978 or as part of a protest proceeding as defined in Section 7-38-24 NMSA 1978, is guilty of a misdemeanor and shall be fined not more than one thousand dollars ($1,000).

**History:** Laws 2003, ch. 118, § 3.

**ANNOTATIONS**

**Effective dates. —** Laws 2003, ch. 118, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

## 7-38-13. Statement of decrease in value of property subject to local valuation.

A. No later than the last day of February of a tax year, any owner of property subject to valuation by the county assessor who believes that the value of his property has decreased in the previous tax year may file with the county assessor a signed statement describing the property affected, the cause and nature of the decrease in value and the amount by which the owner contends the valuation of the property has been decreased. Prior to determining the value of the property, the county assessor or an employee of the assessor must view the property described in the statement. The county assessor shall note on the back of the statement the date the property was viewed, by whom it was viewed and any action taken or to be taken as a result. The provisions of this subsection include a decrease in valuation of property due to a change in ownership, location or existence of personal property subject to local valuation, and in those cases the assessor or his employee shall verify the alleged change and make an appropriate notation of the date of verification, the person who made it and any action taken or to be taken as a result.

B. Reports required or authorized under this section to be filed by the owner of property may be filed by the owner's authorized agent.

**History:** 1953 Comp., § 72-31-13, enacted by Laws 1973, ch. 258, § 53; 1991, ch. 213, § 2.

**ANNOTATIONS**

**The 1991 amendment,** effective January 1, 1992, deleted "Statement of improvements to real property subject to local valuation" in the section heading; deleted former Subsection A, relating to filing a statement of improvements to real property subject to local valuation; designated former Subsections B and C as Subsections A and B; and made minor stylistic changes in Subsection A.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 72 Am. Jur. 2d State and Local Taxation §§ 765, 766.

## 7-38-14. Tabulation of construction permits; information required to be furnished to county assessors.

A. By the tenth day of each month, the trade boards operating under the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978] shall furnish the assessor of each county with a tabulation of all permits which they have issued in the assessor's county in the previous month for all construction projects, the cost of each of which exceeded one thousand dollars ($1,000). The tabulation shall include the name of the owner of the property for which a permit was issued, the construction location and the cost of the construction project for which the permit was issued. A copy of the tabulation shall be sent to the department.

B. By the tenth day of each month, each county or municipality issuing building permits shall furnish the assessor of the county issuing the permit or the county in which the municipality is located with a tabulation of all building permits issued in the previous month for all construction projects, the cost of each of which exceeded one thousand dollars ($1,000). The tabulation shall include the name of the owner of the property for which a permit was issued, the construction location and the cost of the construction project for which the permit was issued. A copy of the tabulation shall be sent to the department.

C. Upon receiving the information required to be furnished under this section, the county assessors and the department shall enter any required changes in their valuation or other records.

**History:** 1953 Comp., § 72-31-14, enacted by Laws 1973, ch. 258, § 54.

## 7-38-15. Information on real property sold, purchased, contracted to be sold or purchased, or exchanged by governmental bodies to be sent to or obtained by the department; department to compile and send information to county assessors.

A. By the twentieth day of each month, the department shall obtain from appropriate agencies of the United States the following information relating to real property transactions occurring during the preceding month:

(1) a list by legal description of each parcel of real property in the state that was sold, purchased, contracted to be sold or purchased, or exchanged by agencies of the United States government; and

(2) the names and addresses of each of the transferors and transferees of the property required to be listed under Paragraph (1) of this subsection.

B. By the twentieth day of each month, each state agency and the governing body of each of the state's political subdivisions shall report to the department the following information relating to real property transactions occurring during the preceding month:

(1) a list by legal description of each parcel of real property in the state that was sold, purchased, contracted to be sold or purchased, or exchanged by the state agency or the political subdivisions; and

(2) the names and addresses of each of the transferors and transferees of the property listed under Paragraph (1) of this subsection.

C. The information gathered by the department on real property that is subject to local valuation for property taxation purposes shall be compiled and sent immediately to the county assessors of the counties in which the reported property is located. The county assessor receiving the information shall enter any required changes in the valuation or other records and shall also take any action that is required under the Property Tax Code as a result of the receipt of the information.

D. The information gathered by the department on real property that is subject to valuation for property taxation purposes by the department shall be compiled and retained by the department. The department shall enter any required changes in its valuation or other records and shall also take any action that is required under the Property Tax Code as a result of the receipt of the information.

**History:** 1953 Comp., § 72-31-15, enacted by Laws 1973, ch. 258, § 55.

## 7-38-16. Condemnation proceedings; duty of condemning authority to notify county assessor.

A. Upon the issuance of a court order making permanent an order of preliminary entry in any condemnation proceeding brought by any governmental authority in this state exercising the power of eminent domain, or upon the issuance of a final order of condemnation if no order allowing preliminary entry is issued, the condemning authority shall notify the county assessor of the county in which the land subject to condemnation is situated of:

(1) the fact of the issuance of an order making permanent an order of preliminary entry or an order of final condemnation and the date of the order;

(2) the description and ownership of the land subject to the order; and

(3) the date that physical possession of the land was or will be assumed by the condemning authority under a preliminary entry order.

B. Upon receipt of the notification required under Subsection A, the county assessor shall make appropriate changes in his valuation records to indicate as owner of the land

for property taxation purposes the condemning authority as of the date of possession or the date of a final order of condemnation. If the land involved is subject to valuation for property taxation purposes by the department, the county assessor shall notify the department of the changes.

C. This section does not authorize the proration of taxes for a tax year in which ownership changes as a result of condemnation proceedings, but a condemning authority may contract or stipulate with an owner of land subject to condemnation for the proration of the owner's tax liability.

**History:** 1953 Comp., § 72-31-16, enacted by Laws 1973, ch. 258, § 56.

**ANNOTATIONS**

**Cross references.** — For condemnation proceedings generally, *see* Chapter 42A NMSA 1978.

## 7-38-17. Claiming exemptions; requirements; penalties.

A. Subject to the requirements of Subsection E of this section, head-of-family exemptions, veteran exemptions, disabled veteran exemptions or veterans' organization exemptions claimed and allowed in a tax year need not be claimed for subsequent tax years if there is no change in eligibility for the exemption nor any change in ownership of the property against which the exemption was claimed. Head-of-family, veteran and veterans' organization exemptions allowable under this subsection shall be applied automatically by county assessors in the subsequent tax years.

B. Other exemptions of real property specified under Section 7-36-7 NMSA 1978 for nongovernmental entities shall be claimed in order to be allowed. Once such exemptions are claimed and allowed for a tax year, they need not be claimed for subsequent tax years if there is no change in eligibility. Exemptions allowable under this subsection shall be applied automatically by county assessors in subsequent tax years.

C. Except as set forth in Subsection H of this section, an exemption required to be claimed under this section shall be applied for no later than thirty days after the mailing of the county assessor's notices of valuation pursuant to Section 7-38-20 NMSA 1978 in order for it to be allowed for that tax year.

D. A person who has had an exemption applied to a tax year and subsequently becomes ineligible for the exemption because of a change in the person's status or a change in the ownership of the property against which the exemption was applied shall notify the county assessor of the loss of eligibility for the exemption by the last day of February of the tax year immediately following the year in which loss of eligibility occurs.

E. Exemptions may be claimed by filing proof of eligibility for the exemption with the county assessor. The proof shall be in a form prescribed by regulation of the

department. Procedures for determining eligibility of claimants for any exemption shall be prescribed by regulation of the department, and these regulations shall include provisions for requiring the veterans' services department to issue certificates of eligibility for veteran and veterans' organization exemptions in a form and with the information required by the department. The regulations shall also include verification procedures to assure that veteran exemptions in excess of the amount authorized under Section 7-37-5 NMSA 1978 are not allowed as a result of multiple claiming in more than one county or claiming against more than one property in a single tax year.

F. The department shall consult and cooperate with the veterans' services department in the development, adoption and promulgation of regulations under Subsection E of this section. The veterans' services department shall comply with the promulgated regulations. The veterans' services department shall collect a fee of five dollars ($5.00) for the issuance of a duplicate certificate of eligibility to a veteran or to a veterans' organization.

G. A person who violates the provisions of this section by intentionally claiming and receiving the benefit of an exemption to which the person is not entitled or who fails to comply with the provisions of Subsection D of this section is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000). A county assessor or the assessor's employee who knowingly permits a claimant for an exemption to receive the benefit of an exemption to which the claimant is not entitled is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) and shall also be automatically removed from office or dismissed from employment upon conviction under this subsection.

H. A veteran or the veteran's unmarried surviving spouse who became eligible to receive a property tax exemption due to the expansion of the class of eligible veterans resulting from approval by the electorate in November 2004 of an amendment to Article 8, Section 5 of the constitution of New Mexico shall apply at the time the veteran or the veteran's unmarried surviving spouse applies for the 2005 veteran exemption, to the county assessor of the county in which the property of the veteran or the veteran's unmarried surviving spouse is located to have the veteran exemptions for the 2004 and 2005 property tax years applied to the 2005 taxable value of the property. The same form of documentation required for a veteran's property exemption for property tax year 2005 is required to be presented to the county assessor for property tax year 2004.

History: 1953 Comp., § 72-31-17, enacted by Laws 1973, ch. 258, §57; 1974, ch. 92, § 9; 1975, ch. 9, § 1; 1982, ch. 28, § 10; 2000, ch. 92, §3; 2000, ch. 94, § 3; 2003, ch. 26, § 1; 2004, ch. 19, § 22; 2005, ch. 230, § 2; 2011, ch. 102, § 2.

## ANNOTATIONS

**Cross references.** — For head of family exemption, *see* 7-37-4 NMSA.

For veteran exemption, *see* 7-37-5 NMSA 1978.

For disabled veteran exemption, *see* 7-37-5.1 NMSA 1978.

For constitutional provision as to head of family and veteran exemptions, *see* N.M. Const., art. VIII, § 5.

For constitutional provision as to disabled veteran exemption, *see* N.M. Const., art. VIII, § 15.

**The 2011 amendment,** effective June 17, 2011, provided the procedure for claiming the veterans' organization property tax exemption.

**The 2005 amendment,** effective April 6, 2005, in Subsection A, deleted the former provisions that limited exemptions to claimed and allowed after specified dates; added the exception in Subsection C; and added Subsection H to provide that a veteran or a veteran's unmarried surviving spouse shall apply for the exemption authorized in the November 2004 constitutional amendment to Article 8, Section 5 of the New Mexico constitution when the veteran or surviving spouse applies for the 2005 veteran exemption.

**The 2004 amendment,** effective May 19, 2004, amended Subsections E and F of this section to change "veterans' service commission" to "veterans' services department".

**The 2003 amendment,** effective March 16, 2003, substituted "thirty days after the mailing of the county assessors' notices of valuation pursuant to Section 7-38-20 NMSA 1978" for "the last day of February of the tax year in which it is required to be claimed" in Subsection C.

**The 2000 amendment,** effective March 7, 2000, in Subsection A, inserted "or a subsequent" following "1974" and "1982" and inserted "or disabled veteran exemptions claimed and allowed in the 2000 or a subsequent tax year"; deleted Subsection B, relating to unclaimed exemptions and redesignated the remaining subsections and adjusted internal references where appropriate, and substituted "department" for "division" throughout the section. Laws 2000, ch. 92, § 3 enacted identical amendments to this section. The section was set out as amended by Laws 2000, ch. 94, § 3. *See* 12-1-8 NMSA 1978.

**Regulations of division to be followed to claim exemption.** — Failure to comply with the procedures prescribed by regulation of the department, under Subsection E, can result in a denial of a claim for exemption. Cottonwood Gulch Found. v. Gutierrez, 1985-NMCA-042, 102 N.M. 667, 699 P.2d 140.

**Inspections and interviews.** — The provisions of this section do not require any specific investigation or interviews by the county assessor when considering an application for exemption from property tax. Georgia O'Keeffe Museum v. Cnty. of Santa Fe, 2003-NMCA-003, 133 N.M. 297, 62 P.3d 754.

## 7-38-17.1. Presumption of nonresidential classification; declaration of residential classification.

A. Property subject to valuation for property taxation purposes for the 1982 and succeeding tax years is presumed to be nonresidential and will be so recorded by the appropriate valuation authority unless the property owner declares the property to be residential. This declaration will be made on a form prescribed by the division, signed by the owner or his agent and mailed to the valuation authority not later than the last day of February of the property tax year to which it applies. The form for the declaration shall be mailed by the valuation authority to property owners no later than January 31 of each property tax year and shall include the property owner's name and address and the description or identification of the property. It may be included as part of a preliminary notice of valuation form or any other similar form mailed to property owners during the appropriate time period. The valuation authority will take reasonable steps to verify any such declaration. Once the declaration is accepted, the valuation authority will make appropriate entries on the valuation records. Declarations, once accepted by the valuation authority, need not be made in subsequent tax years if there is no change in the use of the property.

B. No later than the last day of February of each tax year, every owner of property subject to valuation for property taxation purposes shall report to the appropriate valuation authority as set out in Section 7-36-2 NMSA 1978 whenever the use of the property changes from residential to nonresidential or from nonresidential to residential. This report will be made on a form prescribed by the division and will be signed by the owner of the property or his agent.

C. Any person who violates Subsection A of this section by declaring a property which is nonresidential to be residential or who violates Subsection B of this section by failing to report a change of use from residential to nonresidential shall be liable, for each tax year to which declaration or failure to report applies, for:

(1) any additional taxes because of a difference in tax rates imposed against residential and nonresidential property;

(2) interest, calculated as provided under Section 7-38-49 NMSA 1978, on any additional taxes determined to be due under Paragraph (1) of this subsection; and

(3) a civil penalty of five percent of any additional taxes determined to be due under Paragraph (1) of this subsection.

D. Any person who violates Subsection A of this section by declaring a property which is nonresidential to be residential with the intent to evade any tax or who violates Subsection B of this section by refusing or failing to report a change of use from residential to nonresidential with the intent to evade any tax is guilty of a misdemeanor and shall be punished by the imposition of a fine of not more than one thousand dollars ($1,000). Any director, employee of the division, county assessor or employee of any

assessor who knowingly records a property which is nonresidential to be residential is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) and shall be automatically removed from office or dismissed from employment upon conviction under this subsection.

E. The civil penalties authorized in Subsection C of this section shall be imposed and collected at the same time and in the same manner that the tax and interest are imposed and collected. The county treasurer is responsible for making entries on the appropriate records indicating amounts due and the date of payment.

**History:** 1978 Comp., § 7-38-17.1, enacted by Laws 1981, ch. 37, § 68.

**ANNOTATIONS**

**Cross references.** — For classification of residential and nonresidential property, *see* 7-36-2.1 NMSA 1978.

For limitations on tax rates on residential property, *see* 7-37-7.1 NMSA 1978.

## 7-38-18. Publication of notice of certain provisions relating to reporting property for valuation and claiming of exemptions.

A. Each county assessor shall have a notice published in a newspaper of general circulation within the county at least once a week during the first three full weeks in January of each tax year, which notice shall include a brief statement of the provisions of:

(1) Section 7-38-8 NMSA 1978 relating to requirements for reporting property for valuation for property taxation purposes;

(2) Section 7-38-8.1 NMSA 1978 relating to requirements for reporting exempt property;

(3) Section 7-38-13 NMSA 1978 relating to filing statements of decrease in value of property;

(4) Section 7-38-17 NMSA 1978 relating to requirements for claiming veteran, disabled veteran, head-of-family and other exemptions;

(5) Section 7-38-17.1 NMSA 1978 relating to the requirements for declaring residential property and changes in use of property; and

(6) Section 7-36-21.3 NMSA 1978 relating to requirements for claiming eligibility for the limitation on increases in valuation for property taxation purposes of a single-family dwelling owned and occupied by a person who is sixty-five years of age or older.

B. The department shall develop and issue a uniform form of notice to be used by county assessors to fulfill the requirements of this section.

**History:** 1953 Comp., § 72-31-18, enacted by Laws 1973, ch. 258, § 58; 1981, ch. 37, § 69; 1982, ch. 28, § 11; 2000, ch. 92, § 4; 2000, ch. 94, § 4; 2001, ch. 321, § 3.

**ANNOTATIONS**

**The 2001 amendment,** effective April 5, 2001, deleted "requirements for reporting improvements to real property and to" preceding "filing statements" in Paragraph A(3); and added Paragraph A(6).

**Applicability. —** Laws 2001, ch. 321, § 6 made the provisions of this act applicable to the 2001 property tax year and succeeding tax years.

**The 2000 amendment,** effective March 7, 2000, in Subsection A(4), inserted "disabled veteran" and in Subsection B, substituted "department" for "division". Laws 2000, ch. 92, § 4 enacted identical amendments to this section. The section was set out as amended by Laws 2000, ch. 94, § 4. *See* 12-1-8 NMSA 1978.

## 7-38-19. Valuation records.

A. The county assessor shall maintain a record of the values determined for property taxation purposes on all property within the county subject to valuation under the Property Tax Code, whether the values are determined by the county assessor or the department.

B. The department shall maintain, in addition to the county assessors' records, a record of the values determined for property taxation purposes on all property subject to department valuation under the Property Tax Code.

C. Valuation records shall contain the information required by the Property Tax Code and regulations of the department.

D. Except as provided otherwise in Subsection E of this section, valuation records are public records.

E. Valuation records that contain information regarding the income, expenses other than depreciation, profits or losses associated with a specific property or a property owner or that contain diagrams or other depictions of the interior arrangement of buildings, alarm systems or electrical or plumbing systems are not public records and may be released only in accordance with Paragraphs (2) through (7) of Subsection A of Section 7-38-4 NMSA 1978.

**History:** 1953 Comp., § 72-31-19, enacted by Laws 1973, ch. 258, § 59; 1982, ch. 28, § 12; 1991, ch. 166, § 8.

**ANNOTATIONS**

**The 1991 amendment,** effective June 14, 1991, substituted "department" for "division" throughout the section; deleted "but shall not include the income, expenses other than depreciation, profits or losses associated with a specific property or property owner" at the end of Subsection C; added the exception at the beginning of Subsection D; and added Subsection E.

**Public access.** — District court's decision ordering a county assessor to provide the taxpayer with the requested uniform property record cards, with any confidential information redacted, was affirmed. Gordon v. Sandoval Cnty. Assessor, 2001-NMCA-044, 130 N.M. 573, 28 P.3d 1114.

## 7-38-20. County assessor and department to mail notices of valuation.

A. By April 1 of each year, the county assessor shall mail a notice to each property owner informing the property owner of the net taxable value of the property owner's property that has been valued for property taxation purposes by the assessor and other related information as required by Subsection D of this section.

B. By May 1 of each year, the department shall mail a notice to each property owner informing the property owner of the net taxable value of the property owner's property that has been valued for property taxation purposes by the department and other related information as required by Subsection D of this section.

C. Failure to receive the notice required by this section does not invalidate the value set on the property, any property tax based on that value or any subsequent procedure or proceeding instituted for the collection of the tax.

D. The notice required by this section shall state:

(1) the property owner's name and address;

(2) the description or identification of the property valued;

(3) the classification of the property valued;

(4) the value set on the property for property taxation purposes;

(5) the tax ratio;

(6) the taxable value of the property for the previous and current tax years;

(7) the tax rate from the previous tax year;

(8) the amount of tax from the previous tax year;

(9) with respect to residential property, instructions for calculating an estimated tax for the current tax year, which shall be prominently displayed on the front of the notice, and a disclaimer for such instructions similar to the following:

"The calculation of property tax may be higher or lower than the property tax that will actually be imposed.";

(10) the amount of any exemptions allowed and a statement of the net taxable value of the property after deducting the exemptions;

(11) the allocations of net taxable values to the governmental units;

(12) briefly, the eligibility requirements and application procedures and deadline for claiming eligibility for a limitation on increases in the valuation for property taxation purposes of a single-family dwelling owned and occupied by a person sixty-five years of age or older; and

(13) briefly, the procedures for protesting the value determined for property taxation purposes, classification, allocation of values to governmental units or denial of a claim for an exemption or for the limitation on increases in valuation for property taxation purposes.

E. The county assessor may mail the valuation notice required pursuant to Subsection A of this section to taxpayers with the preceding tax year's property tax bills if the net taxable value of the property has not changed since the preceding taxable year. In this early mailing, the county assessor shall provide clear notice to the taxpayer that the valuation notice is for the succeeding tax year and that the deadlines for protest of the value or classification of the property apply to this mailing date.

History: 1953 Comp., § 72-31-20, enacted by Laws 1973, ch. 258, § 60; 1974, ch. 92, § 10; 1981, ch. 37, § 70; 1996, ch. 39, § 1; 2001, ch. 321, § 4; 2012, ch. 60, § 1.

## ANNOTATIONS

**Cross references.** — For mailing of notices, *see* 7-38-84 NMSA 1978.

**The 2012 amendment,** effective July 1, 2012, required the county assessor to include in the notice of valuation of residential property the taxable values and tax rates for the previous and current tax years and instructions for calculating an estimated tax for the current tax year; in Subsection A, after "valued tor property taxation purposes by the assessor", added the remainder of the sentence; in Subsection B, after "valued for property taxation purposes by the department", added the remainder of the sentence; and in Subsection D, in Paragraph (6), after "property", added the remainder of the sentence, and added Paragraphs (7), (8) and (9).

**The 2001 amendment,** effective April 5, 2001, inserted present Paragraph D(9); designated former Paragraph D(9) as (10); and added the language beginning "or for the limitation on increases" at the end of Paragraph D(10).

**The 1996 amendment,** effective May 15, 1996, substituted "department" for "division" in the section heading and in Subsection B, and added Subsection E.

**Notice not intended for relief or advantage of taxpayer.** — The requirement that the county treasurer (now the county assessor) give written notice to each taxpayer of the amount of his tax adds nothing to the definite imposition of the tax and the equally definite imposition of a penalty to follow upon delinquency. It is intended for the benefit and convenience of the taxpayer, but certainly not for his relief or advantage. Greene v. Esquibel, 1954-NMSC-039, 58 N.M. 429, 272 P.2d 330.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 72 Am. Jur. 2d State and Local Taxation §§ 782 to 785.

84 C.J.S. Taxation § 530.

## 7-38-20.1. Temporary provision; additional instructions to assessors and treasurers; special requirements for 2004 veteran exemption; newly eligible veterans.

A. A county assessor shall include with the notice of valuation distributed to property owners for the 2005 property tax year, a notice to taxpayers informing them that:

(1) a taxpayer who is a veteran or the unmarried surviving spouse of a veteran who was not previously eligible for a veteran property tax exemption may be eligible for that exemption due to the change in Article 8, Section 5 of the constitution of New Mexico adopted in November 2004; and

(2) a taxpayer who is eligible for the veteran tax exemption for the 2005 property tax year may also be eligible for the veteran tax exemption for the 2004 property tax year.

B. The taxpayer shall obtain certification from the veterans' services department verifying that the veteran upon whose service the exemption is claimed is eligible for a tax exemption pursuant to Article 8, Section 5 of the constitution of New Mexico for the 2005 property tax year to present to the county assessor. The veterans' services department shall certify the date on which the veteran became honorably discharged from the armed forces of the United States.

C. The county assessor shall determine from the date of discharge from the armed forces of the United States certified by the veterans' services department if the veteran would have been eligible to receive a tax exemption for the 2004 property tax year based on the veteran's date of discharge from the armed forces of the United States

and the dates on which the taxpayer took title to the property. A veteran would be eligible if the veteran were discharged on a date prior to the thirtieth day following the date on which the county assessor mailed the notice of valuation in 2004 and had title to the property to which the veteran tax exemption is applied at that time.

D. If a taxpayer, who became eligible for the veteran exemption due to the approval of the amendment to Article 8, Section 5 of the constitution of New Mexico, qualifies for the 2004 and 2005 veteran exemptions and has paid in full the taxpayer's property tax liability for the 2004 property tax year, for the 2005 property tax year only the county assessor shall combine the total of the veteran exemptions for those two property tax years and deduct the combined total from the taxable value of the taxpayer's property to obtain the net taxable value for the 2005 property tax year.

**History:** Laws 2005, ch. 230, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 230, § 5 made Laws 2005, ch. 230, § 3 effective April 6, 2005.

**Applicability.** — Laws 2005, ch. 230, § 4 provided that Laws 2005, ch. 230, § 3 was applicable only to the veteran exemptions claimed in a timely manner in the 2005 property tax year.

## 7-38-21. Protests; election of remedies.

A. A property owner may protest the value or classification determined for the property owner's property for property taxation purposes, the allocation of value of the property to a particular governmental unit or a denial of a claim for an exemption or for a limitation on increase in value either by:

(1) filing, as provided in the Property Tax Code, a petition of protest with:

(a) the administrative hearings office; or

(b) the county assessor; or

(2) filing a claim for refund after paying the property owner's taxes as provided in the Property Tax Code.

B. The initiation of a protest under Paragraph (1) of Subsection A of this section is an election to pursue that remedy and is an unconditional and irrevocable waiver of the right to pursue the remedy provided in Paragraph (2) of Subsection A of this section.

C. A property owner may also protest the application to the property owner's property of any administrative fee adopted pursuant to Section 7-38-36.1 NMSA 1978

by filing a claim for refund after paying the property owner's taxes as provided in the Property Tax Code.

History: 1953 Comp., § 72-31-21, enacted by Laws 1973, ch. 258, § 61; 1981, ch. 37, § 71; 1983, ch. 215, § 1; 2001, ch. 24, § 1; 2015, ch. 73, § 19.

**ANNOTATIONS**

**Cross references.** — For definition of "director," *see* 7-35-2 NMSA 1978.

**The 2015 amendment,** effective July 1, 2015, provided for protests of property valuation to be filed with the administrative hearings office; in Subsection A, after "determined for", deleted "his" and added "the property owner's" and after "allocation of value of", deleted "his" and added "the"; in Subsection A, Paragraph (1), after "filing", added "as provided in the Property Tax Code"; in Subsection A, Paragraph (1)(a), after "the", deleted "director" and added "administrative hearings office"; in Subsection A, Paragraph (1)(b), after "county assessor", deleted "as provided in the Property Tax Code"; in Subsection A, Paragraph (2), after "paying", deleted "his" and added "the property owner's"; in Subsection B, after "provided", deleted "under" and added "in"; and in Subsection C, after "application to", deleted "his" and added "the property owner's", and after "paying", deleted "his" and added "the property owner's".

**The 2001 amendment,** effective June 15, 2001, inserted "or for a limitation on increase in value" in Subsection A.

**Protest or refund.** — The alternate methods of protesting the rejection of a tax exemption set out in Subsections A(1) and A(2) are separate and distinct. Where a museum files a protest with the county assessor under Subsection A(1) and then pays the disputed tax, in order to avoid interest and penalty assessments, the museum cannot later apply for a refund under Subsection A(2). Georgia O'Keeffe Museum v. County of Santa Fe, 2003-NMCA-003, 133 N.M. 297, 62 P.3d 754.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 72 Am. Jur. 2d State and Local Taxation §§ 795 to 816.

84 C.J.S. Taxation §§ 512 to 559.

## 7-38-22. Protesting values, classification, allocation of values and denial of exemption determined by the division.

A. A property owner may protest the value or classification determined by the division for the property owner's property for property taxation purposes or the division's allocation of value of the property owner's property to a particular governmental unit or the denial of a claim for an exemption by filing a petition with the administrative hearings office. Filing a petition in accordance with this section entitles a property owner to a hearing on the property owner's protest.

B. Petitions shall:

(1) be filed no later than thirty days after the mailing by the division of the notice of valuation;

(2) state the property owner's name and address and the description of the property;

(3) state why the property owner believes the value, classification, allocation of value or denial of an exemption is incorrect and what the property owner believes the correct value, classification, allocation of value or exemption to be;

(4) state the value, classification, allocation of value or exemption that is not in controversy; and

(5) contain such other information as the administrative hearings office may by rule require.

C. The administrative hearings office shall notify the director and the property owner by certified mail of the date, time and place that the parties may appear before the administrative hearings office to present evidence related to the petition. The notice shall be mailed at least fifteen days prior to the hearing date.

D. The director may provide for an informal conference on the protest before the hearing.

History: 1953 Comp., § 72-31-22, enacted by Laws 1973, ch. 258, § 62; 1974, ch. 92, § 11; 1981, ch. 37, § 72; 2015, ch. 73, § 20.

## ANNOTATIONS

**The 2015 amendment,** effective July 1, 2015, provided for filing petitions with the administrative hearings office when a property owner chooses to protest property values; in Subsection A, after "division for", deleted "his" and added "the property owner's", after "allocation of value of", deleted "his" and added "the property owner's", after "petition with the", deleted "director" and added "administrative hearings office", and after "a hearing on", deleted "his" and added "the property owner's"; in Subsection B, Paragraph (1), after "be filed", deleted "with the division"; in Subsection B, Paragraph (3), after "classification,", deleted "the", and after "incorrect and what", deleted "he" and added "the property owner"; in Subsection B, Paragraph (5), after "information as the", deleted "division" and added "administrative hearings office", and after "may by", deleted "regulation" and added "rule"; and in Subsection C, after "The", deleted "division" and added "administrative hearings office", after "time and place that", deleted "he" and added "the parties", after "appear before the", deleted "director" and added "administrative hearings office", and after "to", deleted "support his" and added "present evidence related to the".

**Provision not applicable** when refund sought for taxes erroneously paid on constitutionally exempt property, because such property is not subject to valuation for property tax purposes. Lovelace Ctr. for Health Sciences v. Beach, 1980-NMCA-004, 93 N.M. 793, 606 P.2d 203.

**Denial of charitable property tax exemption upheld. —** Where the Santa Fe county assessor appealed the district court's decision that petitioner, a retirement and continuing care community, was improperly denied a charitable property tax exemption, the New Mexico supreme court held that the district court erred in concluding that petitioner fulfilled the charitable use requirements for tax exemption under art. VIII, § 3 of the New Mexico constitution, because petitioner, a self-sustaining community that accepts and benefits only financially and medically screened residents based on requirements calculated in the interests of financial security for itself, did not create any substantial public benefit and therefore cannot be entitled to exemption from taxation under 7-36-7(B)(1)(d) NMSA 1978 or N.M. Const., art. VIII, § 3. El Castillo Ret. Residences v. Martinez, 2017-NMSC-026, *aff'g* 2015-NMCA-041, and *overruling* La Vida Llena v. Montoya, 2013-NMCA-048, 299 P.3d 456.

**Constitutional issues are outside the county protests board's statutory authority. —** It is the duty of the judiciary to interpret the constitution, the supreme law of the land, and to set forth the law; a county protests board does not have jurisdiction to hear constitutional issues which are outside the protests board's statutory authority. El Castillo Retirement Residences v. Martinez, 2015-NMCA-041, *overruling* In re Miller, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142, and cert. granted, 2015-NMCERT-004.

Where retirement community was denied a charitable property tax exemption by the county assessor and appealed the county assessor's decision to the Santa Fe county protests board, claiming a charitable property tax exemption under N.M. Const., art. VIII, § 3, it was appropriate for the protests board to decline to hear the constitutional claim, citing a lack of jurisdiction. El Castillo Retirement Residences v. Martinez, 2015-NMCA-041, *overruling* In re Miller, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142, and cert. granted, 2015-NMCERT-004.

**Failure of officials to equalize assessments does not establish interpretation. —** The fact that state officials have, for years, known that there are inequalities or lack of uniformity in tax assessments, and have done nothing about it, does not establish this as official "long-standing interpretation." It is, in essence, merely long-standing failure by respondents and their predecessors to require equalization as plainly required by the constitution and the legislative enactments. State ex rel. Castillo Corp. v. N.M. Tax Comm'n, 1968-NMSC-117, 79 N.M. 357, 443 P.2d 850.

## 7-38-23. Protest hearings; verbatim record; action by hearing officer; time limitations.

A. Except for the rules relating to discovery, the technical rules of evidence and the Rules of Civil Procedure for the District Courts do not apply at a protest hearing conducted pursuant to the provisions of the Property Tax Code [Articles 35 through 38 of Chapter 7 NMSA 1978], but the hearing shall be conducted so that an ample opportunity is provided for the presentation of complaints and defenses. All testimony shall be taken under oath. A verbatim record of the hearings shall be made but need not be transcribed unless required for appeal purposes. A hearing officer shall be designated by the chief hearing officer of the administrative hearings office to conduct the hearing.

B. Final action taken by the hearing officer on a petition shall be by written order. The hearing officer's order shall be made within thirty days after the date of the hearing, but this time limitation may be extended by agreement of the department and the protestant. A copy of the order shall be sent immediately by certified mail to the property owner. A copy of the order shall also be sent to the county assessor.

C. All protests shall be decided within one hundred twenty days of the date the protest is filed unless the parties otherwise agree. The protest shall be denied if the property owner or the property owner's authorized representative fails, without reasonable justification, to appear at the hearing.

D. The hearing officer's order shall be in the name of the chief hearing officer, dated, state the changes to be made in the valuation records, if any, and direct the county assessor to take appropriate action. The department shall make any changes in its valuation records required by the order.

E. Changes in the valuation records shall clearly indicate that the prior entry has been superseded by an order of the hearing officer.

F. The department shall maintain a file of all orders made pursuant to this section. The file shall be open for public inspection.

G. If an order of the hearing officer is appealed under Section 7-38-28 NMSA 1978, the department shall immediately notify the appropriate county assessor of the appeal. Notations shall be made in the valuation records of the assessor and the department indicating the pendency of the appeal.

History: 1953 Comp., § 72-31-23, enacted by Laws 1973, ch. 258, § 63; 1982, ch. 28, § 13; 1986, ch. 20, § 114; 2015, ch. 73, § 21.

## ANNOTATIONS

**Cross references. —** For rules relating to discovery, *see* Rule 1-026 NMRA et seq.

For the Rules of Civil Procedure for the District Courts *see* 1-001 NMRA et seq.

**The 2015 amendment,** effective July 1, 2015, required the chief hearing officer of the administrative hearings office to designate hearing officers to preside over protest hearings conducted pursuant to the Property Tax Code; in Subsection A, after "do not apply at", added "a", after "protest", deleted "hearings before the hearing officer" and added "hearing conducted pursuant to the provisions of the Property Tax Code", after "but the", changed "hearings" to "hearing", and after "designated by the", deleted "secretary" and added "chief hearing officer of the administrative hearings office"; in Subsection C, after "property owner or", deleted "his" and added "the property owner's"; and in Subsection D, after "in the name of the", deleted "secretary" and added "chief hearing officer".

## 7-38-24. Protesting values, classification, allocation of values and denial of exemption or limitation on increase in value determined by the county assessor.

A. A property owner may protest the value or classification determined by the county assessor for his property for property taxation purposes, the assessor's allocation of value of his property to a particular governmental unit or denial of a claim for an exemption or for a limitation on increase in value by filing a petition with the assessor. Filing a petition in accordance with this section entitles the property owner to a hearing on his protest.

B. Petitions shall:

(1) be filed with the county assessor on or before:

(a) the later of April 1 of the property tax year to which the notice applies or thirty days after the mailing by the assessor of the notice of valuation if the notice was mailed with the preceding year's tax bill in accordance with Section 7-38-20 NMSA 1978;

(b) thirty days after the mailing of a property tax bill on omitted property pursuant to Section 7-38-76 NMSA 1978; or

(c) in all other cases, thirty days after the mailing by the assessor of the notice of valuation;

(2) state the property owner's name and address and the description of the property;

(3) state why the property owner believes the value, classification, allocation of value or denial of a claim of an exemption or of a limitation on increase in value is incorrect and what he believes the correct value, classification, allocation of value or exemption to be; and

(4) state the value, classification, allocation of value or exemption that is not in controversy.

C. Upon receipt of the petition, the county assessor shall schedule a hearing before the county valuation protests board and notify the property owner by certified mail of the date, time and place that he may appear to support his petition. The notice shall be mailed at least fifteen days prior to the hearing date.

D. The county assessor may provide for an informal conference on the protest before the hearing.

**History:** 1953 Comp., § 72-31-24, enacted by Laws 1973, ch. 258, § 64; 1974, ch. 92, § 12; 1981, ch. 37, § 73; 1997, ch. 130, § 1; 2001, ch. 24, § 2; 2003, ch. 95, § 1.

## ANNOTATIONS

**The 2003 amendment,** effective June 20, 2003, inserted present Subparagraph B(1)(b) and redesignated former Subparagraph (B)(1)(b) as present Subparagraph (B)(1)(c).

**The 2001 amendment,** effective June 15, 2001, inserted "or limitation on increase in value" in the section heading; inserted "or for a limitation on increase in value" in Subsection A and in Paragraph B(3); and inserted "county" preceding "assessor" in Subsection D.

**The 1997 amendment,** effective June 20, 1997, in Subsection B, rewrote Paragraph (1) and deleted "the" preceding "allocation" in Paragraph (3).

**Provision not applicable** when refund sought for taxes erroneously paid on constitutionally exempt property, because such property is not subject to valuation for property tax purposes. Lovelace Ctr. for Health Sciences v. Beach, 1980-NMCA-004, 93 N.M. 793, 606 P.2d 203.

**Protests board to hear any grounds for protest.** — When the language of a statute is clear and unambiguous, the statute must be given its literal meaning. The language of this section and Section 7-38-25 NMSA 1978 (formerly 72-2-37 and 72-2-38, 1953 Comp.) clearly and unambiguously gives to the county valuation protests boards the duty to hear a protest of the valuation of a taxpayer's property on any grounds whatsoever, including the grounds of allegedly unconstitutional discrimination in comparison with assessments of other properties. In re Miller, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142.

**Board's duty to protect taxpayers from delinquent appraisers and assessors. —** The board was not created for the purpose of burdening the people; its duty is to protect taxpayers from appraisers and county assessors who are delinquent in the performance of their work. Black v. Bernalillo Cnty. Valuation Protest Bd., 1980-NMCA-152, 95 N.M.

136, 619 P.2d 581, *overruled on other grounds*, Jicarilla Apache Nation v. Rodarte, 2004-NMSC-035, 136 N.M. 630, 103 P.3d 554.

**Protest hearing should not be viewed as adversary proceeding** with the board arrayed against the taxpayer. Black v. Bernalillo Cnty. Valuation Protest Bd., 1980-NMCA-152, 95 N.M. 136, 619 P.2d 581, *overruled on other grounds*, Jicarilla Apache Nation v. Rodarte, 2004-NMSC-035, 136 N.M. 630, 103 P.3d 554.

**Court intervention required upon board's lack of reasoned decision-making.** — A court's supervisory function calls on it to intervene with the protest board not merely in case of procedural inadequacies, or a bypassing of the mandate in the legislative charter, but more broadly if the court becomes aware, especially from a combination of danger signals, that the board has not really taken a hard look at the salient problems and has not genuinely engaged in reasoned decision-making. Black v. Bernalillo Cnty. Valuation Protest Bd., 1980-NMCA-152, 95 N.M. 136, 619 P.2d 581, *overruled on other grounds*, Jicarilla Apache Nation v. Rodarte, 2004-NMSC-035, 136 N.M. 630, 103 P.3d 554.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Standing of one taxpayer to complain of underassessment or nonassessment of property of another for state and local taxation, 9 A.L.R.4th 428.

## 7-38-25. County valuation protests boards; creation; duties; funding.

A. There is created in each county a "county valuation protests board". Each board shall consist of three voting members. Three alternates shall also be appointed to serve as voting members in the absence of a voting member. Voting members and alternates shall be appointed as follows:

(1) one member and one alternate shall be a qualified elector of the county and shall be appointed by the board of county commissioners for a term of two years;

(2) one member and one alternate shall be a qualified elector of the county, shall have demonstrated experience in the field of valuation of property and shall be appointed by the board of county commissioners for a term of two years; and

(3) one member and one alternate shall be a property appraisal officer employed by the department, assigned by the director and shall be the chairman of the board.

B. Members of the board and alternates appointed under Paragraph (1) or (2) of Subsection A of this section shall not hold any elective public office during the term of their appointment nor shall any such member or alternate be employed by the state, a political subdivision or a school district during the term of his appointment.

C. Vacancies occurring on the board shall be filled by the authority making the original appointment and shall be for the unexpired term of the vacated membership.

D. The county valuation protests board shall hear and decide protests of determinations made by county assessors and protested under Section 7-38-24 NMSA 1978.

E. Members of the board and alternates when serving as voting members appointed under Paragraphs (1) and (2) of Subsection A of this section shall be paid as independent contractors at the rate of eighty dollars ($80.00) a day for each day of actual service. The payment of board members and alternates and all other actual and direct expenses incurred in connection with protest hearings shall be paid by the department.

**History:** 1953 Comp., § 72-31-25, enacted by Laws 1973, ch. 258, § 65; 1977, ch. 129, § 1; 1981, ch. 37, § 74; 1982, ch. 25, § 1; 1997, ch. 159, § 1.

## ANNOTATIONS

**The 1997 amendment,** effective June 20, 1997, inserted "Three alternates shall also be appointed to serve as voting members in the absence of a voting member. Voting members and alternates shall be" in the introductory paragraph of Subsection A; inserted "and one alternate" following "one member" in Paragraphs A(1), (2), and (3); and made related stylistic changes throughout the section.

**The county valuation protests board** is a quasi-judicial body. Addis v. Santa Fe Cnty. Valuation Protests Bd., 1977-NMCA-122, 91 N.M. 165, 571 P.2d 822.

**Board must act in session with quorum.** — When a duty is entrusted to a board composed of different individuals, that board can act officially only as such, in convened session, with the members, or a quorum thereof, present. Petition of Kinscherff, 1976-NMCA-097, 89 N.M. 669, 556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620.

**Quorum must be present** before county valuation protests board can act officially and any act done with less than a quorum present is invalid. Petition of Kinscherff, 1976-NMCA-097, 89 N.M. 669, 556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620.

**Acts of majority** of quorum are binding on entire body. Petition of Kinscherff, 1976-NMCA-097, 89 N.M. 669, 556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620.

**Quorum not present when not enough members on board.** — When the protests board, consisting of three members, instead of the six required by the prior version of this section, heard the protests and entered the orders, a quorum was not present, and the orders of the board were invalid. San Pedro S. Group v. Bernalillo Cnty. Valuation Protest Bd., 1976-NMCA-116, 89 N.M. 784, 558 P.2d 53.

**Common-law rule of quorum applies in absence of statute.** — Under the former version of this section a quorum of the voting members present was not sufficient for the hearing to be the official act of the board since absent any such statutory provisions the common-law rule that a majority of all of the members of a board or commission shall constitute a quorum applied. Petition of Kinscherff, 1976-NMCA-097, 89 N.M. 669, 556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620.

**Denial of charitable property tax exemption upheld.** — Where the Santa Fe county assessor appealed the district court's decision that petitioner, a retirement and continuing care community, was improperly denied a charitable property tax exemption, the New Mexico supreme court held that the district court erred in concluding that petitioner fulfilled the charitable use requirements for tax exemption under art. VIII, § 3 of the New Mexico constitution, because petitioner, a self-sustaining community that accepts and benefits only financially and medically screened residents based on requirements calculated in the interests of financial security for itself, did not create any substantial public benefit and therefore cannot be entitled to exemption from taxation under 7-36-7(B)(1)(d) NMSA 1978 or N.M. Const., art. VIII, § 3. El Castillo Ret. Residences v. Martinez, 2017-NMSC-026, *aff'g* 2015-NMCA-041, and *overruling* La Vida Llena v. Montoya, 2013-NMCA-048, 299 P.3d 456.

**Constitutional issues are outside the county protests board's statutory authority.** — It is the duty of the judiciary to interpret the constitution, the supreme law of the land, and to set forth the law; a county protests board does not have jurisdiction to hear constitutional issues which are outside the protests board's statutory authority. El Castillo Retirement Residences v. Martinez, 2015-NMCA-041, *overruling* In re Miller, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142, and cert. granted, 2015-NMCERT-004.

Where retirement community was denied a charitable property tax exemption by the county assessor and appealed the county assessor's decision to the Santa Fe county protests board, claiming a charitable property tax exemption under N.M. Const., art. VIII, § 3, it was appropriate for the protests board to decline to hear the constitutional claim, citing a lack of jurisdiction. El Castillo Retirement Residences v. Martinez, 2015-NMCA-041, *overruling* In re Miller, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142, and cert. granted, 2015-NMCERT-004.

**Protests board to hear any grounds for protest.** — When the language of a statute is clear and unambiguous, the statute must be given its literal meaning. The language of Section 7-38-24 NMSA 1978 and this section (formerly 72-2-37 and 72-2-38, 1953 Comp.) clearly and unambiguously gives to the county valuation protests boards the duty to hear a protest of the valuation of a taxpayer's property on any grounds whatsoever, including the grounds of allegedly unconstitutional discrimination in comparison with assessments of other properties. El Castillo Retirement Residences v. Martinez, 2015-NMCA-041, *overruling* In re Miller, 1975-NMCA-116, 88 N.M. 492, 542

P.2d 1182, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142, and cert. granted, 2015-NMCERT-004.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Standing of one taxpayer to complain of underassessment or nonassessment of property of another for state and local taxation, 9 A.L.R.4th 428.

## 7-38-26. Scheduling of protest hearings.

Before scheduling a protest hearing, the county assessor shall notify the director and assure that the assigned property appraisal officer board member will be made available. The director may assign a property appraisal officer to act as a member of more than one county valuation protests board. He also may establish and publish schedules for hearings on protests in the various counties to make the most efficient use of assigned property appraisal officers and assure the expeditious determination of protests.

**History:** 1953 Comp., § 72-31-26, enacted by Laws 1973, ch. 258, § 66.

## 7-38-27. Protest hearing; verbatim record; action by county valuation protests board; time limitations.

A. Except for the rules relating to discovery, the technical rules of evidence and the Rules Civil Procedure for the District Courts do not apply at protest hearings before a county valuation protests board, but the hearing shall be conducted so that an ample opportunity is provided for the presentation of complaints and defenses. All testimony shall be taken under oath. A verbatim record of the hearing shall be made but need not be transcribed unless required for appeal purposes.

B. Final action taken by the board on a petition shall be by written order signed by the chairman or a member of the board designated by the chairman. The order shall be made within thirty days after the date of the hearing, but this time limitation may be extended by agreement of the board and the protestant. A copy of the order shall be sent immediately by certified mail to the property owner. A copy of the order shall also be sent to the director and the county assessor.

C. All protests shall be decided within one hundred eighty days of the date the protest is filed. The protest shall be denied if the property owner or his authorized representative fails, without reasonable justification, to appear at the hearing.

D. The board's order shall be dated, state the changes to be made in the valuation records, if any, and direct the county assessor to take appropriate action. The division shall make any changes in its valuation records required by the order.

E. Changes in the valuation records shall clearly indicate that the prior entry has been superseded by an order of the board.

F. The assessor shall maintain a file of all orders made by the county valuation protests board. The file shall be open for public inspection.

G. If an order of a county valuation protests board is appealed under Section 7-38-28 NMSA 1978, the director shall immediately notify the appropriate county assessor of the appeal. Notations shall be made in the valuation records of the assessor and the division indicating the pendency of the appeal.

**History:** 1953 Comp., § 72-31-27, enacted by Laws 1973, ch. 258, § 67; 1982, ch. 28, § 14.

## ANNOTATIONS

**Cross references.** — For rules relating to discovery, *see* Rule 1-026 NMRA et seq.

**Procedural due process denied when board excluded evidence.** — By unlawfully excluding evidence and denying the right to discovery, the county valuation protests boards curtailed taxpayers' right to be heard and to present any defense, and, in so doing, they deprived appellants of their constitutionally guaranteed right to procedural due process. Taxpayers are entitled to new hearings, at which evidence of valuation of comparable properties or other properties of the same class may be admissible in evidence and are to be weighed by the boards in arriving at their decisions. In re Miller, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142.

**Refusal to allow witnesses.** — A notion of fairness is included within the concept of procedural due process, and accordingly in a hearing before an administrative agency, the agency must examine both sides of the controversy taking and weighing the evidence that is offered and finding facts based on a consideration of the evidence, in order to fairly protect the interests and rights of all who are involved; a refusal to allow witnesses to be called is a denial of procedural due process. In re Miller, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142.

**Denial of right to take depositions.** — To deny the taxpayer the right to take depositions at county valuation protests board hearings denies him the right to a fair hearing. Such denial constitutes a denial of due process under U.S. Const., amend. XIV. In re Miller, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142.

**Arbitrary for board to reach decision without considering all evidence.** — The state has not given administrative boards the authority to catalogue which evidence shall be considered in deciding a protest, and when the administrative board has reached a decision and promulgated an order without considering all the evidence presented at the hearing, its decision and order is arbitrary and should be reversed. In

re Miller, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142.

**Full opportunity to be heard required.** — Administrative proceedings must conform to fundamental principles of justice and the requirements of due process of law; a litigant must be given a full opportunity to be heard with all rights related thereto. In re Miller, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142.

**Rulings void if not in accord with statute.** — Rulings by an administrative agency not in accord with the basic statutory requirements relating to the agency will render its decision void. La Jara Land Developers, Inc. v. Bernalillo County Assessor, 1982-NMCA-006, 97 N.M. 318, 639 P.2d 605.

**Administrative law rules of evidence govern admissions.** — While neither the rules of evidence, the rules of civil procedure nor the rules provided by the Administrative Procedures Act apply, there must be some rules to govern admission of evidence in proceedings before the county valuation protests boards, and these rules must be found in the body of administrative law that has grown up in the courts. In re Miller, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142.

**Wide latitude allowed in admission of evidence.** — The rationale for stating that the technical rules of evidence do not apply at protest hearings before a county valuation protests board is to allow wide latitude in the admission of evidence before an administrative board. In re Miller, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142.

**Administrative Procedures Act (Sections 12-8-1 to 12-8-25 NMSA 1978) demonstrates that depositions are permissible** under administrative law, to assist the agency and other parties in obtaining a fair hearing. In re Miller, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142.

**Taxpayer's evidence should be admitted to prove value.** — The protests board could not rely exclusively on the county assessor's valuation of property even though according to former 72-2-3, 1953 Comp., the assessment must be at "full actual value," and neither could it rely on comparable sales or sales of comparable lands where none have occurred; accordingly, the board should have allowed the admission of the only available relevant evidence which the taxpayer had. In situations where cash market value could not be determined, earning capacity, cost of reproduction and original cost less depreciation furnished relevant considerations for determining "value." In re Miller, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142.

**Rules of weight, etc., not necessarily limited.** — Although the technical rules of evidence and the rules of civil procedure do not apply at protest hearings before a county valuation protests board, the rules relating to weight, applicability or materiality of evidence are not thus limited. San Pedro S. Group v. Bernalillo Cnty. Valuation Protest Bd., 1976-NMCA-116, 89 N.M. 784, 558 P.2d 53.

**Rules of weight, etc., not necessarily limited.** — The rules relating to weight, applicability or materiality of evidence are not limited by the provisions of this section. Petition of Kinscherff, 1976-NMCA-097, 89 N.M. 669, 556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620.

**Requirement for findings.** — By inadvertence, the legislature omitted the requirement of a "decision" by the board under this section. However, the practical reasons for requiring administrative findings are so powerful that the requirement has been imposed with remarkable uniformity by virtually all federal and state courts, irrespective of a statutory requirement. First Nat'l Bank v. Bernalillo Cnty. Valuation Protest Bd., 1977-NMCA-005, 90 N.M. 110, 560 P.2d 174 (decided under prior law).

**Pronouncement not final order subject to review on appeal.** — Statements of a judge as to reasons for the judgment, made before the judgment is entered, which statements are not embodied therein, cannot be considered as a part of the judgment but are merely evidence of what the court had decided to do, a decision that the trial court can change at any time before the entry of a final judgment and an order of a protest board is analogous to the judgment of a court. Therefore, a pronouncement of a county protests board did not constitute its duly entered final order and was not subject to review on appeal of its final order. Peterson Props. v. Valencia Cnty. Valuation Protests Bd., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

**Board must show good cause for delay in hearing.** — When taxpayers show that the statutory time constraints have not been complied with and the taxpayer and board have not agreed to extend the time, the burden shifts to the board to establish good cause for the delay. Protest of Plaza Del Sol Ltd. P'ship v. Assessor for Cnty. of Bernalillo, 1986-NMCA-022, 104 N.M. 154, 717 P.2d 1123.

**Settlement negotiations do not toll time requirements.** — Mere settlement negotiations, without more, are insufficient as a matter of law to toll the statutory time requirements. Protest of Plaza Del Sol Ltd. P'ship v. Assessor for Cnty. of Bernalillo, 1986-NMCA-022, 104 N.M. 154, 717 P.2d 1123.

**Orders invalid when board without quorum.** — When the protests board, consisting of three members, instead of the six required by the prior version of Section 7-38-25 NMSA 1978, heard the protests and entered the orders, a quorum was not present, and the orders of the board were invalid. San Pedro S. Group v. Bernalillo Cnty. Valuation Protest Bd., 1976-NMCA-116, 89 N.M. 784, 558 P.2d 53.

**Protests board without authority to reject agreement between assessor and landowner.** — A county valuation protests board does not have authority to reject an agreement between an assessor and a landowner concerning the land value. In re Horn, 1980-NMCA-145, 95 N.M. 38, 618 P.2d 382.

**Decisions have force and effect of judgments.** — The decisions rendered by an officer or a board legally constituted and empowered to settle the question submitted to it, when acting judicially, have the force and effect of a judgment. Peterson Props. v. Valencia Cnty. Valuation Protests Bd., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

## 7-38-28. Appeals from orders of the hearing officer or county valuation protests boards.

A. A property owner may appeal an order made by a hearing officer or a county valuation protests board by filing an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. The director shall notify the appropriate county assessor of the decision and order of the district court and shall direct the assessor to take appropriate action to comply with the decision and order.

History: 1953 Comp., § 72-31-28, enacted by Laws 1973, ch. 258, § 68; 1982, ch. 28, § 15; 1990, ch. 22, § 3; 1998, ch. 55, § 19; 1999, ch. 265, § 19; 2015, ch. 73, § 22.

**ANNOTATIONS**

**Cross references.** — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

**The 2015 amendment,** effective July 1, 2015, authorized property owners to appeal orders made by hearing officers from the administrative hearings office; in the catchline, after "orders of the", deleted "director" and added "hearing officer"; and in Subsection A, after "order made by", deleted "the director" and added "a hearing officer".

**The 1999 amendment,** effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection A.

**The 1998 amendment,** effective September 1, 1998, rewrote Subsection A, deleted former Subsection B and redesignated former Subsection C as Subsection B; and in present Subsection B, inserted "district" and deleted "of appeals" following "court".

**The 1990 amendment,** effective May 16, 1990, in Subsection A, substituted "thirty days" for "forty-five days" and inserted "or such other time prescribed by the Rules of Appellate Procedure, NMRA" in the first sentence, substituted "shall be" for "must be" and added "and shall not be de novo" at the end of the second sentence and added the

third sentence; deleted former Subsections B and C, relating to the record on appeal; and redesignated former Subsections D and E as Subsections B and C.

**Lack of jurisdiction** at any stage of the proceedings is a controlling consideration which must be resolved before going further, and an appellate court may raise the question of jurisdiction on its own motion. Petition of Kinscherff, 1976-NMCA-097, 89 N.M. 669, 556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620.

**Court bound by substantial evidence of record.** — If there is substantial evidence in the record to support a decision of a county valuation protests board, the appellate court is bound thereby, and, in deciding if there is substantial evidence to support the decision, it must view the evidence in the most favorable light to support the finding, reversing only if convinced that the evidence thus viewed, together with all reasonable inferences to be drawn therefrom, cannot sustain the finding. Further, only favorable evidence and the inferences to be drawn therefrom will be considered, and any evidence unfavorable to the findings will not be considered. In re Miller, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70.

**District court acted outside its proper appellate jurisdiction.** — Where petitioner, a retirement and continuing care community, appealed to the district court the Santa Fe county valuation protests board's (board) decision upholding the county assessor's denial of petitioner's request for a property tax exemption, the district court erred in exercising its original jurisdiction over the statutory claim and issuing new findings of fact which contradicted the findings of the board; the district court should have exercised its appellate jurisdiction over the board's determination regarding the applicability of 7-36-7(B)(1)(d) NMSA 1978 to petitioner and reviewed whether the board's decision was arbitrary and capricious, unsupported by substantial evidence, or otherwise contrary to law as required under 39-3-1.1(D) NMSA 1978. El Castillo Ret. Residences v. Martinez, 2017-NMSC-026, *aff'g* 2015-NMCA-041, and *overruling* La Vida Llena v. Montoya, 2013-NMCA-048, 299 P.3d 456.

**Pronouncement of board not subject to review on appeal.** — Statements of a judge as to reasons for the judgment, made before the judgment is entered, which statements are not embodied therein, cannot be considered as a part of the judgment, but are merely evidence of what the court had decided to do, a decision that the trial court can change at any time before the entry of a final judgment, and an order of a protest board is analogous to the judgment of a court; therefore, a pronouncement of a county protests board did not constitute its duly entered final order and was not subject to review on appeal of its final order. Peterson Props. v. Valencia Cnty. Valuation Protests Bd., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

**Decision arbitrary if board has not considered all evidence.** — The state has not given administrative boards the authority to catalogue which evidence shall be considered in deciding a protest, and when the administrative board has reached a decision and promulgated an order without considering all the evidence presented at

the hearing, its decision and order is arbitrary and should be reversed. In re Miller, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70.

**Rulings void if not in accord with statute.** — Rulings by an administrative agency not in accord with the basic statutory requirements relating to the agency will render its decision void. La Jara Land Developers, Inc. v. Bernalillo Cnty. Assessor, 1982-NMCA-006, 97 N.M. 318, 639 P.2d 605.

**When county assessor did not follow any statutory method of valuation** in 1976, but simply set the valuation of a shopping center back up to the 1972 figure, it was held that the decisions of the board were arbitrary and capricious, not supported by substantial evidence in the record taken as a whole, and otherwise not in accordance with law, and its orders were vacated. San Pedro S. Group v. Bernalillo Cnty. Valuation Protest Bd., 1976-NMCA-116, 89 N.M. 784, 558 P.2d 53.

**Court has no duty to search for authority supporting argument.** — When taxpayer cited no authority to support its argument that the assessor's evidence of sales of certain property did not involve comparable sales, the appellate court had no duty to search for authority or consider taxpayer's claim unless it was apparent on the face of the claimed error that it had merit. Peterson Props. v. Valencia Cnty. Valuation Protests Bd., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

**Judicial review based on whole record.** — Judicial review of decisions by agencies are based on the whole record. This requires the courts to review and consider not only evidence in support of one party's contention, but also to look at evidence which is contrary to the finding; the reviewing court must then decide whether, on balance, the agency's decision was supported by substantial evidence. Cibola Energy Corp. v. Roselli, 1987-NMCA-055, 105 N.M. 774, 737 P.2d 555.

**Necessity of findings of fact and conclusions of law.** — For purposes of judicial review, the order must, at least, indicate the reasoning of the board and the basis on which it acted; the expense incurred by having findings of fact and conclusions of law would be repaid 10-fold by the expense and energy saved on judicial review. Cibola Energy Corp. v. Roselli, 1987-NMCA-055, 105 N.M. 774, 737 P.2d 555.

**Exhaustion of administrative remedies.** — The legislature, in enacting a comprehensive scheme for administrative and judicial review, has provided the exclusive remedy for claims presented to the district court that property owned by all masonic lodges is exempt for taxation under N.M. Const., art. VIII, § 3, and the administrative remedies provided by the legislature must be exhausted before a declaratory judgment action will lie. Grand Lodge of Ancient & Accepted Masons v. Taxation & Revenue Dep't, 1987-NMCA-081, 106 N.M. 179, 740 P.2d 1163, cert. denied, 106 N.M. 174, 740 P.2d 1158.

**Taxpayer effectively rebutted presumption.** — When taxpayer's valuation is supported by the whole record in that after rebutting the assessor's valuation and

presenting a prima facie case for its own valuation the board failed to rebut taxpayer's appraisal, the decision of the board will be reversed and remanded with instructions that the board enter judgment for taxpayer in favor of its valuations. Cibola Energy Corp. v. Roselli, 1987-NMCA-055, 105 N.M. 774, 737 P.2d 555.

**Law reviews.** — For article, "Substantial Evidence Reconsidered: The Post-Duke City Difficulties and Some Suggestions for Their Resolution," see 18 N.M.L. Rev. 525 (1988).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Standing of one taxpayer to complain of underassessment or nonassessment of property of another for state and local taxation, 9 A.L.R.4th 428.

## 7-38-29. Retention of hearing records.

Untranscribed verbatim records of protest hearings shall be retained until after transcription, if transcription is required to support an appeal, or until the time for a protestant to appeal an order under Section 7-38-28 NMSA 1978 has expired and the protestant has not appealed.

**History:** 1953 Comp., § 72-31-29, enacted by Laws 1973, ch. 258, § 69.

## 7-38-30. Department to allocate and certify valuations to county assessors.

By June 1 of each year, the department shall certify to each county assessor the value determined by the department for property taxation purposes of all property allocated to governmental units within the county and subject to departmental valuation. In certifying values, the department shall indicate by appropriate notation all property valuations that are the subject of a pending protest and shall include in the notation a statement of the uncontroverted valuation in the pending protests. The certified values shall be entered by the county assessor in his valuation records.

**History:** 1953 Comp., § 72-31-30, enacted by Laws 1973, ch. 258, § 70.

## 7-38-31. County assessor to certify net taxable values to the department.

After receiving the values for property taxation purposes certified to him by the department, the county assessor shall determine the net taxable value for all property allocated to governmental units in the county and subject to valuation for property taxation purposes, whether valued by him or by the department. No later than June 15 of each year, the county assessor shall certify to the department the net taxable values for all property allocated to governmental units in the county and subject to property taxation. The net taxable values of property shall be certified according to governmental

units within the county. The assessor's certification shall include a statement of all property valuations that are the subject of a pending protest, whether protested locally or to the department, and a statement of the uncontroverted valuation in the pending protests.

**History:** 1953 Comp., § 72-31-31, enacted by Laws 1973, ch. 258, § 71.

## 7-38-32. Department to prepare a compilation of net taxable values to be used for budget making and rate setting.

A. No later than June 30 of each year, the department shall prepare a compilation of all net taxable values certified to it by the county assessors and shall include in the compilation the information regarding protested values required to be furnished by the assessors to the department. The compilation shall be prepared in a form appropriate for use and shall be used for the purpose of making budgets. The compilation of net taxable values shall be sent immediately to the secretary of finance and administration.

B. No later than August 1 of each year, the department shall prepare an amended compilation of net taxable values and send it immediately to the secretary of finance and administration. This amended compilation shall include final valuations resulting from completed protests and information on pending protests. It shall be used by the department of finance and administration in setting property tax rates.

C. In the budget-making process for local units of government, including school districts, the net taxable values from the immediately preceding tax year may be considered for the purpose of estimating available revenue from the current tax year when the compilation of net taxable values certified under Subsection A is incomplete or indefinite due to pending protests.

**History:** 1953 Comp., § 72-31-32, enacted by Laws 1973, ch. 258, § 72; 1977, ch. 247, § 190.

## 7-38-33. Department of finance and administration to set tax rates.

A. No later than September 1 of each year, the secretary of finance and administration shall by written order set the property tax rates for the governmental units sharing in the tax in accordance with the Property Tax Code and the budget of each as approved by the department of finance and administration.

B. A copy of the property tax rate-setting order shall be sent to each board of county commissioners, each county assessor and the department within five days of the date the order is made.

C. Net taxable values from the immediately preceding tax year may be used by the department of finance and administration for the purpose of estimating current tax year

revenue in connection with setting tax rates when final net taxable values for the current tax year are incomplete or indefinite due to pending protests.

D. When a rate is set for a governmental unit that is imposing a newly authorized rate pursuant to Section 7-37-7 NMSA 1978 or a newly authorized or a reauthorized rate after an election in which the imposition of the tax was approved by the voters of the unit, the rate shall be at a level that will produce in the first year of imposition revenue no greater than that which would have been produced if the valuation of property subject to the imposition had been the valuation in the tax year in which the increased rate pursuant to Section 7-37-7 NMSA 1978 was authorized by the taxing district or the year in which the voters approved the imposition.

**History:** 1953 Comp., § 72-31-33, enacted by Laws 1973, ch. 258, § 73; 1977, ch. 247, § 191; 1989, ch. 198, § 1.

**ANNOTATIONS**

**The 1989 amendment,** effective June 16, 1989, added Subsection D.

**Law reviews.** — For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

## 7-38-34. Board of county commissioners to order imposition of the tax.

Within five days of receipt of the property tax rate-setting order from the department of finance and administration, each board of county commissioners shall issue its written order imposing the tax at the rates set on the net taxable value of property allocated to the appropriate governmental units. A copy of this order shall be delivered immediately to the county assessor.

**History:** 1953 Comp., § 72-31-34, enacted by Laws 1973, ch. 258, § 74.

## 7-38-35. Preparation of property tax schedule by assessor.

A. After receipt of the rate-setting order and the order imposing the tax, but no later than October 1 of each tax year, the county assessor shall prepare a property tax schedule for all property subject to property taxation in the county. This schedule shall be in a form that shall be made available electronically and contain the information required by regulations of the department and shall contain at least the following information:

(1) the description of the property taxed and, if the property is personal property, its location;

(2) the property owner's name and address and the name and address of any person other than the owner to whom the tax bill is to be sent;

(3) the classification of the property;

(4) the value of the property determined for property taxation purposes;

(5) the tax ratio;

(6) the taxable value of the property;

(7) the amount of any exemption allowed and a statement of the net taxable value of the property after deducting the exemption;

(8) the allocations of net taxable value to the governmental units;

(9) the tax rate in dollars per thousand of net taxable value for all taxes imposed on the property;

(l0) the amount of taxes due on the described property; and

(11) the amount of any penalties and interest already imposed and due on the described property.

B. The property tax schedule is a public record and a part of the valuation records.

History: 1953 Comp., § 72-31-35, enacted by Laws 1973, ch. 258, § 75; 1974, ch. 92, § 13; 1975, ch. 8, § 1; 1977, ch. 211, § 1; 1981, ch. 37, § 75; 2007, ch. 343, § 1.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, required that the property tax schedule be made available electronically.

## 7-38-36. Preparation and mailing of property tax bills.

A. A copy of the property tax schedule prepared by the assessor shall be delivered to the county treasurer on October 1 of each tax year.

B. Upon receipt of the property tax schedule, the county treasurer shall prepare and mail property tax bills to either the owner of the property or any person other than the owner to whom the tax bill is to be sent. Tax bills shall be mailed no later than November 1 of each tax year. The validity of the tax, the time at which the tax is payable or any subsequent proceeding instituted for the collection of the tax is not affected by the failure of a person to receive his tax bill.

C. To obtain the maximum efficiency and coordination between their offices, a county treasurer and a county assessor may stipulate by written agreement that property tax bills be prepared or mailed, or both, by the county assessor. An agreement authorized under this subsection shall include provisions for the allocation of costs of the functions delegated to the county assessor and must be approved by the board of county commissioners.

**History:** 1953 Comp., § 72-31-36, enacted by Laws 1973, ch. 258, § 76; 1977, ch. 211, § 2.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 72 Am. Jur. 2d State and Local Taxation §§ 782 to 787.

84 C.J.S. Taxation §§ 607, 608.

## 7-38-36.1. Administrative fee to be charged if property tax is less than five dollars ($5.00).

A. If the property tax on property for which a property tax bill is prepared is less than five dollars ($5.00), the board of county commissioners may, by resolution, charge an administrative fee equal to the difference between the amount of the property tax and five dollars ($5.00), but no administrative fee shall be charged if there is no tax due. A copy of the resolution shall be sent to the county treasurer who shall collect the fee. This administrative fee shall be separately identified and stated in the property tax bill and shall be included in the total shown in the bill as due.

B. The administrative fee authorized by this section shall be collected and its collection enforced as if the fee were a property tax except that no interest or penalty shall accrue or be charged because of its nonpayment.

C. The administrative fee authorized by this section shall be distributed to the county general fund when collected and shall not be distributed to the governmental units to which the property tax is distributed pursuant to Section 7-38-43 NMSA 1978.

**History:** 1978 Comp., § 7-38-36.1, enacted by Laws 1982, ch. 21, § 1.

## 7-38-37. Contents of property tax bill.

Each property tax bill shall be in a form and contain the information required by regulations of the department and shall contain at least the following:

A. all of the information required to be contained in the property tax schedule;

B. the amount of property taxes due on each installment, the due dates of the installments and the dates on which taxes become delinquent;

C. a brief statement of the option available to make prepayments of the property tax due pursuant to Sections 7-38-38.2 and 7-38-38.3 NMSA 1978;

D. a brief statement of the procedure under Section 7-38-39 NMSA 1978 for protesting values for property taxation purposes, classification, allocation of values to governmental units or a denial of a claim for an exemption;

E. a statement of the interest and penalties imposed by law for delinquency in the payment of property taxes and the remedies available against the taxpayer and the property for nonpayment of the amount due;

F. a statement advising the property owner that the property tax bill is the only notice the property owner will receive for payment of both installments of the tax if no separate notice will be sent with respect to the second installment;

G. the amount of any prepayment of the first installment made pursuant to Section 7-38-38.2 NMSA 1978; and

H. the total amount of any monthly payments made pursuant to Section 7-38-38.3 NMSA 1978 and a statement of the amount of the final monthly payment necessary to pay the balance of the tax due.

History: 1953 Comp., § 72-31-37, enacted by Laws 1973, ch. 258, § 77; 1981, ch. 37, § 76; 1987, ch. 166, § 1; 2008, ch. 33, § 1.

**ANNOTATIONS**

**The 2008 amendment,** effective May 14, 2008, added the reference to Section 7-38-38.3 NMSA 1978 in Subsection C and added Subsection H.

**Applicability.** — Laws 2008, ch. 33, § 3 provided that the provisions of Laws 2008, ch. 33, §§ 1 and 2 apply to property tax years beginning on or after January 1, 2009.

## 7-38-38. Payment of property taxes; installment due dates; refund in cases of overpayments.

A. Unless otherwise provided in the Property Tax Code, property taxes in the amount of ten dollars ($10.00) or over are payable to the county treasurer in two equal installments due on November 10 of the year in which the tax bill was prepared and mailed and on April 10 of the following year. A board of county commissioners may, by ordinance, provide that property taxes under ten dollars ($10.00) are due and payable in a single payment on November 10 of the year in which the tax bill was prepared and mailed. No demand for payment of property taxes is necessary.

B. If a taxpayer remits an amount in payment of his property taxes that exceeds the total property tax liability shown on the property tax bill, together with any applicable penalty and interest computed to the date payment is received by the county treasurer, a refund of the amount in excess shall be made to the taxpayer if either of the following conditions are met:

(1) a written request for the refund is made by the taxpayer and received by the county treasurer within sixty days of the date the excess payment is received by the county treasurer; or

(2) the county treasurer on his own initiative determines by June 30 of the year following the year for which taxes are imposed that an excess payment has been made.

**History:** 1953 Comp., § 72-31-38, enacted by Laws 1973, ch. 258, § 78; 1975, ch. 121, § 1; 1977, ch. 77, § 1; 1982, ch. 28, § 16; 1983, ch. 216, § 1; 1987, ch. 166, § 2.

**ANNOTATIONS**

**Payment of taxes by mortgagee.** — Since mortgage contained provision stating that monthly payments were to be applied to taxes before being applied to interest or the mortgage loan, and that mortgagor would pay to mortgagee any amount necessary to make up the deficiency between balance of escrow account for payment of taxes and amount of taxes owed, on or before date when taxes become due, mortgagee who applied entire amount of January monthly payment to taxes due and payable, under 72-5-1, 1953 Comp., on November 1, was not liable for conversion of that payment even though such taxes would not become delinquent under 72-7-3, 1953 Comp., until May 1. Evans v. Mortgage Inv. Co., 1973-NMCA-032, 84 N.M. 732, 507 P.2d 793.

**Law reviews.** — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 72 Am. Jur. 2d State and Local Taxation §§ 834, 835, 1074, 1075.

When right to refund of state or local taxes accrues, within statute limiting time for applying for refund, 46 A.L.R.2d 1350.

Mistake: right of property taxpayer to recover back taxes voluntarily but mistakenly paid a second or successive time, 84 A.L.R.2d 1133.

84 C.J.S. Taxation §§ 607, 608, 624, 631, 632.

## 7-38-38.1. Recipients of revenue produced through ad valorem levies required to pay counties administrative charge to offset collection costs.

A. As used in this section:

(1) "revenue" means money for which a county treasurer has the legal responsibility for collection and which is owed to a revenue recipient as a result of an imposition authorized by law of a rate expressed in mills per dollar or dollars per thousands of dollars of net taxable value of property, assessed value of property or a similar term, including but not limited to money resulting from the authorization of rates and impositions under Subsection B and Paragraphs (1) and (2) of Subsection C of Section 7-37-7 NMSA 1978, special levies for special purposes and benefit assessments, but the term does not include any money resulting from the imposition of taxes imposed under the provisions of the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978], the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978] or the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978] or money resulting from impositions under Paragraph (3) of Subsection C of Section 7-37-7 NMSA 1978; and

(2) "revenue recipient" means the state and any of its political subdivisions, including charter schools, but excluding institutions of higher education located in class A counties and class B counties having more than three hundred million dollars ($300,000,000) valuation, that are authorized by law to receive revenue.

B. Prior to the distribution to a revenue recipient of revenue received by a county treasurer, the treasurer shall deduct as an administrative charge an amount equal to one percent of the revenue received.

C. The "county property valuation fund" is created. All administrative charges deducted by the county treasurer shall be distributed to the county property valuation fund.

D. Expenditures from the county property valuation fund shall be made pursuant to a property valuation program presented by the county assessor and approved by the majority of the county commissioners.

History: 1978 Comp., § 7-38-38.1, enacted by Laws 1986, ch. 20, § 116; 1988, ch. 68, § 1; 1990, ch. 125, § 7; 2001, ch. 173, § 1; 2007, ch. 366, § 15.

## ANNOTATIONS

**Compiler's notes.** — Laws 1990, ch. 22, § 12 repealed Laws 1988, ch. 68, § 2, which had specified administrative charges collectible by the county treasurer from "revenue recipients" as defined in this section.

**The 2007 amendment,** effective July 1, 2007, amended Subsection A to include charter schools in the definition of "revenue recipient".

**The 2001 amendment,** effective July 1, 2001, rewrote Subsection B, which formerly provided for the billing of revenue recipients, as an administrative charge, an amount equal to a certain percentage, depending on the class of the county, of the revenues received; and in Subsection C, rewrote the last two sentences which formerly read "All administrative charges shall be collected by the county treasurer and distributed to the county property valuation fund. The revenue recipient may pay the administrative charge from any fund unless otherwise prohibited by law."

**The 1990 amendment,** effective March 7, 1990, in Subsection A, inserted "or the Copper Production Ad Valorem Tax Act" in Paragraph (1) and made a related stylistic change.

**County property valuation fund.** — In creating the county property valuation fund in Subsection C of this section, the legislature created a permanent source of additional revenue to assist county assessors in fulfilling their statutory obligations to maintain current and correct values of all property within their jurisdictions, and directed county assessors to use those funds to achieve fair and timely reappraisal programs. The legislation does not impose any restrictions on the use of the funds other than the use be part of a property valuation program presented by the county assessor and approved by the county commission. Robinson v. Board of Comm’rs of the Cty. of Eddy, 2015-NMSC-035.

Where the Eddy county assessor sought to use funds from the county property valuation fund to contract with a private company for technical assistance in locating and valuing oil and gas property within Eddy county, this section does not prohibit the Eddy county commission from approving a contract with an independent contractor to assist the county assessor in valuing property, because the legislature made no attempt to restrict an assessor’s discretion on the use of the fund and thus intended to leave it to the professional discretion of county assessors to decide how best to achieve the statutory goal of current and correct valuation of all property within the county. Robinson v. Board of Comm’rs of the Cty. of Eddy, 2015-NMSC-035.

## 7-38-38.2. Prepayment of certain property tax installments; resolution by board of county commissioners.

A. Each board of county commissioners, by resolution, may as an option to the taxpayer provide for prepayment of property tax due if the tax due is one hundred dollars ($100) or more.

B. The resolution shall provide for a prepayment of the first installment due pursuant to Section 7-38-38 NMSA 1978 by July 10 in an amount equal to twenty-five percent of the prior year's property tax bill. The amount of prepayment shall be credited against the first installment due.

C. The resolution shall further provide for a prepayment of the second installment due pursuant to Section 7-38-38 NMSA 1978 by January 10 in an amount equal to fifty

percent of the second installment due. The amount of the prepayment shall be credited against the second installment due.

D. The resolution shall also provide that persons who are responsible by contract for paying property taxes on behalf of the property owner shall make prepayments as provided in this section if the amount of property tax due for the prior property tax year was at least one hundred dollars ($100).

E. No penalty and interest shall be applied for failure to pay or for late payment of any optional prepayment of property taxes as authorized by this section. For persons required to make prepayments of property taxes under Subsection D of this section, the date of each prepayment installment shall be deemed to be the date the property tax is due for purposes of applying penalties and interest for failure to pay for late payment of any prepayment.

F. The county treasurer may distribute to the units of government, thirty days following receipt of the prepayment amounts collected, an amount equal to fifty percent of the amounts collected. Distribution shall be made in accordance with the law and regulations of the department of finance and administration.

G. The county shall make a concerted effort to apprise taxpayers of the option provided in this section by publication in a newspaper of general circulation in the county or through other media coverage.

**History:** 1978 Comp., § 7-38-38.2, enacted by Laws 1987, ch. 166, § 3.

## 7-38-38.3. Optional prepayment of property taxes in monthly payments.

A board of county commissioners may by resolution provide property owners the option of making prepayments of property taxes in ten monthly payments beginning June 1 of the year in which the tax bill is prepared and ending March 1 of the following year. The first nine monthly payments shall each be in an amount equal to ten percent of the prior year's property tax bill and the final payment on March 1 shall be in an amount equal to the balance of the tax due, as indicated on the tax bill prepared and mailed pursuant to Sections 7-38-36 and 7-38-37 NMSA 1978; provided that an option otherwise allowed pursuant to this section may not be exercised if taxes are escrowed for the property owner and included in the property owner's monthly mortgage payment.

History: Laws 2008, ch. 33, § 2.

### ANNOTATIONS

**Effective dates.** — Laws 2008, ch. 33 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 14, 2008, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2008, ch. 33, § 3 provided that the provisions of Laws 2008, ch. 33, §§ 1 and 2 apply to property tax years beginning on or after January 1, 2009.

## 7-38-39. Protesting values; claim for refund.

After receiving his property tax bill and after making payment prior to the delinquency date of all property taxes due in accordance with the bill, a property owner may protest the value or classification determined for his property for property taxation purposes, the allocation of value of his property to a particular governmental unit, the application to his property of an administrative fee adopted pursuant to Section 7-38-36.1 NMSA 1978 or a denial of a claim for an exemption by filing a claim for refund in the district court.

**History:** 1953 Comp., § 72-31-39, enacted by Laws 1973, ch. 258, § 79; 1981, ch. 37, § 77; 1983, ch. 203, § 1; 1983, ch. 215, § 2.

**ANNOTATIONS**

**This section requires property that is subject to valuation;** property constitutionally exempt from property taxes is not to be valued for property tax purposes. Lovelace Ctr. for Health Sciences v. Beach, 1980-NMCA-004, 93 N.M. 793, 606 P.2d 203.

**Electric transmission equipment not real estate for tax purposes.** — Electric transmission and distribution substation equipment, consisting of transformers, switches and circuit breakers, is not real estate for taxation purposes since it is readily portable and has very little, if any, annexation or adaptation. Southwestern Pub. Serv. Co. v. Chaves Cnty., 1973-NMSC-064, 85 N.M. 313, 512 P.2d 73.

Electric transmission lines, poles, line transformers, meters and such equipment frequently located on easements and public rights-of-way are not real estate for taxation purposes since they are changed or relocated frequently and are located on unowned land. Southwestern Pub. Serv. Co. v. Chaves Cnty., 1973-NMSC-064, 85 N.M. 313, 512 P.2d 73.

**Steam production equipment as real estate for tax purposes.** — Steam production equipment, consisting of turbines, boilers, pumps and fans, is real estate for taxation purposes since the utility company installed and maintained such equipment on special foundations and could not foresee moving it because of its huge size and weight and such equipment was the very heart of the company's business. Southwestern Pub. Serv. Co. v. Chaves Cnty., 1973-NMSC-064, 85 N.M. 313, 512 P.2d 73.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 72 Am. Jur. 2d State and Local Taxation § 1082.

Recovery of tax paid on exempt property, 25 A.L.R.4th 186.

84 C.J.S. Taxation § 753 et seq.; 85 C.J.S. Taxation § 910 et seq.

## 7-38-40. Claims for refund; civil action.

A. Claims for refund shall be filed by the property owner as a civil action in the district court for the county in which the valuation was determined if the property was locally valued or in the district court for Santa Fe county if valued by the department. Claims shall:

(1) be filed against the director as party defendant if the property was valued by the department or against the county assessor as party defendant if the property was valued by the assessor and shall be filed no later than the sixtieth day after the first installment of the property tax for which a claim for refund is made is due;

(2) state the property owner's name and address and the name and address of any person other than the property owner to whom the tax bill was sent;

(3) state the basis of the claim for refund;

(4) state the amount of the refund to which the property owner believes he is entitled, the amount of property taxes admitted as legally due and the property taxes paid; and

(5) demand the refund to him of the amount to which he claims entitlement.

B. The director shall notify the appropriate county treasurer immediately when a claim for refund is filed against the director.

C. The property owner, the county assessor or the director may appeal to the court of appeals from any final decision or order of the district court in a claim for refund case in which they are parties.

D. Upon the final determination of the property owner's claim filed against the director, the director shall send a copy of the final order to the county treasurer and shall order the county assessor to change the valuation records to clearly reflect the final determination of the property owner's claim. The department shall change its valuation records accordingly.

E. Upon the final determination of the property owner's claim filed against the county assessor, the assessor shall send a copy of the final order to the county treasurer and to the director. The county assessor and the department shall change their respective valuation records to clearly reflect the final determination of the property owner's claim.

**History:** 1953 Comp., § 72-31-40, enacted by Laws 1973, ch. 258, § 80; 1974, ch. 92, § 14; 1982, ch. 28, § 17; 2003, ch. 292, § 1.

## ANNOTATIONS

**The 2003 amendment,** effective June 20, 2003 substituted "department" for "division" throughout the section; inserted "assessor" following "the county" three times; in Subsection E, substituted "assessor" for "treasurer" following "the county assessor" near the middle of the first sentence, and substituted "treasurer" for "assessor" following "The county" near the beginning of the second sentence.

**The sixty day period** for bringing suit for a property tax refund does not violate due process. Chan v. Montoya, 2011-NMCA-072, 150 N.M. 44, 256 P.3d 987, cert. denied, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

**The time limit for filing a property tax refund complaint** begins to run on the date the tax payment is due, not the date the payment becomes delinquent. Chan v. Montoya, 2011-NMCA-072, 150 N.M. 44, 256 P.3d 987, cert. denied, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

**Time limit for filing complaint for refund.** — Where taxpayers received property tax bills which stated that the first of two installments of the annual tax payment was due on November 10, 2007, and that the first installment payment would become delinquent on December 10, 2007; taxpayers paid the installment; and taxpayers filed a complaint for a refund in February 2008, approximately ninety days after the November 10th due date, taxpayers' claims for refund were untimely and barred by the sixty day limitation period. Chan v. Montoya, 2011-NMCA-072, 150 N.M. 44, 256 P.3d 987, cert. denied, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

**Refund claims asserted in supplemental complaint.** — A claim for subsequent year's taxes, asserted in a supplemental complaint in a tax refund suit, was not timely where the supplemental complaint was filed six weeks after the deadline under Section 7-38-40(A)(1) NMSA 1978 for claiming a refund. Dale Bellamah Land Co. v. Bernalillo Cnty., 1978-NMSC-095, 92 N.M. 615, 592 P.2d 971.

**Applicability.** — This section applies to property that is subject to valuation. Property constitutionally exempt from property taxes is not to be valued for property tax purposes and therefore refund claims for exempt property are not viable under this section. Lovelace Ctr. for Health Sciences v. Beach, 1980-NMCA-004, 93 N.M. 793, 606 P.2d 203.

**Because taxpayer's claim was for refund based on incorrect allocation** of the value of its property for tax purposes, its remedy was pursuant to this section, not Section 7-38-78 NMSA 1978. Fed. Express Corp. v. Abeyta, 2004-NMCA-011, 135 N.M. 37, 84 P.3d 85, cert. granted, 2004-NMCERT-001, 135 N.M. 160, 85 P.3d 802.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 72 Am. Jur. 2d State and Local Taxation §§ 1077 to 1079.

Propriety of class action in state courts to recover taxes, 10 A.L.R.4th 655.

Recovery of tax paid on exempt property, 25 A.L.R.4th 186.

85 C.J.S. Taxation § 933 et seq.

## 7-38-41. Protested property taxes; suspense fund; refunds; interest.

A. Each county treasurer shall establish a fund to be known as the "property tax suspense fund." The portion of any property taxes paid to the county treasurer that is not admitted to be due and is the subject of a claim for refund shall be deposited in this fund.

B. The fund shall be invested in interest-earning securities, accounts or deposits that are legal investments for county funds under the law and regulations of the department of finance and administration. The county treasurer shall keep records of interest earned by the investment of the fund.

C. If a property owner's property taxes are reduced as a result of a decrease in value of the property taxed, a change in the classification, a change in the allocation of the value of the property to a particular governmental unit or granting of a claim for an exemption ordered by a court after a claim for refund, the portion of the property taxes in controversy found to be in excess of the amount legally due and paid shall be refunded by the county treasurer to the property owner. The refund shall be made within fifteen days after the county treasurer receives a copy of the final order relating to the protest. The amount of property taxes in controversy found to be legally due and paid shall be distributed to the appropriate governmental units in accordance with the distribution regulations of the department of finance and administration. All payments authorized under this section shall be made from the property tax suspense fund.

D. In addition to the payments authorized under Subsection C of this section, the county treasurer shall pay to the property owner and the governmental units their pro rata share of interest earned by the protested taxes computed by applying the earned interest rate of the fund to the principal amounts of refund and distribution for the period of time from the date of payment into the fund until a date not more than thirty days prior to the date the actual refund payment and distribution payment are made. Payments are considered made on the date a refund payment is mailed or delivered to the property owner and on the date a transfer occurs on the county treasurer's books showing a distribution payment.

E. The department of finance and administration may authorize the transfer of any surplus interest accruing in the property tax suspense fund to the county general fund at the close of the fiscal year.

**History:** 1953 Comp., § 72-31-41, enacted by Laws 1973, ch. 258, § 81; 1974, ch. 92, § 15; 1981, ch. 37, § 78.

**ANNOTATIONS**

**Section authorizes refunds upon decrease or change in property value.** — This section authorizes refunds only when property taxes are reduced as a result of a decrease in value of the property taxed or a change in the allocation of the value of the property to a particular governmental unit. It does not authorize a refund of property taxes paid on property that was constitutionally exempt from taxation and, thus, was not to be valued for property tax purposes. Lovelace Ctr. for Health Sciences v. Beach, 1980-NMCA-004, 93 N.M. 793, 606 P.2d 203.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Interest on tax refunds: right to, 88 A.L.R.2d 823.

## 7-38-42. Collection and receipt of and accounting for property taxes; application of receipts to delinquent taxes.

A. The county treasurer has the responsibility and authority for collection of taxes and any penalties or interest due under the Property Tax Code except for the collection of delinquent taxes, penalties and interest authorized to be collected by the department under Section 7-38-62 NMSA 1978.

B. Property taxes, penalties and interest collected shall be receipted and accounted for in accordance with law and regulations of the department of finance and administration.

C. Any payments received by the treasurer or the department as payments for property taxes, penalties or interest shall be first applied to the oldest outstanding unpaid property taxes, penalties or interest accrued in prior property tax years on the property identified and described in the property tax bill for which payment is tendered or, if the payment cannot be identified with a particular year's property tax bill, then the payment shall be applied first to the oldest liability for property taxes, penalties and interest shown in the treasurer's records under the name of the paying taxpayer. In applying the foregoing requirements for applications of payments and in the adoption of any regulations to implement those provisions, the following additional rules shall apply:

(1) applications of payments to a prior year's delinquent taxes, penalties and interest shall not be made for more than ten years prior to the year of payment unless the treasurer's records show that the property for which taxes are delinquent has been deeded to the state of New Mexico and that property has not been sold by the state pursuant to applicable law;

(2) applications of payments to a prior year's delinquent taxes, penalties and interest shall not be made if:

(a) the prior year for which the delinquent taxes, penalties or interest are due is not the immediately preceding tax year;

(b) the delinquent taxes, penalties or interest are the result of real estate improvements that were omitted from property tax schedules in the prior year and listed and billed pursuant to Section 7-38-76 NMSA 1978;

(c) the current owner was not the owner at the time the improvements were omitted and had no actual notice that the improvements were omitted; and

(d) the payments were made by or on behalf of the current owner;

(3) after application of payment received, if all or part of the payment has been applied to a prior year's delinquent taxes, penalties or interest, the receipting authority shall issue a receipt to the paying taxpayer showing the application of the payment and indicating any balance due for taxes, penalties or interest to bring the property tax payment status current; and

(4) the failure of a receipting authority to apply a payment as required under this subsection or the failure to issue a required receipt to the taxpayer of the status of his account shall not relieve the taxpayer of liability for taxes, penalties or interest he would otherwise be required to pay nor does action or inaction by the receipting authority act to estop the collecting authority from taking any action to collect or enforce the payment of taxes, penalties and interest legally due.

**History:** Laws 1979, ch. 343, § 1; 2003, ch. 95, § 2.

**ANNOTATIONS**

**Prior history.** — In 1979, Section 7-38-42 NMSA 1979 was repealed and reenacted by Laws 1979, Chapter 343, § 1. For prior history, see 1953 Comp., § 72-31-42, enacted by Laws 1973, ch. 258, § 2.

**The 2003 amendment,** effective June 20, 2003, added Paragraph C(2) and redesignated former Paragraphs C(2) and (3) as present Paragraphs C(3) and (4).

**Payment to county treasurer constitutes payment to state.** — Timely payments of delinquent tax to the county treasurer constituted payment to the state since treasurer had apparent if not statutory authority to accept payment of delinquent taxes on property deeded to, but not yet sold by, the state. Tabet v. Campbell, 1984-NMSC-059, 101 N.M. 334, 681 P.2d 1111.

## 7-38-43. Distribution of receipts from collected property taxes, penalties and interest.

The county treasurer shall distribute the receipts from collected property taxes to each governmental unit in an amount and in a manner determined in accordance with the law and with the regulations of the department of finance and administration. Penalties and interest collected by the county treasurer, other than as an agent of the

department under Section 7-38-62 NMSA 1978 and other than penalties and interest on assessments levied by a conservancy district organized under the provisions of The Conservancy Act of New Mexico [73-14-1 NMSA 1978], created prior to 1930 and embracing land situate in four or more counties, shall be deposited in the county general fund at the times and in the manner required by regulations of the department of finance and administration. Penalties and interest collected by the county treasurer as agent of the department under Section 7-38-62 NMSA 1978 shall be remitted to the department at the times and in the manner required by regulations of the department of finance and administration.

**History:** 1953 Comp., § 72-31-43, enacted by Laws 1973, ch. 258, § 83; 1990, ch. 22, § 4; 1995, ch. 75, § 1.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, inserted the language in the second sentence beginning "and other than penalties and interest" and ending "four or more counties".

**The 1990 amendment,** effective May 16, 1990, inserted "with the" preceding "regulations" in the first sentence, substituted "other than as an agent of the department under Section 7-38-62 NMSA 1978" for "or received by him as a distribution under 72-31-63 NMSA 1953" in the second sentence, and added the third sentence.

## 7-38-44. Special procedures for administration of taxes on personal property when probable removal of property from state will jeopardize collection of taxes.

A. If the director or a county assessor has reasonable cause to believe that personal property, other than livestock, subject to valuation by him for property taxation purposes in a tax year will be removed from the state or the county, respectively, before the taxes for that year are due and that the removal of the property will jeopardize the collection of the tax, he may, for property subject to valuation by him:

(1) proceed immediately to determine the value of the property and send a notice of valuation to the property owner;

(2) at any time after sending the notice of valuation proceed to determine the taxes due on the property by using the prior year's tax rates if the current year's tax rates have not been set and prepare and mail or deliver a property tax bill to the property owner and proceed to collect the taxes immediately; and

(3) issue a demand warrant and proceed to collect unpaid taxes as delinquent taxes under the provisions of Sections 7-38-53 through 7-38-59 NMSA 1978 if taxes are not paid upon demand.

B. Payment of taxes determined on the basis of the prior year's tax rates under this section constitutes full payment of the taxes on the property involved for the current tax year.

**History:** 1953 Comp., § 72-31-44, enacted by Laws 1973, ch. 258, § 84; 1974, ch. 92, § 16.

## 7-38-44.1. Special procedures for administration of taxes on real property divided or combined.

A. For real property subject to valuation for property taxation purposes in a taxable year that is divided or combined, a county shall proceed to determine the taxes due on the property by using the prior year's tax rate, if the current tax rates have not been set, and the prior year's value, if the current year value has not been set, and proceed to immediately collect the taxes, penalties, interest and fees through the taxable year in which the property is divided or combined.

B. A taxpayer shall pay the taxes, penalties, interest and fees due on real property divided or combined through the taxable year in which the property is divided or combined prior to filing a plat.

History: Laws 2013, ch. 119, § 1.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2013, ch. 119, § 2 contained an emergency clause and was approved April 2, 2013.

## 7-38-45. Special provisions relating to administration of taxes on livestock.

A. The New Mexico livestock board shall furnish to the department who shall forward to the county assessor of each county information obtained by it about the number, name and address of owner, description, movement, origin and destination of livestock being moved into or from any county. All such information shall be sent in duplicate to the county assessor into or from whose county livestock are being moved. Upon receipt of the information, the assessor shall send the duplicate to the department with a notation indicating the date on which it was received. The livestock board report made under this section fulfills the livestock owner's responsibility to make a report of the livestock under Section 7-36-21 NMSA 1978.

B. Notwithstanding any other provision in the Property Tax Code to the contrary, either the county assessor or the director may:

(1) determine the value of livestock for property taxation purposes at any time the livestock are subject to valuation under the Property Tax Code whether or not the owner of the livestock or any other person has reported them for valuation;

(2) issue a notice of valuation of livestock at any time after a determination of valuation has been made of livestock for property taxation purposes;

(3) prepare and deliver a tax bill and collect taxes on livestock at any time after a notice of valuation has been issued when there is reasonable cause to believe that it would jeopardize the collection of the taxes if the regular tax collection cycle in the Property Tax Code was followed; and

(4) issue a demand warrant to enforce collection of taxes on livestock as delinquent taxes if there is reasonable cause to believe that the livestock may be moved out of the state prior to the payment of taxes, and proceed to collect the taxes as delinquent taxes by sale of the livestock in accordance with Sections 7-38-53 through 7-38-59 NMSA 1978.

C. In the preparation of a tax bill under this section, the assessor or director may determine the tax due on the basis of the prior year's tax rates if the current year's tax rates have not yet been set. Taxes determined on livestock under this section are due when the tax bill is delivered to the owner or the person in charge of the livestock and are delinquent if not paid upon demand. Payment of taxes determined on the basis of the prior year's tax rates constitutes full payment of the taxes on the livestock for the current tax year.

**History:** 1953 Comp., § 72-31-45, enacted by Laws 1973, ch. 258, § 85; 1974, ch. 92, § 17.

**ANNOTATIONS**

**Compiler's notes.** — Pursuant to Laws 1977, ch. 256, § 3, the livestock board is attached to the New Mexico department of agriculture.

## 7-38-46. Delinquent property taxes.

A. Property taxes that are not paid within thirty days after the date on which they are due are delinquent unless a timely protest has been made under Sections 7-38-22 and 7-38-24 NMSA 1978, and in that case the amount of taxes attributable to the net taxable value of the property that is not in controversy becomes delinquent if not paid within thirty days after the due date.

B. If property taxes would have otherwise been delinquent but for a timely protest having been made under Sections 7-38-22 and 7-38-24 NMSA 1978, property taxes are also delinquent if the property owner:

(1) fails to pay his taxes or to appeal after a decision of a county valuation protests board, the director or a court within the time allowed for an appeal; or

(2) fails to pay his taxes as ordered within ten days after the entry of a final order resulting from a timely protest when that order is not appealable.

C. If a timely protest has been made under Sections 7-38-22 and 7-38-24 NMSA 1978, property taxes are also delinquent if the property owner fails to pay his taxes within thirty days after the date on which they are due if that date is later than the dates determined under Paragraph (1) or (2) of Subsection B of this section.

D. Notice of the date when taxes become delinquent must be published in a newspaper of general circulation within the county at least once a week for the three weeks immediately preceding the week in which the delinquency date for first and second installments of property taxes due occurs. Each county treasurer shall cause the notice to be published for his county.

**History:** 1953 Comp., § 72-31-46, enacted by Laws 1973, ch. 258, § 86; 1982, ch. 28, § 18.

## 7-38-47. Property taxes are personal obligation of owner of property.

Property taxes imposed are the personal obligation of the person owning the property on the date on which the property was subject to valuation for property taxation purposes and a personal judgment may be rendered against him for the payment of property taxes that are delinquent together with any penalty and interest on the delinquent taxes. The sale or transfer of property after its valuation date does not relieve the former owner of personal liability for the property taxes imposed for that tax year.

**History:** 1953 Comp., § 72-31-47, enacted by Laws 1973, ch. 258, § 87.

**ANNOTATIONS**

**County treasurer has no authority to enforce property tax lien.** — A county treasurer does not have the authority to file suit to enforce a personal obligation of owners of real property for the collection of delinquent property taxes. The intent of the legislature is to place the authority to enforce the personal obligation provision of this section and the authority to proceed against property subject to a statutorily created tax lien in the taxation and revenue department only. Colfax Cnty. v. Angel Fire Corp., 1993-NMCA-015, 115 N.M. 146, 848 P.2d 532.

**Delinquent taxes.** — A personal judgment may be rendered against the owners of property for delinquent taxes. Cordova v. N.M. Taxation & Revenue Dep't., 2005-NMCA-009, 136 N.M. 713, 104 P.3d 1104.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 72 Am. Jur. 2d State and Local Taxation § 836.

85 C.J.S. Taxation § 978.

## 7-38-48. Property taxes are a lien against real property from January 1; priorities; continuance of taxing process.

A. Except as provided in Subsection B of this section, taxes on real property are a lien against the real property from January 1 of the tax year for which the taxes are imposed. The lien runs in favor of the state and secures the payment of taxes on the real property and any penalty and interest that become due. The lien continues until the taxes and any penalty and interest are paid. The lien created by this section is a first lien and paramount to any other interest in the property, perfected or unperfected. The annual taxing process provided for in the Property Tax Code shall continue as to any particular property regardless of prior tax delinquencies or of pending protests, actions for refunds or other tax controversies involving the property, including a sale for delinquent taxes.

B. No lien is created pursuant to Subsection A of this section if:

(1) the tax otherwise creating the lien is not due for the current tax year or the immediately preceding property tax year;

(2) the tax otherwise creating the lien is the result of real estate improvements that were omitted from property tax schedules in a prior year and listed and billed pursuant to Section 7-38-76 NMSA 1978; and

(3) the current owner was not the owner at the time the improvements were omitted and had no actual notice that the improvements were omitted.

**History:** 1953 Comp., § 72-31-48, enacted by Laws 1973, ch. 258, § 88; 1974, ch. 92, § 18; 2003, ch. 95, § 3.

### ANNOTATIONS

**Cross references.** — For property tax liens on mobile homes, *see* 7-38-52 and 66-3-204 NMSA 1978.

**The 2003 amendment,** effective June 20, 2003, added the Subsection A designation and, in Subsection A, inserted "Except as provided in Subsection B of this section" at the beginning; and added Subsection B.

**Tax liens attach to the interest of the vendee** in a conditional sales contract, but terminates if the interest of the vendee is terminated through forfeiture or otherwise. MGIC Mortgage Corp. v. Bowen, 1977-NMSC-108, 91 N.M. 200, 572 P.2d 547.

**Lien arises by operation of law.** — The lien under this section arises by operation of law and is not dependent upon a filing of notice of lien for its creation and effect against purchasers. Cano v. Lovato, 1986-NMCA-043, 105 N.M. 522, 734 P.2d 762, cert. quashed, 105 N.M. 438, 733 P.2d 1321 (1987).

**Lien not governed by recording act.** — A tax lien is not within the class of written instruments governed by Section 14-9-3 NMSA 1978, relating to effect of unrecorded instruments. Cano v. Lovato, 1986-NMCA-043, 105 N.M. 522, 734 P.2d 762, cert. quashed, 105 N.M. 438, 733 P.2d 1321 (1987).

**County treasurer has no authority to enforce property tax lien.** — A county treasurer does not have the authority to file suit to enforce a personal obligation of owners of real property for the collection of delinquent property taxes. The intent of the legislature is to place the authority to enforce the personal obligation provision of Section 7-38-47 NMSA 1978 and the authority to proceed against property subject to a statutorily created tax lien in the taxation and revenue department only. Colfax Cnty. v. Angel Fire Corp., 1993-NMCA-015, 115 N.M. 146, 848 P.2d 532.

## 7-38-49. Unpaid property taxes; imposition of interest.

If property taxes are not paid for any reason within thirty days after the date they are due, interest on the unpaid taxes shall accrue from the thirtieth day after they are due until the date they are paid. Interest shall accrue at the rate of one percent a month or any fraction of a month. Interest shall accrue whether or not protests have been resolved. However, in the case of a timely protest, interest payable shall be computed on a principal amount equal to the unpaid taxes finally determined to be due upon resolution of the protest. Interest shall not be imposed on interest or on any penalty.

**History:** 1953 Comp., § 72-31-49, enacted by Laws 1973, ch. 258, § 89.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 72 Am. Jur. 2d State and Local Taxation §§ 856, 858, 891 to 903.

Interest of spouse in estate by entireties as subject to satisfaction of his or her individual debt, 75 A.L.R.2d 1172.

84 C.J.S. Taxation §§ 585 to 606.

## 7-38-50. Delinquent taxes; civil penalties.

A. If property taxes become delinquent, a penalty of one percent of the delinquent taxes for each month or any portion of a month they remain unpaid shall be imposed, but the total penalty shall not exceed five percent of the delinquent taxes except that, when the penalty determined under the foregoing provisions of this subsection is less

than five dollars ($5.00), the penalty to be imposed shall be five dollars ($5.00). A county may suspend for a particular tax year application of the minimum penalty requirements of this subsection by resolution of its county commissioners adopted not later than September 1 of that tax year. A copy of any such resolution shall be forwarded to the county treasurer.

B. If property taxes become delinquent because of an intent to defraud by the property owner, fifty percent of the property taxes due or fifty dollars ($50.00), whichever is greater, shall be added as a penalty.

**History:** 1953 Comp., § 72-31-50, enacted by Laws 1973, ch. 258, § 90; 1975, ch. 20, § 1; 1976, ch. 14, § 1; 1982, ch. 28, § 19.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 72 Am. Jur. 2d State and Local Taxation § 856.

## 7-38-51. Notification to property owner of delinquent property taxes.

A. In respect to any tax that is delinquent for more than thirty days as of June 30 of each year, the county treasurer shall mail a notice of delinquency to:

(1) the owner of the property as shown on the property tax schedule at the address of the owner as shown on the most recent property tax schedule; and

(2) any person other than the owner to whom the tax bill on the property was sent.

B. The notice required by this section shall be in a form and contain the information prescribed by division regulations and shall include at least the following:

(1) a description of the property upon which the property taxes are due;

(2) a statement of the amount of property taxes due, the date on which they became delinquent, the rate of accrual of interest and any penalties that may be charged;

(3) a statement that if the property taxes due on real property are not paid within three years from the date of delinquency, the real property will be sold and a deed issued by the division; and

(4) a statement that if property taxes due on personal property are not paid, the personal property may be seized and sold for taxes under authority of a demand warrant.

**History:** 1953 Comp., § 72-31-51, enacted by Laws 1973, ch. 258, § 91; 1974, ch. 92, § 19; 1982, ch. 28, § 20.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 72 Am. Jur. 2d State and Local Taxation § 860.

## 7-38-52. Notification to motor vehicle division of unpaid property taxes on manufactured homes; notice of filing constitutes lien on vehicle.

A. In the preparation of the tax delinquency notices, the county treasurer shall ascertain those persons who have failed to pay taxes on manufactured homes.

B. In addition to the information required under Section 7-38-51 NMSA 1978, delinquency notices sent to the persons determined under Subsection A of this section shall include the location and vehicle identification number of the manufactured home.

C. A copy of the delinquency notice of unpaid taxes on a manufactured home shall be sent to the motor vehicle division of the department. Upon receipt and filing of the notice by the motor vehicle division, the unpaid taxes, penalty and interest constitute a security interest in and a lien on the vehicle in accordance with Section 66-3-204 NMSA 1978. The delinquency notice sent to the owner of the manufactured home shall notify the owner of the mailing of the copy of the notification to the motor vehicle division and of the legal effect of the filing of the notice by that division.

D. When the delinquent taxes, penalty and interest are fully paid, the county treasurer shall certify the fact of payment and shall prepare a notification of certified payment. The original notification shall be sent to the motor vehicle division of the department, and a copy shall be sent to the owner of the manufactured home.

E. The lien provided for in this section is in addition to any other remedy available to the state for the collection of delinquent property taxes.

**History:** 1953 Comp., § 72-31-52, enacted by Laws 1973, ch. 258, § 92; 1974, ch. 92, § 20; 1983, ch. 295, § 3; 1991, ch. 166, § 9.

**ANNOTATIONS**

**The 1991 amendment,** effective June 14, 1991, deleted "transportation" preceding "department" in the first sentence in Subsection C and in the second sentence in Subsection D and made a minor stylistic change in Subsection C.

## 7-38-53. Collection of delinquent property taxes on personal property; assertion of claim against personal property.

A county treasurer may collect delinquent property taxes on personal property by asserting a claim against the owner's personal property for which taxes are delinquent. A claim shall be asserted by service of a demand warrant by the county treasurer, an employee of his office designated by him or the county sheriff upon any person in possession of the personal property subject to the claim.

**History:** 1953 Comp., § 72-31-53, enacted by Laws 1973, ch. 258, § 93.

## 7-38-54. Demand warrant; contents.

A demand warrant shall:

A. contain a statement of the authority for its issuance and service;

B. identify the property owner, the amount of the delinquent taxes on his personal property and the date on which the taxes were due;

C. describe the personal property subject to the tax and the demand warrant;

D. order the person on whom it is served to:

(1) reveal the amount of personal property in his possession that is described in the demand warrant;

(2) state the extent of his and any other person's interest in the personal property;

(3) reveal the amount and kind of the property owner's personal property described in the demand warrant that are in the possession of other persons; and

(4) surrender the personal property described in the demand warrant and in his possession;

E. state the penalties for failure to comply with the terms of the warrant; and

F. be signed by the county treasurer.

**History:** 1953 Comp., § 72-31-54, enacted by Laws 1973, ch. 258, § 94; 1974, ch. 92, § 21.

## 7-38-55. Surrender of personal property; penalty for refusal.

A. Any person in the possession of personal property subject to claim for delinquent taxes and upon whom service of a demand warrant has been made must surrender the personal property to the county treasurer. However, that part of the personal property which is the subject of a bona fide attachment, execution or other similar process need not be surrendered unless the property is released from the attachment, execution or other similar process.

B. Any person who wrongfully fails or refuses to surrender personal property is personally liable for an amount equal to the value of the personal property not surrendered or the amount of the delinquent taxes, penalties and interest on that property, whichever is less.

**History:** 1953 Comp., § 72-31-55, enacted by Laws 1973, ch. 258, § 95.

## 7-38-56. Release of personal property seized.

The county treasurer may release all or part of the personal property seized if he determines that the release will facilitate the collection of the delinquent taxes. However, the release does not prevent the assertion of any subsequent claim against the property owner's personal property.

**History:** 1953 Comp., § 72-31-56, enacted by Laws 1973, ch. 258, § 96.

## 7-38-57. Notice of sale of personal property.

A. As soon as practical after the seizure of personal property, but at least ten days before any proposed sale, the county treasurer shall notify the property owner by certified mail of the amount and kind of personal property seized and that the personal property will be sold for delinquent taxes on his personal property unless the taxes, penalties and interest are paid prior to the time of the sale.

B. The notice shall also state the amount of taxes, penalties and interest due, the time and place of the sale and any other information the department may require by regulation.

C. The treasurer shall make a diligent inquiry as to the identity and whereabouts of other persons having an interest in the property seized and provide them with the same notice given the property owner.

D. Failure to receive the notice of sale does not affect the validity of the sale.

**History:** 1953 Comp., § 72-31-57, enacted by Laws 1973, ch. 258, § 97; 1974, ch. 92, § 22.

**ANNOTATIONS**

**Cross references.** — For mailing of notices, *see* 7-38-84 NMSA 1978.

## 7-38-58. Personal property sale requirements.

A. The county treasurer must offer for sale all personal property seized by a demand warrant within sixty days of the date it is seized.

B. Notice of the sale must be published in a newspaper of general circulation within the county where the personal property is to be sold at least once a week for the three weeks immediately preceding the week of the sale. The notice shall state the time and place of the sale and describe the personal property to be sold. The treasurer shall make a special effort to give notice of the sale to persons with a particular interest in special property and, apart from the requirements stated above, shall advertise the sale in a manner appropriate to the kind of property being sold.

C. Personal property must be sold at public auction either by the treasurer or an auctioneer hired by him. The auction shall be held at a time and place designated by the treasurer.

D. If a property owner's personal property is not sufficiently divisible to enable the treasurer to sell part of it and extinguish the tax delinquency, the treasurer may sell all of the personal property to extinguish the delinquency and return the remaining proceeds to the property owner.

E. Before the sale, the treasurer shall determine a minimum sale price for the personal property. In determining the minimum price, the treasurer shall consider the value of the property owner's interest in the personal property, the amount of delinquent taxes, penalties and interest for which it is being sold and the expenses of the sale. Personal property may not be sold for less than the minimum price unless no offer met the minimum price when it was offered at an earlier public auction.

F. Payment must be made in full and must be made immediately after an offer is accepted.

G. If, prior to the time of the sale, the property owner pays his personal property taxes, penalties and interest due and any costs incurred in preparing for the sale, or makes satisfactory arrangements with the treasurer for the payment of these amounts, the treasurer shall return his personal property to him.

**History:** 1953 Comp., § 72-31-58, enacted by Laws 1973, ch. 258, § 98; 1974, ch. 92, § 23.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Effect of misnomer of landowner or delinquent taxpayer in notice, advertisement, etc., of tax foreclosure or sale, 43 A.L.R.2d 967.

Omissions: validity of notice of tax sale or of tax sale proceeding which fails to state tax year or kind or type of taxes covered by tax assessments, 43 A.L.R.2d 988.

Inclusion or exclusion of first and last days in computing the time for performance of an act or event which must take place a certain number of days before a known future date, 98 A.L.R.2d 1331.

## 7-38-59. Certificates of sale; effect of certificates of sale.

A. Upon receiving payment for the personal property sold, the county treasurer shall execute and deliver a certificate of sale to the purchaser.

B. A certificate of sale:

(1) is prima facie evidence of the treasurer's right to make the sale and conclusive evidence of the regularity of all proceedings relating to the sale;

(2) transfers all of the former property owner's interest in the personal property as of the date of sale. The purchaser takes the personal property free of any unrecorded or unfiled interests unknown to him at the time of sale; and

(3) shall be in a form prescribed by regulation of the department.

**History:** 1953 Comp., § 72-31-59, enacted by Laws 1973, ch. 258, § 99.

## 7-38-60. Notification to property owner of delinquent taxes.

By June 10 of each year, the county treasurer shall mail a notice to each property owner of property for which taxes have been delinquent for more than two years. The notice shall be in a form and contain the information prescribed by department regulations and shall include the following:

A. a description of the property upon which the taxes are due;

B. a statement of the amount of property taxes due, the date on which they became delinquent, the rate of accrual of interest and any penalties or costs that may be charged;

C. a statement that the delinquent tax account on real property will be transferred to the department for collection;

D. a statement that if taxes due on real property are not paid within three years from the date of delinquency, the real property will be sold and a deed issued; and

E. a statement that if taxes due on personal property are not paid, the personal property may be seized and sold for taxes under authority of a demand warrant.

**History:** 1953 Comp., § 72-31-61, enacted by Laws 1973, ch. 258, § 101; 1978 Comp., § 7-38-61, recompiled as 1978 Comp., § 7-38-60 by Laws 1982, ch. 28, § 21; 1997, ch. 124, § 1.

**ANNOTATIONS**

**Recompilations.** — Laws 1982, ch. 28, § 22, recompiled former 7-38-60 NMSA 1978, relating to property taxes delinquent for more than two years, as 7-38-61 NMSA 1978.

**The 1997 amendment,** effective June 20, 1997, substituted "department" for "division" throughout the section and inserted "real property" in Subsection C.

## 7-38-61. Real property taxes delinquent for more than two years; treasurer to prepare delinquency list; notation on property tax schedule.

A. By July 1 of each year, the county treasurer shall prepare a property tax delinquency list of all real property for which taxes have been delinquent for more than two years. The tax delinquency list shall contain the information and be in a form prescribed and submitted by the date required by department regulations. The county treasurer shall record the tax delinquency list in the office of the county clerk. There shall be no recording fee for recordation of the tax delinquency list. The updated final property tax sale list shall be recorded with the office of the county clerk the day following the sale of the property. There shall be no recording fee for recordation of the final property tax sale list.

B. The county treasurer shall make a notation on the property tax schedule indicating that the account has been transferred to the department for collection at the time the tax delinquency list is mailed to the department.

**History:** 1953 Comp., § 72-31-60, enacted by Laws 1973, ch. 258, § 100; 1977, ch. 177, § 1; 1980 ch. 100, § 1; 1978 Comp., § 7-38-60, recompiled as 1978 Comp., § 7-38-61 by Laws 1982, ch. 28, § 22; 1997, ch. 124, § 2.

**ANNOTATIONS**

**Recompilations.** — Laws 1982, ch. 28, § 21, recompiled former 7-38-61 NMSA 1978, relating to notification to property owner of delinquent taxes, as 7-38-60 NMSA 1978.

**The 1997 amendment,** effective June 20, 1997, substituted "department" for "division" throughout the section, added "Real" at the beginning of the section heading, and in Subsection A, inserted "real" in the first sentence and added the third sentence.

## 7-38-62. Authority of department to collect delinquent property taxes after receipt of tax delinquency list; allowing an authorized county treasurer to act as an agent of the department; use of penalties, interest and costs.

A. After the receipt of the tax delinquency list, the department has the responsibility and exclusive authority to take all action necessary to collect delinquent taxes shown on the list. This authority includes bringing collection actions in the district courts based upon the personal liability of the property owner for taxes as well as the actions authorized in the Property Tax Code for proceeding against the property subject to the tax for collection of delinquent taxes.

B. Payment of delinquent taxes listed and any penalty, interest or costs due in connection with those taxes shall be made to the department if occurring after the receipt by the department of the tax delinquency list; however, the department may authorize county treasurers to act as its agents in accepting payments of taxes, penalties, interest or costs due to the department, including payments made pursuant to an installment agreement authorized by Section 7-38-68 NMSA 1978.

C. Penalties, interest and costs due received by the department pursuant to Subsection B of this section shall be retained by the department for use, subject to appropriation by the legislature, in the administration of the Property Tax Code.

History: 1953 Comp., § 72-31-62, enacted by Laws 1973, ch. 258, § 102; 1990, ch. 22, § 5; 2015, ch. 44, § 1.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, allowed the taxation and revenue department to authorize county treasurers to act as agents of the department in accepting payments made pursuant to an installment agreement for the payment of delinquent property taxes; in the catchline, added "allowing an authorized county treasurer to act as an agent of the department"; designated the first two sentences of the section as Subsection A, designated the third sentence of the section as Subsection B, and designated the last sentence of the section as Subsection C; in Subsection B, added "to the department, including payments made pursuant to an installment agreement authorized by Section 7-38-68 NMSA 1978"; in Subsection C, after the first occurrence of "department", deleted "under" and added "pursuant to Subsection B of".

**The 1990 amendment,** effective May 16, 1990, added "use of penalties, interest and costs" in the catchline and added the final sentence.

**Payment to county treasurer constitutes payment to state.** — Timely payments of delinquent tax to the county treasurer constituted payment to the state since treasurer had apparent if not statutory authority to accept payment of delinquent taxes on property deeded to, but not yet sold by, the state. Tabet v. Campbell, 1984-NMSC-059, 101 N.M. 334, 681 P.2d 1111.

## 7-38-63. Payment of delinquent taxes to the department; distribution.

At the time of payment to the department of delinquent taxes, interest and penalties, the department shall issue a receipt to the property owner for the payment of delinquent taxes, penalties and interest. A duplicate of the receipt shall be mailed to the county treasurer together with a remittance of the property taxes paid. When the county treasurer receives the remittance of the taxes and the duplicate receipt, the treasurer shall make a notation of the payment of the property taxes, penalties and interest on the property tax schedule and shall distribute the property taxes to the appropriate governmental units in accordance with the regulations of the department of finance and administration.

**History:** 1953 Comp., § 72-31-63, enacted by Laws 1973, ch. 258, § 103; 1979, ch. 373, § 1; 1990, ch. 22, § 6.

### ANNOTATIONS

**The 1990 amendment,** effective May 16, 1990, substituted "department" for "division" in the section heading and in two places in the first sentence, deleted "penalties and interests" following "taxes" in the second and third sentences and, in the third sentence, inserted "of the property taxes, penalties and interests" and made a minor stylistic change.

## 7-38-64. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1997, ch. 124, § 3 repealed 7-38-64 NMSA 1978, as enacted by Laws 1973, ch. 258, § 104, relating to the authority of the department to sell personal property for delinquent taxes, effective June 20, 1997. For provisions of former section, *see* the 1996 NMSA 1978 on *NMOneSource.com.*

## 7-38-65. Collection of delinquent taxes on real property; sale of real property.

A. If a lien exists by the operation of Section 7-38-48 NMSA 1978, the department may collect delinquent taxes on real property by selling the real property on which the taxes have become delinquent. The sale of real property for delinquent taxes shall be in

accordance with the provisions of the Property Tax Code. Real property may be sold for delinquent taxes at any time after the expiration of three years from the first date shown on the tax delinquency list on which the taxes became delinquent. Real property shall be offered for sale for delinquent taxes either within four years after the first date shown on the tax delinquency list on which the taxes became delinquent or, if the department is barred by operation of law or by order of a court of competent jurisdiction from offering the property for sale for delinquent taxes within four years after the first date shown on the tax delinquency list on which the taxes became delinquent, within one year from the time the department determines that it is no longer barred from selling the property, unless:

(1) all delinquent taxes, penalties, interest and costs due are paid by 5:00 p.m. of the day prior to the date of the sale; or

(2) an installment agreement for payment of all delinquent taxes, penalties, interest and costs due is entered into with the department by 5:00 p.m. of the day prior to the date of the sale pursuant to Section 7-38-68 NMSA 1978.

B. Failure to offer property for sale within the time prescribed by Subsection A of this section shall not impair the validity or effect of any sale that does take place.

C. The time requirements of this section are subject to the provisions of Section 7-38-83 NMSA 1978.

D. After January 1, 2014 and subject to the provisions of Subsection A of this section, the department shall annually offer for sale in each county at least one real property listed on that county's property tax delinquency list, unless the director of the property tax division of the department and the county treasurer enter into an agreement to postpone the delinquent property tax sale. The agreement to postpone the delinquent property tax sale shall be executed in writing, and copies shall be sent to the secretary of taxation and revenue and the secretary of finance and administration. That agreement shall state the reason for the postponement and the proposed remedy that will allow the department to conduct the sale in the future.

History: 1953 Comp., § 72-31-65, enacted by Laws 1973, ch. 258, § 105; 1983, ch. 215, § 3; 1985, ch. 109, § 9; 1985, ch. 226, § 1; 1990, ch. 22, § 7; 2001, ch. 253, § 1; 2001, ch. 254, § 1; 2003, ch. 95, § 4; 2013, ch. 155, § 1.

## ANNOTATIONS

**The 2013 amendment,** effective January 1, 2014, required the taxation and revenue department to conduct delinquent property tax sales in each county with delinquent properties at least one time in each calendar year; and added Subsection D.

**Applicability.** — Laws 2013, ch. 155, § 2 provided that the provisions of Laws 2013, ch. 155, § 2 applies to property tax years beginning on or after January 1, 2014.

**The 2003 amendment,** effective June 20, 2003, added "If a lien exists by the operation of Section 7-38-48 NMSA 1978" at the beginning of Subsection A.

**The 2001 amendment,** effective June 15, 2001, in Paragraphs A(1) and (2), substituted "by 5:00 p.m. of the day prior to the date of sale" for "by the date of sale"; and added Paragraph C. Laws 2001, ch. 253, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 2001, ch. 254, § 1. *See* 12-1-8 NMSA 1978.

**The 1990 amendment,** effective May 16, 1990, in Subsection A, substituted "department" for "division" in the first sentence and in Paragraph (2) and rewrote the fourth sentence which read "Real property must be offered for sale for delinquent taxes within four years after the first date shown on the tax delinquency list on which the taxes became delinquent, unless".

**Purpose of statutes on tax deeds** is to give a measure of certainty and security to tax titles. First Nat'l Bank v. State, 1967-NMSC-097, 77 N.M. 695, 427 P.2d 225.

**Tax deeds prima facie valid.** — Since tax deeds attacked were signed by the proper officials, they were prima facie valid unless some departure from statutory mandates, which made the conveyance a nullity and void, was established. The burden in this respect was on the state in order to overcome the prima facie effect granted the deeds by former 72-8-43, 1953 Comp. First Nat'l Bank v. State, 1967-NMSC-097, 77 N.M. 695, 427 P.2d 225.

**Tax deed issued before period of redemption has expired** is void. First Nat'l Bank v. State, 1967-NMSC-097, 77 N.M. 695, 427 P.2d 225.

**State is not an "owner"** neither is it "person entitled to redeem." First Nat'l Bank v. State, 1967-NMSC-097, 77 N.M. 695, 427 P.2d 225.

**State has no standing to assert rights of owner.** — The rights preserved in the statutes are rights of "owners" as that term is interpreted, and the state cannot bring itself within the protection of the sections. Unless the conveyances were void and a nullity, the state has no standing to assert rights given by statute to "owners" or "persons entitled to redeem." First Nat'l Bank v. State, 1967-NMSC-097, 77 N.M. 695, 427 P.2d 225.

**State in no better position than other strangers.** — The state is in no better position to avoid its tax deeds or to claim deprivation of rights guaranteed by statute to the prior owner than would be some other stranger to the right. First Nat'l Bank v. State, 1967-NMSC-097, 77 N.M. 695, 427 P.2d 225.

**Action to declare rights under the Property Tax Code.** — A claim seeking to invalidate a tax sale due to inadequacy of price may be directed solely at the third-party

purchasers of the property. Valenzuela v. Snyder, 2014-NMCA-061, cert. granted, 2014-NMCERT-005.

Where plaintiffs owed delinquent property taxes; the department sold the property at auction; the department established the minimum bid as $215; the fair market value of the property was at least $25,000; the buyers of the property, who were the only bidders, paid $215 for the property; the department issued a tax deed to the buyers; and plaintiffs filed suit against the buyers to set aside the sale, the suit against the buyers was permissible. Valenzuela v. Snyder, 2014-NMCA-061, cert. granted, 2014-NMCERT-005.

**Inadequacy of purchase price.** — The inadequacy of the purchase price or gross disproportionality between the purchase price and the property's value are not grounds for setting aside a tax sale. Valenzuela v. Snyder, 2014-NMCA-061, cert. granted, 2014-NMCERT-005.

Where plaintiffs owed delinquent property taxes; the department sold the property at auction; the department established the minimum bid as $215; the fair market value of the property was at least $25,000; the buyers of the property, who were the only bidders, paid $215 for the property; the department issued a tax deed to the buyers; and plaintiffs filed suit against the buyers to set aside the sale, the inadequacy of the purchase price or gross disproportionality between the purchase price and the property's value were not unconscionable and were not grounds for setting aside the tax sale. Valenzuela v. Snyder, 2014-NMCA-061, cert. granted, 2014-NMCERT-005.

**Failure of proper notice would not invalidate sale.** — If a valid assessment and levy had been made of the taxes, the county treasurer's failure to give a proper notice would not invalidate the tax sales. The neglect to give a proper notice or failure to give any notice at all would not discharge the tax or present a valid obstacle to the collection thereof. Greene v. Esquibel, 1954-NMSC-039, 58 N.M. 429, 272 P.2d 330.

**Continuity of adverse possession interrupted where land forfeited for taxes.** — If, during the running of the statute of limitations in favor of the adverse occupant of land, the land is forfeited to the state for taxes, the general rule is that continuity of possession is interrupted for the reason that the statute of limitations does not run against the state in the absence of some special provision to that effect. Greene v. Esquibel, 1954-NMSC-039, 58 N.M. 429, 272 P.2d 330.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Easement, servitude, or covenant as affected by sale for taxes, 7 A.L.R.5th 187.

## 7-38-66. Sale of real property for delinquent taxes; notice of sale.

A. At least twenty days but not more than thirty days before the date of the sale for delinquent taxes, the department shall notify by certified mail, return receipt requested, to the address as shown on the most recent property tax schedule, each property owner

whose real property will be sold that the owner's real property will be sold to satisfy delinquent taxes, unless:

(1) all delinquent taxes, penalties, interest and costs due are paid by 5:00 p.m. of the day prior to the date of the sale; or

(2) an installment agreement for payment of all delinquent taxes, penalties, interest and costs due is entered into with the department by 5:00 p.m. of the day prior to the date of sale in accordance with Section 7-38-68 NMSA 1978.

B. The notice shall also:

(1) state the amount of taxes, penalties, interest and costs due;

(2) state the time and place of the sale;

(3) describe the real property that will be sold;

(4) inform the property owner of his right to enter into an installment agreement with the department for payment of delinquent taxes, penalties, interest and costs, in accordance with Section 7-38-68 NMSA 1978;

(5) provide information on the name and phone number of the individual in the department the taxpayer can contact to arrange for an installment agreement in accordance with Section 7-38-68 NMSA 1978; and

(6) contain any other information that the department may require by regulation.

C. At the same time a notice required by Subsection A of this section is sent to the owner of the property, a notice containing the information set out in Subsection B of this section shall also be sent to each person holding a lien or security interest of record in the property if an address for such person is reasonably ascertainable through a search of the property records of the county in which the property is located.

D. Failure of the department to mail a required notice by certified mail, return receipt requested, shall invalidate the sale; provided, however, that return to the department of the notice of the return receipt shall be deemed adequate notice and shall not invalidate the sale.

E. Proof by the taxpayer that all delinquent taxes, penalties, interest and costs had been paid by 5:00 p.m. of the day prior to the date of sale shall prevent or invalidate the sale.

F. Proof by the taxpayer that the taxpayer has, by 5:00 p.m. of the day prior to the date of sale, entered into an installment agreement to pay all delinquent taxes,

penalties, interest and costs as provided in Section 7-38-68 NMSA 1978 and that timely payments under such agreement are being made shall prevent or invalidate the sale.

G. The time requirements of this section are subject to the provisions of Section 7-38-83 NMSA 1978.

**History:** 1953 Comp., § 72-31-66, enacted by Laws 1973, ch. 258, § 106; 1980, ch. 104, § 1; 1982, ch. 28, § 23; 1983, ch. 215, § 4; 1990, ch. 22, § 8; 2001, ch. 253, § 2; 2001, ch. 254, § 2.

## ANNOTATIONS

**The 2001 amendment,** effective June 15, 2001, in Paragraphs A(1), (2) and Subsection E, substituted "by 5:00 p.m. of the day prior to the date of sale" for "by the date of sale"; added Paragraphs B(4) and (5); in Subsection F, added "by 5:00 p.m. of the day prior to the date of sale" and deleted "prior to the date of sale" following "interests and costs"; and added Subsection G. Laws 2001, ch. 253, § 2 enacted identical amendments to this section. The section was set out as amended by Laws 2001, ch. 254, § 2. *See* 12-1-8 NMSA 1978.

**The 1990 amendment,** effective May 16, 1990, substituted "department" for "division" throughout the section; added Subsection C; redesignated former Subsections C to E as Subsections D to F; rewrote the provisions of Subsection D which read "Failure of the division to mail the notice by certified mail, return receipt requested, or failure of the division to receive the return receipt shall invalidate the sale; provided, however, that the receipt by the division of a return receipt indicating that the taxpayer does not reside at the address shown on the most recent property tax schedule shall be deemed adequate notice and shall not invalidate the sale"; and made numerous minor stylistic changes.

**Taxpayer testimony insufficient to create issue of material fact.** — In the face of documentary evidence establishing that the initial payment made by taxpayer for delinquent taxes corresponded to payment of one-half of his delinquent taxes, penalties, and interest, taxpayer's self-serving testimony as to his subjective belief that he had paid his taxes for certain tax years was insufficient to create a genuine issue of material fact as to prior payment. Cordova v. N.M. Taxation & Revenue Dep't., 2005-NMCA-009, 136 N.M. 713, 104 P.3d 1104.

**Due process required.** — A tax sale by the division is a taking of property by the government, and the notice of such taking must comply with minimum due process standards under the United States and New Mexico Constitutions. Patrick v. Rice, 1991-NMCA-063, 112 N.M. 285, 814 P.2d 463, cert. denied, 112 N.M. 308, 815 P.2d 161.

**Section 7-38-70C NMSA 1978 subject to notice requirements.** — The legislature did not intend to apply Section 7-38-70C NMSA 1978 (limitation period to challenge tax sale) when the state fails to comply with the notice requirements of this section and

federal and state constitutional due process requirements. Hoffman v. State Taxation & Revenue Dep't, 1994-NMCA-032, 117 N.M. 263, 871 P.2d 27.

**Due process requirements.** — Due process requires that the state must provide notice of sale to parties whose interest in property would be affected by a tax sale, as long as that information is reasonably ascertainable. Brown v. Greig, 1987-NMCA-096, 106 N.M. 202, 740 P.2d 1186, cert. denied, 106 N.M. 174, 740 P.2d 1158.

**Persons to whom notice is necessary.** — In keeping with the intent of the legislature to notify "each property owner" of an impending sale of his property, it is implicit that the legislature also intended that holders of record title be notified of the same thing. Brown v. Greig, 1987-NMCA-096, 106 N.M. 202, 740 P.2d 1186, cert. denied, 106 N.M. 174, 740 P.2d 1158.

**Indications of ownership.** — When the record owner of three lots orally notified the county assessor that he no longer owned the lots and would not be responsible for the property taxes, that notice did not constitute a waiver of his right to be notified of the subsequent delinquency prior to the tax sales, where the purchaser never recorded his deeds, record owner repurchased the properties, and no documentation, other than the grant of an easement, appeared of record which would have indicated purchaser's interest in the property. Brown v. Greig, 1987-NMCA-096, 106 N.M. 202, 740 P.2d 1186, cert. denied, 106 N.M. 174, 740 P.2d 1158.

**Notice requirements in effect at time of sale apply.** — A tax sale is controlled by the notice requirements in effect at the time of the sale, not by those in effect when the tax lien arose. Buescher v. Jaquez, 1983-NMSC-107, 101 N.M. 2, 677 P.2d 615.

**Reasonable diligence to locate taxpayer contact information.** — Where the state failed to contact the utility company that served the nonresident taxpayer’s rural property, to red tag the taxpayer’s property with a warning of the tax deficiency, and to access public records in the state where the taxpayer was known to reside; accessed only two internet websites that contained published telephone and address information when the state knew that the contact information listed under the taxpayer’s name was unpublished; and although the taxpayer was a prominent businessman and property owner in his home state, failed to use internet websites that would produce information about the taxpayer, the state was not reasonably diligent in attempting to locate the reasonably ascertainable contact information of the deficient taxpayer before selling his property at auction in violation of due process. Gates v. N.M. Taxation & Revenue Dept., 2008-NMCA-023, 143 N.M. 446, 176 P.3d 1178.

**Duty to seek correct address.** — Subsection A requires the division (department) to send notice to delinquent taxpayers via certified mail, return receipt requested. This requirement implicitly requires the division (department) to send the notice to the correct address. The division (department) has an affirmative duty to seek out, by "diligent search and inquiry", the correct address of each property owner, and failure to do so

may violate due process. Patrick v. Rice, 1991-NMCA-063, 112 N.M. 285, 814 P.2d 463, cert. denied, 112 N.M. 308, 815 P.2d 161.

**Incorrect address does not invalidate sale. —** The return of a notice of tax sale to the department indicating an incorrect address did not invalidate the tax sale. Cano v. Lovato, 1986-NMCA-043, 105 N.M. 522, 734 P.2d 762, cert. quashed, 105 N.M. 438, 733 P.2d 1321 (1987).

**Incorrect address immaterial if notice received. —** The incorrect address on the envelope is immaterial if the notice actually got to the right address. The statute does not turn on the technical accuracy of the address typed on the envelope, which is merely a delivery vehicle, but upon mailing the notice "to the address" shown on the latest tax schedule. Wine v. Neal, 1983-NMSC-087, 100 N.M. 431, 671 P.2d 1142.

**Incorrect address immaterial if no challenge on those grounds.** — There is no basis for voiding a tax sale merely because the proper address was not correctly printed on the notice envelope, where there is no challenge as to whether the notice actually reached the correct address. Wine v. Neal, 1983-NMSC-087, 100 N.M. 431, 671 P.2d 1142.

**Intent of 1990 amendment to Subsection D. —** Subsection D of this section, as amended in 1990, was intended to legislatively overrule the Supreme Court's decision in State ex rel. Klineline v. Blackhurst, 1988-NMSC-015, 106 N.M. 732, 749 P.2d 1111. Cordova v. N.M. Taxation & Revenue Dep't., 2005-NMCA-009, 136 N.M. 713, 104 P.3d 1104.

**Receipt of notice of return receipt shall be deemed adequate notice** as long as the notice of the tax sale was mailed in compliance with Subsection A of this section. Cordova v. N.M. Taxation & Revenue Dep't., 2005-NMCA-009, 136 N.M. 713, 104 P.3d 1104.

**Failure to notify rendering sale invalid. —** Tax sale was invalid since the owner had sent the county a change of address and the division's attempt to notify the owner of delinquent taxes and of the tax sale failed, due primarily to the county treasurer's initial failure to properly record the owner's new address. Chavez v. Sharvelle, 1988-NMCA-005, 106 N.M. 793, 750 P.2d 1119, cert. denied, 107 N.M. 16, 751 P.2d 700.

**Validity of sale not affected by failure to deliver notice. —** Since party did not receive the notices required by former 72-8-30, 1953 Comp., to be mailed to him by the tax commission at least 30 days (now 20) prior to the actual sale, if such notice was mailed, it was specifically provided in that section that the fact that the notice was not delivered to the addressee would not affect the validity of any subsequent sale. Bailey v. Barranca, 1971-NMSC-074, 83 N.M. 90, 488 P.2d 725.

**Effect of failure of notice. —** A tax sale will not be invalidated under the curative act for failure to give, or of the taxpayer to receive, notice of taxes due or that redemption

time is about to expire. Bailey v. Barranca, 1971-NMSC-074, 83 N.M. 90, 488 P.2d 725; Worman v. Echo Ridge Homes Coop., 1982-NMSC-081, 98 N.M. 237, 647 P.2d 870.

**Failure to give notice does not constitute constructive fraud.** — Failure to give notice of a tax sale of land or the failure of taxpayer to receive such notice, standing alone, does not constitute constructive fraud invalidating the tax sale. Lamb v. Manley, 1954-NMSC-046, 58 N.M. 292, 270 P.2d 706; Worman v. Echo Ridge Homes Coop., 1982-NMSC-081, 98 N.M. 237, 647 P.2d 870.

The failure to send notice of a delinquent tax sale to the record owner, and to red tag the land, does not amount to constructive fraud. Worman v. Echo Ridge Homes Coop., 1982-NMSC-081, 98 N.M. 237, 647 P.2d 870.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 72 Am. Jur. 2d State and Local Taxation §§ 904 to 930.

Effect of misnomer of landowner or delinquent taxpayer in notice, advertisement, etc. of tax foreclosure or sale, 43 A.L.R.2d 967.

Omissions: validity of notice of tax sale or of tax sale proceeding which fails to state tax year or kind or type of taxes covered by tax assessments, 43 A.L.R.2d 988.

Inclusion or exclusion of first and last days in computing the time for performance of an act or event which must take place a certain number of days before a known future date, 98 A.L.R.2d 1331.

85 C.J.S. Taxation § 1101 et seq.

## 7-38-67. Real property sale requirements.

A. Real property shall not be sold for delinquent taxes before the expiration of three years from the first date shown on the tax delinquency list on which the taxes on the real property became delinquent.

B. Notice of the sale shall be published in a local newspaper within the county where the real property is located or, if there is no local county or municipal newspaper, then a newspaper published in a county contiguous to or near the county in which the real property is located, at least once a week for the three weeks immediately preceding the week of the sale. For more generalized notice, the department may choose to publish notice of the sale also in a newspaper not published within the county and of more general circulation. The notice shall state the time and place of the sale and shall include a description of the real property sufficient to permit its identification and location by potential purchasers.

C. Real property shall be sold at public auction either by the department or an auctioneer hired by the department. The auction shall be held in the county where the real property is located at a time and place designated by the department.

D. If the real property can be divided so as to enable the department to sell only part of it and pay all delinquent taxes, penalties, interest and costs, the department may, with the consent of the owner, sell only a part of the real property.

E. Before the sale, the department shall determine a minimum sale price for the real property. In determining the minimum price, the department shall consider the value of the property owner's interest in the real property, the amount of all delinquent taxes, penalties and interest for which it is being sold and the costs. The minimum price shall not be less than the total of all delinquent taxes, penalties, interest and costs. Real property shall not be sold for less than the minimum price unless no offer met the minimum price when it was offered at an earlier public auction or the property is sold in accordance with the provisions of Subsection H of this section. A sale properly made under the authority of and in accordance with the requirements of this section constitutes full payment of all delinquent taxes, penalties and interest that are a lien against the property at the time of sale, and the sale extinguishes the lien.

F. Payment shall be made in full by the close of the public auction before an offer may be deemed accepted by the department.

G. Real property not offered for sale may be offered for sale at a later sale, but the requirements of this section and Section 7-38-66 NMSA 1978 shall be met in connection with each sale.

H. The board of trustees of a community land grant-merced governed pursuant to the provisions of Chapter 49, Article 1 NMSA 1978 or by statutes specific to the named land grant-merced shall be allowed to match the highest bid at a public auction, which shall entitle the board of trustees to purchase the property for the amount bid if:

(1) the property is situated within the boundaries of that land grant-merced as shown in the United States patent to the grant;

(2) the bid covers all past taxes, penalties, interest and costs due on the property; and

(3) the land becomes part of the common lands of the land grant-merced.

**History:** 1953 Comp., § 72-31-67, enacted by Laws 1973, ch. 258, § 107; 1974, ch. 92, § 24; 1982, ch. 28, § 24; 1983, ch. 215, § 5; 1995, ch. 12, § 12; 2001, ch. 253, § 3; 2001, ch. 254, § 3; 2005, ch. 211, § 1.

## ANNOTATIONS

**Cross references.** — For laws relating to land grant-merced, *see* 49-1-1 to 49-1-22 NMSA 1978.

**The 2005 amendment,** effective July 1, 2005, in Subsection E, provided that real property shall not be sold for less than the minimum price unless no offer met the minimum price when the property is sold in accordance with Subsection H and added Subsection H to provide that the board of trustees shall be allowed to match the highest bid at a public auction and purchase the property for the amount bid if the property is within a land grant-merced, the bid covers all past taxes, penalties, interest and costs and the land becomes part of the common lands of the land grant-merced.

**The 2001 amendment,** effective June 15, 2001, in Subsection B, substituted "local newspaper" for "newspaper of general circulation", added "or, if there is no local county or municipal newspaper, then a newspaper published in a county contiguous to or near the county in which the real property is located", and added the second sentence. Laws 2001, ch. 253, § 3 enacted identical amendments to this section. The section was set out as amended by Laws 2001, ch. 254, § 3. *See* 12-1-8 NMSA 1978.

**The 1995 amendment,** effective June 16, 1995, substituted "department" for "division" throughout the section and substituted "costs" for "expenses of the sale" in Subsection D and in two places in Subsection E.

**Notice by publication inadequate for mortgagee.** — Notice by publication, in compliance with this section, does not provide a mortgagee of real property with constitutionally adequate notice of a proceeding to sell the mortgaged property for nonpayment of taxes. Macaron v. Assocs. Capital Servs. Corp., 1987-NMCA-005, 105 N.M. 380, 733 P.2d 11.

**Owner's interest.** — Subsection E of this section requires the department to "consider" both the owner's interest and the amount of delinquent taxes, penalties, and costs, but then the department is directed to set the minimum price as not less than the total of the delinquent taxes, penalties, and costs. Thus, the legislature does not appear to have required any definite amount representing the owner's interest as part of the minimum sale price. Cochrell v. Mitchell, 2003-NMCA-094, 134 N.M. 180, 75 P.3d 396.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 72 Am. Jur. 2d State and Local Taxation §§ 931 to 939.

85 C.J.S. Taxation §§ 798 to 808.

## 7-38-68. Installment agreements.

A. The division may enter into an installment agreement for the payment of all delinquent property taxes, penalties, interest and costs due with respect to either real property or a manufactured home with the owner of the real property or manufactured home whose taxes have become delinquent and whose account for all or part of the

delinquent taxes has been transferred for collection to the division. Execution of an installment agreement under this section by a property owner is an irrevocable admission of liability for all taxes that are the subject of the agreement. The installment agreement shall be in writing and shall not extend for a period of more than thirty-six months. Interest shall accrue on the unpaid balance during the period of the installment agreement. The rate of interest shall be one percent a month, and no other interest on that portion of the principal representing unpaid taxes shall accrue while an installment agreement is in effect. The division shall not enter into an installment agreement with a property owner on or after the date of the initial sale of real property or manufactured home for delinquent taxes whether or not the real property or manufactured home is sold and a deed issued as a result of that sale. The division shall promulgate regulations establishing requirements for a minimum down payment and substantially equal monthly payments for installment agreements.

B. An installment agreement prevents any further action to collect the delinquent taxes stated in the agreement as long as the terms of the agreement are met.

C. The division may proceed under the Property Tax Code to collect the property taxes, penalties, interest and costs due and unpaid if:

(1) installment payments are not made on or before the dates specified in the agreement;

(2) the property owner fails to pay other property taxes when required; or

(3) any other condition contained in the agreement is not met.

D. For the purpose of computing the time when real property or a manufactured home may be sold for delinquent taxes, the date of original delinquency shall be used when the delinquent taxes have been the subject of an installment agreement that was subsequently breached by the property owner.

E. If an owner of real property or a manufactured home enters into an installment agreement and subsequently breaches the agreement under this section, the division shall not enter into another installment agreement with that property owner for the payment of the delinquent taxes that were the subject of the installment agreement.

F. Alphabetically indexed and serially numbered records of installment agreements must be kept in the office of the director and made available for public inspection.

**History:** 1953 Comp., § 72-31-68, enacted by Laws 1973, ch. 258, § 108; 1985, ch. 109, § 10.

## ANNOTATIONS

## 7-38-69. Distribution of amounts collected under installment agreements.

Amounts collected under installment agreements entered into by the department that represent delinquent taxes shall be remitted to the county treasurer of the county to which the net taxable value of the property is allocated for distribution to the governmental units. Amounts collected that represent penalties, interest and costs shall be retained by the department in accordance with Section 7-38-71 NMSA 1978. Money collected shall be remitted at the times and in the manner required by regulations of the department of finance and administration. When the department has received payment in full of delinquent taxes, penalties, interest and costs paid under an installment agreement, the department shall notify the county treasurer of that fact, and the county treasurer shall make an entry on the property tax schedule indicating that the delinquent property taxes, penalties and interest have been paid.

**History:** 1953 Comp., § 72-31-69, enacted by Laws 1973, ch. 258, § 109; 1985, ch. 109, § 11; 1990, ch. 22, § 9; 1995, ch. 12, § 13.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, substituted the language beginning "interest and costs" for "and interest shall be retained by the department for use, subject to appropriation by the legislature, in the administration of the Property Tax Code" at the end of the second sentence, deleted the former third sentence which read "Amounts collected that represent costs shall be remitted to the state treasurer for deposit in the state general fund", and inserted "and costs" near the beginning of the fourth sentence.

**The 1990 amendment,** effective May 16, 1990, substituted "department" for "division" in the first sentence, rewrote the second sentence which read "Amounts collected that represent penalties and interests shall be remitted to the appropriate county treasurer for deposit in the county general fund" and, in the final sentence, substituted "department has received" for "county treasurer has received" and "the department shall notify the county treasurer of that fact and the county treasurer shall make an entry" for "he shall make an entry".

## 7-38-70. Issuance of deeds as result of sale of real property for delinquent taxes; effect of deeds; limitation of action to challenge conveyance.

A. Upon receiving payment for real property sold for delinquent taxes, the division shall execute and deliver a deed to the purchaser.

B. If the real property was sold substantially in accordance with the Property Tax Code, the deed conveys all of the former property owner's interest in the real property as of the date the state's lien for real property taxes arose in accordance with the

Property Tax Code, subject only to perfected interests in the real property existing before the date the property tax lien arose.

C. After two years from the date of sale, neither the former real property owner shown on the property tax schedule as the delinquent taxpayer nor anyone claiming through him may bring an action challenging the conveyance.

D. Subject to the limitation of Subsection C of this section, in all controversies and suits involving title to real property held under a deed from the state issued under this section, any person claiming title adverse to that acquired by the deed from the state must prove, in order to defeat the title, that:

(1) the real property was not subject to taxation for the tax years for which the delinquent taxes for which it was sold were imposed;

(2) the division failed to mail the notice required under Section 7-38-66 NMSA 1978 or to receive any required return receipt;

(3) he, or the person through whom he claims, had title to the real property at the time of the sale and had paid all delinquent taxes, penalties, interest and costs prior to the sale as provided in Subsection E of Section 7-38-66 NMSA 1978; or

(4) he, or the person through whom he claims, had entered into an installment agreement to pay all delinquent taxes, penalties, interest and costs prior to the sale as provided in Section 7-38-68 NMSA 1978 and that all payments due were made timely.

**History:** 1953 Comp., § 72-31-70, enacted by Laws 1973, ch. 258, § 110; 1982, ch. 28, § 25.

## ANNOTATIONS

### I. GENERAL CONSIDERATIONS.

**Suing to quiet title within two years of tax sale.** — Section 42-6-1 NMSA 1978, which provides that "Title may be quieted against the owner or holder of any mortgage, claim of lien or other encumbrance, where the owner or holder of such mortgage, lien or encumbrance has permitted [the encumbrance] to become barred by the statute of limitations," does not bar a plaintiff from initiating a suit to quiet title to clear a cloud against the title within the two-year period following a tax sale, provided in Subsection D of this section. Bentz v. Peterson, 1988-NMCA-071, 107 N.M. 597, 762 P.2d 259.

**Time of delivery of deed.** — This section does not mandate immediate delivery of the deed at the time of sale; thus, a deed delivered one month after the tax sale was issued pursuant to statutory authority, and the sale and deed could not be invalidated on the basis of a claimed jurisdictional defect. Cano v. Lovato, 1986-NMCA-043, 105 N.M. 522, 734 P.2d 762, cert. quashed, 105 N.M. 438, 733 P.2d 1321.

**Applicability of recording act.** — Section 14-9-3 NMSA 1978, relating to effect of unrecorded instruments applies to tax deeds. Cano v. Lovato, 1986-NMCA-043, 105 N.M. 522, 734 P.2d 762, cert. quashed, 105 N.M. 438, 733 P.2d 1321.

**Grantees in quitclaim deed from purchaser of property sold for taxes** would take subject to all defects therein of which they knew, or which an examination of the record would disclose. State ex rel. State Tax Comm'n v. Garcia, 1967-NMSC-098, 77 N.M. 703, 427 P.2d 230.

**Purpose of statutes on tax deeds** is to give a measure of certainty and security to tax titles. First Nat'l Bank v. State, 1967-NMSC-097, 77 N.M. 695, 427 P.2d 225.

**Original owner's right to purchase.** — Former statutory language gave the original owner of the land the preferential right to purchase the property upon the payment of the full amount of taxes, penalties, interest and costs for which the property was sold by the tax sale proceedings. The purpose of the legislature was to grant a preference to the original property owner to become reinvested of his property upon payment of taxes, penalties, interest and costs. Trujillo v. Montano, 1958-NMSC-079, 64 N.M. 259, 327 P.2d 326 (decided under prior law).

**Power of treasurer (department) to execute tax deed** is not exhausted until a deed is made in compliance with law. Brown v. Gurley, 1954-NMSC-025, 58 N.M. 153, 267 P.2d 134.

**The assessment of property for taxation** is one of the essential steps leading up to a sale for taxes. If an assessment is void, it follows inevitably that the sale based upon such assessment is likewise void. Baltzley v. Lujan, 1949-NMSC-065, 53 N.M. 502, 212 P.2d 417.

## II. CHALLENGES TO TAX SALE.

### A. GENERALLY.

**Grounds for challenge to tax sale** are generally strictly limited to the grounds set forth in Subsection D of this section, but there could be such a degree of noncompliance with other required procedures that a tax sale could be voided on grounds other than those of that subsection. Cochrell v. Mitchell, 2003-NMCA-094, 134 N.M. 180, 75 P.3d 396.

**Substantial compliance.** — Subsection B means that a trial court is empowered to review the sale procedures, but not for the purpose of requiring letter-perfect compliance with each requirement of the statutes. Cochrell v. Mitchell, 2003-NMCA-094, 134 N.M. 180, 75 P.3d 396.

A reading of the entirety of this section, together with the cases, indicates that the substantial compliance language of Subsection B of this section must overlay all the

other statutes that comprise the Property Tax Code. Cochrell v. Mitchell, 2003-NMCA-094, 134 N.M. 180, 75 P.3d 396.

**This section is "curative" statute** that stringently limits the grounds upon which a successful attack upon a tax deed issued by the state may be made. It also limits the time for bringing such action. Bailey v. Barranca, 1971-NMSC-074, 83 N.M. 90, 488 P.2d 725.

**Tax deed prima facie valid.** — Since tax deeds attacked were signed by the proper officials, they were prima facie valid unless some departure from statutory mandates, which made the conveyance a nullity and void, was established. The burden in this respect was on the state in order to overcome the prima facie effect granted the deeds by former 72-8-43, 1953 Comp. First Nat'l Bank v. State, 1967-NMSC-097, 77 N.M. 695, 427 P.2d 225.

**Tax titles subject to attack for failure of procedure.** — While the title received from the state is a new and paramount title in fee simple absolute, tax titles are commonly subject to attack for failure to comply with statutory procedures in the assessment and collection of taxes, in the sale of properties because of failure to pay taxes and in the redemption from tax sale. State ex rel. State Tax Comm'n v. Garcia, 1967-NMSC-098, 77 N.M. 703, 427 P.2d 230.

## B. STANDING.

**Appellants without color of title have no standing to contest deed.** — Since appellants could show no color of title, they did not have title to the land at the time of the sale and were not the owners of the land sold for taxes and, therefore, could not claim fraud nor contest appellee's tax deed under provisions of former version of this section. Griego v. Roybal, 1970-NMSC-021, 81 N.M. 202, 465 P.2d 85.

**Mere possession of land** is not such substantial right as would constitute "title" required by this section. Griego v. Roybal, 1970-NMSC-021, 81 N.M. 202, 465 P.2d 85.

**State in no better position than other stranger.** — The state is in no better position to avoid its deeds or to claim deprivation of rights guaranteed by statute to the prior owner than would be some other stranger to the right. First Nat'l Bank v. State, 1967-NMSC-097, 77 N.M. 695, 427 P.2d 225.

**State has no standing to assert rights of owners.** — The rights preserved in the statutes are rights of "owners" as that term is interpreted, and the state cannot bring itself within the protection of those statutes. Unless the conveyances were void and a nullity, the state has no standing to assert rights given by statute to "owners" or "persons entitled to redeem." First Nat'l Bank v. State, 1967-NMSC-097, 77 N.M. 695, 427 P.2d 225.

## C. PARTICULAR GROUNDS.

**Fraud as grounds for challenge of tax deed.** — Prior to 1973, constructive fraud by the officer selling property was a statutory ground for attacking a tax deed but in 1973, the legislature amended the Property Tax Code, omitting fraud by tax officials from the list of statutory grounds for attacking a tax deed. Cordova v. N.M. Taxation & Revenue Dep't., 2005-NMCA-009, 136 N.M. 713, 104 P.3d 1104.

**Fraud by county treasurer avoids tax title.** — Fraud on the part of the county treasurer, either actual or constructive, will suffice to avoid a tax title and save property from forfeiture. Trujillo v. Dimas, 1956-NMSC-043, 61 N.M. 235, 297 P.2d 1060.

**Constitutional and statutory notice requirements applicable to Subsection C.** — The legislature did not intend to apply Subsection C when the state fails to comply with the notice requirements of Section 7-38-66 NMSA 1978 and federal and state constitutional due process requirements. Hoffman v. State, Taxation & Revenue Dep't, 1994-NMCA-032, 117 N.M. 263, 871 P.2d 27.

**Notice of tax sale constitutionally inadequate.** — The notice of a tax sale was constitutionally inadequate under both the United States and New Mexico Constitutions, since the notice was mailed only to the taxpayer's old address, the notice was returned with a stamp indicating that the forwarding address had expired, and the new location of the taxpayer was reasonably ascertainable since she had submitted a change of address to the county assessor. Hoffman v. State, Taxation & Revenue Dep't, 1994-NMCA-032, 117 N.M. 263, 871 P.2d 27.

**Clear evidence necessary to set aside tax deed for fraud.** — One seeking to set aside a tax title on the ground of fraud, actual or constructive, in giving out erroneous information, has the burden of establishing such fact by clear and convincing evidence, a mere preponderance will not suffice. Trujillo v. Dimas, 1956-NMSC-043, 61 N.M. 235, 297 P.2d 1060; Gallegos v. Quinlan, 1980-NMSC-065, 94 N.M. 405, 611 P.2d 1099.

**Tax deed obtained by fraud may be attacked** without regard to statute of limitations. Gallegos v. Quinlan, 1980-NMSC-065, 94 N.M. 405, 611 P.2d 1099.

**Payment of taxes under erroneous assessment good defense to sale.** — When the owner of land who in good faith paid taxes under an erroneous assessment, thinking and intending the payment to cover the tax on his land, such payment constituted a good defense against the sale and tax deed based upon a second assessment of the same land with a proper description. Trujillo v. Montano, 1958-NMSC-079, 64 N.M. 259, 327 P.2d 326.

## III. TITLE.

### A. GENERALLY.

**Former vendor's interest transferred.** — Under Subsection B, all of the former vendor's interests in the real property were conveyed to the defendants by the tax deed

because the vendor is a "former property owner." Thus, the vendor's legal title to the property was conveyed to the defendants because legal title is clearly an interest in real property. Further, the vendor lost its reversionary interest in the property because it lost legal title to the land. Southwest Land Inv., Inc. v. Hubbart, 1993-NMSC-072, 116 N.M. 742, 867 P.2d 412.

**Former vendor's perfected interest does not survive.** — The Property Tax Code states that "all of the former property owner's interest in the real property" is conveyed. The legislature did not limit the word "all". The second phrase states that the tax deed is accepted "subject only to perfected interests in the real property." The legislature chose to use the same language in both the first and second clauses. Reading these clauses together and giving them their plain meaning, the vendor's perfected security interest in the property did not survive the conveyance by the tax deed. The vendor was an owner under the code and its perfected security interest was an interest "in the real property." Even though the interest may have been perfected, because the interest was "in the real property" and because the vendor was an owner, the interest was conveyed along with all of the vendor's other interests in the property. Southwest Land Inv., Inc. v. Hubbart, 1993-NMSC-072, 116 N.M. 742, 867 P.2d 412.

**Effect of multiple tax sale certificates.** — Although a tax sale certificate to which the deed in question could be traced was issued at a time when the state already had title pursuant to an earlier certificate and tax deed, the state's conveyance to the property owner was nonetheless valid. Deeds from the state do not purport to convey interests acquired by the state under any particular tax deed, regardless of certain tax sale certificates or deeds that are referenced in the conveyance. A deed from the state is a conveyance of its interest in land, not its interest in a particular tax deed or tax sale certificate. Johnson v. Rodgers, 1991-NMSC-059, 112 N.M. 137, 812 P.2d 791.

**Tax deed subject to subsequent lien under "betterment" statute.** — To subject a tax deed to operation of a subsequent lien under the "betterment" statute, Section 42-4-18 NMSA 1978, is not in conflict with Subsection B of this section, governing the issuance and effect of tax deeds - to preclude such a lien would foreclose an avenue of security for those performing services upon the property and allow unjust enrichment. Cano v. Lovato, 1986-NMCA-043, 105 N.M. 522, 734 P.2d 762, cert. quashed, 105 N.M. 438, 733 P.2d 1321.

**Mortgagees cannot extinguish mortgage by tax deed.** — When a tax deed grantee is the previous owner of the property, his mortgage is not extinguished. In re Bouma, 32 Bankr., 619 (Bank. D.N.M. 1983).

**Tax deed grants fee simple absolute.** — Once land is sold by the state for delinquent taxes, the tax deed issued becomes a new and paramount title in fee simple absolute, striking down all previous titles and interests in the property. This is to ensure certainty and stability in tax titles, and to promote important social and economic objectives such as raising state revenues and promoting land improvement. Worman v. Echo Ridge Homes Coop., 1982-NMSC-081, 98 N.M. 237, 647 P.2d 870.

**Perpetual grazing right extinguished by tax sale.** — Alleged perpetual grazing right which arose either by express reservation in the deed or by prescription was extinguished by tax sale by the state. Huning v. Potts, 1977-NMSC-037, 90 N.M. 407, 564 P.2d 612.

**Tax title is in nature of new and independent grant** from the sovereign authority and is a new and paramount title in fee simple absolute, striking down all previous titles and interests in the property. Bailey v. Barranca, 1971-NMSC-074, 83 N.M. 90, 488 P.2d 725.

**Fraudulent tax deed passes good title to bona fide purchaser.** — A tax deed fraudulently obtained from the state is not void, but simply voidable, and there can be no cancellation when there has been a sale to a bona fide purchaser. State ex rel. State Tax Comm'n v. Garcia, 1967-NMSC-098, 77 N.M. 703, 427 P.2d 230.

**Tenant may buy tax title.** — A tenant who owes no duty to pay taxes for his landlord and who has not withheld rents due, or in some other manner lulled his landlord into tax delinquency, may, while in possession of the property, both buy a tax title and assert it. Gore v. Cone, 1955-NMSC-075, 60 N.M. 29, 287 P.2d 229.

## B. PROPERTY DESCRIPTION.

**The test of validity of a tax deed** is whether the description is sufficient, aided by data furnished by it, to identify the property. The substitution of "NE" for "NW" resulted in the identification of an entirely different parcel of property than that which was intended to have been assessed. Ambiguity may not be resolved by reference to the description of the property in the assessment rolls of prior and subsequent years. Brylinski v. Cooper, 1981-NMSC-028, 95 N.M. 580, 624 P.2d 522.

**Property conveyed.** — Lands underlying a dam and reservior and which are budgeted with severed easements for the maintenance and operation of the dam, were not covered by an assessment describing the estate as improvements. The lands were not sold for delinquent taxes and the tax deed, upon which plaintiff based its title, does not cover them. Rio Costilla Coop. Livestock Ass'n v. W.S. Ranch Co., 1970-NMSC-020, 81 N.M. 353, 467 P.2d 19.

**The rules regarding sufficiency of descriptions** in deeds are applicable to tax deeds. Hughes v. Meem, 1962-NMSC-039, 70 N.M. 122, 371 P.2d 235.

**Sale not affected by error in survey number.** — When the tax deed issued to the plaintiff described the land as being located in homestead entry survey 370, instead of 378, the error was so manifestly clerical that the validity of the sale could not be affected by it. Trujillo v. Montano, 1958-NMSC-079, 64 N.M. 259, 327 P.2d 326.

## IV. REDEMPTION.

**Tax deed issued before period of redemption has expired** is void. First Nat'l Bank v. State, 1967-NMSC-097, 77 N.M. 695, 427 P.2d 225.

**Contention plaintiff prevented right of redemption unfounded.** — Plaintiff's contention that he was prevented from exercising his right of redemption on property sold to state for delinquent taxes by fraud of county tax assessor is unfounded where fraud is based on assessor's refusal to alter the description on tax rolls in the absence of a court order. Trujillo v. Dimas, 1956-NMSC-043, 61 N.M. 235, 297 P.2d 1060.

**Adverse possession protected by redemption.** — The right to acquire title by adverse possession is capable of protection by means of redemption from a tax sale. Morris v. Ross, 1954-NMSC-063, 58 N.M. 379, 271 P.2d 823.

**Effect of redemption** will not be a transfer of the inchoate title of the purchaser at tax sale but will be to extinguish the tax sale; and, as to all other persons who might have had a right to redeem, the redemption is in their interest and, consequently, they are not adversely affected. Morris v. Ross, 1954-NMSC-063, 58 N.M. 379, 271 P.2d 823.

**Failure of notice to redeem.** — The failure of the treasurer to send notice that the property had been sold for taxes and of the tax commission to advise of the sale and of the preferential right of redemption or repurchase were at most irregularities which were covered by the curative provisions of this article. Brown v. Gurley, 1954-NMSC-025, 58 N.M. 153, 267 P.2d 134 (decided under prior law).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Easement, servitude, or covenant as affected by sale for taxes, 7 A.L.R.5th 187.

## 7-38-71. Distribution of amounts received from sale of property.

A. Money received by the department from the sale of real or personal property for delinquent property taxes shall be deposited in a suspense fund and distributed as follows:

(1) first, that portion equal to the costs shall be retained by the department for use, subject to appropriation by the legislature, in administration of the Property Tax Code;

(2) second, that portion equal to the penalties and interest due shall be retained by the department for use, subject to appropriation by the legislature, by the department in administration of the Property Tax Code;

(3) third, that portion equal to the delinquent taxes due shall be remitted by the department to the appropriate county treasurer for distribution by the treasurer to the governmental units in accordance with the law and the regulations of the department of finance and administration; and

(4) the balance shall be paid to the former owner of the property sold or to any other person designated by order directed to the department by a court of competent jurisdiction, provided that the department may first apply all or any portion of the balance to be paid against the amount of any property tax, including any penalty and interest related thereto, owed by the person to whom the balance would otherwise be paid.

B. As a condition precedent to payment of the balance of the sale amount received to the former owner of the property, the department may require any person claiming to be entitled to that payment to present sufficient evidence of proof of former ownership of the property to the department. The department shall adopt regulations providing for the procedures to be followed by persons claiming sale proceeds as former owners in those instances where conflicting claims exist or the department requires proof of ownership.

C. If no person claims the balance of sale proceeds, whether the property was sold under the provisions of the Property Tax Code or prior law, as the former owner of the property within two years of the date of the sale and after a reasonable search to determine the former owner is made by the department and no former owner is found, the balance of the sale proceeds shall be considered abandoned property and deposited in accordance with the provisions of the Uniform Unclaimed Property Act [Chapter 7, Article 8A NMSA 1978].

D. If the balance of proceeds from the sale after paying a higher priority claim under Subsection A of this section is insufficient to pay all of the next priority claim, then the complete balance shall be applied to that next priority claim as partial payment.

**History:** 1953 Comp., § 72-31-71, enacted by Laws 1973, ch. 258, § 111; 1979, ch. 61, § 1; 1982, ch. 28, § 26; 1986, ch. 20, § 117; 1990, ch. 22, § 10; 1995, ch. 12, § 14.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, rewrote Paragraph A(1) which read "first, that portion equal to the expenses of seizure and sale shall be retained by the department and these amounts are appropriated to the department for use in administration of the Property Tax Code" and made stylistic changes in Paragraph A(2).

**The 1990 amendment,** effective May 16, 1990, in Subsection A, rewrote Paragraph (2) which read "second, that portion equal to the penalties and interests due shall be remitted by the department, to the appropriate county treasurer for deposit in the county general fund" and added the proviso at the end of Paragraph (4) and, in Subsection C, substituted "Uniform Unclaimed Property Act" for "Uniform Disposition of Unclaimed Property Act".

## 7-38-72. Notation on property tax schedule by county treasurer when property sold for delinquent taxes.

When the county treasurer receives written notification from the division of the sale of property for delinquent taxes, he shall make an entry on the property tax schedule indicating that the delinquent property taxes, penalties and interest are no longer a lien against the property.

**History:** 1953 Comp., § 72-31-72, enacted by Laws 1973, ch. 258, § 112; 1982, ch. 28, § 27.

## 7-38-73. Department of finance and administration to promulgate regulations regarding accounting for and distribution of property taxes collected.

The department of finance and administration is authorized and directed to promulgate regulations covering the receipt of, accounting for and distribution of amounts received under the Property Tax Code by county treasurers as taxes. The department of finance and administration may provide in these regulations for the withholding of amounts of taxes to which the state is entitled to distribution in those instances when delinquent property taxes are paid to the department, but the regulations shall require that withheld taxes must be credited and shown as paid by the county treasurer on the property tax schedule.

**History:** 1953 Comp., § 72-31-73, enacted by Laws 1973, ch. 258, § 113.

## 7-38-74. Officers and employees engaged in the administration of the property tax prohibited from buying property sold for delinquent property taxes; penalties for violation; sales of real property in violation declared void.

A. Officers or employees of the state or of any of its political subdivisions engaged in the administration of the property tax may not, directly or indirectly, acquire an interest in, buy or profit from any property sold by the department for delinquent taxes except that an officer or employee may purchase property sold for delinquent taxes if he is the owner of the property and was the owner of the property at the time the taxes became delinquent.

B. Any officer or employee violating this section is guilty of a fourth degree felony and shall be fined not more than five thousand dollars ($5,000) or imprisoned for not less than one year nor more than five years, or both. He shall also be automatically removed from office or have his employment terminated upon conviction.

C. A real property sale in violation of this section is void.

**History:** 1953 Comp., § 72-31-74, enacted by Laws 1973, ch. 258, § 114.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 72 Am. Jur. 2d State and Local Taxation §§ 940 to 946.

85 C.J.S. Taxation § 1191.

## 7-38-75. Exception to property tax due date.

When, because of provisions of the Property Tax Code, a property tax bill is required or authorized to be prepared and mailed or delivered on or by a date other than the date specified in Section 7-38-36 NMSA 1978, the due date of the property taxes involved shall be the date the property tax bill was mailed or delivered.

**History:** 1953 Comp., § 72-31-75, enacted by Laws 1973, ch. 258, § 115; 1974, ch. 92, § 25.

## 7-38-76. Property subject to property taxation but omitted from property tax schedules in prior years.

A. Subject to the limitations contained in the Property Tax Code and except as provided in Subsection B of this section, county assessors, treasurers and the department have the authority and the duty to enter in the valuation records, list on the property tax schedules, bill for and collect the taxes for all tax years on property that was subject to property taxation but was omitted from property tax schedules and for which taxes have not been paid but would be due except for the omission. Property tax bills shall be prepared and mailed by the county treasurers within thirty days of the date the omitted property is listed on the property tax schedule, and all taxes on omitted property shall be due the date the property tax bill is mailed.

B. Except for taxes due in the current tax year and the immediately preceding tax year, the current owner of the real estate is not liable for a property tax bill mailed pursuant to Subsection A of this section if:

(1) the omitted property is improvements that were placed on the real estate; and

(2) the current owner was not the owner at the time the improvements were omitted and had no actual notice that the improvements were omitted.

C. Nothing in this section relieves the owner of the property at the time the improvements were omitted from being personally liable for the taxes due pursuant to Section 7-38-47 NMSA 1978.

D. The department shall promulgate regulations for the procedures to be followed and the records to be maintained in the administration and collection of taxes on omitted property. The department of finance and administration shall promulgate regulations covering the receipt of, accounting for and distribution of taxes on omitted property.

**History:** 1953 Comp., § 72-31-76, enacted by Laws 1973, ch. 258, § 116; 1974, ch. 92, § 26; 2003, ch. 95, § 5.

**ANNOTATIONS**

**The 2003 amendment,** effective June 20, 2003, inserted "and except as provided in Subsection B of this section" following "Property Tax Code" in Subsection A; added present Subsections B and C and redesignated former Subsection B as Subsection D.

## 7-38-77. Authority to make changes in property tax schedule after its delivery to the county treasurer.

A. After delivery of the property tax schedule to the county treasurer, the amounts shown on the schedule as taxes due and other information on the schedule shall not be changed except:

(1) by the county treasurer to correct obvious errors in the mathematical computation of taxes;

(2) by the county treasurer to correct obvious errors by the county assessor in:

(a) the name or address of the property owner or other persons shown on the schedule;

(b) the description of the property subject to property taxation, even if the correction results in a change in the amount shown on the schedule as taxes due;

(c) the data entry of the value, classification, allocation of value and limitation on increases in value pursuant to Sections 7-36-21.2 and 7-36-21.3 NMSA 1978 of property subject to property taxation by the county assessor; or

(d) the application of eligible, documented and qualified exemptions;

(3) by the county treasurer to cancel multiple valuations for property taxation purposes of the same property in a single tax year, but only if:

(a) a taxpayer presents tax receipts showing the payment of taxes by the taxpayer for any year in which multiple valuations for property taxation purposes are claimed to have been made;

(b) a taxpayer presents evidence of ownership of the property, satisfactory to the treasurer, as of January 1 of the year in which multiple valuations for property taxation purposes are claimed to have been made; and

(c) there is no dispute concerning ownership of the property called to the attention of the treasurer, and the treasurer has no actual knowledge of any dispute concerning ownership of the property;

(4) by the county treasurer, to correct the tax schedule so that it no longer contains personal property that is deemed to be unlocatable, unidentifiable or uncollectable, after thorough research with verification by the county assessor or appraiser, with notification to the department and the county clerk;

(5) as a result of a protest, including a claim for refund, in accordance with the Property Tax Code, of values, classification, allocations of values determined for property taxation purposes or a denial of a claim for an exemption;

(6) by the department or the order of a court as a result of any proceeding by the department to collect delinquent property taxes under the Property Tax Code;

(7) by a court order entered in an action commenced by a property owner under Section 7-38-78 NMSA 1978;

(8) by the department as authorized under Section 7-38-79 NMSA 1978;

(9) by the department of finance and administration as authorized under Section 7-38-77.1 NMSA 1978; or

(10) as specifically otherwise authorized in the Property Tax Code.

B. As used in this section, "obvious errors" does not include the method used to determine the valuation for, or a difference of opinion in the value of, the property subject to property taxation.

History: 1953 Comp., § 72-31-77, enacted by Laws 1973, ch. 258, § 117; 1974, ch. 92, § 27; 1981, ch. 37, § 79; 1995, ch. 65, § 1; 2000, ch. 32, § 1; 2015, ch. 39, § 1.

## ANNOTATIONS

**The 2015 amendment,** effective June 19, 2015, designated authority to the county treasurer to correct certain obvious errors in the property tax schedule; designated the previously undesignated introductory sentence as Subsection A; designated former Subsection A as Paragraph (1) of Subsection A, and after "obvious", deleted "clerical"; deleted former Paragraphs (1) and (2) of Subsection A; added the language of former Paragraph (3) of Subsection A to Paragraph (1); added a new Paragraph (2) of Subsection A; redesignated former Subsection B as Paragraph (3) of Subsection A, redesignated former Paragraphs (1), (2) and (3) of Subsection B as Subparagraphs (a), (b) and (c) of Subsection A, respectively; in Subsection A(3)(a), after "taxes by", deleted "him" and added "the taxpayer"; in Subparagraph A(3)(c), after "and", deleted "he" and added "the treasurer"; redesignated former Subsections C, D, E, F, G, H and I as

Paragraphs (4), (5), (6), (7), (8), (9) and (10) of Subsection A, respectively; and added a new Subsection B.

**Applicability.** — Laws 2015, ch. 39, § 3 provided that the provisions of Laws 2015, ch. 39, § 1 apply to taxable years beginning on or after January 1, 2016.

**The 2000 amendment,** effective July 1, 2000, added present Subsection C and redesignated the remaining subsections accordingly.

**The 1995 amendment,** effective June 16, 1995, substituted "department" for "division" in Subsections D and F, added Subsection G, redesignated former Subsection G as Subsection H, and made a minor stylistic change in Subsection F.

**Treasurer authorized to make corrections.** — The treasurer is authorized, upon finding any property upon which taxes have become delinquent to be erroneously described or omitted from tax rolls, to correct any errors of description. Trujillo v. Dimas, 1956-NMSC-043, 61 N.M. 235, 297 P.2d 1060.

**Inadequacy of description.** — If the description on the assessment rolls for any one of the years involved was sufficient, any inadequacy of description in any other of the years would be immaterial. Trujillo v. Dimas, 1956-NMSC-043, 61 N.M. 235, 297 P.2d 1060.

**Such as failure to say whether township was north or south** is not fatal since all townships are north and all ranges east in Santa Fe county. Trujillo v. Dimas, 1956-NMSC-043, 61 N.M. 235, 297 P.2d 1060.

## 7-38-77.1. Changes in property tax schedule ordered by the department of finance and administration.

After the delivery of the property tax schedule to the county treasurer for any tax year, the department of finance and administration may order the county treasurer to make changes in the property tax schedule in connection with any property listed on the schedule if the department of finance and administration determines that an error was made in the certification of the tax rates.

**History:** 1978 Comp., § 7-38-77.1, enacted by Laws 1995, ch. 65, § 2.

**ANNOTATIONS**

## 7-38-78. Action by property owner in district court to change property tax schedule.

A. After the delivery of the property tax schedule to the county treasurer for a particular tax year, a property owner may bring an action in the district court requesting

a change in the property tax schedule in connection with any property listed on the schedule for property taxation in which the owner claims an interest. The action shall be brought in the district court for the county for which the property tax schedule in question was prepared.

B. Actions brought under this section may not directly challenge the value, classification, allocations of value determined for property taxation purposes, denial of any exemption claimed or method used to determine the valuation for the property subject to property taxation. Actions brought under this section shall be founded on one or more of the following grounds:

(1) errors in the name or address of the property owner or other person shown on the schedule;

(2) errors in the description of the property for property taxation purposes, even if the correction results in a change in the amount shown on the schedule as taxes due;

(3) errors in the computation of taxes;

(4) errors in the property tax schedule relating to the payment or nonpayment of taxes;

(5) multiple valuations for property taxation purposes for a single tax year of the same property on the property tax schedule; or

(6) errors in the rate of tax set for any governmental unit in which the owner's property is located.

C. Actions brought under this section shall name the county treasurer as defendant. An action brought under Paragraph (6) of Subsection B of this section, shall also name the secretary of finance and administration as a defendant.

History: 1953 Comp., § 72-31-78, enacted by Laws 1973, ch. 258, § 118; 1974, ch. 92, § 28; 1981, ch. 37, § 80; 2015, ch. 39, § 2.

## ANNOTATIONS

**The 2015 amendment,** effective June 19, 2015, amended the grounds for which a property owner may request a change to a property tax schedule; in the introductory paragraph of Subsection B, after "purposes", deleted "or", after "claimed", deleted "and must" and added "or method used to determine the valuation for the property subject to property taxation. Actions brought under this section shall"; in Paragraph (2) of Subsection B, after "purposes", added "even if the correction results in a change in the amount shown on the schedule as taxes due"; and in Subsection C, after "defendant.", deleted "and, if the" and added "An", and after "action", deleted "is".

**Applicability.** — Laws 2015, ch. 39, § 3 provided that the provisions of Laws 2015, ch. 39, § 2 apply to taxable years beginning on or after January 1, 2016.

**General statute of limitations applicable.** — Because this section does not contain a time limit for filing the request for a change in the property tax schedule, the general statute of limitations of four years pursuant to Section 37-1-4 NMSA 1978 applies. Fed. Express Corp. v. Abeyta, 2004-NMCA-011, 135 N.M. 37, 84 P.3d 85, cert. granted, 2004-NMCERT-001, 135 N.M. 160, 85 P.3d 802.

**When taxpayer makes computational errors in documents submitted** to enable the taxing authorities to determine valuation, it is a case of error in valuation, and not computation, and therefore the sixty-day limit applies. Fed. Express Corp. v. Abeyta, 2004-NMCA-011, 135 N.M. 37, 84 P.3d 85, cert. granted, 2004-NMCERT-001, 135 N.M. 160, 85 P.3d 802.

**Because taxpayer's claim was for refund based on incorrect allocation** of the value of its property for tax purposes, its remedy was pursuant to Section 7-38-40 NMSA 1978, not this section. Fed. Express Corp. v. Abeyta, 2004-NMCA-011, 135 N.M. 37, 84 P.3d 85, cert. granted, 2004-NMCERT-001, 135 N.M. 160, 85 P.3d 802.

**Authorized district court action limited** to changes in property tax schedule and does not apply to refunds. Lovelace Ctr. for Health Sciences v. Beach, 1980-NMCA-004, 93 N.M. 793, 606 P.2d 203.

## 7-38-79. Changes in property tax schedule ordered by the division; action by the division in district court to enforce ordered changes.

A. After the delivery of the property tax schedule to the county treasurer but before the tax bill is mailed for a particular tax year, the division may order the county assessor or county treasurer, or both, to make changes in the property tax schedule in connection with any property listed on the schedule if any of the following actions have been taken in a manner that is not in compliance with the provisions of law or applicable regulations of the division:

(1) an unprotested determination of value for property taxation purposes;

(2) an unprotested allocation of values to governmental units;

(3) an unprotested determination of classification; or

(4) the application of the tax rates.

B. After the delivery of the property tax schedule to the county treasurer for a particular tax year, the division may order the county assessor or county treasurer, or both, to make changes in the property tax schedule in connection with any property listed on the schedule:

(1) for any of the reasons for which a county treasurer could change the property tax schedule under Section 7-38-77 NMSA 1978; or

(2) for any of the reasons for which a district court could order changes in the property tax schedule at the request of a property owner under Section 7-38-78 NMSA 1978 except for the reason specified in Paragraph (6) of Subsection B of that section.

C. Any action taken by the division under this section shall be by written order of the director. Copies of the order shall be mailed by certified mail to the property owner, the county assessor and the county treasurer.

D. If the county assessor or county treasurer refuses to make any changes ordered by the division under this section, the division may bring an action to enforce its order in the district court for the county involved.

**History:** 1953 Comp., § 72-31-79, enacted by Laws 1973, ch. 258, § 119; 1981, ch. 37, § 81.

## 7-38-80. Changes in property tax schedules as result of treasurer's action, department order or court order; collection of any additional property taxes due as result; refund of property taxes paid erroneously.

A. If, as a result of actions authorized under Sections 7-38-77 through 7-38-79 NMSA 1978, the county assessor or county treasurer makes changes in the property tax schedule that result in an increase in the tax liability of the property owner and, if a tax bill has already been mailed to the property owner for collection of the taxes on the property in question for the tax year involved, then an additional tax bill shall be prepared and mailed by the county treasurer to the property owner. The date the supplemental tax bill is mailed shall be used for determining the due dates for the collection of any additional property taxes.

B. If, as a result of actions authorized under Sections 7-38-77 through 7-38-79 NMSA 1978, the county assessor or county treasurer makes changes in the property tax schedule that result in a decrease in the property tax liability of the property owner and, if the property taxes on the property for the tax year involved have already been paid, then a refund of any excess property taxes paid shall be made to the property owner. Refunds under this section shall be made by the county treasurer in accordance with regulations of the department of finance and administration.

**History:** 1953 Comp., § 72-31-80, enacted by Laws 1973, ch. 258, § 120.

## 7-38-81. Limitation on actions for collection of property taxes; presumption of payment of property taxes after ten years.

A. Property may not be sold and proceedings may not be initiated for the collection of property taxes that have been delinquent for more than ten years.

B. Property that has not been included on a property tax schedule may not be subjected to the imposition of property taxes for more than ten tax years immediately preceding the date of its entry on the property tax schedule.

C. Property taxes that have been delinquent for more than ten years, together with any penalties and interest, are presumed to have been paid. The county treasurer shall indicate on the property tax schedule that all such property taxes and any penalties and interest have been "presumed paid by act of the legislature."

**History:** 1953 Comp., § 72-31-81, enacted by Laws 1973, ch. 258, § 121.

## 7-38-81.1. Limitation on actions for collection of any levy or assessment in the form of property taxes; presumption of payment after ten years.

A. Property may not be sold and proceedings may not be initiated for the collection of any levy or assessment in the form of property taxes levied or assessed under the provisions of Sections 73-14-1 through 73-18-43 NMSA 1978 that have been delinquent for more than ten years.

B. Property that has not been included on a property tax schedule or a levy or assessment schedule may not be subjected to the imposition of any levy or assessment in the form of property taxes levied or assessed under the provisions of Sections 73-14-1 through 73-18-43 NMSA 1978 for more than ten tax years immediately preceding the date of its entry on the property tax schedule or levy or assessment schedule.

C. Any levy or assessment in the form of property taxes levied or assessed under the provisions of Sections 73-14-1 through 73-18-43 NMSA 1978 that has been delinquent for more than ten years, together with any penalties and interest, is presumed to have been paid. The county treasurer or appropriate conservancy district officer shall indicate on the property tax schedule or levy or assessment schedule that all such levies or assessments in the form of property taxes and any penalties and interest have been "presumed paid by act of the legislature".

D. The county treasurer may correct the tax schedule so that it no longer contains personal property that is deemed to be unlocatable, unidentifiable or uncollectable, after thorough research with verification by the county assessor or appraiser, with notification to the department and the county clerk.

**History:** Laws 1983, ch. 109, § 1; 2000, ch. 32, § 2.

**ANNOTATIONS**

**The 2000 amendment,** effective July 1, 2000, added Subsection D.

## 7-38-82. Duty of persons responsible for administration of property tax to ascertain the names of owners of property; use of term "unknown owner" prohibited except in certain cases; validity of procedures when name of owner is incorrect or unknown.

A. It is the duty of all persons charged with the administration and collection of the property tax to make diligent search and inquiry to determine the correct name and address of the owner of property subject to valuation for property taxation purposes and the imposition of the property tax.

B. The use of the term "unknown owner" in valuation records is prohibited except in those instances where diligent search and inquiry fail to result in the determination of the name of the owner of property.

C. Proceedings for the collection of delinquent property taxes are valid as to property sold for delinquent taxes even though the property owner's name or address shown on the valuation records was incorrect or the property was shown on the valuation records as owned by an "unknown owner."

**History:** 1953 Comp., § 72-31-82, enacted by Laws 1973, ch. 258, § 122.

**ANNOTATIONS**

**Duty of department.** — The division (department) has an affirmative duty to seek out, by "diligent search and inquiry", the correct address of each property owner, and failure to do so may violate due process. Patrick v. Rice, 1991-NMCA-063, 112 N.M. 285, 814 P.2d 463, cert. denied, 112 N.M. 308, 815 P.2d 161.

**Failure to notify of tax sale.** — Since county tax officials and the property tax division were placed on notice that notices to a taxpayer were returned as undeliverable, but they did not check the estate tax records on file in the division's office, which would have indicated that the taxpayer had died and that a personal representative of the decedent's estate had been appointed, along with sufficient information whereby the name and address of the representative were readily ascertainable, the failure of the division to notify the representative invalidated the subsequent tax sale. Fulton v. Cornelius, 1988-NMCA-057, 107 N.M. 362, 758 P.2d 312.

## 7-38-83. Timeliness.

A. When the last day for performing an act falls on Saturday, Sunday or a legal state or national holiday, the performance of the act is timely if performed on the next succeeding day which is not a Saturday, Sunday or a legal state or national holiday.

B. All acts required or permitted to be done by mail are timely if postmarked on the required date.

**History:** 1953 Comp., § 72-31-83, enacted by Laws 1973, ch. 258, § 123.

## 7-38-84. Notices; mailing.

A. Any notice that is required to be made to a property owner by the Property Tax Code is effective if mailed by regular first class mail to the property owner's last address or to the address of any person other than the owner to whom the tax bill is to be sent as shown by the valuation records unless the provisions of that code require a different method of notification or mailing, in which case the notice is effective if given in accordance with the provisions of that code.

B. If a property owner notifies, in writing or by electronic mail, the county assessor or the county treasurer that the property owner wants to receive notices pursuant to the Property Tax Code by electronic mail rather than by regular first class mail, the county assessor or the county treasurer may thereafter provide such notices to the property owner using an electronic mail address provided by the property owner; provided that the notice is consistent with the requirements of the Electronic Authentication of Documents Act [14-15-1 through 14-15-6 NMSA 1978] and the Uniform Electronic Transactions Act [Chapter 14, Article 16 NMSA 1978]. A property owner's request to receive notices by electronic mail shall be effective until revoked in writing or by electronic mail to the county assessor and the county treasurer. Wherever the Property Tax Code requires a method of notification or mailing done only by the county assessor or county treasurer, other than by regular first class mail, the notice is effective if given in accordance with the provisions of that code.

C. An electronic mail address provided by a property owner pursuant to this section shall not be considered a valuation record pursuant to Section 7-38-19 NMSA 1978 and shall be retained by the county assessor as a confidential record that is not subject to inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

History: 1953 Comp., § 72-31-84, enacted by Laws 1973, ch. 258, § 124; 1974, ch. 92, § 29; 2015, ch. 2, § 1.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, provided property owners the option of receiving notices under this section via electronic mail rather than by first class mail, set forth the election procedure, and provided that electronic mail addresses be retained by the county assessor as confidential records; designated the previously undesignated paragraph as Subsection A, and after "the provisions of", deleted "the" and added "that" in two places; and added Subsections B and C.

## 7-38-85. Extension of deadlines; general provision.

The director may extend any deadline in the Property Tax Code for a period of time not in excess of six months. However, this section does not permit the extension of deadlines for an individual property owner nor does it permit successive extensions of a deadline for a cumulative period of more than six months. Extensions may be made applicable to one or more counties. Extension of deadlines authorized by this section shall be made by written order of the director and notice of the extension shall be published in a newspaper of general circulation in each county in the state to which the extension applies once each week for a period of three weeks immediately succeeding the week in which the deadline being extended occurs. When more than one deadline is extended under this section, the notice required to be published may include all extensions, and publication need only be made for the three weeks immediately succeeding the week in which the first deadline being extended occurs.

**History:** 1953 Comp., § 72-31-85, enacted by Laws 1973, ch. 258, § 125; 1979, ch. 59, § 1.

## 7-38-86. Extension of deadlines at request of property owners.

The director may extend the time by which reports are required to be filed under Subsection A of Section 7-38-8 NMSA 1978 at the written request of the property owner. The request must be received by the department prior to the date by which the required report must be made. Extensions granted under this section shall be by written order of the director and shall be for a period of not more than thirty days. The director shall not grant more than one extension in a tax year for a property owner in respect to the same property.

**History:** 1953 Comp., § 72-31-86, enacted by Laws 1973, ch. 258, § 126.

## 7-38-87. Administrative regulations; promulgation; general provisions.

A. Except for regulations promulgated by the department, regulations authorized or directed to be promulgated under the Property Tax Code may be promulgated by the authorized governmental agency without prior notice or hearing and shall become effective when filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

B. All regulations promulgated under the Property Tax Code shall be applied prospectively only unless there is a statement in the regulation that it is to have retroactive effect and a statement of the extent of any retroactive effect.

**History:** 1953 Comp., § 72-31-87, enacted by Laws 1973, ch. 258, § 127; 1974, ch. 92, § 30; 1982, ch. 28, § 28; 1991, ch. 166, § 10.

**ANNOTATIONS**

**The 1991 amendment,** effective June 14, 1991, in Subsection A, added the exception at the beginning and deleted "except for those regulations required to be promulgated by the division under the provisions of Section 7-38-88 NMSA 1978" at the end.

## 7-38-88. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991, ch. 166, § 14 repealed 7-38-88 NMSA 1978, as amended by Laws 1986, ch. 20, § 120, relating to procedures for adopting, amending or repealing certain department regulations, effective June 14, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com.*

## 7-38-89. Validity of certain regulations; judicial review.

A. Any person who is or may be adversely affected by the adoption, amendment or repeal of a regulation promulgated by an authorized governmental agency other than the department under Section 7-38-87 NMSA 1978 may appeal that action to the court of appeals. All appeals shall be on the record made at the hearing and must be perfected by filing a notice of appeal in the court of appeals within thirty days after the adoption, amendment or repeal of a regulation is filed pursuant to law.

B. The notice of appeal required to be filed under this section shall include a concise statement of the facts upon which jurisdiction is based, the grounds upon which relief is sought and the relief requested. The notice shall also include a statement that arrangements have been made with the governmental agency for preparation of the record to support his appeal to the court and to provide the governmental agency with a copy. Costs of appeal, including cost of the record, may be charged against the parties by order of the court of appeals in its discretion.

C. Copies of the notice of appeal shall be served upon the governmental agency and proof of service shall be filed with the court in the manner and within the time prescribed by the rules of appellate procedure.

D. The filing of a notice of appeal does not stay the effective date of the action appealed from, but the governmental agency may grant, or the court may order, a stay upon appropriate terms.

E. Within thirty days after the service of the notice of appeal or within such greater time as the court may allow, the governmental agency shall file in the court the original or a certified copy of the record of the proceedings appealed from. The record shall consist of:

(1) the entire proceedings;

(2) portions of the proceedings to which the governmental agency and the appellant stipulate; or

(3) a statement of the case agreed to by the governmental agency and the appellant.

F. If the record is to be of the entire proceedings or portions of the proceedings, it shall be a verbatim written transcript or, if permitted by the court of appeals, it may be an electronic recording. It shall also include copies of documentary evidence admitted at the hearing or during those portions of the hearing that are stipulated to as the record.

G. In any proceeding for judicial review of the adoption, amendment or repeal of a regulation, the court may set aside the action or remand the case to the governmental agency for further proceedings only if it determines that the action is:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the record taken as a whole; or

(3) otherwise not in accordance with law.

H. If the court determines that the action appealed is free from the errors specified under Paragraphs (1) through (3) of Subsection G of this section, it shall affirm the action.

**History:** 1953 Comp., § 72-31-89, enacted by Laws 1973, ch. 258, § 129; 1982, ch. 28, § 29; 1983, ch. 215, § 7; 1991, ch. 166, § 11.

**ANNOTATIONS**

**Cross references.** — For jurisdiction of court of appeals, *see* N.M. Const., art. VI, § 29.

For special statutory proceedings, *see* Rule 12-601 NMRA.

**The 1991 amendment,** effective June 14, 1991, substituted "governmental agency" for "division" throughout the section; inserted "promulgated by an authorized governmental agency other than the department" and substituted "7-38-87" for "7-38-88" in the first sentence in Subsection A; and rewrote Subsection C which read "Copies of the notice of appeal shall be served personally or by certified mail upon the division no later than ten days after the filing of the notice of appeal and proof of service shall be filed with the court within twenty days after the filing of a notice of appeal."

## 7-38-90, 7-38-91. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 31, § 7 repealed 7-38-90 and 7-38-91 NMSA 1978, as enacted by Laws 1973, ch. 258, §§ 130 and 131, relating to issuance of administrative regulations, rulings, instructions and orders by the secretary and publication thereof, effective July 1, 1995. For provisions of the former sections, *see* the 1994 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 9-11-6.2 NMSA 1978.

## 7-38-92. Attempts to evade or defeat the property tax.

Any person who willfully attempts to evade the payment of any property tax is guilty of a fourth degree felony. He shall be fined not more than five thousand dollars ($5,000), or imprisoned for not less than one year nor more than five years, or both.

**History:** 1953 Comp., § 72-31-92, enacted by Laws 1973, ch. 258, § 132.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 85 C.J.S. Taxation § 1056.

## 7-38-93. Interference with the administration of the Property Tax Code.

Any person who by force, bribe, threat or other corrupt practice obstructs or impedes the administration of the Property Tax Code is guilty of a misdemeanor. He shall be fined not less than two hundred fifty dollars ($250) nor more than ten thousand dollars ($10,000), or imprisoned for not less than three months nor more than one year, or both.

**History:** 1953 Comp., § 72-31-93, enacted by Laws 1973, ch. 258, § 133.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 85 C.J.S. Taxation § 1653.

# ARTICLE 39
# Copper Production Ad Valorem Tax

## 7-39-1. Short title.

Chapter 7, Article 39 NMSA 1978 may be cited as the "Copper Production Ad Valorem Tax Act".

**History:** 1978 Comp., § 7-39-1, enacted by Laws 1990, ch. 125, § 8.

**ANNOTATIONS**

## 7-39-2. Definitions.

As used in the Copper Production Ad Valorem Tax Act:

A. "average price" means for any mineral the average price for the appropriate period determined from published price data in the manner specified by regulation;

B. "copper mineral property" means all mineral property and property held in connection with mineral property when seventy-five percent or more, by either weight or value, of the salable mineral produced from or by the mineral property is copper;

C. "copper production ad valorem tax" means the tax imposed by the Copper Production Ad Valorem Tax Act;

D. "department" means, unless the context requires otherwise, the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "new copper mineral property" means either a copper mineral property that began operations on a commercial basis within the three-year period immediately preceding the tax year for which value is being determined or a copper mineral property that was valued and taxed under the Property Tax Code [Chapter 7. Articles 35 to 38 NMSA 1978] for any tax year subsequent to the 1990 property tax year within the three-year period immediately preceding the tax year for which value is being determined;

F. "produced" means the altered form, character or condition of a mineral that is the product of a particular process;

G. "taxable value" means the value of property determined by applying the tax ratio to the valuation of the copper mineral property determined for purposes of the Copper Production Ad Valorem Tax Act;

H. "tax ratio" means the percentage established under the Property Tax Code that is applied to the value of property determined for property taxation purposes to derive taxable value, as that term is defined in the Property Tax Code; and

I. "value of salable copper and other minerals" means:

(1) for new copper mineral properties, the sum, for copper and each other mineral produced, of the product of the salable amount of the mineral produced during the interval beginning with the month in which operations on a commercial basis began or recommenced and ending with the last month of production preceding the tax year for which valuation is being determined; multiplied by the normalization factor which is a fraction, the numerator of which is twelve and the denominator of which is the number of months within the interval beginning with the month in which operations on a commercial basis began or recommenced and ending with the last month of production

preceding the tax year for which valuation is being determined; further multiplied by the average price for the interval beginning with the month in which operations on a commercial basis began or recommenced and ending with the last month of production preceding the tax year for which valuation is being determined; and

(2) for all other copper mineral properties the sum, for copper and each other mineral produced, of the product of the quotient of the salable amount of the mineral produced during the three calendar years immediately preceding the year for which valuation is being determined divided by three; multiplied by the average price for the three-year period.

**History:** 1978 Comp., § 7-39-2, enacted by Laws 1990, ch. 125, § 9.

**ANNOTATIONS**

## 7-39-3. Application of act.

The provisions of the Copper Production Ad Valorem Tax Act apply to the valuation of all productive copper mineral property.

**History:** 1978 Comp., § 7-39-3, enacted by Laws 1990, ch. 125, § 10.

**ANNOTATIONS**

## 7-39-4. Valuation of copper mineral property.

A. The valuation for purposes of the Copper Production Ad Valorem Tax Act of copper mineral property of the following types shall be determined annually, except as provided otherwise in Subsection B, C or D of this section, as follows:

(1) the value of any mine and all real property and personal property held or used for the mining of ore from the mine:

(a) any part of which is mined for processing in a concentrator shall be thirty percent of the value of salable copper and other minerals contained in concentrate produced from the ore produced from the mine; or

(b) which is mined solely for solvent extraction or electrowinning shall be twenty percent of the value of salable copper and other minerals produced through solvent extraction or electrowinning from the ore produced from the mine;

(2) the value of a concentrator and all real property and personal property held or used in connection with the concentrator shall be twenty-five percent of the value of salable copper and other minerals contained in concentrate produced in the concentrator;

(3) the value of a precipitation plant and all real property and personal property held or used in connection with the precipitation plant shall be twenty-five percent of the value of salable copper and other minerals contained in precipitate produced in the precipitation plant;

(4) the value of the solvent extraction or electrowinning plant and all real property and personal property held or used in connection with the solvent extraction or electrowinning plant shall be one hundred thirty-five percent of the value of salable copper and other minerals produced through the solvent extraction or electrowinning process, less four times the value of property determined for the same tax year under Subparagraph (b) of Paragraph (1) of this subsection; and

(5) the value of a smelter and all real property and personal property held or used in connection with the smelter shall be twenty-one percent of the value of salable copper and other minerals produced in the smelter.

B. A property, which has been valued in accordance with the Copper Production Ad Valorem Tax Act in any preceding year and which is permanently shut down on or before January 1 of any year for which a valuation is to be made under the Copper Production Ad Valorem Tax Act, is no longer subject to the Copper Production Ad Valorem Tax Act and is subject instead to the provisions of the Property Tax Code [Chapter 7. Articles 35 to 38 NMSA 1978].

C. A copper mineral property from which no copper or other minerals were mined or processed during a period of at least twelve months immediately prior to the beginning of the tax year for which valuation is being determined is not subject to the Copper Production Ad Valorem Tax Act and is subject instead to the provisions of the Property Tax Code.

D. This subsection applies only to copper mineral properties with respect to which the owner, as part of the annual report to the department, declares for the tax year for which valuation is being determined or has declared for any prior tax year that a copper mineral property will remain in operation for a period less than four years and will not be replaced or reconstructed:

(1) the valuation of a copper mineral property subject to this subsection shall be the value determined under Subsection A of this section for that property multiplied by:

(a) twenty-five percent for properties with an anticipated operating period of less than one year as of the beginning of the tax year for which valuation is being determined;

(b) forty-five percent for properties with an anticipated operating period of at least one year but less than two years as of the beginning of the tax year for which valuation is being determined;

(c) sixty percent for properties with an anticipated operating period of at least two years but less than three years as of the beginning of the tax year for which valuation is being determined; and

(d) seventy-five percent for properties with an anticipated operating period of at least three years but less than four years as of the beginning of the tax year for which valuation is being determined; and

(2) if the owner declared in a prior annual report that the copper mineral property would remain in operation for a period less than four years and the owner, in the annual report for the tax year for which valuation is being determined, does not declare that the property will remain in operation for a period less than four years, declares that permanent shutdown is not anticipated within four years or declares that permanent shutdown is anticipated in a year subsequent to the year declared in the prior tax year, there shall be added to the property's valuation determined under Subsection A of this section or Paragraph (1) of this subsection, as appropriate, one hundred percent of:

(a) if the owner fails to make a declaration or declares that the property will remain in operation for a period of at least four years, the difference between the valuation for the property determined solely under Subsection A of this section for each prior tax year in which the owner had declared the property would remain in operation for a period less than four years and the respective valuations in those prior tax years determined under this subsection; or

(b) if the year of anticipated permanent shutdown declared in the prior tax year annual report is earlier than that in the subsequent annual report, the difference between the valuation for the prior tax year determined under this subsection using the later date of anticipated permanent shutdown and the valuation for that prior tax year determined under this subsection in that prior tax year; and

(3) when value is added pursuant to Paragraph (2) of this subsection to the valuation otherwise determined for the copper mineral property, the property owner shall pay interest at the rate determined under Section 7-1-67 NMSA 1978 on the additional taxes due and penalty at the rate determined under Subsection A of Section 7-1-69 NMSA 1978. The interest and penalty shall be measured from the dates that the taxes were due to have been paid for the tax year from which the additional valuation derived.

**History:** 1978 Comp., § 7-39-4, enacted by Laws 1990, ch. 125, § 11.

**ANNOTATIONS**

## 7-39-5. Annual report of value.

Each tax year the owner of a copper mineral property shall report to the department on the forms and in the manner prescribed by the department the value, for purposes of the Copper Production Ad Valorem Tax Act, of each copper mineral property owned and the taxing jurisdictions in which each property is located. The report shall also contain a declaration of the year in which the owner expects the copper mineral property to be permanently shut down if permanent shutdown is expected within four years. A declaration shall be made in each annual report subsequent to an annual report in which such a declaration is first made for the copper mineral property. The report shall be submitted on or before March 31 of the tax year for which value is being determined. The report required by this subsection may be referred to as the "annual report".

**History:** 1978 Comp., § 7-39-5, enacted by Laws 1990, ch. 125, § 12.

**ANNOTATIONS**

## 7-39-6. Notification to department of finance and administration and counties.

By August 1 of each year, the department shall prepare and send to the department of finance and administration schedules of the taxable value and taxing jurisdictions of each copper mineral property. The taxable values shown on the schedules shall be used by the department of finance and administration in setting property tax rates. A copy of the schedule for the county shall be sent to the assessors of the respective counties in which copper mineral property is located, who shall accept the schedules as the assessment of copper mineral property required under the Copper Production Ad Valorem Tax Act.

**History:** 1978 Comp., § 7-39-6, enacted by Laws 1990, ch. 125, § 13.

**ANNOTATIONS**

## 7-39-7. Determination of taxable values for taxing districts.

To determine for any purpose the total taxable value of property required to be taxed under the Copper Production Ad Valorem Tax Act for any taxing jurisdiction for any year after 1990, the taxable value of copper mineral property for the taxing jurisdiction entered upon the schedules prepared under the Copper Production Ad Valorem Tax Act for the tax year preceding the determination shall be used.

**History:** 1978 Comp., § 7-39-7, enacted by Laws 1990, ch. 125, § 14.

**ANNOTATIONS**

## 7-39-8. Ad valorem tax levied.

An ad valorem tax is levied upon the owner of each copper mineral property that is not subject to valuation and taxation under the provisions of the Property Tax Code [Chapter 7. Articles 35 to 38 NMSA 1978]. The amount of the tax shall be equal to the product of the taxable value determined for each copper mineral property owned multiplied by the rate certified to the department by the department of finance and administration for nonresidential property under the provisions of Sections 7-37-7 and 7-37-7.1 NMSA 1978 for the taxing jurisdictions in which the copper mineral property is located.

**History:** 1978 Comp., § 7-39-8, enacted by Laws 1990, ch. 125, § 15.

**ANNOTATIONS**

## 7-39-9. Notification of tax rate; due date.

A. On or before November 1 of each tax year the department shall notify the owner or operator of each copper mineral property, to which the Copper Production Ad Valorem Tax Act applies, of the tax rates that have been established for the taxing jurisdictions in which the copper mineral property is located, the taxable value of the copper mineral property and the amount of the copper production ad valorem tax due.

B. The copper production ad valorem tax is payable in two equal installments due on December 10 of the year for which tax is assessed and on May 10 of the following year. Payment shall be made to the department. No demand for payment of the copper production ad valorem tax is necessary.

**History:** 1978 Comp., § 7-39-9, enacted by Laws 1990, ch. 125, § 16.

**ANNOTATIONS**

## 7-39-10. Monthly report to department of finance and administration; remittances to state and county treasurers; state and county treasurers may distribute funds.

A. By the last day of each month, the department shall prepare and certify a report to the secretary of finance and administration. The report shall be for the preceding month and shall show the amount of copper production ad valorem tax distributed to the copper production tax fund, the amount due the state and each taxing district imposing a tax and any other information required by the secretary of finance and administration. The secretary of finance and administration shall forthwith remit the appropriate amounts from the copper production tax fund to the state treasurer and the county treasurers who shall make the appropriate distribution, except as provided in Subsection B of this section.

B. If the board of county commissioners notifies the secretary of finance and administration that the county elects not to distribute the proceeds of the copper production ad valorem tax due to the municipalities and school districts in the county, the secretary of finance and administration shall pay amounts due directly to municipalities and school districts within the county.

**History:** 1978 Comp., § 7-39-10, enacted by Laws 1990, ch. 125, § 17.

## ANNOTATIONS

**Nonseverability.** — Laws 1990, ch. 125, § 19 provides that the provisions of the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978] and the corresponding amendments made in that act to the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] are not severable.