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.

Provisions govern 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., 83 N.M. 86, 488 P.2d 343 (1971).

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 [this article] 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) Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978];

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

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

(6) Banking and Financial Corporations Tax Act;

(7) any municipal sales or gross receipts tax;

(8) County Fire Protection Excise Tax Act [7-20A-1 to 7-20A-9 NMSA 1978];

(9) any county sales or gross receipts tax;

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

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

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

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

(14) County and Municipal Gasoline Tax Act [Chapter 7, Article 24A NMSA 1978];

(15) Investment Credit Act [7-9A-1 to 7-9A-7, 7-9A-8, 7-9A-9 NMSA 1978];

(16) Corporate Income Tax Act;

(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]; and

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

B. the administration and enforcement of the following taxes 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 to 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]; and

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

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

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

(2) Special Fuels Tax Act [7-16-1 to 7-16-26 NMSA 1978];

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

(4) Controlled Substance Tax Act [Chapter 7, Article 18A NMSA 1978];

(5) Unclaimed Property Act [Chapter 7, Article 8 NMSA 1978]; and

(6) 911 emergency surcharge; 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 such 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.

Cross-references. - As to administration of Income Tax Act, see 7-2-22 NMSA 1978.

As to administration and enforcement of Estate Tax Act, see 7-7-10 NMSA 1978.

As to applicability of the Tax Administration Act to municipal gross receipts taxes, see 7-19-9 NMSA 1978.

The 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.

The 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.

Applicability. - Laws 1990, ch. 125, § 18 provides that the provisions of the act are applicable to tax years and property tax years beginning on or after January 1, 1990.

Corporate Income Tax Act. - The Corporate Income Tax Act, referred to in Subsection A(16), formerly appeared as Chapter 7, Article 2A NMSA 1978, but was amended by Laws 1986, Chapter 20 to be the Corporate Income and Franchise Tax Act.

Refund procedures of 7-1-26 NMSA 1978 are not applicable to real property taxes. Lovelace Center for Health Sciences v. Beach, 93 N.M. 793, 606 P.2d 203 (Ct. App. 1980).

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 repeal 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 provisions of former sections, see 1985 Cumulative Supplement and 1986 Replacement Pamphlet. 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 [Chapter 7, Article 1 NMSA 1978] these words and phrases appear, the singular includes the plural and the plural includes the singular:

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. "division" or "oil and gas accounting division" means the taxation and revenue department;

C. "director" means the secretary of taxation and revenue;

D. "director or his delegate" means the secretary or the secretary's delegate;

E. "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;

F. "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;

G. "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;

H. "overpayment" means any amount paid, pursuant to any law subject to administration and enforcement under the provisions of the Tax Administration Act, by any 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;

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

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

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

L. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, 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, any federal, state or other governmental unit or subdivision, or an agency, department or instrumentality thereof; "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;

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

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

O. "secretary" means the secretary of taxation and revenue and, except for purposes of Subsection B of Section 7-1-4, Paragraphs (1) and (2) of Subsection B of Section 7-1-5 and Subsection E of Section 7-1-24 NMSA 1978, also includes the deputy secretary or a division director or deputy division director delegated by the secretary;

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

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

R. "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;

S. "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 and, unless the context otherwise requires, includes the amount of any interest or civil penalty relating thereto; "tax" also means any amount of 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 and includes, unless the context requires otherwise, the amount of any interest or civil penalty relating thereto;

T. "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, or a person to whom an assessment has been made, if the assessment remains unabated or the amount thereof has not been paid; and

U. "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.

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.

United States as "taxpayer". - Where 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 on other grounds, 624 F.2d 111 (10th Cir. 1980), aff'd, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 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 on other grounds, 624 F.2d 111 (10th Cir. 1980), aff'd, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 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 or for the purpose of enforcing any statute administered under the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978], 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, 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.

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.

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. Commissioner of Revenue, 84 N.M. 610, 506 P.2d 354 (Ct. App. 1972), cert. denied, 84 N.M. 592, 506 P.2d 336 (1973).

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.

7-1-5. Administrative regulations, rulings, instructions and orders; presumption of correctness.

A. The secretary is empowered and directed to issue and file as required by law all regulations, rulings, instructions or orders necessary to implement and enforce any provision of any law administered under the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978], including all rules and regulations necessary by reason of any alteration of the Tax Administration Act or any law administered under the provisions of that act. In order to accomplish its purpose, this provision is to be liberally construed.

B. Directives issued by the secretary shall be in form substantially as follows:

(1) regulations are written statements of the secretary, of general application to taxpayers, interpreting and exemplifying the statutes to which they relate;

(2) rulings are written statements of the secretary, of limited application to one or a small number of taxpayers, interpreting the statutes to which they relate, ordinarily issued in response to a request for clarification of the tax consequences of a specified set of circumstances;

(3) orders are written statements of the secretary to implement a decision after a hearing; and

(4) instructions are other written statements or directives of the secretary not dealing with the merits of any tax but otherwise in aid of the accomplishment of the duties of the secretary.

C. To be effective, any ruling or regulation issued by the secretary shall be reviewed by the attorney general or other legal counsel of the department prior to being filed as required by law and the fact of the review shall be indicated thereon.

D. To be effective, a regulation shall first be issued as a proposed regulation and filed for public inspection in the office of the secretary. Distribution thereof shall be made to interested persons and their comments shall be invited. After the proposed regulation has been on file for not less than sixty days and a public hearing on the proposed action has been held by the secretary or a hearing officer designated by the secretary, the secretary may issue it as a final regulation by filing as required by law.

E. In addition to filing copies of regulations with the state records center as required by law, the secretary shall maintain in the secretary's office a duplicate official set of current and superseded regulations, a set of current and superseded rulings and such additional sets thereof as appear necessary, which duplicate or additional sets shall be available for inspection by the public.

F. The secretary shall develop and maintain a file of names and addresses of individuals and professional and industry groups having an interest in the promulgation of new, revised or proposed regulations and shall at convenient times distribute to these persons all such regulations and all pertinent rulings, making such charges therefor as will defray the expense incurred in their physical preparation and mailing.

G. Any regulation, ruling, instruction or order issued by the secretary is presumed to be a proper implementation of the provisions of the revenue laws administered under the provisions of the Tax Administration Act.

H. The extent to which regulations, rulings and orders will have retroactive effect shall be stated and, if no such statement is made, they will be applied prospectively only.

I. All existing orders, rulings, rules and regulations which have been filed with the state records center prior to July 1, 1986, whether or not they were required to have been filed, shall be continued in full force and effect until repealed, replaced, superseded or amended.

History: 1953 Comp., § 72-13-23, enacted by Laws 1965, ch. 248, § 11; 1970, ch. 25, § 1; 1975, ch. 116, § 1; 1979, ch. 144, § 5; 1982, ch. 18, § 3; 1983, ch. 211, § 4; 1985, ch. 65, § 4; 1986, ch. 20, § 5.

Cross-references. - As to state records center, see 14-3-8 NMSA 1978.

As to the State Rules Act, see 14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978.

Director (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. Rainbo Baking Co. v. Commissioner of Revenue, 84 N.M. 303, 502 P.2d 406 (Ct. App. 1972).

Presumption of validity overcome by showing regulation void. - A showing of a void time requirement established by a regulation of the commissioner (now secretary) overcomes the presumption of validity stated in this statute. Rainbo Baking Co. v. Commissioner of Revenue, 84 N.M. 303, 502 P.2d 406 (Ct. App. 1972).

Director (now secretary) reversed for arbitrariness. - Where the commissioner (now secretary), 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, 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 7-1-24 NMSA 1978 and therefore held the ruling reversed for arbitrariness. Eaton v. Bureau of Revenue, 84 N.M. 226, 501 P.2d 670 (Ct. App.), cert. denied, 84 N.M. 219, 501 P.2d 663 (1972).

Director's (now secretary's) instructions to be in ordinary language. - To aid in the accomplishment of his duties, instructions issued by the director (now secretary) to every resident individual upon whom an income tax is imposed should be in ordinary, everyday language understood by the man or woman on the street. Davis v. New Mexico State Bureau of Revenue, 95 N.M. 218, 620 P.2d 376 (Ct. App. 1980).

Judicial review of rulings. - The legislature has provided a comprehensive scheme for protesting department of revenue and county actions. In not providing more specifically for judicial review of a ruling, the legislative intent was that the ruling should be applied before it is reviewed, in the absence of some applicable exception. Grand Lodge of Ancient & Accepted Masons v. Taxation & Revenue Dep't, 106 N.M. 179, 740 P.2d 1163 (Ct. App. 1987).

Director (now secretary) is a state officer. State ex rel. Bureau of Revenue v. MacPherson, 79 N.M. 272, 442 P.2d 584 (1968), overruled on other grounds New Mexico Livestock Bd. v. Dose, 94 N.M. 68, 607 P.2d 606 (1980).

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

A. All money received by the department with respect to laws administered under the provisions of the Tax Administration Act [this article] 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 [Chapter 7, Article 2 NMSA 1978] 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, 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. 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.

D. All revenues collected or received by the department pursuant to the provisions of the taxes and tax acts administered under Subsection A of Section 7-1-2 NMSA 1978 shall be credited to the tax administration suspense fund and are appropriated for the purpose of making the disbursements authorized under this section or otherwise authorized or required by law to be made from the tax administration suspense fund.

E. All revenues collected or received by the department pursuant to the taxes or tax acts administered under Subsection B of Section 7-1-2 NMSA 1978, other than amounts required to be credited to the oil and gas protested payments suspense fund, shall be credited to the extraction taxes suspense fund and are appropriated for the purpose of making the disbursements authorized under this section or otherwise authorized or required by law to be made from the extraction taxes suspense fund.

F. All revenues collected or received by the department pursuant to the taxes or tax acts administered under 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 under this section or otherwise authorized or required by law.

G. 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 under this section or otherwise authorized or required by law to be made from the workers' compensation collections suspense fund.

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

I. Miscellaneous receipts from charges made by the department to defray expenses pursuant to the provisions of Section 7-1-5 NMSA 1978 and similar charges are appropriated to the department for its use.

J. 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 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.

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 present Subsection F; and redesignated former Subsections F through H as present Subsections G through I.

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 present Subsection F, redesignated former Subsections F to I as present Subsections G to J and, in present Subsection I, substituted "Section 7-1-5 NMSA 1978" for "Sections 7-1-5 and 7-1-25 NMSA 1978".

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 §§ 1057 to 1067.

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 provisions of 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. 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.

Cross-references. - As to the tax administration suspense fund, see 7-1-6 NMSA 1978.

As to the general fund, see 6-4-2 NMSA 1978.

The 1990 amendments. - Laws 1990, ch. 6, § 19, effective February 13, 1990, substituting "7-1-6.30 NMSA 1978" for "7-1-6.18 NMSA 1978" at the end of the first sentence, was approved February 13, 1990. However, Laws 1990, ch. 86, § 3, effective July 1, 1990, substituting "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, but not giving effect to the changes made by the first 1990 amendment, was approved March 2, 1990. The section is 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 ten 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.

Cross-references. - As to distributions from small cities assistance fund, see 3-37A-3 NMSA 1978.

7-1-6.3. Distribution; community alcoholism treatment and detoxification fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the community alcoholism treatment and detoxification fund in an amount equal to fifty-two percent of the net receipts attributable to the tax imposed by Section 7-17-5 NMSA 1978.

History: 1978 Comp., § 7-1-6.3, enacted by Laws 1983, ch. 214, § 5; 1986, ch. 44, § 1.

7-1-6.4. Distribution; municipality from gross receipts tax. (Effective until August 1, 1992.)

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 Section 7-9-4 NMSA 1978 times the net receipts for the month attributable to the gross receipts tax from business locations:

A. within that municipality;

B. on land owned by the state, commonly known as the "state fair grounds," 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 which 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 director.

History: 1978 Comp., § 7-1-6.4, enacted by Laws 1983, ch. 211, § 9.

7-1-6.4. Distribution; municipality from gross receipts tax. (Effective August 1, 1992.)

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 times the net receipts for the month attributable to the gross receipts tax from business locations:

A. within that municipality;

B. on land owned by the state, commonly known as the "state fair grounds", 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: 1978 Comp., § 7-1-6.4, enacted by Laws 1983, ch. 211, § 9; 1991, ch. 9, § 9.

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.

Cross-references. - As to distributions from small counties assistance fund, see 4-61-3 NMSA 1978.

Compiler's note. - 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 two and fifteen one-hundredths percent of the gross receipts or value attributable to the sale or use 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-seven one hundredths of one percent of gasoline taxes, exclusive of penalties and interest, collected pursuant to the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978].

History: 1978 Comp., § 7-1-6.7, enacted by Laws 1983, ch. 211, § 12; 1988, ch. 72, § 2; 1988, ch. 73, § 2; 1989, ch. 356, § 2.

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

The 1989 amendment, effective August 1, 1989, in Subsection B, substituted "equal to twenty-seven one hundredths" for "equal to thirty-one one hundredths".

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 fourteen one 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.

Cross-references. - As to Gasoline Tax Act, see Chapter 7, Article 13 NMSA 1978.

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. (Effective until July 1, 1992.)

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made in an amount equal to eleven and five-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. This distribution shall be paid into the municipal treasury or county general fund for general purposes or for any special purposes designated by the governing body of the municipality or county. 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.

History: 1978 Comp., § 7-1-6.9, enacted by Laws 1983, ch. 211, § 14; 1987, ch. 347, § 8; 1988, ch. 72, § 4; 1988, ch. 73, § 4; 1989, ch. 356, § 4; 1990, ch. 85, § 1; 1991, ch. 9, § 10.

The 1989 amendment, effective August 1, 1989, in Subsection A, substituted "nine and twenty-eight one hundredths" for "ten and six tenths", in Paragraph (2), substituted "six and twenty-five one hundredths percent" for "one-sixteenth"; in Subsection B, substituted "ninety percent" for "nine-tenths" in Paragraph (1) and "ten percent" for "one-tenth" in Paragraph (2).

The 1990 amendment, effective July 1, 1990, deleted "and special fuels" following "gasoline" in the catchline; in Subsection A, deleted the paragraph designation "(1)" and former Paragraph (2) which read "an amount equal to six and twenty-five one hundredths percent of the net receipts attributable to the special fuel tax" and substituted "eleven and twenty-five one hundredths percent" for "nine and twenty-eight one hundredths percent"; and made stylistic changes in Subsection C.

The 1991 amendment, effective July 1, 1991, substituted "eleven and five-hundredths" for "eleven and twenty-five one hundredths" in Subsection A.

Applicability. - Laws 1990, ch. 85, § 4 makes §§ 1 and 3 of the act applicable to revenues received by the taxation and revenue department pursuant to the Gasoline Tax Act on or after July 1, 1990, and distributed to counties and municipalities on or after August 1, 1990.

7-1-6.9. Distribution of gasoline taxes to municipalities and counties. (Effective July 1, 1992.)

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made in an amount equal to eleven and three-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. This distribution shall be paid into the municipal treasury or county general fund for general purposes or for any special purposes designated by the governing body of the municipality or county. 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.

History: 1978 Comp., § 7-1-6.9, enacted by Laws 1991, ch. 9, § 11.

Repeals and reenactments. - Laws 1991, ch. 9, § 11 repeals former 7-1-6.9 NMSA 1978, as amended by Laws 1991, ch. 9, § 10 and enacts the above section, effective July 1, 1992.

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 Tax Act [7-16-1 to 7-16-26 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 petroleum storage cleanup fund pursuant to Section 7-1-6.25 NMSA 1978;

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

(7) the amount distributed to the municipal arterial program pursuant to Section 7-1-6.28 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, fees, 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.

Cross-references. - As to state aviation fund, see 64-1-15 NMSA 1978.

The 1989 amendment, effective August 1, 1989, in Subsection A, added Paragraphs (5) to (7).

The 1990 amendment, effective July 1, 1990, inserted "surcharges" and "surtaxes" in the introductory clause of Subsection A.

7-1-6.11. Distributions of cigarette taxes to municipalities, counties and dedicated health research fund.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county and municipality recreational fund in an amount equal to one-fifteenth 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 shall be made to the county and municipal cigarette tax fund in an amount equal to two-fifteenths of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

C. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the dedicated health research fund in an amount equal to three-fifteenths of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

History: 1978 Comp., § 7-1-6.11, enacted by Laws 1983, ch. 211, § 16; 1985, ch. 25, § 3; 1986, ch. 13, § 1.

Cross-references. - As to the county and municipality recreation fund, see 7-12-15 NMSA 1978.

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

For dedicated health research fund, see 24-20-1 NMSA 1978.

7-1-6.12. Transfer; revenues from municipal 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 municipal gross receipts tax 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 municipal gross receipts tax imposed by that municipality pursuant to the Municipal Gross Receipts Tax Act [7-19-1 to 7-19-9 NMSA 1978], less any deduction for administrative cost determined and made by the department pursuant to the provisions of that act.

B. A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality for which the department is collecting a supplemental municipal gross receipts tax 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 supplemental municipal gross receipts tax imposed by that municipality pursuant to the Supplemental Municipal Gross Receipts Tax Act [7-19-10 to 7-19-18 NMSA 1978], less any deduction for administrative cost determined and made by the department pursuant to the provisions of that act.

C. A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality for which the department is collecting a special municipal gross receipts tax 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 special municipal gross receipts tax imposed by that municipality pursuant to the Special Municipal Gross Receipts Tax Act [7-19A-1 to 7-19A-7 NMSA 1978], less any deduction for administrative cost determined and made by the department pursuant to the provisions of that act.

D. A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality for which the department is collecting a municipal environmental services gross receipts tax 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 municipal environmental services gross receipts tax imposed by that municipality pursuant to the Municipal Environmental Services Gross Receipts Tax Act [7-19B-1 to 7-19B-7 NMSA 1978], less any deduction for administrative cost determined and made by the department pursuant to the provisions of that act.

E. A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality for which the department is collecting a municipal infrastructure gross receipts tax 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 municipal infrastructure gross receipts tax imposed in that municipality pursuant to the Municipal Infrastructure Gross Receipts Tax Act [7-19A-1 to 7-19A-7 NMSA 1978], less any deduction for administrative cost determined and made by the department pursuant to the provisions of that act.

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.

Cross-references. - As to creation of solid waste facility grant fund, see 74-9-41 NMSA 1978.

The 1990 amendment, effective March 5, 1990, added Subsection D.

The 1991 amendment, effective July 1, 1991, added Subsection E.

Temporary provisions. - Laws 1989, ch. 84, §§ 1, 2, effective March 17, 1989, provide that the additional gross receipts tax distribution to counties and municipalities of June 1987 from the tax administration suspense fund was made in error, that recovering the erroneous distribution from the counties and municipalities would represent a hardship, that correcting the erroneous distribution would not impact the general fund, and that the secretary of taxation and revenue shall not take any action on or after March 17, 1989, to decrease distributions to local governments to correct any distribution made to a county or municipality in the seventy-fifth fiscal year which had been determined by the secretary in November, 1988 to have been erroneous and these amounts shall not be recorded or collected.

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

A. A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each county for which the department is collecting a county fire protection excise tax 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 county fire protection excise tax imposed by that county pursuant to the County Fire Protection Excise Tax Act [7-20A-1 to 7-20A-9 NMSA 1978], less any deduction for administrative cost determined and made by the department pursuant to the provisions of that act.

B. A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each county for which the department is collecting a county gross receipts tax 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 county gross receipts tax imposed by that county pursuant to the County Gross Receipts Tax Act [7-20-1 to 7-20-9 NMSA 1978], less any

deduction for administrative cost determined and made by the department pursuant to the provisions of that act.

C. A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each county for which the department is collecting a special county hospital gross receipts tax 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 special county hospital gross receipts tax imposed by that county pursuant to the Special County Hospital Gross Receipts Tax Act [7-20-19 to 7-20-26 NMSA 1978], less any deduction for administrative cost determined and made by the department pursuant to the provisions of that act.

D. 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 liquor excise tax 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 liquor excise tax imposed by that county pursuant to the Local Liquor Excise Tax Act [7-24-8 to 7-24-16 NMSA 1978], less any deduction for administrative costs determined and made by the department pursuant to the provisions of that act.

E. A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each county for which the department is collecting a county environmental services gross receipts tax 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 county environmental services gross receipts tax imposed by that county pursuant to the County Environmental Services Gross Receipts Tax Act [7-20B-1 to 7-20B-7 NMSA 1978], less any deduction for administrative cost determined and made by the department pursuant to the provisions of that act.

F. 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 hospital gross receipts tax 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 hospital gross receipts tax imposed by that county pursuant to the Local Hospital Gross Receipts Tax Act [7-20C-1 to 7-20C-15 NMSA 1978], less any deduction for administrative costs determined and made by the department pursuant to the provisions of that act.

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.

The 1989 amendment, effective June 16, 1989, added Subsection E.

The 1990 amendment, effective March 5, 1990, deleted former Subsection A which read "A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each county for which the department is collecting a county sales tax 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 county sales tax imposed by that county pursuant to the

County Sales Tax Act less any deduction for administrative costs determined and made by the department pursuant to the provisions of that act", redesignated former Subsections B to E as present Subsections A to D, and added present Subsection E.

The 1991 amendment, effective April 4, 1991, added Subsection F.

7-1-6.14. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 88, § 21 repeals 7-1-6.14 NMSA 1978, as amended by Laws 1987, ch. 45, § 21, 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 1988 Replacement Pamphlet.

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 of gross receipts taxes pursuant to Section 7-1-6.4 NMSA 1978;

(2) any transfer to a municipality with respect to any tax imposed in accordance with the Municipal Gross Receipts Tax Act [7-19-1 to 7-19-9 NMSA 1978], Special Municipal Gross Receipts Tax Act [7-19A-1 to 7-19A-7 NMSA 1978], Supplemental Municipal Gross Receipts Tax Act [7-19-10 to 7-19-18 NMSA 1978] or Municipal Environmental Services Gross Receipts Tax Act [7-19B-1 to 7-19B-7 NMSA 1978];

(3) any transfer to a county with respect to any tax imposed in accordance with the County Fire Protection Excise Tax Act [7-20A-1 to 7-20A-9 NMSA 1978], Local Liquor Excise Tax Act [7-24-8 to 7-24-16 NMSA 1978], County Gross Receipts Tax Act [7-20-1 to 7-20-9 NMSA 1978], Special County Hospital Gross Receipts Tax Act [7-20-19 to 7-20-26 NMSA 1978], County Environmental Services Gross Receipts Tax Act [7-20B-1 to 7-20B-7 NMSA 1978] or Local Hospital Gross Receipts Tax Act [7-20C-1 to 7-20C-15 NMSA 1978];

(4) any distribution to a county pursuant to Section 7-1-6.16 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 municipality or county with respect to any tax imposed in accordance with the County and Municipal Gasoline Tax Act [7-24A-1 to 7-24A-21 NMSA 1978];

(7) any transfer to a county with respect to any tax imposed in accordance with the Special County Hospital Gasoline Tax Act [7-24B-1 to 7-24B-10 NMSA 1978]; and

(8) any distribution to a municipality or a county of cigarette taxes pursuant to Sections 7-1-6.11, 7-12-15 and 7-12-16 NMSA 1978.

B. If the secretary determines that any prior distribution or transfer to a municipality or county was erroneous, the secretary shall increase or decrease the next distribution or transfer amount for that municipality or county after the determination, except as provided in Subsection C, D or E of this section, by the amount necessary to correct the error. Unless provided by Subsection E of this section, the secretary shall notify the municipality or county of the amount of each increase or decrease.

C. No decrease shall be made to current or future distributions or transfers to a municipality or a county for any excess distribution or transfer made to that municipality or county more than one year prior to the calendar year in which the determination of the secretary was made.

D. The secretary, in lieu of recovery from the next distribution or transfer amount, may recover an excess distribution or transfer of one hundred dollars ($100) or more to the municipality or county in installments from current and future distributions or transfers to that municipality or county pursuant to an agreement with the officials of the municipality or county whenever the amount of the distribution or transfer decrease for the municipality or county exceeds ten percent of the average distribution or transfer amount for that municipality or county for the twelve months preceding the month in which the secretary's determination is made; provided that for the purposes of this subsection, the "average distribution or transfer amount" shall be the arithmetic mean of the distribution or transfer amounts within the twelve months immediately preceding the month in which the determination is made.

E. Except for the provisions of this section, if the amount by which a distribution or transfer would be adjusted is one hundred dollars ($100) or less, no adjustment or notice need be made.

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.

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

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.

1991 amendments. - Laws 1991, ch. 9, § 13, effective July 1, 1991, in Paragraph (2) of Subsection A, adding "or Municipal Infrastructure Gross Receipts Tax Act" and making a related stylistic change, was approved on March 15, 1991. However, Laws 1991, ch. 176, § 17, effective April 4, 1991, in Paragraph (3) of Subsection A, adding "or Local Hospital Gross Receipts Tax Act" and making a related stylistic change was approved on April 4, 1991. The section is set out as amended by Laws 1991, ch. 176, § 17. See 12-1-8 NMSA 1978.

Temporary provisions. - Laws 1989, ch. 84, §§ 1, 2, effective March 17, 1989, provide that the additional gross receipts tax distribution to counties and municipalities of June 1987 from the tax administration suspense fund was made in error, that recovering the erroneous distribution from the counties and municipalities would represent a hardship, that correcting the erroneous distribution would not impact the general fund, and that the secretary of taxation and revenue shall not take any action on or after March 17, 1989, to decrease distributions to local governments to correct any distribution made to a county or municipality in the seventy-fifth fiscal year which had been determined by the secretary in November, 1988 to have been erroneous and these amounts shall not be recorded or collected.

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 the County Gross Receipts Tax Act [7-20-1 to 7-20-9 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 which 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 the net receipts received by the department in the month attributable to the state gross receipts tax multiplied by 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 bureau of the census 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.

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 Subsection A(1); in Subsection A(2) rewrote the first sentence and added the second sentence; added Subsections C(1) and C(2); redesignated former Subsection C as Subsection C(3) while deleting therein "for the purposes of this section" following "means"; and added Subsection C(4).

7-1-6.17. Repealed.

ANNOTATIONS

Repeals. - Laws 1987, ch. 264, § 25A repeals 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. For provisions of former section, see 1986 Replacement Pamphlet.

7-1-6.18. Distribution; veterans' national cemetery fund. (Delayed repeal - See note.)

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, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the veterans' national cemetery fund of the amounts designated pursuant to Section 7-2-28 NMSA 1978 as contributions to that fund; 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, if House Bill 103 of the first session of the thirty-eighth legislature becomes law, or to the general fund if House Bill 103 does not become law.

History: 1978 Comp., § 7-1-6.18, enacted by Laws 1987, ch. 257, § 1.

Delayed repeals. - Laws 1987, ch. 257, § 6 repeals 7-1-6.18, as enacted by Laws 1987, ch. 257, § 1 relating to the distribution of the veterans' national cemetery fund, effective January 1 of the year following the year in 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.

House Bill 103. - House Bill 103 of the first session of the thirty-eighth legislature, (Laws 1987, Chapter 265) referred to in this section, was approved by the governor on April 9, 1987, and is effective June 19, 1987. That bill appears as 7-1-6.24, 7-2-29, 7-2-30, 26-2-4 and 26-2-4.1 NMSA 1978.

7-1-6.19. Distribution; county government road fund created. (Effective until July 1, 1992.)

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 six and nineteen-hundredths percent of the net receipts attributable to the gasoline tax.

History: 1978 Comp., § 7-1-6.19, enacted by Laws 1987, ch. 347, § 10; 1989, ch. 352, § 1 (repealed by Laws 1990, ch. 86, § 12); 1989, ch. 356, § 6; 1990, ch. 85, § 2; 1991, ch. 9, § 14.

The 1989 amendments. - Laws 1989, ch. 352, § 1 (repealed by Laws 1990, ch. 86, § 12), effective June 16, 1989, in Subsection A, making a minor stylistic change; in Subsection C, inserting at the end "less than five-tenths of one percent which is distributed to the county government training program", and adding a Subsection D creating a "county government training program" and a Subsection E regarding administration of that program, was approved on April 7, 1989. However, Laws 1989, ch. 356, § 6, effective August 1, 1989, making a minor stylistic change in Subsection A and, in Subsection C, substituting "equal to six and twenty-five one hundredths percent" for "equal to one-fourteenth", was approved later on April 7, 1989. The section is set out as amended by Laws 1989, ch. 356, § 6. See 12-1-8 NMSA 1978.

The 1990 amendment, effective July 1, 1990, deleted former Subsection B relating to the distribution pursuant to 7-1-6.1 NMSA 1978 for the period August, 1987 through July, 1988; redesignated former Subsection C as present Subsection B, and deleted "For any months after July 1, 1988" at the beginning thereof.

The 1991 amendment, effective July 1, 1991, substituted "six and nineteen-hundredths" for "six and twenty-five one hundredths" in Subsection B.

Temporary provisions. - Laws 1987, ch. 347, § 11 provides for the distribution of the county government road fund by the state treasurer, in the period August, 1987 through July, 1988, to the respective county road funds.

Compiler's note. - Laws 1990, ch. 86, § 12 repeals Laws 1989, ch. 352, § 1 which purported to amend 7-1-6.19 NMSA 1978 but which had not been given effect since there was a later amendment of the section.

7-1-6.19. Distribution; county government road fund created. (Effective July 1, 1992.)

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 six and thirteen-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.

Repeals and reenactments. - Laws 1991, ch. 9, § 15 repeals former 7-1-6.19 NMSA 1978, as amended by Laws 1990, ch. 9, § 14 and enacts the above section, effective July 1, 1992.

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

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.

History: 1978 Comp., § 7-1-6.20, enacted by Laws 1985, ch. 65, § 6.

Cross-references. - As to the extraction taxes suspense fund, see 7-1-6 NMSA 1978.

As to the general fund, see 6-4-2 NMSA 1978.

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

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

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

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.

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".

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.

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

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

Applicability. - Laws 1990, ch. 125, § 18 provides that the provisions of the act are applicable to tax years and property tax years beginning on or after January 1, 1990.

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 to 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.

Cross-references. - As to 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 7-2-28 NMSA 1978 as contributions to that fund.

History: 1978 Comp., § 7-1-6.18, enacted by Laws 1987, ch. 265, § 3.

Applicability. - Laws 1987, ch. 265, § 6 makes the provisions of Sections 2 and 3 of the act applicable to taxable years beginning on or after January 1, 1987.

Compiler's note. - 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.

The reference to 7-2-28 NMSA 1978 appears to be erroneous. Section 7-2-30 NMSA 1978, not 7-2-28 NMSA 1978, involves amounts designated to the substance abuse education fund.

Substance abuse education fund. - See 26-2-4.1 NMSA 1978.

7-1-6.25. Distribution; corrective action fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the corrective action fund of the net receipts attributable to the petroleum products loading fee. Imposition of the petroleum products loading fee shall cease on the first day of the month following the expiration of ninety days from the end of the month for which the unencumbered balance of the corrective action fund is certified to equal or exceed twenty-five million dollars ($25,000,000) and for every month thereafter until the unencumbered balance is certified by the director of the environmental improvement division of the health and environment department [department of environment] to be less than or equal to twelve million dollars ($12,000,000) as of the end of any month, in which event the imposition of the petroleum products loading fee shall be reinstated on the first day of the month following the expiration of ninety days after the end of the

month for which the certification was made and the distribution of the fee shall be returned to the corrective action fund.

History: 1978 Comp., § 7-1-6.25, enacted by Laws 1988, ch. 70, § 9; 1990, ch. 124, § 13.

Cross-references. - As to ground water protection corrective action fund, see 74-6B-7 NMSA 1978.

Bracketed material. - The bracketed reference to the department of environment was inserted by the compiler, as Laws 1991, ch. 25, § 4 establishes the department of environment and provides that all references to the environmental improvement division of the health and environment department shall be construed to mean the department of environment. The bracketed material was not enacted by the legislature and is not part of the law.

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

Effective dates. - Laws 1988, ch. 70 makes the act effective on July 1, 1988.

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 highway and transportation shall determine and certify on or before July 1, 1987, and on or before July 1 of each subsequent 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 A and B 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 May 1, 1988, and by April 1 of every year thereafter, of the year for which distribution is being made, the secretary of highway and 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 which have certified mileages.

History: Laws 1987, ch. 347, § 11; 1988, ch. 106, § 1; 1989, ch. 352, § 2; 1990, ch. 85, § 3.

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

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 present 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 present Subsection A; in present Subsection C, substituted "Subsection D" for "Subsection E" in the first sentence and rewrote the second paragraph of Paragraph (2) to the extent that a detailed analysis is impracticable; and, in present Subsection D, substituted "Subsections A and B" for "Subsections B and C" in the first sentence and added the second sentence.

Applicability. - Laws 1990, ch. 85, § 4 makes §§ 1 and 3 of the act applicable to revenues received by the taxation and revenue department pursuant to the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978] on or after July 1, 1990, and distributed to counties and municipalities on or after August 1, 1990.

7-1-6.27. Distribution; municipal roads. (Effective until July 1, 1992.)

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 six and nineteen-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; and

(2) 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 six and twenty-five one hundredths percent of the net receipts attributable to the gasoline tax 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". For the twelve-month period beginning in August 1989 through July 1990, an amount sufficient to provide funding for the floor municipalities shall be deducted from the distribution to full distribution municipalities. 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 which is neither a full distribution municipality nor a floor municipality in an amount which 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 which are neither full distribution municipalities nor floor municipalities.

History: 1978 Comp., § 7-1-6.27, enacted by Laws 1989, ch. 356, § 7; 1991, ch. 9, § 19.

The 1991 amendment, effective July 1, 1991, substituted "six and nineteen-hundredths" for "six and twenty-five one hundredths" in Subsection A.

Effective dates. - Laws 1989, ch. 356, § 11 makes this section effective August 1, 1989.

Temporary provisions. - Laws 1989, ch. 356, § 10, effective June 16, 1989, provides that a full distribution municipality, as defined in 7-1-6.27 NMSA 1978, shall expend a minimum of $300,000 each year for a minimum of five years on constructing a new limited access four-lane major arterial roadway in that full distribution municipality.

7-1-6.27. Distribution; municipal roads. (Effective July 1, 1992.)

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 six and thirteen-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; and

(2) 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 six and twenty-five one hundredths percent of the net receipts attributable to the gasoline tax 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". For the twelve-month period beginning in August 1989 through July 1990, an amount sufficient to provide funding for the floor municipalities shall be deducted from the distribution to full distribution municipalities. 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 which is neither a full distribution municipality nor a floor municipality in an amount which 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 which are neither full distribution municipalities nor floor municipalities.

History: 1978 Comp., § 7-1-6.27, enacted by Laws 1991, ch. 9, § 20.

Repeals and reenactments. - Laws 1991, ch. 9, § 20 repeals former 7-1-6.27 NMSA 1978, as amended by Laws 1991, ch. 9, § 19 and enacts the above section, effective July 1, 1992.

7-1-6.28. Distribution; municipal arterial program. (Effective until July 1, 1992.)

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 fifty-five hundredths percent of the net receipts attributable to the gasoline tax.

History: 1978 Comp., § 7-1-6.28, enacted by Laws 1989, ch. 356, § 8; 1991, ch. 9, § 21.

The 1991 amendment, effective July 1, 1991, substituted "one and fifty-five hundredths" for "one and fifty-six one hundredths".

Effective dates. - Laws 1989, ch. 356, § 11 makes this section effective August 1, 1989.

7-1-6.28. Distribution; municipal arterial program. (Effective July 1, 1992.)

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 fifty-three 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.

Repeals and reenactments. - Laws 1991, ch. 9, § 22 repeals former 7-1-6.28 NMSA 1978, as amended by Laws 1991, ch. 9, § 21, and enacts the above section, effective July 1, 1992.

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

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 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.

History: 1978 Comp., § 7-1-6.27, enacted by Laws 1989, ch. 325, § 3.

Effective dates. - Laws 1989, ch. 325 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

Compiler's note. - 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.

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

A. Subject to the provisions of Subsection B of this section, 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 the net receipts attributable to the taxes imposed under the Income Tax Act [Chapter 7, Article 2 NMSA 1978] on income derived from pensions, retirement benefits and annuities payable under the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978], the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978], the Judicial Retirement Act [Chapter 10, Article 12 NMSA 1978], the Magistrate Retirement Act [10-12A-1 to 10-12A-13 NMSA 1978], the Retirement Reciprocity Act [10-13-1 to 10-13-5 NMSA 1978], or the Judicial Retirement Reciprocity Act [10-13-6 to 10-13-9 NMSA 1978].

B. The distribution provided in Subsection A of this section is contingent upon enactment into law of the Retiree Health Care Act [10-7C-1 to 10-7C-16 NMSA 1978] or other similar act authorizing health care insurance benefits for retired public employees of the state and any of its political subdivisions.

History: 1978 Comp., § 7-1-6.30, enacted by Laws 1990, ch. 6, § 20.

Emergency clauses. - Laws 1990, ch. 6, § 23 makes the act effective immediately. Approved February 13, 1990.

7-1-6.31. Distribution; enhanced 911 fund.

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.

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

Effective dates. - Laws 1990, ch. 86, § 13 makes this section of the act effective on July 1, 1990.

Compiler's note. - 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.

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 to 74-9-42, 74-9-72 and 74-9-73 NMSA 1978].

History: Laws 1990, ch. 99, § 44.

Cross-references. - As to creation of solid waste facility grant fund, see 74-9-41 NMSA 1978.

Emergency clauses. - Laws 1990, ch. 99, § 74 makes the act effective immediately. Approved March 5, 1990.

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 the County Health Care Gross Receipts Tax Act [7-20D-1 to 7-20D-7 NMSA 1978].

History: Laws 1991, ch. 212, § 15.

Effective dates. - Laws 1991, ch. 212, § 24, makes the act effective on July 1, 1991.

7-1-6.34 - 7-1-6.40. Reserved.

ANNOTATIONS

Compiler's note. - Laws 1990, ch. 86, § 11, effective May 16, 1990, provides that Sections 7-1-6.31 to 7-1-6.40 NMSA 1978 are reserved. Sections 7-1-6.31 and 7-1-6.32 NMSA 1978 were assigned as code sections falling within that group in 1990. Section 7-1-6.33 NMSA 1978 was assigned as a code section falling within that group in 1991.

7-1-7. [Distribution in lieu of municipal sales tax; pledges of municipal sales tax.]

The municipal distribution is in lieu of all municipal sales taxes previously authorized under Sections 14-39-1 through 14-39-5.1 NMSA 1953. Any municipality which has pledged any portion of its sales taxes to the payment of revenue bonds issued pursuant to Section 3-31-1 NMSA 1978 shall receive its portion of the municipal distribution impressed with and subject to the irrevocable pledges made in the bonds. The irrevocable pledges shall be satisfied in full compliance with the terms of the ordinance under which the bonds were issued before any portion of the distribution may be used for any other purposes.

History: 1953 Comp., § 72-13-24.1, enacted by Laws 1969, ch. 147, § 2.

Compiler's note. - Sections 14-39-1 to 14-39-5.1, 1953 Comp., cited in the first sentence in this section, were repealed by Laws 1969, ch. 146, § 1, except as applicable to any liability for payment of municipal sales taxes incurred prior to July 1, 1969.

7-1-8. Confidentiality of returns and other information.

It is unlawful for any employee of the department or any former employee of the department to reveal to any individual other than another employee of the department any information contained in the return of any taxpayer made pursuant to any law subject to administration and enforcement under the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] or any other information about any taxpayer acquired as a result of his employment by the department except:

A. 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 and that the receiving state has enacted a confidentiality statute similar to this section;

B. 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;

C. 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 Subsection A of this section;

D. to a district court or an appellate court or a federal court:

(1) in response to an order thereof in an action relating to taxes to which the state is a party and in which the information sought is material to the inquiry, in which case only that information may be required to be produced in court and admitted in evidence and no more; or

(2) in any action in which the department is attempting to enforce an act with which the department is charged or to collect a tax or in any matter in which the taxpayer has put his own liability for taxes at issue;

E. to the taxpayer or to the taxpayer's authorized representative; provided, however, that nothing in this subsection shall be construed to require any employee to testify in a judicial proceeding except as provided in Subsection D of this section;

F. information obtained through the administration of any law not subject to administration and enforcement under the provisions of the Tax Administration Act to the extent that release of such information is not otherwise prohibited by law;

G. in such manner, for statistical purposes, that the information revealed is not identified as applicable to any individual taxpayer;

H. with reference to any information concerning the tax on tobacco imposed by Sections 7-12-1 through 7-12-17 NMSA 1978 to a committee of the legislature for a valid legislative purpose;

I. to a transferee, assignee, buyer or lessor of a liquor license, the amount and basis of any unpaid assessment of tax for which his transferor, assignor, seller or lessee is liable;

J. to a purchaser of a business as provided in Sections 7-1-61 through 7-1-64 NMSA 1978, the amount and basis of any unpaid assessment of tax for which the purchaser's seller is liable;

K. to a municipality upon its request for any period specified by that municipality within the twelve months preceding the request for such information by that municipality:

(1) 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], the Municipal Gross Receipts Tax Act [7-19-1 to 7-19-9 NMSA 1978], the Supplemental Municipal Gross Receipts Tax Act [7-19-10 to 7-19-18 NMSA 1978] or the Special Municipal Gross Receipts Tax Act [7-19A-1 to 7-19A-7 NMSA 1978]. The department may also release, within the twelve months following the request for such information by the municipality, the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the municipality may agree; and

(2) information indicating whether persons shown on any 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, the Municipal Gross Receipts Tax Act, the Supplemental Municipal Gross Receipts Tax Act or the Special Municipal Gross Receipts Tax Act.

The employees of municipalities receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if such information is revealed to individuals other than other employees of the municipality in question or the department;

L. to the commissioner of public lands for use in auditing which pertains to rentals, royalties, fees and other payments due the state under land sale, land lease or other land use contracts; the commissioner of public lands and his employees are subject to the same provisions regarding confidentiality of information as employees of the department;

M. the department shall furnish, upon request by the child support enforcement division of the human services department, the last known address with date of all names certified to the department as being absent parents of children receiving public financial assistance. The child support enforcement division personnel shall use such information only for the purpose of enforcing the support liability of such absent parents and shall not use the information or disclose it for any other purpose; the child support enforcement division and its employees are subject to the provisions of this section with respect to any information acquired from the department;

N. with respect to the tax on gasoline imposed by the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978], the department shall make available for public inspection at monthly intervals a report covering the amount and gallonage of gasoline and ethanol blended fuels imported, exported, sold and used, including tax exempt sales to the federal government reported or upon which the gasoline tax was paid, together with a tabulation of taxes received from each distributor in the state of New Mexico;

O. the identity of distributors and gallonage reported on returns required under the Gasoline Tax Act to any distributor, but only when it is necessary to enable the department to carry out its duties under the Gasoline Tax Act;

P. the department shall release upon request only the names and addresses of all gasoline distributors, wholesalers and retailers to the New Mexico department of agriculture, the employees of which are thereby subject to the penalty contained in Section 7-1-76 NMSA 1978 if such information is revealed to individuals other than employees of either the New Mexico department of agriculture or the department;

Q. the department shall answer all inquiries concerning whether a person is or is not a registered taxpayer;

R. upon request of the municipality or the county, the department shall permit officials or employees of the municipality or county to inspect 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. The municipal or county officials or employees receiving information provided in this subsection shall not reveal that information to any person other than another employee of the municipality or the county, 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. Any information provided in this subsection that is revealed other than as provided herein shall subject the person revealing the information to the penalties contained in Section 7-1-76 NMSA 1978;

S. to a county which has in effect any county gross receipts tax or a county fire protection excise tax upon its request for any period specified by that county within the twelve months preceding the request for such information by that county:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts either for that county in the case of a county gross receipts tax or only for the areas of that county outside of any incorporated municipalities within that county in the case of a county fire protection excise tax. The department may also release within the twelve months following the request for such information by the county the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the county may agree;

(2) in the case of a county gross receipts tax, information indicating whether persons shown on any 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, the County Gross Receipts Tax Act [7-20-1 to 7-20-9 NMSA 1978] or the Special County Hospital Gross Receipts Tax Act [7-20-19 to 7-20-26 NMSA 1978]; and

(3) in the case of a county fire protection excise tax, information indicating whether persons shown on any list of businesses located in the area of that county outside of any incorporated municipalities within that county furnished by the county have reported gross receipts to the department but have not reported gross receipts for the area of that county outside of any incorporated municipalities within that county under the Gross Receipts and Compensating Tax Act and the County Fire Protection Excise Tax Act [7-20A-1 to 7-20A-9 NMSA 1978].

The officers and employees of counties receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if such information is revealed to individuals other than other officers or employees of the county in question or the department;

T. 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 reciprocal agreement entered into with the Indian nation, tribe or pueblo for the exchange of such information for tax purposes only; provided that the Indian nation, tribe or pueblo has enacted a confidentiality statute similar to this section;

U. information with respect to the taxes or tax acts administered pursuant to Subsection B or C of Section 7-1-2 NMSA 1978, except that information for or relating to any period prior to July 1, 1985 with respect to Sections 7-25-1 through 7-25-9, 7-26-1 through 7-26-9 and 7-27-1 through 7-27-48 NMSA 1978 may be released only to a committee of the legislature for a valid legislative purpose;

V. to the state corporation commission, 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;

W. to the state racing commission, information with respect to the state, municipal and county gross receipts taxes paid by race tracks; and

X. upon request of a corporation authorized to be formed under the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978], the department shall furnish the last known address and the date of that address of every person certified to the department as being an absent obligor of an educational debt that is due and owed to the corporation or that the corporation has lawfully contracted to collect. The corporation and its officers and employees shall use such information only for the purpose of enforcing the educational debt obligation of such absent obligors and shall not disclose that information or use it for any other purpose.

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.

Cross-references. - As to inspection of books of taxpayers, see 7-1-11 NMSA 1978.

As to the multistate tax commission, see Article VI of 7-5-1 NMSA 1978.

As to commissioner of public lands, see 19-1-1 NMSA 1978.

The 1991 amendment, effective June 14, 1991, substituted "division" for "bureau" in three places in Subsection M and added Subsection X.

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.

7-1-9. Address of notices and payments; timely mailing constitutes timely filing or making.

A. Any notice required or authorized by the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] 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.

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.

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 division 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 he 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 his method of accounting in keeping his books and records for tax purposes, a taxpayer must first secure the consent of the director or his delegate. If consent is not secured, the director or his delegate 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 his method of reporting taxes, other than for changes required by law, a taxpayer must first secure the consent of the director or his delegate. Consent shall be granted or withheld pursuant to the provisions of Section 7-4-19 NMSA 1978. If consent is not secured, the director or his delegate upon audit may require the taxpayer to compute the amount of tax due on the basis of the reporting method earlier used.

E. The director may, by regulation, require any person doing business in the state to submit to the division information reports which are considered reasonable and necessary for the administration of any provision of law to which the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] 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.

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, 84 N.M. 428, 504 P.2d 638 (Ct. App. 1972).

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, 85 N.M. 736, 516 P.2d 1119 (Ct. App. 1973).

But director's (now secretary's) decision conclusive where more than one inference possible. - Where 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, 85 N.M. 736, 516 P.2d 1119 (Ct. App. 1973).

7-1-11. Inspection of books of taxpayers; credentials.

A. The director or his delegate shall cause the records and books of account of taxpayers to be inspected or audited at such times as he deems necessary for the effective execution of his responsibilities.

B. Auditors and other officials of the division designated by the director are authorized to request and require the production for examination of the records and books of account of a taxpayer. Those auditors and officials of the division so designated by the director 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 director or his delegate who properly identifies himself to the taxpayer.

History: 1953 Comp., § 72-13-28, enacted by Laws 1965, ch. 248, § 16; 1979, ch. 144, § 10.

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.

7-1-12. Identification of taxpayers.

A. The director 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, the United States and to aid in statistical computations.

C. The director 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 director 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.

7-1-12.1. Oil and gas accounting division to designate production unit; index; identification by number or symbol.

A. The oil and gas accounting division 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 oil and gas accounting division shall compile and keep current an index of all production units by description sufficient to properly identify such production units.

C. The oil and gas accounting division shall assign to each production unit a number or symbol, such 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 division.

History: 1978 Comp., § 7-1-12.1, enacted by Laws 1985, ch. 65, § 12.

7-1-12.2. Notice of identification number assigned; operator may request identification number.

The oil and gas accounting division shall inform each operator of a production unit by mail 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 by mail. 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 division to assign a new identification number or symbol and the division 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.

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.

C. 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. Payment of any additional tax due shall accompany the return.

D. Payment of the total amount of all taxes which 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 [this article] 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, such 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 except that the secretary by regulation may also provide for the automatic extension for no more than four 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 assure 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.

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.

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".

Internal Revenue Code. - The Internal Revenue Code appears as 26 U.S.C. § 1 et seq.

State returns used for audit although federal taxes filed on different basis. - Where 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 where 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, 93 N.M. 589, 603 P.2d 328 (Ct. App. 1979).

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.

84 C.J.S. Taxation §§ 607, 608, 617.

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) or (3) 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 those taxes during the preceding calendar year equaled or exceeded twenty-five thousand dollars ($25,000):

(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] and any other act authorizing a municipal or county tax to be collected at the same time and in the same manner as the gross receipts tax;

(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]; or

(3) the tax due under the Natural Gas Processors Tax Act [Chapter 7, Article 33 NMSA 1978].

For taxpayers that 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:

(1) automated clearinghouse deposit initiated at least one banking day prior to the due date and containing the information required by the department;

(2) a transfer of funds through a recognized wire transfer system which provides immediate availability of funds and containing the information required by the department;

(3) currency of the United States;

(4) check drawn on and payable at any New Mexico financial institution, provided that the check is received by the department at least one banking day prior to the due date; or

(5) check drawn on and payable at any domestic non-New Mexico financial institution, provided that the check is received 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. When an offsetting debit to an automated clearinghouse deposit or a check is dishonored by the taxpayer's financial institution, neither the department nor the fiscal agent is obligated to resubmit the debit or check for payment; if the dishonoring causes the final payment of taxes to be not timely under the provisions of this section, then the provisions of Sections 7-1-67 and 7-1-69 NMSA 1978 apply.

D. For the purposes of this section:

(1) "automated clearinghouse deposit" means an electronic credit transmitted through an automated clearinghouse deposit payable to the state treasurer and deposited with the fiscal agent of the state; and

(2) "financial institution" means any state or nationally chartered federally insured depository institution.

History: 1978 Comp., § 7-1-13.1, enacted by Laws 1988, ch. 99, § 3; 1989, ch. 76, § 1; 1990, ch. 86, § 6.

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).

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.

Effective dates. - Laws 1988, ch. 99, § 5 makes the act effective January 1, 1989.

7-1-13.2. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 319, § 15 repeals 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. For provisions of former section, see 1988 Replacement Pamphlet.

7-1-14. Director may require gross receipts to be reported according to municipality, Indian reservation, pueblo grant or if on municipally-owned land.

By regulation, the director may require any person maintaining more than one place of business to report his taxable gross receipts and deductions for each municipality or county or area within an Indian reservation or pueblo grant covered by a contract of the type described in Section 7-1-6.4 NMSA 1978 in which he maintains a place of business. For persons engaged in the construction business, "place of business" includes the place where the construction project is performed. The director may, by regulation, also require any person maintaining a business outside the boundaries of a municipality on land owned by that municipality to report his taxable gross receipts for that municipality.

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.

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 § 1092.

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.

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.

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 [Chapter 7, Article 1 NMSA 1978] 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.

7-1-16. Delinquent taxpayer.

A. 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 either make payment before thirty days after the date of assessment or demand for payment or within that time protest the assessment or demand for payment as provided by Section 7-1-24 NMSA 1978 or within that time furnish security for payment as provided by Section 7-1-54 NMSA 1978 becomes a delinquent taxpayer and remains such until payment of the total amount of all such taxes is made or until security is furnished for payment or until 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.

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.

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 §§ 736 to 743, 750.

7-1-17. Assessment of tax; presumption of correctness.

A. If the director or his delegate determines that a taxpayer is liable for taxes in excess of ten dollars ($10.00) that are due and that have not been previously assessed to him, he or his 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 division showing a liability for taxes;

(2) when a document denominated "notice of assessment of taxes", issued in the name of the director, 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 him to the state, demanding of him the immediate payment thereof and briefly informing him of the remedies available to him; or

(3) when an effective jeopardy assessment is made as provided in the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

C. Any assessment of taxes or demand for payment made by the division is presumed to be correct.

D. When taxes have been assessed to any taxpayer and remain unpaid, the director or his delegate may demand payment at any time.

History: 1953 Comp., § 72-13-32, enacted by Laws 1965, ch. 248, § 20; 1969, ch. 32, § 1; 1979, ch. 144, § 16.

Assessment of taxes effective when effective jeopardy assessment is made as provided in the Tax Administration Act. Regents of N.M. College of Agric. & Mechanic Arts v. Academy of Aviation, Inc., 83 N.M. 86, 488 P.2d 343 (1971).

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, 84 N.M. 610, 506 P.2d 354 (Ct. App. 1972), cert. denied, 84 N.M. 592, 506 P.2d 336 (1973).

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, 84 N.M. 428, 504 P.2d 638 (Ct. App. 1972); Tipperary Corp. v. New Mexico Bureau of Revenue, 93 N.M. 22, 595 P.2d 1212 (Ct. App. 1979); Anaconda Co. v. Property Tax Dep't, 94 N.M. 202, 608 P.2d 514 (Ct. App. 1979), cert. denied, 94 N.M. 628, 614 P.2d 545 (1980); Hawthorne v. Director of Revenue Div. Taxation & Revenue Dep't, 94 N.M. 480, 612 P.2d 710 (Ct. App. 1980).

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, 88 N.M. 576, 544 P.2d 291 (Ct. App. 1975).

Assessment upheld when statutes followed and no dispute of factual correctness. - Where 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, 83 N.M. 386, 492 P.2d 1003 (Ct. App. 1971).

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, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

And 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, 87 N.M. 118, 529 P.2d 1239 (Ct. App.), cert. denied, 87 N.M. 111, 529 P.2d 1232 (1974).

Or 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. College of Agric. & Mechanic Arts v. Academy of Aviation, Inc., 83 N.M. 86, 488 P.2d 343 (1971).

Presumption of correctness of this section also applies to penalty section (7-1-69 NMSA 1978). Tiffany Constr. Co. v. Bureau of Revenue, 90 N.M. 16, 558 P.2d 1155 (Ct. App. 1976), cert. denied, 90 N.M. 255, 561 P.2d 1348 (1977).

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. New Mexico Bureau of Revenue, 90 N.M. 43, 559 P.2d 420 (Ct. App. 1976), cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977).

No basis for overturning decision where taxpayer unprepared. - Where 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, 83 N.M. 386, 492 P.2d 1003 (Ct. App. 1971).

Presumption not overcome where 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, 88 N.M. 576, 544 P.2d 291 (Ct. App. 1975).

Nor where audit method acceptable. - Where "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 where there was evidence that the "test months" method was acceptable practice, the presumption of correctness of the assessments was not overcome. Torridge Corp. v. Commissioner of Revenue, 84 N.M. 610, 506 P.2d 354 (Ct. App. 1972), cert. denied, 84 N.M. 592, 506 P.2d 336 (1973).

But presumption overcome when no basis for assessments existed. - Where 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, 84 N.M. 610, 506 P.2d 354 (Ct. App. 1972), cert. denied, 84 N.M. 592, 506 P.2d 336 (1973).

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 §§ 349 to 372, 390 to 420.

7-1-18. Limitation on assessment by director.

A. Except as otherwise provided in this section, no assessment of tax may be made by the director or his delegate 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 his liability for any tax for the period to which the return relates, appropriate assessments may be made by the director 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 which results in liability for any tax, the amount thereof may be assessed at any time but not after 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.

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.

Extension of limitations period. - The taxation and revenue department was required to extend the general three-year limitation on assessments to six years when making an assessment, where a taxpayer underreported taxes in excess of 25 percent, and the principles of estoppel did not affect the department's application of the longer period. Taxation & Revenue Dep't v. Bien Mur Indian Mkt. Center, Inc., 108 N.M. 228, 770 P.2d 873 (1989).

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.

84 C.J.S. Taxation § 63; 85 C.J.S. Taxation § 984.

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 [Chapter 7, Article 1 NMSA 1978] and due under an assessment or notice of the assessment of taxes after ten years from the date of such assessment or notice.

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.

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 §§ 694, 728; 85 C.J.S. Taxation § 1225.

7-1-20. Compromise of taxes; closing agreements.

A. At any time after the assessment of any tax, if the director in good faith is in doubt of the liability for the payment thereof, he 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 director 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.

Cross-references. - As to compromise, satisfaction or release by attorney general or district attorney, see 36-1-22 NMSA 1978.

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 §§ 630, 701.

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 any taxpayer wherein the taxpayer admits conclusive liability for the entire amount of taxes due and agrees to make monthly installment payments thereof according to the terms of the agreement, but not for a period longer than thirty-six months. No installment agreement shall prevent the accrual of interest as otherwise provided by law.

B. The agreement provided for in this section is to be known as an "installment 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. 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 his 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 he becomes liable as they fall 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 such 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.

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 §§ 617, 634.

7-1-22. Exhaustion of administrative remedies.

No court of this state has jurisdiction to entertain any proceeding by a taxpayer in which he calls into question his liability for any tax or the application to him of any provision of

the Tax Administration Act [this article], except as a consequence of the appeal by him to the court of appeals from the action and order of the director, all as specified in Section 7-1-24 NMSA 1978, 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.

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.

84 C.J.S. Taxation § 722.

7-1-23. Election of remedies.

Any taxpayer must elect to dispute his liability for the payment of taxes either by protesting the assessment thereof as provided in Section 7-1-24 NMSA 1978 without making payment or by claiming a refund thereof as provided in Section 7-1-26 NMSA 1978 after making payment. 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.

7-1-24. Administrative hearing; procedure.

A. Any taxpayer may dispute the assessment to the taxpayer of any amount of tax, the application to the taxpayer of any provision of the Tax Administration Act [this article] 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 by filing with the secretary a written protest against the assessment or against the application to him of the provision or a written claim for refund of the amount claimed to have been erroneously paid as tax. Every protest shall state the nature of the taxpayer's complaint and the affirmative relief requested. The secretary may, in appropriate cases, provide for an informal conference before setting a hearing of the protest or acting on any claim for refund.

B. Any protest by a taxpayer shall be filed within thirty days of the date of the mailing to the taxpayer by the department of the notice of assessment or mailing to, or service upon, the taxpayer of other peremptory notice or demand, or the date of mailing or filing a return, and if not filed within that time or such other reasonable time, not to exceed thirty additional days, as the secretary may grant as an extension of time for filing of a written protest, 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. To be effective, any notice of assessment or other peremptory notice or demand shall briefly inform the taxpayer of the taxpayer's rights of protest under this section and of the consequences of a failure to protest. No proceedings other than those to enforce

collection of any 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 under this section.

C. Claims for refund shall be filed as provided for in Section 7-1-26 NMSA 1978.

D. Upon timely receipt of a protest, the department or hearing officer shall promptly set a date for hearing and on that date hear the protest or claim.

E. A hearing officer shall be designated by the secretary to conduct the hearing. Taxpayers may appear at a hearing for themselves or be represented by a bona fide employee, an attorney, certified public accountant or registered public accountant. Hearings shall not be open to the public except upon request of the taxpayer and may be postponed or continued at the discretion of the hearing officer.

F. In hearings before the hearing officer, the technical rules of evidence shall not apply, but in ruling on the admissibility of evidence, the hearing officer may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

G. In hearings before the hearing officer, the Rules of Civil Procedure for the District Courts shall not apply, but the hearing shall be conducted so that both complaints and defenses are amply and fairly presented. To this end, 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.

H. In the case of the hearing of any protest, the hearing officer shall make and preserve a complete record of the proceedings. At the beginning of the hearing, the hearing officer shall inform the taxpayer of the taxpayer's right to representation. The hearing officer, within thirty days of the hearing, shall inform the protestant in writing of the decision, informing the protestant at the same time of the 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 such part thereof as seems appropriate. All decisions and orders shall be signed by the secretary.

I. Nothing in this section shall be construed to authorize any criminal proceedings hereunder 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.

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.

Appealable final order. - Hearing officer's order dismissing taxpayer's appeal was not an appealable final order, where it had not been approved or signed by the secretary of taxation and revenue. Harris v. Revenue Div. of Taxation & Revenue Dep't, 105 N.M. 721, 737 P.2d 80 (Ct. App. 1987).

Assessments are not abated because taxpayers are not given prompt hearing on protests. Ranchers-Tufco Limestone Project Joint Venture v. Revenue Div., 100 N.M. 632, 674 P.2d 522 (Ct. App. 1983).

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, 83 N.M. 386, 492 P.2d 1003 (Ct. App. 1971).

Decision upheld when arguments based on taxpayer's unpreparedness. - Where 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 (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, 83 N.M. 386, 492 P.2d 1003 (Ct. App. 1971).

Hearing officer need not assume duties of counsel at second hearing. - Where 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, it was held that 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, 90 N.M. 258, 561 P.2d 1351 (Ct. App. 1977).

Technical rules of evidence do not apply in hearings before the commissioner (now secretary) and as the oral evidence provided reasonable substantiation of the documents, they were properly admitted. Garfield Mines Ltd. v. O'Cheskey, 85 N.M. 547, 514 P.2d 304 (Ct. App. 1973).

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, 84 N.M. 226, 501 P.2d 670 (Ct. App.), cert. denied, 84 N.M. 219, 501 P.2d 663 (1972).

Director (now secretary) has no authority to catalogue which evidence considered. - The state has not given to the commissioner (now secretary) authority to catalogue which evidence shall be considered in determining a taxpayer's employment status. Eaton v. Bureau of Revenue, 84 N.M. 226, 501 P.2d 670 (Ct. App.), cert. denied, 84 N.M. 219, 501 P.2d 663 (1972).

Where testimony based on supposition, Subsection F not satisfied. - Where 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 F. Archuleta v. O'Cheskey, 84 N.M. 428, 504 P.2d 638 (Ct. App. 1972).

Ruling reversed where director (now secretary) failed to consider all evidence. - Where the commissioner (now secretary), 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, 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, and therefore held the ruling reversed for arbitrariness. Eaton v. Bureau of Revenue, 84 N.M. 226, 501 P.2d 670 (Ct. App.), cert. denied, 84 N.M. 219, 501 P.2d 663 (1972).

Record must indicate reasoning and basis for denial. - Although the commissioner (now secretary) 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. Commissioner of Revenue, 86 N.M. 128, 520 P.2d 284 (Ct. App. 1974).

Law reviews. - For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

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 §§ 512 to 559.

7-1-25. Appeals from secretary'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 [Rule 12-101 et seq.].

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's fees to the protestant. If the decision upholds the hearing officer's decision only in part, the award shall be limited to reasonable attorney's 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.

I. General Consideration.
II. Appeal.
A. In General.
B. Issue at Hearing.
III. Record.
IV. Grounds for Reversal.
A. Arbitrary.
B. Substantial Evidence.
C. Accordance with Law.

ANNOTATIONS

I. GENERAL CONSIDERATION.

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.

Section grants court of appeals jurisdiction to review director's (now secretary's) decisions. - Court of appeals lacks jurisdiction to review decisions of the commissioner (now secretary) 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, 83 N.M. 29, 487 P.2d 1099 (Ct. App.), cert. denied, 83 N.M. 22, 487 P.2d 1092 (1971).

Law reviews. - For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

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 §§ 371, 504, 566, 584, 630, 712; 85 C.J.S. Taxation § 1105.

II. APPEAL.

A. IN GENERAL.

Record must indicate reasoning and basis of denial of protest. - Although the commissioner (now secretary) 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, 86 N.M. 128, 520 P.2d 284 (Ct. App. 1974).

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," 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, 88 N.M. 525, 543 P.2d 493 (Ct. App. 1975), cert. denied, 89 N.M. 206, 549 P.2d 284 (1976).

B. ISSUE AT HEARING.

Issue not raised at hearing cannot be heard on appeal. - The appeal to a court of appeals from the commissioner's (now secretary's) decision is on the record made at the hearing. Where 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, 83 N.M. 743, 497 P.2d 745 (Ct. App.), cert. denied, 83 N.M. 740, 497 P.2d 742 (1972).

If an issue is not raised at the formal hearing, it is not an issue in the appeal. Ranchers-Tufco Limestone Project Joint Venture v. Revenue Div., 100 N.M. 632, 674 P.2d 522 (Ct. App. 1983).

Appeal to same extent and upon same theory as hearing. - Where claim was not raised at the hearing before the commissioner (now secretary), this section provides the appeal to an appellate court is only to the same extent and upon the same theory as was asserted in the hearing. New Mexico Sheriffs & Police Ass'n v. Bureau of Revenue, 85 N.M. 565, 514 P.2d 616 (Ct. App. 1973).

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., 96 N.M. 117, 628 P.2d 687 (Ct. App. 1981).

Audit items not protested or issue in hearing not reviewable. - Where 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 (now secretary). Archuleta v. O'Cheskey, 84 N.M. 428, 504 P.2d 638 (Ct. App. 1972).

Nor arguments not raised at hearing. - The taxpayer did not raise the argument before the bureau (now department) 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, 88 N.M. 576, 544 P.2d 291 (Ct. App. 1975).

III. RECORD.

Question of law not binding but inference from facts conclusive. - As all facts before the commissioner (now secretary) 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 (secretary) 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 (secretary) is conclusive. Rust Tractor Co. v. Bureau of Revenue, 82 N.M. 82, 475 P.2d 779 (Ct. App.), cert. denied, 82 N.M. 81, 475 P.2d 778 (1970); Rock v. Commissioner of Revenue, 83 N.M. 478, 493 P.2d 963 (Ct. App. 1972).

IV. GROUNDS FOR REVERSAL.

A. ARBITRARY.

If Paragraphs (2) and (3) of Subsection D (now Subsection C) are satisfied, then Paragraph (1) satisfied. - Where 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 County Feedlot, Inc. v. Vigil, 79 N.M. 684, 448 P.2d 485 (Ct. App. 1968).

Double taxation is not necessarily arbitrary or capricious. New Mexico Sheriffs & Police Ass'n v. Bureau of Revenue, 85 N.M. 565, 514 P.2d 616 (Ct. App. 1973).

Ruling arbitrary where all evidence not considered. - Where the commissioner (now secretary), 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, the court could not say that the commissioner (secretary) would have reached the same conclusion had all of "the evidence presented and admitted" been considered as required by 7-1-24G NMSA 1978, and therefore held the ruling reversed for arbitrariness. Eaton v. Bureau of Revenue, 84 N.M. 226, 501 P.2d 670 (Ct. App.), cert. denied, 84 N.M. 219, 501 P.2d 663 (1972).

B. SUBSTANTIAL EVIDENCE.

Evidence viewed in light most favorable to director's (now secretary'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 (now secretary's) decision. Floyd & Berry Davis Co. v. Bureau of Revenue, 88 N.M. 576, 544 P.2d 291 (Ct. App. 1975).

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 (now secretary's) decision. Sterling Title Co. v. Commissioner of Revenue, 85 N.M. 279, 511 P.2d 765 (Ct. App. 1973).

And 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 (now secretary's) decision. Westland Corp. v. Commissioner of Revenue, 84 N.M. 327, 503 P.2d 151 (Ct. App. 1972); C & D Trailer Sales v. Taxation & Revenue Dep't, 93 N.M. 697, 604 P.2d 835 (Ct. App. 1979).

Director's (now secretary's) determination conclusive where more than one inference drawn. - Where 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, 85 N.M. 736, 516 P.2d 1119 (Ct. App. 1973).

But 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. New Mexico Bureau of Revenue, 88 N.M. 521, 543 P.2d 489 (Ct. App.), cert. denied, 89 N.M. 6, 546 P.2d 71 (1975).

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, 88 N.M. 576, 544 P.2d 291 (Ct. App. 1975).

But 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, 88 N.M. 576, 544 P.2d 291 (Ct. App. 1975).

Where 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, 84 N.M. 327, 503 P.2d 151 (Ct. App. 1972).

C. ACCORDANCE WITH LAW.

Decision not in accordance with law if record not complete. - Under Subsection D(3) (now subsection C(3)), the court will set aside a decision and order of the commissioner (now secretary) 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. Where 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 (now 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, 87 N.M. 118, 529 P.2d 1239 (Ct. App.), cert. denied, 87 N.M. 111, 529 P.2d 1232 (1974).

7-1-26. Claim for refund.

A. Any 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 B, C and D of this section, a written claim for refund. Every claim for refund shall state the nature of the person's complaint and contain information sufficient to allow processing of the claim; provided, however, that the filing of a fully completed original income tax return, corporate income tax return, corporate income and franchise tax return or estate tax return which 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 or an amended oil and gas tax return which 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. The secretary or the secretary's delegate may allow the claim in whole or in part or may deny the claim. If the claim is denied in whole or in part in writing, the claim may not be refiled. If the claim is not granted in full, the person, within thirty days after either the mailing of the denial of all or any part of the claim or the expiration of one hundred twenty days after the mailing of a claim which is neither allowed nor denied, may either:

(1) direct to the secretary a written protest against the denial of, or failure to either allow or deny, the claim, which shall be set for hearing by a hearing officer designated by the secretary within thirty days after the receipt of the protest in accordance with the provisions of Section 7-1-24 NMSA 1978 and pursue the remedies of appeal from decisions adverse to the protestant as provided in Section 7-1-25 NMSA 1978; 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, alleging that on account thereof the state is indebted to the plaintiff in the amount stated, together with any interest allowable, demanding the refund to the plaintiff of that amount and reciting the facts of the claim for refund. The taxpayer or the secretary may appeal from any final decision or order of the district court to the court of appeals.

B. Except as otherwise provided in Subsection C 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 within three years of the end of the calendar year in which:

(1) 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;

(2) the final determination of value occurs with respect to any overpayment which 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]; or

(3) property was levied upon pursuant to the provisions of the Tax Administration Act [this article].

C. 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 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 refunds shall be allowed or made to any person claiming a refund of gasoline tax under Section 7-13-14 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.

D. If any adjustment of federal tax is made with the result that there would have been an overpayment of tax if the adjustment to federal tax had been applied to the taxable period to which it relates, claim for credit or refund of only that amount based on the adjustment may be made as provided in this section within one year of the date on which the adjustment of federal tax becomes fixed or within the period limited by Subsection B of this section, whichever expires later. Interest, computed at the rate specified in Subsection B of Section 7-1-68 NMSA 1978, shall be allowed on any such claim for refund from the date one hundred twenty days after the claim is made until the date the final decision to grant the credit or refund is made.

E. 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.

F. For the purposes of this section, the term "oil and gas tax return" means a return reporting tax due with respect to oil, natural gas, liquid hydrocarbons or carbon dioxide 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].

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.

Cross-references. - As to allowance of interest on overpayments, see 7-1-68 NMSA 1978.

The 1989 amendment, effective June 16, 1989, rewrote the section to the extent that a detailed comparison would be impracticable.

The 1990 amendment, effective July 1, 1990, substituted "income tax return, corporate income tax return" for "income tax, corporate income tax" in the first sentence of Subsection A and inserted "originally" following "the payment was" in Paragraph (1) of Subsection B.

Time limitation not denial of plain and speedy remedy. - Fact that Subsection B 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. United States v. Bureau of Revenue, 217 F. Supp. 849 (D.N.M. 1963).

Refund procedures of this section are not applicable to real property taxes. Lovelace Center for Health Sciences v. Beach, 93 N.M. 793, 606 P.2d 203 (Ct. App. 1980).

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.

84 C.J.S. Taxation §§ 631 to 633; 85 C.J.S. Taxation § 1109.

7-1-26.1. Limitation on claims for refund based on net operating losses.

For taxable years beginning prior to January 1, 1991, a credit or refund of income tax or corporate income tax that is the result of a net operating loss carryback, as that term is defined 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], as appropriate, may be claimed and allowed if the claim for refund is made in conformance with Section 7-1-26 NMSA 1978 within three years of the end of the calendar year in which the return for the taxable year in which there was a net operating loss was originally due. The limitation provided by this section on the time in which a claim for refund of income tax or corporate income tax may be filed is in addition to the limitations provided in Section 7-1-26 NMSA 1978 on the time in which a claim for refund may be filed.

History: 1978 Comp., § 7-1-26.1, enacted by Laws 1991, ch. 9, § 23.

Effective dates. - Laws 1991, ch. 9, § 47A makes this section effective on July 1, 1991.

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 Sections 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.

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 (now secretary) can then proceed anew against a taxpayer under another theory. Leaco Rural Tel. Coop. v. Bureau of Revenue, 86 N.M. 629, 526 P.2d 426 (Ct. App. 1974).

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 §§ 503, 543.

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 found to be incorrect, the secretary or the secretary's delegate may, with the written approval of the attorney general, abate any part of an assessment determined by the secretary or the secretary's delegate to have been incorrectly, erroneously or illegally made. 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.

B. Pursuant to the final order of the district court for Santa Fe county, 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 or assessments of tax.

D. The secretary or the secretary's delegate shall cause the abatement of the amount of an assessment of tax which 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 one thousand dollars ($1,000) 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.

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.

Cross-references. - As to compromises of taxes and closing agreements, see 7-1-20 NMSA 1978.

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 § 583; 85 C.J.S. Taxation § 1105.

7-1-29. Authority to make refunds or credits.

A. In response to a claim for refund made as provided in Section 7-1-26 NMSA 1978, but before any court acquires jurisdiction of the matter, the secretary or the secretary's delegate may, authorize the refund to a person of the amount of any overpayment of tax determined by the secretary or the secretary's delegate to have been erroneously made by the person, together with allowable interest. Refunds of tax and interest erroneously paid and amounting to more than five thousand dollars ($5,000) during any one calendar year may be made to any one person only with the prior approval of the attorney general, except that 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], refunds of gasoline tax made under Sections 7-13-13 through 7-13-15 NMSA 1978 and refunds of cigarette tax made under the Cigarette Tax Act [Chapter 7, Article 12 NMSA 1978] may be made 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, adjudging that any person has made an overpayment of tax, the secretary shall authorize the refund to the person of the amount thereof.

C. In the discretion of the secretary, any amount of tax due to be refunded may be offset against any amount of tax for the payment of which the person due to receive the refund is liable.

D. Records of refunds made in excess of one thousand dollars ($1,000) 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.

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.

Cross-references. - As to compromises of taxes and closing agreements, see 7-1-20 NMSA 1978.

As to interest on overpayments, see 7-1-68 NMSA 1978.

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.

Director (now 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, 89 N.M. 265, 550 P.2d 277 (Ct. App.), cert. denied, 89 N.M. 321, 551 P.2d 1368 (1976).

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.

84 C.J.S. Taxation §§ 631 to 633; 85 C.J.S. Taxation § 1106.

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.

Cross-references. - As to interest on deficiencies, see 7-1-67 NMSA 1978.

As to 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.

85 C.J.S. Taxation §§ 1021 to 1036.

7-1-31. Seizure of property by levy for collection of taxes.

A. The director or his delegate may proceed to collect tax from a delinquent taxpayer by levy upon all property or rights to property of such person and the conversion thereof 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 director or his delegate or any sheriff, of the warrant upon the taxpayer or other person in possession of property or rights to property of the taxpayer, or upon any person or depositary owing or who will owe money to or holding funds of the taxpayer, ordering him to reveal the extent thereof and surrender it to the director or his 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.

History: 1953 Comp., § 72-13-45, enacted by Laws 1965, ch. 248, § 33; 1979, ch. 144, § 28.

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.

84 C.J.S. Taxation §§ 685 to 715.

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 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 his own possession that belong to the taxpayer and the extent of his own interest therein, and to reveal the amount and kind of property or rights to property of the taxpayer that are, to the best of his knowledge, in the possession of others;

D. order the person on whom it is served to surrender the property forthwith but may allow him 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. state on its face the penalties for willful failure by any person upon whom it is served to comply with its terms; and

F. 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.

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.

84 C.J.S. Taxation §§ 687 to 694.

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 director or his 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.

History: 1953 Comp., § 72-13-47, enacted by Laws 1965, ch. 248, § 35; 1979, ch. 144, § 30.

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.

84 C.J.S. Taxation §§ 688, 694.

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, upon demand of the secretary or the secretary's delegate, 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. 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, shall be liable in his own person and estate to the state of New Mexico in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate specified in Section 7-1-67 NMSA 1978 from the date of such levy.

C. The term "person", as used in Subsections A and B of 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.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 84 C.J.S. Taxation §§ 686 to 693.

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 [Chapter 7, Article 1 NMSA 1978] 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.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 84 C.J.S. Taxation § 690.

7-1-36. Property exempt from levy.

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).

History: 1953 Comp., § 72-13-50, enacted by Laws 1965, ch. 248, § 38.

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. College of Agric. & Mechanic Arts v. Academy of Aviation, Inc., 83 N.M. 86, 488 P.2d 343 (1971).

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.

84 C.J.S. Taxation §§ 688, 694.

7-1-37. Assessment as lien.

A. If any person liable for any tax neglects or refuses to pay the same after assessment and demand for payment thereof 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 Sections 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, lienor 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.

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. College of Agric. & Mechanic Arts v. Academy of Aviation, Inc., 83 N.M. 86, 488 P.2d 343 (1971).

The requirements of 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., 105 N.M. 164, 730 P.2d 467 (1986).

Liens arising upon transfer of liquor license. - The tax liability referred to in 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 7-1-38 NMSA 1978 are followed. In re What D'Ya Call It, Inc., 105 N.M. 164, 730 P.2d 467 (1986).

A lien pursuant to 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 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., 105 N.M. 164, 730 P.2d 467 (1986).

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 7-1-82 NMSA 1978, where its liens under this section and 7-1-38 NMSA 1978 have been foreclosed. First Interstate Bank v. Taxation & Revenue Dep't, 108 N.M. 756, 779 P.2d 133 (Ct. App. 1989).

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.

84 C.J.S. Taxation §§ 585 to 595.

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 such notices are presented shall record them as requested without charge. The notice of lien (a) 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 (b) shall 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. Recording of the notice of lien shall be effective as to both real and tangible personal property.

History: 1953 Comp., § 72-13-52, enacted by Laws 1965, ch. 248, § 40; 1979, ch. 144, § 33.

Priority of tax lien. - Liquor wholesalers have a superpriority lien over all lien holders, with the exception of the New Mexico 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. D & M, Inc. v. United N.M. Bank, 114 Bankr. 274 (Bankr. D.N.M. 1990).

Requirements of this section must be met to effectuate a lien under 7-1-37 NMSA 1978. In re What D'Ya Call It, Inc., 105 N.M. 164, 730 P.2d 467 (1986).

Liens arising upon transfer of liquor license. - The tax liability referred to in 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 7-1-37 NMSA 1978 and this section are followed. In re What D'Ya Call It, Inc., 105 N.M. 164, 730 P.2d 467 (1986).

A lien pursuant to 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., 105 N.M. 164, 730 P.2d 467 (1986).

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 7-1-82 NMSA 1978, where its liens under this section and 7-1-37 NMSA 1978 have been foreclosed. First Interstate Bank v. Taxation & Revenue Dep't, 108 N.M. 756, 779 P.2d 133 (Ct. App. 1989).

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.

84 C.J.S. Taxation §§ 585 to 588.

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. 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. The county clerk shall enter in his records a notice including the words "canceled by act of legislature" and the lien is thereby extinguished. No action shall be brought to enforce any lien extinguished in accordance with this section.

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.

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.

84 C.J.S. Taxation §§ 595 to 598.

7-1-40. Foreclosure of lien.

The liens provided for in the Tax Administration Act [this article] 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.

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 §§ 770 to 785.

7-1-41. Notice of seizure.

As soon as practicable after the levy, the director or his 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.

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 director or his 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.

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 §§ 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.

"Public place" within requirements as to posting of tax notices, 90 A.L.R.2d 1212.

Inclusion or exclusion of first and last days in computing time for giving notice of tax sale which must be given a certain number of days before a known future date, 98 A.L.R.2d 1422.

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 §§ 790 to 797.

7-1-43. Sale of indivisible property.

If any property of the taxpayer subject to levy is not divisible so as to enable the director or his 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.

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 tax lien in satisfaction of his or her individual debt, 75 A.L.R.2d 1194.

85 C.J.S. Taxation § 806.

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.

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 §§ 749 to 752, 799 to 802.

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 director, notwithstanding the above.

History: 1953 Comp., § 72-13-59, enacted by Laws 1965, ch. 248, § 47; 1979, ch. 144, § 40.

Cross-references. - As to auctions generally, see 61-16-1, 61-16-2 NMSA 1978.

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 §§ 798 to 812.

7-1-46. Minimum prices.

Before the sale, the director or his 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 director or his 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.

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 §§ 803 to 805.

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 director or his delegate at any time prior to the sale thereof, and upon payment or furnishing of security the director or his delegate shall restore the property to him, 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 him 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.

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.

Extension of periods of redemption under provisions of Soldiers' and Sailors' Civil Relief Act relating to taxation of property of military personnel, 32 A.L.R.2d 620.

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 §§ 841 to 894.

7-1-48. Documents of title.

In case property is sold as above provided, the director or his delegate, 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 form as the director 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.

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 §§ 895 to 965.

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 director or his delegate to make the sale, and conclusive evidence of the regularity of his 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 his 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.

Cross-references. - As to records and recording generally, see Chapter 14 NMSA 1978.

As to record of shareholders of corporation, see 53-11-50 NMSA 1978.

As to purchase of investment securities generally, see 55-8-301 to 55-8-321 NMSA 1978.

As to registration, certificates of title and transfers of motor vehicles, see 66-3-2, 66-3-3, 66-3-9 NMSA 1978.

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.

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 §§ 951 to 965.

7-1-51. Proceeds of levy and sale.

A. Money realized by levy or sale under provision of the Tax Administration Act [this article] 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.

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 §§ 816 to 818.

7-1-52. Release of levy.

It shall be lawful for the director or his delegate, under regulations prescribed by the director to release the levy upon all or part of the property or rights to property levied upon if the director or his 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.

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.

84 C.J.S. Taxation §§ 596, 628, 630, 662.

7-1-53. Enjoining delinquent taxpayer from continuing in business.

A. In order to ensure or to compel payment of taxes and to aid in the enforcement of the provisions of the Tax Administration Act [this article], the director 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 he ceases to be a delinquent taxpayer or until he complies with other requirements, reasonably necessary to protect the revenues of the state, placed on him by the director.

B. Upon application to a court for the issuance of an injunction against a delinquent taxpayer, the court may forthwith issue an order temporarily restraining him from doing business. The court shall hear the matter within three days and, upon a showing by the preponderance of the evidence that the taxpayer is delinquent and that he has been given notice of the hearing as required by law, the court may enjoin him from engaging in business in New Mexico until he ceases to be a delinquent taxpayer. Upon issuing an injunction, the court may also order the business premises of the taxpayer to be sealed

by the sheriff and may allow the taxpayer access thereto only upon approval of the court.

C. Upon application to a court for the issuance of an injunction against a person other than a delinquent taxpayer, the court may issue an order temporarily restraining the person from engaging in business. The court shall hear the matter within three days and upon a showing that (1) the person has been given notice of the hearing as required by law, (2) that demand has been made upon the taxpayer for the furnishing of security, (3) that the taxpayer has not furnished security, and (4) that the director considers the collection from the person primarily responsible therefor of the total amount of tax due or reasonably expected to become due to be in jeopardy, the court may forthwith issue an injunction to such taxpayer in terms commanding him to refrain from engaging in business until he complies in full with the demand of the director for the furnishing of security.

D. No temporary restraining order or injunction shall 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 he 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.

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 [this article] 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.

Cross-references. - As to redemption of property before sale, see 7-1-47 NMSA 1978.

As to 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, 89 A.L.R.2d 333.

84 C.J.S. Taxation §§ 690, 728.

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 Sections 7-19-1

through 7-21-7 NMSA 1978 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 any 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 any 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 such person on gross receipts from a prime construction contract will not be paid, request such 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. "Construction" and "engaging in business" shall have the meanings set forth, respectively, in Subsections C and E of Section 7-9-3 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.

Cross-references. - As to when and to whom surety bonds payable, see 7-1-57 NMSA 1978.

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 director or his delegate may:

A. redeem for cash or, as specified in the Tax Administration Act [this article] 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.

Cross-references. - As to sale of property for taxes generally, see 7-1-42 to 7-1-52 NMSA 1978.

7-1-57. Surety bonds.

Surety bonds accepted by the director 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 director or his delegate and a showing by him 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.

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 or paid over and may be collected by civil action to that end commenced by the director or attorney general in district court at any time or by actions commenced in federal courts. Final judgments for taxes may be enforced in appropriate courts of other states by the attorney general pursuant to agreement between the other state and this state, or by attorneys 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.

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, 697 to 713.

7-1-59. Jeopardy assessments.

A. If the director at any time reasonably believes that the collection of any tax for which a taxpayer is liable will be jeopardized by delay, he may immediately make a jeopardy assessment of the amount of tax the payment of which to the state he 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 director, stating the nature and amount of the taxes assertedly owed by him to the state, demanding of him the immediate payment thereof and briefly informing the taxpayer of the steps that may be taken against him as well as of the remedies available to him.

C. Notwithstanding any other provision of the Tax Administration Act [this article], if any person against whom a jeopardy assessment has been made neglects or refuses either to pay the amount of tax demanded of him or furnish satisfactory security therefor within five days of the service upon him of the notice of jeopardy assessment, the director may (1) 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, or he may (2) 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 division 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 by furnishing security and otherwise following the procedures set forth in Section 7-1-24 NMSA 1978, or he may pay the tax and claim a refund thereof 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.

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 [this article], the director or the division shall be estopped from obtaining or withholding the relief requested if it is shown by the party adverse to the director that his 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 him personally and in writing by the director, 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.

State was not estopped from applying extended limitation period to taxpayer, where 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. Center, Inc., 108 N.M. 228, 770 P.2d 873 (1989).

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 7-1-64 NMSA 1978, "tax" means the amount of tax due imposed by provisions of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978], the Liquor Excise Tax Act [Chapter 7, Article 17 NMSA 1978], the Resources Excise Tax Act [Chapter 7, Article 25 NMSA 1978], the County Fire Protection Excise Tax Act [7-20A-1 to 7-20A-9 NMSA 1978] or any municipal or county sales or gross receipts tax.

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 sells out his business, the purchaser shall withhold and place in a trust account sufficient of the purchase price to cover such amount until the secretary issues a certificate stating that no amount is due, or he shall pay over the amount due to the department upon proper demand therefor 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.

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 (now secretary's) decision. Sterling Title Co. v. Commissioner of Revenue, 85 N.M. 279, 511 P.2d 765 (Ct. App. 1973).

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. Commissioner of Revenue, 85 N.M. 279, 511 P.2d 765 (Ct. App. 1973).

And 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. Commissioner of Revenue, 85 N.M. 279, 511 P.2d 765 (Ct. App. 1973).

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.

84 C.J.S. Taxation § 644.

7-1-62. Duty of director; release of purchaser.

A. Within thirty days after receiving from the purchaser 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 director or his delegate shall either issue the certificate or mail a notice to the purchaser of the amount of tax for which the vendor is liable and which must be paid as a condition of issuing the certificate.

B. Failure of the director or his delegate to mail the notice within the required time releases the purchaser from any obligation to withhold from the purchase price and releases the property from the operation of Section 7-1-61 NMSA 1978.

History: 1953 Comp., § 72-13-75, enacted by Laws 1965, ch. 248, § 63; 1979, ch. 144, § 56.

7-1-63. Demand for payment; application of payment.

A. If, after any business is sold, any tax for which the former owner is liable remains due, the director or his delegate shall make demand upon the purchaser for payment over of that amount and the purchaser shall comply with the demand.

B. Upon the payment over of the amount required to be withheld 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.

History: 1953 Comp., § 72-13-76, enacted by Laws 1965, ch. 248, § 64; 1979, ch. 144, § 57.

7-1-64. Failure to withhold.

A. If the purchaser has wrongfully failed to withhold and pay over as provided by Subsection C of Section 7-1-61 NMSA 1978, or has not made payment after demand by the director or his delegate as provided in Section 7-1-63 NMSA 1978, he becomes a delinquent taxpayer.

B. The purchaser hereunder may completely discharge his responsibility under the provisions of this section by surrendering and assigning all his interest in the tangible and intangible property acquired, or the proceeds thereof, to the director or his delegate for disposition by him in the manner provided for disposition of property levied upon by Section 7-1-31 NMSA 1978.

History: 1953 Comp., § 72-13-77, enacted by Laws 1965, ch. 248, § 65; 1979, ch. 144, § 58.

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.

B. The attorney general may employ members of the bars of other jurisdictions to recover taxes due this state and may fix their fees.

History: 1953 Comp., § 72-13-78, enacted by Laws 1965, ch. 248, § 66.

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 tribes and of the United States.

Liens will attach or levy may be made by terms of any provision of the Tax Administration Act [this article] to or on property belonging to the United States of America or to an Indian tribe, an Indian pueblo or any Indian only to the extent allowed by law.

History: 1953 Comp., § 72-13-79, enacted by Laws 1965, ch. 248, § 67.

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, 85 N.M. 381, 512 P.2d 954 (Ct. App.), cert. quashed, 85 N.M. 388, 512 P.2d 961 (1973).

Indian's fee interest not taxable but non-Indian leasehold is. - Where 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 §§ 251 to 260.

7-1-67. Interest on deficiencies.

A. If any tax imposed is not paid on or before the day on which it becomes due, interest shall be paid to the state on such 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; provided, however, that for any 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.

B. Interest due to the state under Subsection A of this section shall be at the rate of fifteen percent a year, computed at the rate of one and one-fourth 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.

C. Notwithstanding any of the above, if demand is made for payment of any tax, including accrued interest, and if such tax is paid within ten days after the date of such demand, no interest on the amount so paid shall be imposed for the period after the date of the demand.

D. Nothing in this section shall be construed to impose interest on interest or interest on the amount of any penalty.

E. 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. The interest due under this subsection shall be one and one-quarter percent of 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.

Cross-references. - As to collection of penalties and interest, see 7-1-30 NMSA 1978.

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.

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".

Temporary provisions. - Laws 1988, ch. 73, § 57B, effective July 1, 1988, provides that the interest rate specified in 7-1-67 NMSA 1978 shall apply to any amounts due to the state under the provisions of the Special Fuels Act and 66-6-28 NMSA 1978, as those laws were in effect immediately prior to July 1, 1988, only on or after July 1, 1988, and that amounts due under the provisions of the Special Fuels Act and 66-6-28 NMSA 1978, as those laws were in effect immediately prior to July 1, 1988, shall bear interest as provided in applicable law until July 1, 1988, and thereafter at the rate specified in 7-1-67 NMSA 1978.

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 § 1054.

7-1-67.1. Temporary provision [; effective date of increased interest rate].

The increase in the interest rate on taxes due under the provisions of Section 14 [7-1-67 NMSA 1978] of this act shall apply to the amount of any taxes due on or after July 1, 1982. Any amount of taxes due before July 1, 1982 shall bear interest at the rate of six percent until July 1, 1982 and thereafter at the increased rate, except that agreements entered into prior to July 1, 1982 shall bear interest at the rate specified in the agreement.

History: Laws 1982, ch. 18, § 25.

Meaning of "this act". - The term "this act," referred to in the first sentence, refers to Laws 1982, ch. 18, which is compiled as various sections throughout NMSA 1978. See Table of Corresponding Code Sections in Parallel Tables located in Volume 13.

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 which is subsequently refunded or credited to that person.

B. Interest payable on overpayments of tax shall be paid at the rate of fifteen percent a year, computed at the rate of one and one-fourth percent per month or fraction thereof.

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 the claim for refund was made until a date preceding by not more than thirty days the date on which the amount thereof is credited or refunded to any person; interest on an overpayment arising from an assessment by the department shall be paid from the date overpayment was made until a date preceding by not more than thirty days the date on which the amount thereof is credited or refunded 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 seventy-five days of the date of the 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;

(3) the credit or refund is made within one hundred twenty days of the date of the claim for refund of income tax, pursuant to the Income Tax Act, the Corporate Income Tax Act, the Corporate Income and Franchise Tax Act or the Banking and Financial Corporations Tax Act, for any tax year more than one year prior to the year in which the claim is made;

(4) Sections 6611(f) and 6611(g) of the United States Internal Revenue Code of 1986, as those sections may be amended or renumbered, prohibit payment of interest for federal income tax purposes;

(5) the credit or refund is made within one hundred twenty days of the date of the claim for refund of any tax other than income tax; or

(6) gasoline tax is refunded or credited under the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978] to users of gasoline off the highways.

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.

Cross-references. - For the authority to make refunds or credits, see 7-1-29 NMSA 1978.

The 1989 amendment, effective June 16, 1989, rewrote the section to the extent that a detailed comparison would be impracticable.

Temporary provisions. - Laws 1988, ch. 73, § 57C, effective July 1, 1988, provides that the interest rate specified in 7-1-68 NMSA 1978 on amounts due to a taxpayer under the provisions of the Special Fuels Act and 66-6-28 NMSA 1978, as those laws were in effect immediately prior to July 1, 1988, shall apply to the amounts only on or after July 1, 1988, and that any amounts due a taxpayer under the provisions of the Special Fuels Act and 66-6-28 NMSA 1978, as those laws were in effect immediately prior to July 1, 1988, shall bear interest as provided in applicable law.

Compiler's note. - Sections 6611(f) and 6611(g) of the United States Internal Revenue Code of 1954, cited in Subsection D(4), appear as 26 U.S.C. §§ 6611(f) and 6611(g).

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, 70 N.M. 226, 372 P.2d 808 (1962).

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, 70 N.M. 226, 372 P.2d 808 (1962).

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, 70 N.M. 226, 372 P.2d 808 (1962).

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.

84 C.J.S. Taxation § 633.

7-1-69. Civil penalty for failure to pay tax or file a return.

A. 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 tax required to be paid or to file by the date required a return regardless of whether any tax is due, there shall be added to the amount two percent per month or a fraction thereof from the date the tax was due or from the date the return was required to be filed, not to exceed ten percent of the tax or a minimum of five dollars ($5.00), whichever is greater, as penalty, 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 the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] or taxes administered by the department pursuant to Subsection B of Section 7-1-2 NMSA 1978.

B. In the case of failure, with intent to defraud the state, to pay when due any 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.

C. In the case of failure to pay the amount of tax required to be paid in accordance with Section 7-1-13.1 NMSA 1978 in the manner required by that section, a penalty shall be added to the amount due. The penalty shall be two percent of the amount due. The penalty imposed by this subsection shall be in addition to any penalty due under Subsection A of this section.

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.

Cross-references. - As to collection of penalties and interest, see 7-1-30 NMSA 1978.

The 1990 amendment, effective July 1, 1990, added Subsection C.

Temporary provisions. - Laws 1988, ch. 73, § 57D, effective July 1, 1988, provides that the penalties specified in the Tax Administration Act apply to any amounts due to the state under the provisions of the Special Fuels Act and 66-6-28 NMSA 1978, as those laws were in effect immediately prior to July 1, 1988, only on or after July 1, 1988; provided that, if a penalty imposed by the Special Fuels Act or Motor Vehicle Code with respect to a transaction occurring prior to July 1, 1988 exceeds the penalty that would otherwise be imposed by the Tax Administration Act, the penalty specified by the Special Fuels Act or the Motor Vehicle Code, as appropriate, shall be imposed and the Tax Administration Act penalty shall not be imposed. Any penalty specified in the Special Fuels Act or the Motor Vehicle Code with respect to amounts due under the Special Fuels Act or 66-6-28 NMSA 1978, as those laws were in effect immediately prior to July 1, 1988, shall remain in full force and effect for periods and transactions prior to July 1, 1988.

Section is divided into two parts: penalty for fraud and penalty for negligence. Stohr v. New Mexico Bureau of Revenue, 90 N.M. 43, 559 P.2d 420 (Ct. App. 1976), cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977).

Presumption of correctness section 7-1-17 NMSA 1978 also applies to the penalty section (this section). Tiffany Constr. Co. v. Bureau of Revenue, 90 N.M. 16, 558 P.2d 1155 (Ct. App. 1976), 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, 87 N.M. 334, 533 P.2d 107 (Ct. App. 1975).

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, 90 N.M. 16, 558 P.2d 1155 (Ct. App. 1976), cert. denied, 90 N.M. 255, 561 P.2d 1348 (1977).

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 Center v. Taxation & Revenue Dep't, 108 N.M. 795, 779 P.2d 982 (Ct. App. 1989).

"Negligent" means indifferent, careless or off-hand or lacking reasonable cause. Tiffany Constr. Co. v. Bureau of Revenue, 90 N.M. 16, 558 P.2d 1155 (Ct. App. 1976), cert. denied, 90 N.M. 255, 561 P.2d 1348 (1977).

And is a 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, 87 N.M. 334, 533 P.2d 107 (Ct. App. 1975).

And 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, 87 N.M. 334, 533 P.2d 107 (Ct. App. 1975).

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, 93 N.M. 697, 604 P.2d 835 (Ct. App. 1979).

But "diligent protest" negates negligence. - Where 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, 93 N.M. 697, 604 P.2d 835 (Ct. App. 1979).

Taxpayer's erroneous belief and no further investigation constituted negligence. - Where 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), it was held that 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, 90 N.M. 16, 558 P.2d 1155 (Ct. App. 1976), cert. denied, 90 N.M. 255, 561 P.2d 1348 (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, 87 N.M. 118, 529 P.2d 1239 (Ct. App.), cert. denied, 87 N.M. 111, 529 P.2d 1232 (1974).

Diligent protest negates negligence and 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. New Mexico Bureau of Revenue, 90 N.M. 43, 559 P.2d 420 (Ct. App. 1976), cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977).

Substantial evidence of negligence. - Substantial evidence supported hearing officer's finding that nursing home's failure to pay tax was due to negligence, where 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 Center v. Taxation & Revenue Dep't, 108 N.M. 795, 779 P.2d 982 (Ct. App. 1989).

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 §§ 1021 to 1036.

7-1-70. Civil penalty for bad checks.

If any payment required to be made by provision of the Tax Administration Act [this article] is attempted to be made by check which is not paid upon presentment, such

dishonor is presumptive of negligence. The penalty shall never be less than ten dollars ($10.00).

History: 1953 Comp., § 72-13-83, enacted by Laws 1965, ch. 248, § 71.

Cross-references. - As to presentment and dishonor generally, see 55-3-501 to 55-3-511 NMSA 1978.

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.

Cross-references. - As to defaulting officers and prosecution for shortages, see 10-17-9, 10-17-10 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 68 Am. Jur. 2d Sales and Use Taxes §§ 163, 164.

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.

7-1-71.1. Tax return preparers; requirements; penalties.

A. The director 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 director 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 director 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.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 592.

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.

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, 90 N.M. 524, 565 P.2d 1041 (Ct. App.), cert. denied, 90 N.M. 636, 567 P.2d 485 (1977).

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.

85 C.J.S. Taxation § 1056.

7-1-73. False statement and fraud.

Any individual or person who:

A. willfully makes and subscribes any return, statement or other document which contains or is verified by a written declaration that it is true and correct as to every material matter and which the individual or person does not believe to be true and correct as to every material matter; or

B. with intent to evade or defeat the payment or collection of any tax, or, knowing that the probable consequences of his 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 which 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, is guilty of a felony and, upon conviction thereof, shall be fined not more than five thousand dollars ($5,000) or imprisoned not less than six months nor more than three years, or both, together with costs of prosecution.

History: 1953 Comp., § 72-13-86, enacted by Laws 1965, ch. 248, § 74; 1979, ch. 144, § 60; 1989, ch. 325, § 12.

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, 90 N.M. 524, 565 P.2d 1041 (Ct. App.), cert. denied, 90 N.M. 636, 567 P.2d 485 (1977).

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, 102 N.M. 317, 694 P.2d 1382 (Ct. App. 1985).

UJI Criminal 1.50 (now Instruction 14-141) is required in prosecutions for false statements on tax returns. State v. Sparks, 102 N.M. 317, 694 P.2d 1382 (Ct. App. 1985).

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 § 1026.

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 [this article] 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.

Any employee of the department, any former employee of the department or any other person who reveals to another individual any information which he is prohibited from lawfully revealing by provision of Section 7-1-8 NMSA 1978 is guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than one thousand dollars ($1,000) or imprisoned not more than 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.

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 [this article] 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.

Cross-references. - For general rule as to computation of time, see 12-2-2 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 director or the state.

History: 1953 Comp., § 72-13-90, enacted by Laws 1965, ch. 248, § 81; 1979, ch. 144, § 63.

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 [this article]:

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 state corporation commission shall not issue any certificate of dissolution to any taxpayer or allow any corporate taxpayer to withdraw from the state until:

A. such taxpayer files with the state corporation commission a certificate signed by the director of the revenue division or his 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; or

B. a successor, acceptable to the director of the revenue division or his 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 director or his 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 director of the revenue division or his delegate.

History: 1953 Comp., § 72-13-92, enacted by Laws 1965, ch. 248, § 83; 1979, ch. 144, § 65; 1985, ch. 65, § 20.

Cross-references. - As to sale of assets of a corporation, see 53-15-1 to 53-15-4 NMSA 1978.

As to dissolution of corporations generally, see 53-16-1 to 53-16-24 NMSA 1978.

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, repeals 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 department of alcoholic beverage control shall not allow the transfer, assignment, lease or sale of any liquor license pursuant to the provisions of the Liquor Control Act until he receives written notification from the director or his 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 director or his delegate in which he 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 department of alcoholic beverage control shall not allow the renewal of any liquor license pursuant to the provisions of the Liquor Control Act until he receives notification from the director or his 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.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

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 7-1-37 and 7-1-38 NMSA 1978 are followed. In re What D'Ya Call It, Inc., 105 N.M. 164, 730 P.2d 467 (1986).

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 7-1-37 and 7-1-38 NMSA 1978 have been foreclosed. First Interstate Bank v. Taxation & Revenue Dep't, 108 N.M. 756, 779 P.2d 133 (Ct. App. 1989).

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.

ARTICLE 1A
PROJECT MAINSTREAM EMPLOYMENT TAX CREDIT

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. For provisions of former sections, see 1988 Replacement Pamphlet.

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.

Cross-references. - As to provisions governing administration and enforcement, see 7-1-2 and 7-2-22 NMSA 1978.

As to 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).

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 §§ 1089 to 1110.

7-2-2. Definitions.

For the purpose of the Income Tax Act [this article] 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; and

(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;

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. "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 an amount that, for the purpose of determining liability for federal income tax, 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 derived, including:

(1) compensation;

(2) net profit derived from business;

(3) gains derived 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 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" does not include:

(1) payments for hospital, dental, medical or drug expenses whether made 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 made 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 made pursuant to Sections 7-2-14, 7-2-14.1, 7-2-18, 7-2-18.1 and 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, as 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;

(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; and

(7) for taxable years beginning on or after January 1, 1991, 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 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;

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) or (7) 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, 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; but any individual who, on or before the last day of the taxable year, changed his 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;

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.

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.

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.

Applicability. - Laws 1987, ch. 277, § 8B makes the provisions of Sections 1 to 4 of the act applicable to taxable years beginning on or after January 1, 1987.

Laws 1988, ch. 41, § 3, effective March 4, 1988, makes the provisions of the act applicable to taxable years beginning on or after January 1, 1988.

Laws 1990, ch. 49, § 24, makes the provisions of the act applicable to taxable years beginning on or after January 1, 1990.

Laws 1991, ch. 9, § 46 makes the provisions of §§ 24 and 25 of the act applicable to taxable years beginning on or after January 1, 1991.

Internal Revenue Code. - Sections 55, 62, 151, and 402 of the Internal Revenue Code appear as 26 U.S.C. §§ 55, 62, 151, and 402 respectively.

Internal Revenue Code. - Sections 55, 62, 63, 103, 151, 172, and 402 of the Internal Revenue Code appear as 26 U.S.C. §§ 55, 62, 63, 103, 151, 172, and 402, respectively.

"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, 94 N.M. 54, 607 P.2d 592 (1980).

Definition of "resident" is based on both person's domicile and his intent. Murphy v. Taxation & Revenue Dep't, 94 N.M. 54, 607 P.2d 592 (1980).

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, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

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, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

And it 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, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

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.

85 C.J.S. Taxation § 1096.

7-2-3. Imposition and levy of tax.

A tax is imposed at the rates specified in the Income Tax Act [this article] 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.

Cross-references. - See case notes to 7-2-2 NMSA 1978. As to income tax rates, see 7-2-7 and 7-2-7.1 NMSA 1978.

Tax burden should fall with uniformity and equality upon the class of persons sought to be taxed. New Mexico Elec. Serv. Co. v. Jones, 80 N.M. 791, 461 P.2d 924 (Ct. App. 1969).

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, 94 N.M. 54, 607 P.2d 592 (1980).

But not income of Indians from activities on 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, 85 N.M. 381, 512 P.2d 954 (Ct. App.), cert. quashed, 85 N.M. 388, 512 P.2d 961 (1973).

Even though Indian is on another tribe's reservation. - The fact that taxpayer, who resides and works on the Navajo reservation in New Mexico and is married to a non-Indian, is a Comanche Indian, does not destroy her status as a "reservation Indian" nor make her liable for state income tax. Such a case is not within the "assimilated in the general community" doctrine, since "general community" means something more than other Indians' reservations. Fox v. Bureau of Revenue, 87 N.M. 261, 531 P.2d 1234 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975), cert. denied, 424 U.S. 933, 90 S. Ct. 1147, 47 L. Ed. 2d 341 (1976).

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, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

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, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

And it 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, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

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 § 1096.

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.

Cross-references. - As to exemption of severance tax bonds from taxation, see 7-27-24 NMSA 1978.

As to exemption of mortgage finance authority and bonds and notes thereof, see 58-18-18 NMSA 1978.

Internal Revenue Code. - For the United States 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. New Mexico Elec. Serv. Co. v. Jones, 80 N.M. 791, 461 P.2d 924 (Ct. App. 1969).

And exemptions therefore strictly construed. - In pursuance of the beneficient 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. New Mexico Elec. Serv. Co. v. Jones, 80 N.M. 791, 461 P.2d 924 (Ct. App. 1969).

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.

84 C.J.S. Taxation §§ 281 to 305; 85 C.J.S. Taxation §§ 1096, 1098.

7-2-5, 7-2-5.1. Repealed.

ANNOTATIONS

Applicability. - Laws 1990, ch. 49, § 24, makes the provisions of the act applicable to taxable years beginning on or after January 1, 1990.

Repeals. - Laws 1990, ch. 49, § 18 repeals 7-2-5 and 7-2-5.1 NMSA 1978, as enacted by Laws 1967, ch. 70, § 1 and as amended by Laws 1984, ch. 125, § 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 1988 Replacement Pamphlet.

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

If adjusted gross income is:		The maximum amount of exemption allowable under this section shall be:
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 gross income is:		The maximum amount of 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.

Applicability. - Laws 1987, ch. 264, § 27 makes 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.

84 C.J.S. Taxation §§ 241, 247; 85 C.J.S. Taxation § 1098.

7-2-5.3. Repealed.

ANNOTATIONS

Applicability. - Laws 1990, ch. 49, § 24, makes the provisions of the act applicable to taxable years beginning on or after January 1, 1990.

Repeals. - Laws 1990, ch. 49, § 18 repeals 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 1988 Replacement Pamphlet.

7-2-5.4. Exemption; adopted special needs child.

A. Any individual who has adopted a special needs child on or after January 1, 1988 may claim an exemption for each such child in an amount specified in Subsection B of this section not to exceed two thousand five hundred dollars ($2,500) 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.

B. For single individuals, heads of household and married individuals filing joint returns, for any taxable year beginning on or after January 1, 1988, the amount of the exemption under this section shall be two thousand five hundred dollars ($2,500). For married individuals filing separate returns, for any taxable year beginning on or after January 1, 1988, the amount of the exemption under this section shall be one thousand two hundred fifty dollars ($1,250).

C. As used in this section, "special needs child" means an individual under eighteen years of age who is certified by the human services department or a licensed child placement agency as meeting the definition of a "difficult to place child" in Subsection B of Section 40-7-64 NMSA 1978; provided, however, that no such classification shall be based upon physical or mental handicap or emotional disturbance which is less than moderately disabling.

History: 1978 Comp., § 7-2-5.4, enacted by Laws 1988, ch. 59, § 1.

Effective dates. - Laws 1988, ch. 59, § 1 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1988.

7-2-6. Repealed.

ANNOTATIONS

Applicability. - Laws 1990, ch. 49, § 24, makes the provisions of the act applicable to taxable years beginning on or after January 1, 1990.

Repeals. - Laws 1990, ch. 49, § 18 repeals 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 1988 Replacement Pamphlet.

7-2-7. Individual income tax rates.

Subject to the adjustments provided in Subsection F of this section, 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, 1990:

A. For married individuals filing separate returns:

If the taxable income is:	The tax shall be:
Not over $4,000	2.4% of taxable income
Over $ 4,000 but not over $ 8,000	$ 96.00 plus 3.8% of excess

over $ 4,000
Over $ 8,000 but not over $12,000 $ 248 plus 4.8% of excess over $ 8,000
Over $12,000 but not over $18,000 $ 440 plus 5.9% of excess over $12,000
Over $18,000 but not over $24,000 $ 794 plus 6.9% of excess over $18,000
Over $24,000 but not over $32,000 $ 1,208 plus 7.7% of excess over $24,000
Over $32,000 $ 1,824 plus 8.5% of excess over $32,000.

B. For surviving spouses and married individuals filing joint returns:

If the taxable income is: The tax shall be:
Not over $8,000 2.4% of taxable income
Over $ 8,000 but not over $16,000 $ 192 plus 3.8% of excess over $ 8,000
Over $16,000 but not over $24,000 $ 496 plus 4.8% of excess over $16,000
Over $24,000 but not over $36,000 $ 880 plus 5.9% of excess over $24,000
Over $36,000 but not over $48,000 $ 1,588 plus 6.9% of excess over $36,000
Over $48,000 but not over $64,000 $ 2,416 plus 7.7% of excess over $48,000
Over $64,000 $ 3,648 plus 8.5% of excess over $64,000.

C. For single individuals and for estates and trusts:

If the taxable income is: The tax shall be:
Not over $5,200 1.8% of taxable income
Over $ 5,200 but not over $10,400 $ 93.60 plus 3.0% of excess over $ 5,200
Over $10,400 but not over $15,600 $ 249.60 plus 4.5% of excess over $10,400
Over $15,600 but not over $23,400 $ 483.60 plus 5.8% of excess over $15,600
Over $23,400 but not over $31,200 $ 936.00 plus 6.9% of excess over $23,400
Over $31,200 but not over $41,600 $ 1,474.20 plus 7.7% of excess

over $31,200
Over $41,600 $ 2,275.00 plus 8.5% of excess over $41,600.

D. For heads of household filing returns:

If the taxable income is:	The tax shall be:
Not over $5,200	1.8% of taxable income
Over $ 5,200 but not over $10,400	$ 93.60 plus 3.0% of excess over $ 5,200
Over $10,400 but not over $18,000	$ 249.60 plus 4.5% of excess over $10,400
Over $18,000 but not over $28,000	$ 591.60 plus 5.8% of excess over $18,000
Over $28,000 but not over $40,000	$ 1,171.60 plus 6.9% of excess over $28,000
Over $40,000 but not over $52,000	$ 1,999.60 plus 7.7% of excess over $40,000
Over $52,000	$ 2,923.60 plus 8.5% of excess over $52,000.

E. 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.

F. Any taxpayer whose taxable year begins in 1986 and ends in 1987 on a date other than December 31 shall be subject to the rates and laws in effect during the taxable years in which the taxpayer's taxable year falls and shall compute the tax due based upon regulations that shall be adopted by the secretary. Regulations required by this subsection shall apportion tax based on the number of months related to the applicable tax rates.

History: 1978 Comp., § 7-2-7, enacted by Laws 1969, ch. 152, § 3; 1974, ch. 88, § 1; 1978, ch. 179, § 1; 1981, ch. 37, § 17; 1983, ch. 213, § 2; 1986, ch. 20, § 27; 1987, ch. 277, § 3; 1988, ch. 41, § 2; 1990, ch. 49, § 2.

The 1990 amendment, effective May 16, 1990, substituted "taxable income" for "net income" in the column headings throughout the section; in the introductory paragraph, substituted "Subsection F of this section" for "Subsection E of this section" and added "for any taxable year beginning on or after January 1, 1990" at the end; deleted "for any taxable year beginning on or after January 1, 1987" following "returns" in the introduction of Subsection A; deleted "for any taxable year beginning on or after January 1, 1988" following "returns" in the introduction of Subsection B; deleted "for any taxable year beginning on or after January 1, 1987" following "trusts" in the introduction of Subsection C; deleted "for any taxable year beginning on or after January 1, 1988" following "returns" in the introduction of Subsection D; added present Subsection E; and redesignated former Subsection E as present Subsection F.

Applicability. - Laws 1987, ch. 277, § 8B makes the provisions of Sections 1 to 4 of the act applicable to taxable years beginning on or after January 1, 1987.

Laws 1988, ch. 41, § 3, effective March 4, 1988, makes the provisions of the act applicable to taxable years beginning on or after January 1, 1988.

Laws 1990, ch. 49, § 24, makes the provisions of the act applicable to taxable years beginning on or after January 1, 1990.

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 shall be computed substantially on the basis of the rates prescribed in Section 7-2-7 NMSA 1978. The secretary may by regulation 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.

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.

Applicability. - Laws 1990, ch. 49, § 24, makes the provisions of the act applicable to taxable years beginning on or after January 1, 1990.

7-2-8. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 37, § 96, repeals 7-2-8 NMSA 1978, relating to corporate income tax rates.

Laws 1981, ch. 37, contains no effective date provision applicable to § 96, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

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.

The 1990 amendment, effective May 16, 1990, substituted "secretary shall" and "the secretary may deem" for "director shall" and "he may deem".

Applicability. - Laws 1990, ch. 49, § 24, makes the provisions of the act applicable to taxable years beginning on or after January 1, 1990.

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.

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 §§ 1089, 1095.

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 Paragraphs (1) and (7) of this subsection, income other than compensation shall be allocated and apportioned as provided in the Uniform Division of Income for Tax Purposes Act [Chapter 7, Article 4 NMSA 1978];

(3) except as provided otherwise in Paragraph (1) of this subsection, compensation 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;

(5) except as provided otherwise in Paragraph (1), nonbusiness income as defined in the Uniform Division of Income for Tax Purposes Act not otherwise allocated or apportioned in the Uniform Division of Income for Tax Purposes Act shall be equitably apportioned in accordance with regulations of the secretary;

(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 apportioned in accordance with regulations of the secretary; and

(7) a taxpayer having business income both within and without this state and who begins business in this state after July 1, 1981, but prior to January 1, 1991, may separately account for business income in this state for five consecutive taxable years beginning with the taxable year in which the taxpayer began business in 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 7-2-7 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.

Cross-references. - See case notes to 7-2-3 NMSA 1978. As to Multistate Tax Compact, see 7-5-1 NMSA 1978.

The 1990 amendment, effective May 16, 1990, added "Tax credit" in the catchline; designated the introductory paragraph of the section as present 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 present Paragraphs (1) to (7) of present Subsection A; and, in present 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 present Subsections B and C.

Applicability. - Laws 1986, ch. 20, § 138A makes the provisions of §§ 26 to 52 of that act applicable to taxable years beginning on or after January 1, 1986.

Laws 1990, ch. 49, § 24, makes the provisions of the act applicable to taxable years beginning on or after January 1, 1990.

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 §§ 1090, 1091, 1095 to 1099.

7-2-12. Taxpayer returns; payment of tax.

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 [this article] 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. 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.

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.

Cross-references. - See case notes to 7-2-2 and 7-2-3 NMSA 1978. As to reporting on fiscal year basis, see 7-2-20 NMSA 1978. As to income tax withholding, see 7-3-1 to 7-3-10 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.

Applicability. - Laws 1990, ch. 49, § 24, makes the provisions of the act applicable to taxable years beginning on or after January 1, 1990.

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, 85 N.M. 381, 512 P.2d 954 (Ct. App.), cert. quashed, 85 N.M. 388, 512 P.2d 961 (1973).

State returns used for audit although federal taxes filed on different basis. - Where 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 where 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, 93 N.M. 589, 603 P.2d 328 (Ct. App. 1979)(decided prior to 1981 amendment).

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 §§ 1092 to 1099.

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 [this article] 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 for income taxes paid another state.

History: 1978 Comp., § 7-2-12.1, enacted by Laws 1990, ch. 23, § 1.

Effective dates. - Laws 1990, ch. 23 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

Compiler's note. - Section 7-2-19 NMSA 1978, referred to in Subsection B(2), was repealed by Laws 1990, ch. 49, § 19, effective May 16, 1990.

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 [this article] 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. However, in no case shall the credit exceed five and one-half percent of income 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.

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".

Applicability. - Laws 1990, ch. 49, § 24, makes the provisions of the act applicable to taxable years beginning on or after January 1, 1990.

Meaning of "director". - See 7-2-2E 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 §§ 39 to 47; 85 C.J.S. Taxation § 1099.

7-2-14. Low-income comprehensive tax rebate; tax rebates for food and medical expenses.

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 [this article]. 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	$105	$120	$130	$140	$150	$230
500	1,000	130	155	180	205	225	325
1,000	1,500	120	160	195	230	250	355
1,500	2,000	110	155	190	235	265	370
2,000	2,500	80	135	180	225	260	375
2,500	3,000	50	110	160	215	245	365

3,000	3,500	30	80	135	200
240	345				
3,500	4,000	20	50	105	185
230	320				
4,000	4,500	10	30	75	160
210	290				
4,500	5,000	5	15	50	135
190	270				
5,000	5,500	0	10	30	115
160	230				
5,500	6,000	0	5	15	80
140	190				
6,000	6,500	0	0	10	50
120	150				
6,500	7,000	0	0	5	35
95	120				
7,000	7,500	0	0	0	25
65	90				
7,500	8,000	0	0	0	15
40	60				
8,000	8,500	0	0	0	5
25	45				
8,500	9,000	0	0	0	0
15	30				
9,000	9,500	0	0	0	0
5	20				
9,500	10,000	0	0	0	0
0	10.				

E. 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.

F. For purposes of this section, "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.

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.

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.

Applicability. - Laws 1986, ch. 20, § 138A makes the provisions of §§ 26 to 52 of that act applicable to taxable years beginning on or after January 1, 1986.

Laws 1987, ch. 264, § 27A makes 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.

Laws 1990, ch. 49, § 24, makes the provisions of the act applicable to taxable years beginning on or after January 1, 1990.

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 §§ 39 to 46; 85 C.J.S. Taxation § 1099.

7-2-14.1. Tax rebate for gross receipts tax on food and medical expenses; refund.

A. Except as provided otherwise in Subsection E of this section, any resident who files an individual New Mexico income tax return for a taxable year beginning on or after January 1, 1989, and who is not a dependent of another individual may claim a tax rebate for a portion of gross receipts taxes on food purchases and medical expenses to which the resident has been subject during the taxable year for which the return is filed. The tax rebate provided in this section may be claimed in the amount shown in the appropriate filing status tables in Subsections B, C and D of this section for each exemption.

B. For heads of household, surviving spouses and married individuals filing joint returns, the tax rebate shall be at the following amounts based upon the modified gross income of the taxpayer:

If modified gross income is:		The tax rebate per exemption shall be:
Over	But Not Over	
$ 0	$ 9,000	$52.50
9,000	14,000	38.00

14,000	16,000	14.0
0		
16,000		0
.		

If modified gross income is zero or less than zero, the tax rebate per exemption shall be fifty-two dollars fifty cents ($52.50).

C. For single individuals, the tax rebate shall be at the following amounts based upon the modified gross income of the taxpayer:

If modified gross income is:		The tax rebate per exemption
Over	But Not Over	shall be:
$ 0	$ 6,000	$52.5
0		
6,000	9,000	38.0
0		
9,000	10,500	14.0
0		
10,500		0
.		

If modified gross income is zero or less than zero, the tax rebate per exemption shall be fifty-two dollars fifty cents ($52.50).

D. For married individuals filing separate returns, the tax rebate shall be at the following amounts based upon the modified gross income of the taxpayer:

If modified gross income is:		The tax rebate per exemption
Over	But Not Over	shall be:
$ 0	$ 4,500	$52.5
0		
4,500	7,000	38.0
0		
7,000	8,000	14.0
0		
8,000		0

.

If modified gross income is zero or less than zero, the tax rebate per exemption shall be fifty-two dollars fifty cents ($52.50).

E. 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.

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. For the purposes of this section, the number of exemptions for which a tax rebate may be claimed or allowed is determined by adding the number of exemptions allowable for federal income tax purposes for each individual included in the return who is domiciled in New Mexico plus one exemption for each individual domiciled in New Mexico included in the return who is sixty-five years of age or older plus one 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.

H. For purposes of this section, "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.

History: 1978 Comp., § 7-2-14.1, enacted by Laws 1987, ch. 264, § 8; 1988, ch. 4, § 1; 1990, ch. 49, § 9.

The 1990 amendment, effective May 16, 1990, substituted "the resident has been subject" for "he has been subject" in Subsection A, added the language beginning "plus

one exemption for each minor child" at the end of Subsection G, added Subsection H, and made minor stylistic changes.

Applicability. - Laws 1990, ch. 49, § 24, makes the provisions of the act applicable to taxable years beginning on or after January 1, 1990.

Compiler's note. - Laws 1988, ch. 4, § 2, repeals 7-2-14.1 NMSA 1978, as enacted by Laws 1987, ch. 264, § 9, which would have become effective on January 1, 1989, relating to tax rebate for gross receipt tax on food, effective May 18, 1988. For provisions of former section, see 1987 Cumulative Supplement.

Internal Revenue Code. - Section 152 of the federal Internal Revenue Code, referred to in Subsection H, appears as 26 U.S.C. § 152.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Am. Jur. 2d State and Local Taxation, § 551.

7-2-14.2, 7-2-15. Repealed.

ANNOTATIONS

Repeals. - Laws 1987, ch. 264, § 25B repeals 7-2-14.2 and 7-2-15 NMSA 1978, as amended by Laws 1983, ch. 213, § 3 and Laws 1986 (3d S.S.), ch. 1, § 3, relating to withholding instructions and rebate for gross receipts tax on medical and dental expenses, effective June 19, 1987. For provisions of former sections, see 1986 Replacement Pamphlet.

7-2-16 to 7-2-17. Repealed.

ANNOTATIONS

Applicability. - Laws 1990, ch. 49, § 24, makes the provisions of the act applicable to taxable years beginning on or after January 1, 1990.

Repeals. - Laws 1990, ch. 49, § 20 repeals 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 1988 Replacement Pamphlet.

7-2-17.1. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 49, § 21 repeals 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 1990 Replacement Pamphlet.

7-2-18. Tax rebate of property tax due which 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 which exceeds the property tax liability indicated by the table in Subsection F 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 which exceeds the property tax liability indicated by the table in Subsection F of this section, based upon the taxpayer's modified gross income.

C. "Principal place of residence" for purposes of this section shall mean the 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. The tax rebate provided for in this section may be claimed in the amount of the property tax due each taxable year which 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. The tax rebate provided for in this section shall not exceed two hundred fifty dollars ($250) per return, and, if a return if filed separately which 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).

H. 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.

History: 1953 Comp., § 72-15A-11.4, enacted by Laws 1977, ch. 196, § 1; 1981, ch. 37, § 28.

Cross-references. - As to meaning of "modified gross income," see 7-2-2L and M NMSA 1978.

Compiler's note. - 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.

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 §§ 1096 to 1100.

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 the 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, 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 his 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 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 he is eligible and the federal child care credit he is able to deduct from federal tax liability for the same 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.

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 present Paragraph (3), and redesignated former Paragraphs (3) to (5) as present Paragraphs (4) to (6).

Applicability. - Laws 1990, ch. 49, § 24, makes the provisions of the act applicable to taxable years beginning on or after January 1, 1990.

7-2-18.2. Credit for preservation of cultural property; refund.

A. To encourage the restoration, rehabilitation and preservation of cultural properties, any 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 his 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.

B. The taxpayer may claim the credit if:

(1) he submitted a plan and specifications for such 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) he 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 which 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) 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 his 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 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 which 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) 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 office of cultural affairs created in Section 18-6-8 NMSA 1978.

History: 1978 Comp., § 7-2-18.2, enacted by Laws 1984, ch. 34, § 1.

Applicability. - Laws 1984, ch. 34, § 5, makes the provisions of the act applicable to tax years beginning on or after January 1, 1984.

7-2-19. Repealed.

ANNOTATIONS

Applicability. - Laws 1990, ch. 49, § 24, makes the provisions of the act applicable to taxable years beginning on or after January 1, 1990.

Repeals. - Laws 1990, ch. 49, § 19 repeals Section 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 1988 Replacement Pamphlet.

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.

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.

Applicability. - Laws 1990, ch. 49, § 24, makes the provisions of the act applicable to taxable years beginning on or after January 1, 1990.

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 § 1102.

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 [this article] on the same basis.

History: 1953 Comp., § 72-15A-14, enacted by Laws 1965, ch. 202, § 14; 1981, ch. 37, § 31.

Cross-references. - As to returns and payment generally, see 7-2-12 NMSA 1978.

Internal Revenue Code. - For the United States 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.

Cross-references. - As to accounting methods used by corporations, see 7-2A-11 NMSA 1978.

As to 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 § 1102.

7-2-22. Administration.

The Income Tax Act [this article] 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.

Cross-references. - As to 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.

Applicability. - Laws 1987, ch. 277, § 8B makes the provisions of Sections 1 to 4 of the act applicable to taxable years beginning on or after January 1, 1987.

7-2-25, 7-2-26. Repealed.

ANNOTATIONS

Repeals. - Laws 1987, ch. 277, § 7 and Laws 1985, ch. 154, § 6 repeal 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. For provisions of former sections, see 1986 Replacement Pamphlet.

7-2-27. Legislative findings and intent. (Delayed repeal - See note.)

The legislature finds that it is in the public interest to provide additional funds to increase the size of the Santa Fe national cemetery to provide a lasting tribute to all veterans of New Mexico. This act provides a means by which additional 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. It is further the intent of the legislature that all contributions obtained under this act will automatically be transferred into the veterans' national cemetery fund in the event the city of Santa Fe grants and conveys the additional acreage for the Santa Fe national cemetery.

History: 1978 Comp., § 7-2-27, enacted by Laws 1987, ch. 257, § 2.

Delayed repeals. - Laws 1987, ch. 257, § 6 repeals 7-2-27 NMSA 1978, as enacted by Laws 1987, ch. 257, § 2, 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.

Meaning of "this act". - The phrase "this act", as used in this section, means Laws 1987, Chapter 257, which appears as §§ 7-1-6.18, 7-2-27, 7-2-28 and 28-13-5.1 NMSA 1978.

7-2-28. Optional designation of tax refund contribution[; veterans' national cemetery fund]. (Delayed repeal - See note.)

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 veterans' national cemetery fund. In the case of a joint return, both individuals must make such designation.

B. The secretary of taxation and revenue 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' National Cemetery Fund - Check []

if you wish to contribute a part or all

of your tax refund to the Veterans' National 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.

Delayed repeals. - Laws 1987, ch. 257, § 6 repeals 7-2-28 NMSA 1978 as enacted by Laws 1987, ch. 257, § 3, relating to the veterans' national cemetery fund, effective on the January 1 of the year following the year in which the sum of contributions received on or after January 1, 1988, pursuant to this section, equals or exceeds $1,070,000.

Applicability. - Laws 1987, ch. 257, § 5 makes this section applicable to taxable years beginning on or after January 1, 1987.

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.

Meaning of "this act". - 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.

Applicability. - Laws 1987, ch. 265, § 6 makes the provisions of Sections 2 and 3 of the act applicable to taxable years beginning on or after January 1, 1987.

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.

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 [this article] 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, 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; "base income" also includes interest received on a state or local bond;

D. "corporation" means corporations, joint stock companies, real estate trusts organized and operated under the Real Estate Trust Act [47-2-1 to 47-2-6 NMSA 1978], financial corporations and banks, other business associations and, for corporate income tax purposes, partnerships taxed as corporations under the Internal Revenue Code;

E. "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;

F. "financial corporation" means any savings or building and loan association or any incorporated savings and loan company, trust company, mortgage banking company, consumer finance company or other financial corporation;

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, as amended;

I. "net income" means base income adjusted to exclude:

(1) amounts that have been taxed as income under the Banking and Financial Corporations Tax Act;

(2) income from obligations of the United States less expenses incurred to earn that income;

(3) other amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States;

(4) 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; and

(5) for taxable years beginning on or after January 1, 1991, 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 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;

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 (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, 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. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

N. "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;

O. "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;

P. "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;

Q. "taxpayer" means any corporation subject to the taxes imposed by the Corporate Income and Franchise Tax Act; and

R. "unitary corporations" means two or more integrated corporations 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.

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.

Applicability. - Laws 1991, ch. 9, § 46 makes the provisions of §§ 24 and 25 of the act applicable to taxable years beginning on or after January 1, 1991.

Internal Revenue Code. - For the United States Internal Revenue Code, see 26 U.S.C. § 1 et seq.

Banking and Financial Corporations Tax Act. - The Banking and Financial Corporations Tax Act, referred to in Subsection I(1), was repealed by Laws 1981, ch. 37, § 97. Prior to its repeal, the act was codified as 7-6-1 to 7-6-9 NMSA 1978.

Internal Revenue Code. - Sections 103 and 172 of the Internal Revenue Code appear as 26 U.S.C. §§ 103 and 172, 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.

84 C.J.S. Taxation § 1; 85 C.J.S. Taxation §§ 1089, 1096.

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 [this article] 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.

Constitutionality. - The United States supreme court has held that similar state franchise tax laws do not violate the federal constitution. Southern Pac. Co. v. SCC, 41 N.M. 556, 72 P.2d 15 (1937).

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. SCC, 41 N.M. 556, 72 P.2d 15 (1937).

"Property and business" in the state as used in the former section is 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 does not refer to business across state lines. Southern Pac. Co. v. SCC, 41 N.M. 556, 72 P.2d 15 (1937).

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 §§ 126 to 128, 134, 186 to 188; 85 C.J.S. Taxation §§ 1090 to 1095.

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.

Cross-references. - For exemption of nonprofit corporations, see 53-8-28B NMSA 1978.

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".

Applicability. - Laws 1989, ch. 111, § 4 makes the provisions of the act applicable to taxable years beginning on or after January 1, 1989.

Internal Revenue Code. - For the United States Internal Revenue Code, see 26 U.S.C. § 1 et seq.

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.

84 C.J.S. Taxation §§ 162 to 167, 215, 272, 281 to 303; 85 C.J.S. Taxation § 1098.

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 table:

If the taxable 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.

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.

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. Mountain States Tel. & Tel. Co. v. New Mexico SCC, 104 N.M. 36, 715 P.2d 1332 (1986).

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 § 1101.

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.

History: Laws 1986, ch. 20, § 37.

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. SCC, 41 N.M. 556, 72 P.2d 15 (1937).

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.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 85 C.J.S. Taxation § 1103.

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.

Cross-references. - As to 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 § 252.

7-2A-8. 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 [this article];

(2) 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 apportioned in accordance with 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 apportioned in accordance with regulations of the secretary; and

(4) except as otherwise provided in Sections 7-2A-8.3 and 7-2A-8.4 NMSA 1978, a taxpayer having income both within and without this state and who begins business in this state after July 1, 1981, but prior to January 1, 1991, may separately account for income in this state for five consecutive taxable years beginning with the taxable year in which the taxpayer began business in 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.

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.

Applicability. - Laws 1990, ch. 49, § 24, makes the provisions of the act applicable to taxable years beginning on or after January 1, 1990.

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 §§ 35, 118, 129, 130, 329 to 335, 354; 85 C.J.S. Taxation §§ 1096, 1097, 1103 to 1104(2).

7-2A-8.1. Credit for solar or wind energy equipment installation. (Effective until January 1, 1993.)

A. Any taxpayer who files a New Mexico corporate income tax return may claim a tax credit, in an amount not to exceed the maximum amount for each taxable year specified in Subsection I of this section, equal to twenty-five percent of the cost of solar or wind energy equipment, and the cost of the installation of such equipment, purchased by the taxpayer and used in the taxpayer's business location in New Mexico for:

(1) direct pumping of water through the use of solar or wind energy equipment;

(2) generation of electricity through the use of solar or wind energy equipment;

(3) heating, cooling or heating and cooling through the use of solar energy equipment; or

(4) heating purposes through the use of solar energy equipment in connection with the taxpayer's swimming pool.

B. Any person furnishing or installing the equipment for any of the purposes specified in Subsection A of this section shall furnish the taxpayer with an accounting of the cost to the taxpayer. Cost shall be reduced by any amount of consideration received by or payable to the taxpayer for any purpose related to the solar or wind energy project from the person furnishing such equipment.

C. When the solar or wind energy equipment purchased by the taxpayer is installed in or upon property leased by the taxpayer from another person, the lessor or lessee may claim only a share of the credit based on the expenditures made by him, provided that the total tax credit claimed would not exceed the tax credit allowed for a single business location.

D. A taxpayer may claim the credit provided in this section in the taxable year following the taxable year in which equipment is installed. Claims for the credit provided in this section shall be limited to three consecutive years, and the maximum aggregate credit allowable shall not exceed the maximum amount indicated in Subsection I of this section for the taxable year the equipment was installed for any business location.

E. For the purpose of this section, the term "heating, cooling or heating and cooling through the use of solar energy equipment" means using any solar heating, cooling or heating and cooling equipment which:

(1) meets the definitive performance criteria prescribed pursuant to the provisions of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C.A. S.S. 5506) or any amendments thereto;

(2) is designed to be used solely in connection with a swimming pool for heating purposes; or

(3) is designated as such by regulation of the director.

F. Except as provided in Subsection G of this section, the credit provided in this section may only be deducted from the taxpayer's New Mexico corporate income tax liability in the taxable year following the taxable year in which the equipment was installed in the taxpayer's separate business location for the direct pumping of water, the generation of electricity or for heating or cooling purposes.

G. Any portion of the maximum tax credit provided in this section which remains unused at the end of the taxpayer's taxable year may be carried forward for three consecutive years.

H. A taxpayer may not claim the credit provided by the provisions of this section if the taxpayer has claimed a credit under Section 7-2-16.1, 7-2-16.2, 7-2A-8.2 or 7-2B-1 [7-2-16.1] NMSA 1978 for such equipment, except that carry-forward amounts for credits initially claimed under Sections 7-2-16.1, 7-2-16.2 and 7-2B-1 [7-2-16.1] NMSA 1978 may be claimed.

I. The credit provided in this section shall not exceed the maximum allowable credit for each taxable year specified:

For the taxable years beginning in the calendar year	Maximum Credit
1986	$2,500
1987	2,000
1988	1,500
1989 and thereafter	0.

History: 1978 Comp., § 7-2A-8.1, enacted by Laws 1983, ch. 213, § 10; 1986, ch. 20, § 41; 1986, ch. 110, § 2.

Delayed repeals. - Laws 1990, ch. 49, § 22 repeals 7-2A-8.1 NMSA 1978, as amended by Laws 1986, ch. 110, § 2 effective January 1, 1993.

Bracketed material. - The bracketed references in Subsection H to 7-2-16.1 NMSA 1978 were inserted by the compiler, as 7-2B-1 NMSA 1978 was recompiled as 7-2-16.1 NMSA 1978 by Laws 1983, ch. 213, § 5. The bracketed material was not enacted by the legislature and is not part of the law.

Section 7-2-16.1 NMSA 1978, referred to in Subsection H, was repealed by Laws 1990, ch. 49, § 20, effective May 16, 1990.

7-2A-8.2. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 49, § 21 repeals 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 1990 Replacement Pamphlet.

7-2A-8.3. Combined returns.

A. The secretary shall permit the filing of a combined return by unitary corporations and is authorized to impose the corporate income tax due under the Corporate Income and Franchise Tax Act [this article] 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. Corporations which have included all members in a consolidated return to New Mexico shall continue to file on a consolidated basis under Section 7-2A-8.4 NMSA 1978.

B. The secretary shall not require or permit a foreign corporation incorporated in a foreign country and not engaged in trade or business in the United States during the taxable year to report through a combined return.

C. Once corporations have reported net income through a combined return for any tax year, they shall file combined returns for subsequent taxable years, so long as they remain unitary corporations, unless prior permission of the secretary is obtained to file on a different reporting method. Permission to change reporting method shall be granted or withheld pursuant to the provisions of Section 7-4-19 NMSA 1978.

D. A corporation that would be included in a unitary group for reporting purposes may separately account pursuant to Section 7-2A-8 NMSA 1978 if it begins business in New Mexico with assets and employees not previously used by the corporation or the unitary group in a similar business in New Mexico. However, a corporation that does not meet the requirements of this subsection may request relief as provided in Section 7-4-19 NMSA 1978.

History: 1978 Comp., § 7-2A-8.3, enacted by Laws 1983, ch. 213, § 12; 1986, ch. 20, § 43.

7-2A-8.4. Consolidated returns.

A. The secretary shall permit any corporation which is subject to taxation under the Corporate Income and Franchise Tax Act [this article] and which 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 to report to New Mexico on the same basis.

B. A corporation which has previously been included in a consolidated return to New Mexico may 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. A corporation that would be included in a consolidated group for reporting purposes may separately account pursuant to Section 7-2A-8 NMSA 1978 if it begins business in New Mexico with assets and employees not previously used by the corporation or the consolidated group in a similar business in New Mexico. However, a corporation that does not meet the requirements of this subsection may request relief as provided in Section 7-4-19 NMSA 1978.

History: 1978 Comp., § 7-2A-8.4, enacted by Laws 1983, ch. 213, § 13; 1986, ch. 20, § 44.

Internal Revenue Code. - The Internal Revenue Code, referred to in Subsection B, is codified as 26 U.S.C. § 1 et seq.

7-2A-8.5. Corporate income tax credit; geothermal capital investment. (Effective until January 1, 1996.)

A. As used in this section:

(1) "geothermal equipment" means equipment that is used for the utilization of geothermal energy and includes but is not limited to:

(a) geothermal production, low-temperature thermal, injection and disposal well completion equipment;

(b) energy transmission, storage and transfer equipment;

(c) electrical generation equipment;

(d) geothermal fluid treatment and disposal equipment; and

(e) system control equipment used exclusively for the utilization of geothermal energy; but "geothermal equipment" does not include groundwater heat pumps and other systems used to increase the delivery temperature of geothermal energy;

(2) "geothermal fluid" means naturally occurring steam or hot water which is at a temperature of at least 95ø Fahrenheit in the natural state of free-flowing springs or pumped from wells; and

(3) "productive capital" means tangible personal property that is depreciable, has a useful life of at least three years and is used as an integral part of the geothermal equipment used to supply geothermal energy for commercial use or for the private use of the corporation.

B. Any taxpayer engaged in the development of geothermal energy for use in New Mexico who files a New Mexico corporate income tax return may claim a tax credit against his corporate income tax liability in an amount equal to the percentage of the cost of productive capital indicated in the following schedule:

For taxable years beginning on or after January 1	Percentage
1983	25%
1984	25%

1985	20%
1986	20%
1987	15%
1988	10%
1989	5%
1990	0%.

C. To qualify for the credit described in Subsection B of this section, the productive capital must be placed in service in New Mexico during the taxable year for which the credit is claimed.

D. The credit provided in Subsection B of this section may only be deducted from the taxpayer's corporate income tax liability.

E. Any portion of the maximum tax credit provided by this section which remains unused at the end of the taxpayer's taxable year may be carried forward for five consecutive years. However, in no case shall the total corporate income tax credits claimed under this section exceed sixty thousand dollars ($60,000) on any single geothermal project.

History: 1978 Comp., § 7-2A-8.1, enacted by Laws 1983, ch. 212, § 2, compiled as 1978 Comp., § 7-2A-8.5; 1986, ch. 20, § 45.

Delayed repeals. - Laws 1990, ch. 49, § 23 repeals Section 7-2A-8.5 NMSA 1978, as amended by Laws 1986, ch. 20, § 45, effective January 1, 1996.

Compiler's note. - Laws 1983, ch. 212, § 2, enacted this section as 7-2A-8.1 NMSA 1978, but, since Laws 1983, ch. 213, § 10, also enacted a section designated 7-2A-8.1 NMSA 1978, this section has been compiled as 7-2A-8.5 NMSA 1978.

7-2A-8.6. Credit for preservation of cultural property; corporate income tax credit.

A. To encourage the restoration, rehabilitation and preservation of cultural properties, any taxpayer who files a corporate income tax return and who 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.

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 which 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) 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 his 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 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 which 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) 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 office of cultural affairs 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.

Cross-references. - As to credit for preservation of cultural property against income tax, see 7-2-18.2 NMSA 1978.

7-2A-9. Taxpayer returns; payment of tax.

A. Every corporation deriving income from any business transaction, property or employment within this state and not exempt from tax under the Corporate Income and Franchise Tax Act [this article] which 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. 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.

B. Every domestic or foreign corporation, not exempt from tax under the Corporate Income and Franchise Tax Act, employed or engaged in the transaction of business in, into or from this state or deriving any income from property or employment within this state and every domestic or foreign corporation, whether engaged in active business or not, but having or exercising its corporate franchise in this state and not exempt from tax under the Corporate Income and Franchise Tax Act is required to 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 of this section for payment of corporate income tax for the preceding taxable year.

History: 1978 Comp., § 7-2A-9, enacted by Laws 1981, ch. 37, § 42; 1986, ch. 20, § 47; 1989, ch. 111, § 2.

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".

Applicability. - Laws 1989, ch. 111, § 4 makes the provisions of the act applicable to taxable years beginning on or after January 1, 1989.

Temporary transfer of corporate income tax net receipts. - Laws 1983, ch. 214, § 8, provides for the transfer of § 5,000,000 to the state-support reserve fund from net tax

receipts attributable to corporate income tax from payments of corporate income taxes in the seventy-second fiscal year.

Laws 1983, ch. 214, contains no effective date provision applicable to § 8 of the act, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const, art. IV, § 23.

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. SCC, 42 N.M. 254, 76 P.2d 1139 (1938)(see 53-3-3 NMSA 1978).

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.

84 C.J.S. Taxation § 628; 85 C.J.S. Taxation §§ 1102, 1106.

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 for such taxable year can reasonably be expected to be five thousand dollars ($5,000) or more.

B. If Subsection A of this section applies, the amount of estimated tax shall be paid in installments as 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 the fifteenth day of the sixth month of the taxable year, another twenty-five percent is due on or before the fifteenth day of the ninth month of the taxable year and the final twenty-five percent is due on or before the fifteenth day of the twelfth month of the taxable year. Application of this subsection to a taxable year which 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 eighty percent of the tax imposed on the taxpayer under the Corporate Income [and Franchise] Tax Act [this article] 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 one hundred percent of the tax liability for the previous taxable year 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.

History: 1978 Comp., § 7-2A-9.1, enacted by Laws 1986, ch. 5, § 1; 1990, ch. 49, § 13.

Bracketed material. - The bracketed phrase "and franchise" in Subsection C was inserted by the compiler, as the Corporate Income Tax Act, formerly compiled as Chapter 7, Article 2A NMSA 1978, was amended and designated "Corporate Income and Franchise Tax Act" by Laws 1986, Chapter 20, § 32. The bracketed insertion was not enacted by the legislature and is not part of the law.

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.

Applicability. - Laws 1990, ch. 49, § 24, makes the provisions of the act applicable to taxable years beginning on or after January 1, 1990.

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 §§ 1106, 1107.

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 [this article] 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.

Effective dates. - Laws 1990, ch. 23 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

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.

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 §§ 1102, 1106.

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.

Cross-references. - As to 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 § 1102.

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 [this article] on the same basis.

History: 1978 Comp., § 7-2A-12, enacted by Laws 1981, ch. 37, § 45; 1986, ch. 20, § 50.

Internal Revenue Code. - For the United States 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 § 1100.

7-2A-13. Administration.

The Corporate Income and Franchise Tax Act [this article] 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 [this article] in an amount equal to thirty percent of the total expenses 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 his share of the cost of operating the child care facility. 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. 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 [24-1-1 to 24-1-5, 24-1-6 to 24-1-21 NMSA 1978] and is operated without profit by the taxpayer.

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.

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 §§ 1103, 1106.

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.

This act [7-2C-1 to 7-2C-14 NMSA 1978] may be cited as the "Tax Refund Intercept Program Act".

History: Laws 1985, ch. 106, § 1.

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 § 1109.

7-2C-2. Purpose.

The purpose of the Tax Refund Intercept Program Act is to comply with federal law by enhancing the enforcement of child support obligations, to aid collection of outstanding debts owed for overpayment of public assistance and overissuance of food stamps and overpayment of unemployment compensation benefits and nonpayment of contributions or payments in lieu of contributions or other amounts due under the Unemployment Compensation Law and to promote repayment of educational loans through establishing a system to collect debts, in particular, outstanding child support obligations, educational loans and amounts due under the Unemployment Compensation Law, by setting off the amount of such debts against the state income tax refunds due the debtors.

History: Laws 1985, ch. 106, § 2; 1987, ch. 125, § 1; 1988, ch. 49, § 1; 1991, ch. 184, § 1.

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 [7-2C-1 to 7-2C-14 NMSA 1978]:

A. "claimant agency" means the taxation and revenue department or any of its divisions, the human services department, the employment security division of the labor department or any corporation authorized to be formed under the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978];

B. "debt" means a legally enforceable obligation of an employer subject to the Unemployment Compensation Law [Chapter 51 NMSA 1978] or an individual to pay a liquidated amount of money:

(1) that is equal to or more than one hundred fifty dollars ($150);

(2) that 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) that has accrued through contract, tort, subrogation or operation of law; and

(4) that, in the case of an amount due under the Unemployment Compensation Law, has been secured by a warrant of levy and lien or, in all other cases, has been reduced to judgment;

C. "debtor" means any employer subject to the Unemployment Compensation Law 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 postsecondary educational institution or owned or guaranteed by any corporation authorized to be formed under the Educational Assistance Act;

F. "public postsecondary educational institution" means a publicly owned or operated institution of higher education or other publicly owned or operated postsecondary educational facility located within New Mexico;

G. "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 which may be subject to the provisions of the Tax Refund Intercept Program Act; and

H. "refund" means a refund, including any amount of tax rebates or credits, under the Income Tax Act which the department has determined to be due to an individual.

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; 1991, ch. 141, § 1; 1991, ch. 184, § 2.

1991 amendments. - Laws 1991, ch. 141, § 1, effective June 14, 1991, in Subsection E, inserting "or other debt" and "the state of New Mexico or" and making minor stylistic changes in Subsections B, G and H, was approved on April 3, 1991. However, Laws 1991, ch. 184, § 2, effective January 1, 1992, inserting "the employment security division of the labor department" in Subsection A; in Subsection B, inserting "an employer subject to the Unemployment Compensation Law or" in the introductory phrase, deleting "and has been reduced to judgment" following "law" in Paragraph (3), rewriting Paragraph (4) which read "which, in the case of an educational loan has been reduced to judgment," and making minor stylistic changes; and inserting "employer subject to the Unemployment Compensation Law or any" in Paragraph (C), was approved on April 4, 1991. The section is 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 [7-2C-1 to 7-2C-14 NMSA 1978] are in addition to and not in substitution for any other remedies available by law.

History: Laws 1985, ch. 106, § 4.

7-2C-5. Division to aid in collection of debts through setoff.

Subject to the limitations contained in the Tax Refund Intercept Program Act [7-2C-1 to 7-2C-14 NMSA 1978], the division, upon request, shall render assistance in the collection of any debt owed to a claimant agency or any debt which 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.

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 division in the manner and by the date required by the division, which date shall be in the period from November 1 through December 15. The notice to the division shall include the amount of the debt, the name and identification number of the debtor and such other information as the division 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 division.

B. The claimant agency shall inform the division 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 division shall determine whether the debtor is entitled to a refund of at least fifty dollars ($50.00). The division shall notify the claimant agency in writing, or in such other manner as the division 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 division 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 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 division 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 must 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. Within fifteen days of the date the division notifies the claimant agency in accordance with Subsection C of this section, the claimant agency shall confirm to the division in the manner required by the division that the claimant agency has met the requirements of Subsection D of this section and, in the case of joint returns, the requirements of Subsection E of this section. If the division does not receive confirmation from the claimant agency within the time required, the division shall not apply against any refund due the debtor any debt with respect to which the division has not received confirmation and shall resume normal processing of the refund. If the division receives timely confirmation from the claimant agency, the division 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 division 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 division 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 division 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 division shall be deemed to have made the refund required by the Income Tax Act [Chapter 7, Article 2 NMSA 1978].

History: Laws 1985, ch. 106, § 6.

7-2C-7. Suspense account.

Upon receipt of money transferred from the division pursuant to Subsection H of Section 6 [7-2C-6 NMSA 1978] of the Tax Refund Intercept Program Act, 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.

7-2C-8. Interest becomes obligation of claimant agency.

Once a transfer is made by the division pursuant to Subsection H of Section 6 [7-2C-6 NMSA 1978] of the Tax Refund Intercept Program Act, notwithstanding any other

provision of law to the contrary, the division, 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 division and claimant agency with the provisions of the Tax Refund Intercept Program Act [7-2C-1 to 7-2C-14 NMSA 1978] bars accrual of interest notwithstanding the provisions of Section 7-1-68 NMSA 1978.

History: Laws 1985, ch. 106, § 8.

7-2C-9. Administrative hearing required of claimant agency; division 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 6 [7-2C-6 NMSA 1978] of the Tax Refund Intercept Program Act.

B. Notwithstanding any other provision of law, the division, 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 [7-2C-1 to 7-2C-14 NMSA 1978].

History: Laws 1985, ch. 106, § 9.

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 [7-2C-1 to 7-2C-14 NMSA 1978] 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 division shall notify the claimant agency of these changes. The division 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 which 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 division.

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 division. 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 division pursuant to Subsection H of Section 6 [7-2C-6 NMSA 1978] of the Tax Refund Intercept Program Act is authorized to be paid by the claimant agency from any funds available to it for this purpose.

History: Laws 1985, ch. 106, § 10.

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 [7-2C-1 to 7-2C-14 NMSA 1978] or under the provisions of any other law which 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 resulting from educational loans made under the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978];

(3) claims of the human services department resulting from AFDC liabilities;

(4) claims of the human services department resulting from food stamp liabilities; and

(5) claims of the employment security division of the labor department arising under the Unemployment Compensation Law [Chapter 51 NMSA 1978].

History: Laws 1985, ch. 106, § 11; 1988, ch. 49, § 3; 1991, ch. 184, § 3.

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 division.

The division may charge claimant agencies for the costs incurred by the division in setting off debts for the claimant agencies pursuant to the Tax Refund Intercept Program Act [7-2C-1 to 7-2C-14 NMSA 1978]. The division shall determine those costs, and the determination of the division shall be conclusive. Claimant agencies shall pay to the division any charges made, and these payments are appropriated to the division for use in administering the Tax Refund Intercept Program Act.

History: Laws 1985, ch. 106, § 12.

7-2C-13. Confidentiality; exemption.

A. The information obtained by a claimant agency from the division in accordance with the provisions of the Tax Refund Intercept Program Act [7-2C-1 to 7-2C-14 NMSA 1978] 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 division is guilty of a misdemeanor and shall, upon conviction thereof, 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 division of information from a taxpayer's return, the division may provide to a claimant agency any

information deemed necessary by the division to accomplish the purposes of the Tax Refund Intercept Program Act.

History: Laws 1985, ch. 106, § 13.

7-2C-14. Administrative regulations, rulings, instructions and orders; presumption of correctness.

A. The director of the division is empowered and directed to issue and file, as required by law, all regulations, rulings, instructions or orders necessary to implement and enforce any provision of the Tax Refund Intercept Program Act [7-2C-1 to 7-1C-14 NMSA 1978], including all rules and regulations necessary by reason of any alteration of that act. In order to accomplish its purpose, this provision is to be liberally construed.

B. Directives issued by the director of the division shall be in form substantially as follows:

(1) regulations are written statements of the director of the division, of general application, interpreting and exemplifying the statutes to which they relate;

(2) rulings are written statements of the director of the division, of limited application to one or a small number of debtors or claimant agencies, interpreting the statutes to which they relate, ordinarily issued in response to a request for clarification of the consequences of a specified set of circumstances;

(3) orders are written statements of the director of the division to implement a decision of the director of the division after a hearing; and

(4) instructions are other written statements or directives of the director of the division not dealing with the merits of any statute, but otherwise in aid of the accomplishment of the duties of the director of the division.

C. To be effective, any ruling or regulation issued by the director of the division shall be reviewed by the attorney general or other legal counsel of the taxation and revenue department prior to being filed as required by law, and the fact of review shall be indicated thereon.

D. To be effective, a regulation shall first be issued as a proposed regulation and filed for public inspection in the office of the director of the division. Distribution of the regulation shall be made to interested persons and their comments shall be invited. A hearing shall be conducted by the director of the division or the director's authorized delegate with respect to the proposed regulation, at which hearing any interested party may submit evidence and present testimony. After the proposed regulation has been on file for not less than two months and a hearing has been held, the director of the division may issue it as a final regulation by filing as required by law.

E. In addition to filing copies of regulations with the state records center as required by law, the director of the division shall maintain in his office a duplicate official set of current and superseded regulations with respect to the Tax Refund Intercept Program Act, a set of current and superseded rulings with respect to the Tax Refund Intercept Program Act and such additional sets thereof as appear necessary, which duplicate or additional sets shall be available for inspection by the public.

F. Any regulation, ruling, instruction or order issued pursuant to this section by the director of the division is presumed to be a proper implementation of the provisions of the Tax Refund Intercept Program Act.

G. The director of the division shall state the extent to which regulations, rulings and orders shall have retroactive effect and, if no such statement is made, they shall be applied prospectively only.

History: Laws 1985, ch. 106, § 14.

Cross-references. - As to the duties of the attorney general, see 8-5-2 NMSA 1978.

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.

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 § 1107.

7-3-2. Definitions.

As used in the Withholding Tax Act [this article]:

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. "payor" means any person making payment of a pension or annuity to an individual domiciled in New Mexico;

F. "payroll period" means a period for which a payment of wages is made to the employee by his employer;

G. "person" means any individual, club, company, cooperative association, corporation, estate, firm, joint venture, partnership, receiver, syndicate, trust or other association and, to the extent permitted by law, any federal, state or other governmental unit or subdivision or an agency, department or instrumentality thereof;

H. "wages" means remuneration in cash or other form for services performed by an employee for an employer;

I. "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; and

(2) an employee; and

J. "withholder" means a payor or an employer."

History: 1978 Comp., § 7-3-2, enacted by Laws 1990, ch. 64, § 1.

Repeals and reenactments. - Laws 1990, ch. 64, § 1 repeals former 7-3-2 NMSA 1978, as amended by Laws 1986, ch. 20, § 54, and enacts the above section, effective July 1, 1990. For provisions of former section, see 1988 Replacement Pamphlet.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 85 C.J.S. Taxation §§ 1092, 1097.

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 that, if the employee instructs the employer to withhold a greater amount, the employer shall deduct and withhold the greater amount. 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. Provided, that 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. 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 must include the payee's name, current address, taxpayer identification number and, if applicable, the contract, policy or account number to which the request applies.

History: 1953 Comp., § 72-15-51, enacted by Laws 1961, ch. 243, § 3; 1990, ch. 64, § 2.

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.

Internal Revenue Code. - For the United States Internal Revenue Code, see 26 U.S.C. § 1.

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, 85 N.M. 381, 512 P.2d 954 (Ct. App.), cert. quashed, 85 N.M. 388, 512 P.2d 961 (1973). 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 §§ 1092, 1097.

7-3-4. Deductions considered taxes.

Amounts deducted under the provisions of the Withholding Tax Act [this article] 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.

History: 1953 Comp., § 72-15-52, enacted by Laws 1961, ch. 243, § 4; 1971, ch. 27, § 1; 1990, ch. 64, § 3.

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 §§ 1103, 1107 to 1109.

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 [this article] regardless of whether or not 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.

The 1990 amendment, effective July 1, 1990, substituted "Withholder" for "Employer" in the catchline 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 §§ 1103 to 1105.

7-3-6. Date payment due.

Taxes withheld under the provisions of the Withholding Tax Act [this article] 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.

7-3-7. Statements of withholding.

A. 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. 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.

History: 1953 Comp., § 72-15-56, enacted by Laws 1961, ch. 243, § 8; 1990, ch. 64, § 5.

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.

Meaning of "bureau". - See 7-3-2F NMSA 1978.

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.

The 1990 amendment, effective July 1, 1990, substituted "withholdee" for "employee" in the catchline 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.

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 §§ 1107, 1110.

7-3-10. Voluntary submission to act.

Any employee whose participation under the Withholding Tax Act [this article] 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.

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 [this article]. 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.

Effective dates. - Laws 1990, ch. 64, § 10 makes the act effective on July 1, 1990.

Internal Revenue Code. - The federal Internal Revenue Code, referred to in Subsection A, appears as Title 26 of the United States Code.

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.

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 [this article]:

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. "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.

Fairly apportioned tax constitutional. - Where 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. New Mexico Bureau of Revenue, 93 N.M. 22, 595 P.2d 1212 (Ct. App.), cert. denied, 92 N.M. 675, 593 P.2d 1078 (1979).

"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, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975); Tipperary Corp. v. New Mexico Bureau of Revenue, 93 N.M. 22, 595 P.2d 1212 (Ct. App.), cert. denied, 92 N.M. 675, 593 P.2d 1078 (1979).

All income of business organization is not "business income"; business income must arise from the regular course of business. Tipperary Corp. v. New Mexico Bureau

of Revenue, 93 N.M. 22, 595 P.2d 1212 (Ct. App.), cert. denied, 92 N.M. 675, 593 P.2d 1078 (1979).

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. New Mexico Bureau of Revenue, 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, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975); Tipperary Corp. v. New Mexico Bureau of Revenue, 93 N.M. 22, 595 P.2d 1212 (Ct. App.), cert. denied, 92 N.M. 675, 593 P.2d 1078 (1979).

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, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

Use to which income is put determines whether it is business income. Tipperary Corp. v. New Mexico Bureau of Revenue, 93 N.M. 22, 595 P.2d 1212 (Ct. App.), cert. denied, 92 N.M. 675, 593 P.2d 1078 (1979).

Taxation of dividends from foreign subsidiary. - As relevant to the right of a state to tax dividends from foreign subsidiaries, due process requires 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).

As to 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).

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, rehearing denied, 459 U.S. 961, 103 S. Ct. 274, 74 L. Ed. 2d 213 (1982).

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, rehearing denied, 458 U.S. 961, 103 S. Ct. 274, 74 L. Ed. 2d 213 (1982).

Where, 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, rehearing denied, 458 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, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

But 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, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

Short-term investment income held business income. - Where 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, it was held that 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, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

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, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

Income from sale of telephone poles by paper company held business income. - Where 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, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

When coal lease sale in regular course of business. - Where 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, 93 N.M. 22, 595 P.2d 1212 (Ct. App.), cert. denied, 92 N.M. 675, 593 P.2d 1078 (1979).

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, 93 N.M. 22, 595 P.2d 1212 (Ct. App.), cert. denied, 92 N.M. 675, 593 P.2d 1078 (1979).

Income from liquidation of part of business held not business income. - Where 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. New Mexico Bureau of Revenue, 88 N.M. 521, 543 P.2d 489 (Ct. App.), cert. denied, 89 N.M. 6, 546 P.2d 71 (1975).

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 [this article].

History: 1953 Comp., § 72-15A-18, enacted by Laws 1965, ch. 203, § 3; 1981, ch. 37, § 48.

Cross-references. - As to income allocation and apportionment, see 7-2-11 NMSA 1978.

As to Multistate Tax Compact, see 7-5-1 to 7-5-7 NMSA 1978.

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, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975)(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 §§ 1090, 1093, 1096, 1099, 1103.

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 [this article], 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.

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 §§ 28, 51, 66, 78, 121, 134; 85 C.J.S. Taxation §§ 1089, 1092, 1096.

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.

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 §§ 66, 78, 85, 108, 120; 85 C.J.S. Taxation §§ 809, 1097, 1103.

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.

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 §§ 66, 67, 78.

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.

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 §§ 5, 107, 110, 111, 112 to 120, 130, 186, 190, 193, 335; 85 C.J.S. Taxation §§ 1097 to 1099.

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.

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 §§ 186, 190, 193.

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.

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 §§ 186, 190, 193.

7-4-10. Apportionment of business income.

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.

History: 1953 Comp., § 72-15A-25, enacted by Laws 1965, ch. 203, § 10.

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.

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 §§ 66, 67, 78, 112 to 115, 130, 316.

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 is not taxable in the state of the purchaser.

History: 1953 Comp., § 72-15A-32, enacted by Laws 1965, ch. 203, § 17.

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 §§ 66, 67, 78, 112 to 115, 130, 316.

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.

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 §§ 66, 67, 78, 112 to 115, 130, 316.

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 [this article] 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.

Taxpayer's burden to show when modification of formula necessary. - Where 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., 95 N.M. 519, 624 P.2d 28 (1981), rev'd on other grounds, 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).

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.

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 [this article] 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.

Cross-references. - As to income allocation and apportionment, see 7-2-11 NMSA 1978.

As to Uniform Division of Income for Tax Purposes Act, see Chapter 7, Article 4 NMSA 1978.

As to taxpayer option to elect alternative tax pursuant to Article III 2, see 7-5-2 NMSA 1978.

As to applicability of Article VIII as to interstate audits, see 7-5-7 NMSA 1978.

As to filing rules, see 14-4-3 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 456, 569 to 577.

85 Am. Jur. 2d Taxation §§ 1090, 1093, 1096, 1099, 1103.

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.

Cross-references. - 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.

Cross-references. - As to 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 [7-5-1 NMSA 1978] . 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 6
BANKING AND FINANCIAL CORPORATIONS TAX

7-6-1 to 7-6-9. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 37, § 97, repeals 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.

Cross-references. - As to 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, 75 N.M. 379, 405 P.2d 224 (1965).

Law reviews. - For symposium, "Tax Implications of the Equal Rights Amendment," see 3 N.M.L. Rev. 69 (1973).

7-7-2. Definitions.

As used in the Estate Tax Act [7-7-1 to 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.

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.

Internal Revenue Code. - For §§ 2001, 2011, 2031 and 2051 of the United States Internal Revenue Code of 1954, see 26 U.S.C. §§ 2001, 2011, 2031 and 2051.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 42 Am. Jur. 2d Inheritance, Estate, and Gift Taxes §§ 16, 20, 21, 168 to 188; 71 Am. Jur. 2d State and Local Taxation §§ 180, 183, 467.

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.

85 C.J.S. Taxation §§ 1115, 1116, 1140, 1141.

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.

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 §§ 64, 168, 304.

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 §§ 1115, 1120, 1132, 1138 to 1140, 1187.

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 property of a nonresident is exempt from the tax imposed by this section to the extent that the 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.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 42 Am. Jur. 2d Inheritance, Estate and Gift Taxes §§ 3, 7, 60, 63, 66, 288, 304.

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 §§ 1116, 1123, 1132, 1138, 1141.

7-7-5. Tax return.

The personal representative of every estate subject to the tax imposed by the Estate Tax Act [7-7-1 to 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.

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 §§ 1166, 1169, 1220, 1223.

7-7-6. Date payment due.

The taxes imposed by the Estate Tax Act [7-7-1 to 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.

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 statutory provisions).

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 §§ 1166, 1169, 1220, 1223.

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 to 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.

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 §§ 1166, 1169, 1220, 1223.

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 to 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.

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 to 7-7-12 NMSA 1978] are paid.

History: 1953 Comp., § 72-33-9, enacted by Laws 1973, ch. 345, § 9; 1989, ch. 122, § 6.

Cross-references. - As to 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. - 42 Am. Jur. 2d Inheritance, Estate and Gift Taxes §§ 3, 318.

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 § 1169.

7-7-10. Administration.

The Estate Tax Act [7-7-1 to 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.

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 to 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 to 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.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 42 Am. Jur. 2d Inheritance, Estate and Gift Taxes §§ 321, 324.

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.

This act may be cited as the "Art Acceptance Act".

History: 1978 Comp., § 7-7-15, enacted by Laws 1983, ch. 209, § 1.

Meaning of "this act". - The term "this act" means Laws 1983, Chapter 209, which appears as 7-7-15 to 7-7-20 NMSA 1978.

7-7-16. Definitions.

As used in the Art Acceptance Act:

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.

Art Acceptance Act. - See 7-7-15 NMSA 1978 and notes thereto.

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, 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.

Art Acceptance Act. - See 7-7-15 NMSA 1978 and notes thereto.

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 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.

Art Acceptance Act. - See 7-7-15 NMSA 1978 and notes thereto.

ARTICLE 8
UNIFORM UNCLAIMED PROPERTY ACT

7-8-1. Short title.

Chapter 7, Article 8 NMSA 1978 may be cited as the "Uniform Unclaimed Property Act".

History: 1953 Comp., § 22-22-1, enacted by Laws 1959, ch. 132, § 1; 1979, ch. 352, § 1; 1989, ch. 293, § 1.

Cross-references. - As to powers of municipality relative to unclaimed property, see 29-1-13 to 29-1-15 NMSA 1978.

The 1989 amendment, effective November 1, 1989, substituted "Chapter 7, Article 8 NMSA 1978" for "Sections 7-8-1 through 7-8-34 NMSA 1978" and deleted "Disposition of" preceding "Unclaimed Property".

And does 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 this article. Clovis Nat'l Bank v. Callaway, 69 N.M. 119, 364 P.2d 748 (1961).

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, 69 N.M. 119, 364 P.2d 748 (1961).

But 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, 69 N.M. 119, 364 P.2d 748 (1961).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Abandoned, Lost, etc., Property §§ 1 to 11; 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 to 21.

7-8-2. Definitions.

As used in the Uniform Unclaimed Property Act [this article]:

A. "administrator" 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. "apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued or owing by the holder;

C. "banking organization" means a bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker or any organization defined by other law as a bank or banking organization;

D. "business association" means a nonpublic corporation, joint stock company, investment company, business trust, partnership or association for business purposes of two or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company or utility;

E. "domicile" means the state of incorporation of a corporation and the state of the principal place of business of an unincorporated person;

F. "financial organization" means a savings and loan association, cooperative bank building and loan association or credit union;

G. "holder" means a person, wherever organized or domiciled, who is:

(1) in possession of property belonging to another;

(2) a trustee; or

(3) indebted to another on an obligation;

H. "insurance company" means an association, corporation, fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage including accident, burial, casualty, credit life, contract performance, dental,

fidelity, fire, health, hospitalization, illness, life including endowments and annuities, malpractice, marine, mortgage, surety and wage protection insurance;

I. "intangible property" includes:

(1) money, checks, drafts, deposits, interest, dividends and income;

(2) credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets and unidentified remittances;

(3) stocks and other intangible ownership interests in business associations;

(4) money deposited to redeem stocks, bonds, coupons and other securities or to make distributions;

(5) amounts due and payable under the terms of insurance policies; and

(6) amounts 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;

J. "last known address" means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail;

K. "owner" means a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, a creditor, claimant or payee in the case of other intangible property or a person having a legal or equitable interest in property subject to that act or his legal representative;

L. "person" means an individual, business association, state or other government, governmental subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest or any other legal or commercial entity;

M. "state" means any state, district, commonwealth, territory, insular possession or any other area subject to the legislative authority of the United States; and

N. "utility" means a person who owns or operates for public use any plant, equipment, 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: 1978 Comp., § 7-8-2, enacted by Laws 1989, ch. 293, § 2.

Repeals and reenactments. - Laws 1989, ch. 293, § 2 repeals former 7-8-2 NMSA 1978, as amended by Laws 1986, ch. 20, § 61, relating to definitions, and enacts the

above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-3. Property presumed abandoned; general rule.

A. Except as otherwise provided by the Uniform Unclaimed Property Act [this article], all intangible property including any income or increment derived therefrom, less any lawful charges, that is held, issued or owing in the ordinary course of a holder's business and has remained unclaimed by the owner for more than five years after it became payable or distributable is presumed abandoned.

B. Property is payable or distributable for the purpose of the Uniform Unclaimed Property Act notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

History: 1978 Comp., § 7-8-3, enacted by Laws 1989, ch. 293, § 3.

Repeals and reenactments. - Laws 1989, ch. 293, § 3 repeals former 7-8-3 NMSA 1978, as amended by Laws 1985, ch. 48, § 2, relating to property held by banking or financial institutions or by business associations, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-4. General rules for taking custody of intangible unclaimed property.

Unless otherwise provided in the Uniform Unclaimed Property Act [this article] or by other statute of this state, intangible property is subject to the custody of this state as unclaimed property if the conditions raising a presumption of abandonment under Sections 7-8-3 and 7-8-6 through 7-8-16 NMSA 1978 are satisfied and:

A. the last known address, as shown on the records of the holder, of the apparent owner is in this state;

B. 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;

C. the records of the holder do not reflect the last known address of the apparent owner, and it is established that:

(1) the last known address of the person entitled to the property is in this state; or

(2) the holder is a domiciliary or a government or governmental subdivision or agency 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;

D. the last known address, as shown on the records of the holder, of the apparent owner is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property and the holder is a domiciliary or a government or governmental subdivision or agency of this state;

E. the last known address, as shown on the records of the holder, of the apparent owner is in a foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this state; or

F. the transaction out of which the property arose occurred in this state, and:

(1) the last known address of the apparent owner or other person entitled to the property:

(a) is unknown; or

(b) is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property; and

(2) the holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

History: 1978 Comp., § 7-8-4, enacted by Laws 1989, ch. 293, § 4.

Cross-references. - As to liability for failure to exercise due diligence in attempting to locate owner of certain properties, see 7-8-20 NMSA 1978.

Repeals and reenactments. - Laws 1989, ch. 293, § 4 repeals former 7-8-4 NMSA 1978, as amended by Laws 1985, ch. 48, § 3, relating to unclaimed funds held by life insurance corporations, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-5. Traveler's checks and money orders.

A. Subject to Subsection D of this section any sum payable on a traveler's check that has been outstanding for more than fifteen years after its issuance is presumed abandoned unless the owner, within fifteen years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

B. Subject to Subsection D of this section, any sum payable on a money order or similar written instrument, other than a third-party bank check, that has been outstanding for more than seven years after its issuance is presumed abandoned unless the owner, within seven years, has communicated in writing with the issuer concerning it or

otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

C. A holder may not deduct from the amount of a traveler's check or money order any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the issuer and the owner of the instrument pursuant to which the issuer may impose a charge and the issuer regularly imposes such charges and does not regularly reverse or otherwise cancel them.

D. No sum payable on a traveler's check, money order or similar written instrument, other than a third-party bank check, described in Subsection A or B of this section may be subjected to the custody of this state as unclaimed property unless:

(1) the records of the issuer show that the traveler's check, money order or similar written instrument was purchased in this state;

(2) the issuer has its principal place of business in this state and the records of the issuer do not show the state in which the traveler's check, money order or similar written instrument was purchased; or

(3) the issuer has its principal place of business in this state, the records of the issuer show the state in which the traveler's check, money order or similar written instrument was purchased and the laws of the state of purchase do not provide for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

E. Notwithstanding any other provision of the Uniform Unclaimed Property Act [this article], Subsection D of this section applies to sums payable on traveler's checks, money orders and similar written instruments presumed abandoned on or after February 1, 1965, except to the extent that those sums have been paid over to a state prior to January 1, 1974.

History: 1978 Comp., § 7-8-5, enacted by Laws 1989, ch. 293, § 5.

Repeals and reenactments. - Laws 1989, ch. 293, § 5 repeals former 7-8-5 NMSA 1978, as amended by Laws 1985, ch. 48, § 4, relating to deposits and refunds held by utilities, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-6. Checks, drafts and similar instruments issued or certified by banking and financial organizations.

A. Any sum payable on a check, draft or similar instrument, except those subject to Section 7-8-5 NMSA 1978, on which a banking or financial organization is directly liable, including a cashier's check and a certified check, which has been outstanding for more

than five years after it was payable or after its issuance if payable on demand, is presumed abandoned, unless the owner, within five years, has communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee thereof.

B. A holder may not deduct from the amount of any instrument subject to this section any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose a charge, and the holder regularly imposes such charges and does not regularly reverse or otherwise cancel them.

History: 1978 Comp., § 7-8-6, enacted by Laws 1989, ch. 293, § 6.

Repeals and reenactments. - Laws 1989, ch. 293, § 6 repeals former 7-8-6 NMSA 1978, as amended by Laws 1985, ch. 48, § 5, relating to undistributed dividends and distributions of business associations, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-6.1. Bank deposits and funds in financial organizations.

A. Any demand, savings or matured time deposit with a banking or financial organization, including a deposit that is automatically renewable and any funds paid toward the purchase of a share, a mutual investment certificate or any other interest in a banking or financial organization, is presumed abandoned unless the owner, within five years has:

(1) in the case of a deposit, increased or decreased its amount or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(2) communicated in writing with the banking or financial organization concerning the property;

(3) otherwise indicated an interest in the property as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization;

(4) owned other property to which Paragraph (1), (2) or (3) of this subsection applies and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be presumed abandoned under this subsection at the address to which communications regarding the other property regularly are sent; or

(5) had another relationship with the banking or financial organization concerning which the owner has:

(a) communicated in writing with the banking or financial organization; or

(b) otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship regularly are sent.

B. For purposes of Subsection A of this section, "property" includes interest and dividends.

C. A holder may not impose with respect to property described in Subsection A of this section any charge due to dormancy or inactivity or cease payment of interest unless:

(1) there is an enforceable written contract between the holder and the owner of the property pursuant to which the holder may impose a charge or cease payment of interest;

(2) for property in excess of two dollars ($2.00), the holder, no more than three months before the initial imposition of those charges or cessation of interest, has given written notice to the owner of the amount of those charges at the last known address of the owner stating that those charges will be imposed or that interest will cease, but the notice provided in this section need not be given with respect to charges imposed or interest ceased before the effective date of the Uniform Unclaimed Property Act [this article]; and

(3) the holder regularly imposes such charges or ceases payment of interest and does not regularly reverse or otherwise cancel them or retroactively credit interest with respect to the property.

D. Any property described in Subsection A of this section that is automatically renewable is matured for purposes of Subsection A of this section upon the expiration of its initial time period, but in the case of any renewal to which the owner consents at or about the time of renewal by communicating in writing with the banking or financial organization or otherwise indicating consent as evidenced by a memorandum or other record on file prepared by an employee of the organization, the property is matured upon the expiration of the last time period for which consent was given. If, at the time provided for delivery in Section 7-8-19 NMSA 1978, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the time when no penalty or forfeiture would result.

E. The Uniform Unclaimed Property Act shall not apply to any 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.

History: 1978 Comp., § 7-8-6.1, enacted by Laws 1989, ch. 293, § 7; 1991, ch. 151, § 1.

Repeals and reenactments. - Laws 1989, ch. 293, § 7 repeals former 7-8-6.1 NMSA 1978, as amended by Laws 1981, ch. 195, § 1, relating to issued certificates of ownerships presumed abandoned, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

The 1991 amendment, effective June 14, 1991, added Subsection E.

7-8-7. Funds owing under life insurance policies.

A. Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than five years after the funds became due and payable as established from the records of the insurance company holding or owing the funds, but property described in Paragraph (2) of Subsection C of this section is presumed abandoned if unclaimed for more than two years.

B. If a person other than the insured or annuitant is entitled to the funds and an address of the person is not known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the company.

C. For purposes of the Uniform Unclaimed Property Act [this article], a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the company is matured and the proceeds due and payable if:

(1) the company knows that the insured or annuitant has died; or

(2) the following conditions pertain:

(a) the insured has attained, or would have attained if he were living, the limiting age under the mortality table on which the reserve is based;

(b) the policy was in force at the time the insured attained, or would have attained, the limiting age specified in Subparagraph (a) of this paragraph; and

(c) neither the insured nor any other person appearing to have an interest in the policy within the preceding two years, according to the records of the company, has assigned, readjusted or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the company concerning the policy or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.

D. For purposes of the Uniform Unclaimed Property Act, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from being matured or terminated under Subsection A of this section if the insured has died or the insured or the beneficiary of the policy otherwise has become entitled to the proceeds thereof before the depletion of the cash surrender value of a policy by the application of those provisions.

E. If the laws of this state or the terms of the life insurance policy require the company to give notice to the insured or owner that an automatic premium loan provision or other nonforfeiture provision has been exercised and the notice, given to an insured or owner whose last known address according to the records of the company is in this state, is undeliverable, the company shall make a reasonable search to ascertain the policyholder's correct address to which the notice shall be mailed.

F. Notwithstanding any other provision of law, if the company learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurer within four months after the death, the company shall take reasonable steps to pay the proceeds to the beneficiary.

G. Commencing two years after the effective date of the Uniform Unclaimed Property Act, every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this state shall request the following information:

(1) the name of each beneficiary or, if a class of beneficiaries is named, the name of each current beneficiary in the class;

(2) the address of each beneficiary; and

(3) the relationship of each beneficiary to the insured.

History: 1978 Comp., § 7-8-7, enacted by Laws 1989, ch. 293, § 8.

Repeals and reenactments. - Laws 1989, ch. 293, § 8 repeals former 7-8-7 NMSA 1978, as amended by Laws 1959, ch. 132, § 7, relating to property of business associations and banking or financial organizations held in course of dissolution, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

Effective date of the Uniform Unclaimed Property Act. - The phrase "effective date of the Uniform Unclaimed Property Act", referred to in Subsection G, means November 1, 1989, the effective date of Laws 1989, ch. 293.

7-8-8. Deposits held by utilities.

A deposit, including any interest thereon, made by a subscriber with a utility to secure payment or any sum paid in advance for utility services to be furnished, less any lawful deductions, that remains unclaimed by the owner for more than one year after termination of the services for which the deposit or advance payment was made is presumed abandoned.

History: 1978 Comp., § 7-8-8, enacted by Laws 1989, ch. 293, § 9.

Repeals and reenactments. - Laws 1989, ch. 293, § 9 repeals former 7-8-8 NMSA 1978, as amended by Laws 1985, ch. 48, § 6, relating to property held by fiduciaries, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-9. Refunds held by business associations.

Except to the extent otherwise ordered by a court or administrative agency, any sum that a business association has been ordered to refund by a court or administrative agency which has remained unclaimed by the owner for more than one year after it became payable in accordance with the final determination or order providing for the refund, whether or not the final determination or order requires any person entitled to a refund to make a claim for it, is presumed abandoned.

History: 1978 Comp., § 7-8-9, enacted by Laws 1989, ch. 293, § 10.

Repeals and reenactments. - Laws 1989, ch. 293, § 10 repeals former 7-8-9 NMSA 1978, as amended by Laws 1985, ch. 48, § 7, relating to property held by state courts and public officers and agencies, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-10. Stock and other intangible interests in business associations.

A. Except as provided in Subsections B and E of this section, stock or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder if a dividend, distribution or other sum payable as a result of the interest has remained unclaimed by the owner for seven years and the owner within seven years has not:

(1) communicated in writing with the association regarding the interest or a dividend, distribution or other sum payable as a result of the interest; or

(2) otherwise communicated with the association regarding the interest or a dividend, distribution or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association.

B. At the expiration of a seven-year period following the failure of the owner to claim a dividend, distribution or other sum payable to the owner as a result of the interest, the interest is not presumed abandoned unless there have been at least seven dividends, distributions or other sums paid during the period, none of which has been claimed by the owner. If seven dividends, distributions or other sums are paid during the seven-year period, the period leading to a presumption of abandonment commences on the date payment of the first unclaimed dividend, distribution or other sum became due and payable. If seven dividends, distributions or other sums are not paid during the presumptive period, the period continues to run until there have been seven dividends, distributions or other sums that have not been claimed by the owner.

C. The running of the seven-year period of abandonment ceases immediately upon the occurrence of a communication referred to in Subsection A of this section. If any future dividend, distribution or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back to the time a subsequent dividend, distribution or other sum became due and payable.

D. At the time an interest is presumed abandoned under this section, any dividend, distribution or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed abandoned.

E. The Uniform Unclaimed Property Act [this article] shall not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions or other sums payable as a result of the interest unless the records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within seven years communicated in any manner described in Subsection A of this section.

F. The Uniform Unclaimed Property Act shall not apply to any patronage capital or other tangible ownership interest in a rural electric or telephone cooperative if the bylaws of the cooperative provide for unclaimed patronage capital to be used for educational scholarships or other charitable uses.

History: 1978 Comp., § 7-8-10, enacted by Laws 1989, ch. 293, § 11; 1991, ch. 151, § 2.

Repeals and reenactments. - Laws 1989, ch. 293, § 11 repeals former 7-8-10 NMSA 1978, as amended by Laws 1985, ch. 48, § 8, relating to presumption of abandonment of personal property held by government, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

The 1991 amendment, effective June 14, 1991, inserted "or telephone" following "electric" in Subsection F and made minor stylistic changes in Subsections B and F.

7-8-11. Property of business associations held in course of dissolution.

Intangible property distributable in the course of a dissolution of a business association which remains unclaimed by the owner for more than one year after the date specified for final distribution is presumed abandoned.

History: 1978 Comp., § 7-8-11, enacted by Laws 1989, ch. 293, § 12.

Repeals and reenactments. - Laws 1989, ch. 293, § 12 repeals former 7-8-11 NMSA 1978, as amended by Laws 1985, ch. 48, § 9, relating to miscellaneous personal property held for another person, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-12. Property held by agents and fiduciaries.

A. Intangible property and any income or increment derived therefrom held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner, within five years after it has become payable or distributable, has increased or decreased the principal, accepted payment of principal or income, communicated concerning the property or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by the fiduciary.

B. Funds in an individual retirement account or a retirement plan for self-employed individuals or similar account or plan established pursuant to the internal revenue laws of the United States are not payable or distributable within the meaning of Subsection A of this section unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

C. For the purpose of this section, a person who holds property as an agent for a business association is deemed to hold the property in a fiduciary capacity for that business association alone, unless the agreement between him and the business association provides otherwise.

D. For the purposes of the Uniform Unclaimed Property Act [this article], a person who is deemed to hold property in a fiduciary capacity for a business association alone is the holder of the property only insofar as the interest of the business association in the property is concerned, and the business association is the holder of the property insofar as the interest of any other person in the property is concerned.

History: 1978 Comp., § 7-8-12, enacted by Laws 1989, ch. 293, § 13.

Repeals and reenactments. - Laws 1989, ch. 293, § 13 repeals former 7-8-12 NMSA 1978, as amended by Laws 1959, ch. 132, § 11, relating to reciprocity for property presumed abandoned or escheated under the laws of another state, and enacts the

above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-13. Property held by courts and public agencies.

Intangible property held for the owner by a court, state or other government, governmental subdivision or agency, public corporation or public authority which remains unclaimed by the owner for more than one year after becoming payable or distributable is presumed abandoned.

History: 1978 Comp., § 7-8-13, enacted by Laws 1989, ch. 293, § 14.

Repeals and reenactments. - Laws 1989, ch. 293, § 14 repeals former 7-8-13 NMSA 1978, as amended by Laws 1985, ch. 48, § 10, relating to report of abandoned property, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-14. Gift certificates and credit memos.

A. A gift certificate or a credit memo issued in the ordinary course of an issuer's business which remains unclaimed by the owner for more than five years after becoming payable or distributable is presumed abandoned.

B. In the case of a gift certificate, the amount presumed abandoned is the price paid by the purchaser for the gift certificate. In the case of a credit memo, the amount presumed abandoned is the amount credited to the recipient of the memo.

History: 1978 Comp., § 7-8-14, enacted by Laws 1989, ch. 293, § 15.

Repeals and reenactments. - Laws 1989, ch. 293, § 15 repeals former 7-8-14 NMSA 1978, as amended by Laws 1985, ch. 48, § 11, relating to notice and publication of lists of abandoned property, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-15. Wages.

Unpaid wages, including wages represented by unpresented payroll checks, owing in the ordinary course of the holder's business which remain unclaimed by the owner for more than one year after becoming payable are presumed abandoned.

History: 1978 Comp., § 7-8-15, enacted by Laws 1989, ch. 293, § 16.

Repeals and reenactments. - Laws 1989, ch. 293, § 16 repeals former 7-8-15 NMSA 1978, as amended by Laws 1967, ch. 256, § 4, relating to payment or delivery of abandoned property, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-16. Contents of safe deposit box or other safekeeping repository.

All tangible and intangible property held in a safe deposit box or any other safekeeping repository 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, which remain unclaimed by the owner for more than five years after the lease or rental period on the box or other repository has expired, are presumed abandoned.

History: 1978 Comp., § 7-8-16, enacted by Laws 1989, ch. 293, § 17.

Repeals and reenactments. - Laws 1989, ch. 293, § 17 repeals former 7-8-16 NMSA 1978, as amended by Laws 1965, ch. 298, § 6, relating to relief from liability by payment or delivery, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-17. Report of abandoned property.

A. A person holding property tangible or intangible, presumed abandoned and subject to custody as unclaimed property under the Uniform Unclaimed Property Act [this article] shall report to the administrator concerning the property as provided in this section.

B. The report shall be verified and shall include:

(1) except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of the property of the value of twenty-five dollars ($25.00) or more presumed abandoned under that act;

(2) in the case of unclaimed funds of twenty-five dollars ($25.00) or more held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds;

(3) in the case of the contents of a safe deposit box or other safekeeping repository or of other tangible property, a description of the property and the place where it is held and may be inspected by the administrator and any amounts owing to the holder;

(4) the nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, but items of value under twenty-five dollars ($25.00) each may be reported in the aggregate;

(5) the date the property became payable, demandable or returnable and the date of the last transaction with the apparent owner with respect to the property; and

(6) other information an administrator prescribes by rule as necessary for the administration of that act.

C. If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner or the holder has changed his name while holding the property, he shall file with his report all known names and addresses of each previous holder of the property.

D. The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of any life insurance company shall be filed before May 1 of each year as of December 31 next preceding. On written request by any person required to file a report, the administrator may postpone the reporting date.

E. Not more than one hundred twenty days before filing the report required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under the Uniform Unclaimed Property Act shall send written notice to the apparent owner at his last known address informing him that the holder is in possession of property subject to that act if:

(1) the holder has in his 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 the statute of limitations; and

(3) the property has a value of fifty dollars ($50.00) or more.

History: 1978 Comp., § 7-8-17, enacted by Laws 1989, ch. 293, § 18.

Repeals and reenactments. - Laws 1989, ch. 293, § 18 repeals former 7-8-17 NMSA 1978, as amended by Laws 1965, ch. 296, § 7, relating to income accruing after payment or delivery, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-18. Notice and publication of lists of abandoned property.

A. The administrator shall cause a notice to be published not later than March 1, or in the case of property reported by life insurance companies, September 1, of the year immediately following the report required by Section 7-8-17 NMSA 1978 at least once a week for two consecutive weeks in a newspaper of general circulation in the county of this state in which is located the last known address of any person to be named in the notice. If no address is listed or the address is outside this state, the notice shall be published in the county in which the holder of the property has its principal place of business within this state.

B. The published notice shall be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property" and contain:

(1) the names in alphabetical order and last known address, if any, of persons listed in the report and entitled to notice within the county as specified in Subsection A of this section;

(2) a statement that information concerning the property and the name and last known address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the administrator; and

(3) 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 April 20, or, in the case of property reported by life insurance companies, before October 20, the property will be placed not later than May 1, or in the case of property reported by life insurance companies, not later than November 1, in the custody of the administrator and all further claims shall thereafter be directed to the administrator.

C. The administrator is not required to publish in the notice any items of less than fifty dollars ($50.00) unless the administrator considers their publication to be in the public interest.

D. Not later than March 1, or in the case of property reported by life insurance companies, not later than September 1, of the year immediately following the report required by Section 7-8-17 NMSA 1978, the administrator shall mail a notice to each person whose last known address is listed in the report and who appears to be entitled to property of the value of fifty dollars ($50.00) or more presumed abandoned under that act and any beneficiary of a life or endowment insurance policy or annuity contract for whom the administrator has a last known address.

E. The mailed notice shall contain:

(1) a statement that, according to a report filed with the administrator, property is being held to which the addressee appears entitled;

(2) the name and last known address of the person holding the property and any necessary information regarding the changes of name and last known address of the holder; and

(3) a statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property shall be placed in the custody of the administrator and all further claims shall be directed to the administrator.

F. This section is not applicable to sums payable on traveler's checks, money orders and other written instruments presumed abandoned under Section 7-8-5 NMSA 1978.

History: 1978 Comp., § 7-8-18, enacted by Laws 1989, ch. 293, § 19.

Repeals and reenactments. - Laws 1989, ch. 293, § 19 repeals former 7-8-18 NMSA 1978, as amended by Laws 1965, ch. 298, § 8, relating to periods of limitation not a bar, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-19. Payment or delivery of abandoned property.

A. Except as otherwise provided in Subsection B or C of this section, a person who is required to file a report under Section 7-8-17 NMSA 1978, within six months after the final date for filing the report as required by that section, shall pay or deliver to the administrator all abandoned property required to be reported.

B. If the owner establishes the right to receive the abandoned property to the satisfaction of the holder before the property has been delivered or it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property to the administrator, and the property will no longer be presumed abandoned. In that case, the holder shall file with the administrator a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

C. Property reported under Section 7-8-17 NMSA 1978, for which the holder is not required to report the name of the apparent owner shall be delivered to the administrator at the time of filing the report.

D. The holder of an interest under Section 7-8-10 NMSA 1978 shall deliver a duplicate certificate or other evidence of ownership if the holder does not issue certificates of ownership to the administrator. Upon delivery of a duplicate certificate to the administrator, the holder and any transfer agent, registrar or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability of every kind in accordance with the provisions of Section 7-8-20 NMSA 1978 to every person, including any person acquiring the original certificate or the duplicate of the certificate issued to the administrator, for any losses or damages resulting to any persons by the issuance and delivery to the administrator of the duplicate certificate.

History: 1978 Comp., § 7-8-19, enacted by Laws 1989, ch. 293, § 20.

Repeals and reenactments. - Laws 1989, ch. 293, § 20 repeals former 7-8-19 NMSA 1978, as amended by Laws 1965, ch. 298, § 9, relating to preferential right of business association to purchase its issued stock when presumed abandoned, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-20. Custody by state; holder relieved from liability; reimbursement of holder paying claim; reclaiming for owner;

defense of holder; payment of safe deposit box or repository charges.

A. Upon the payment or delivery of property to the administrator, the state assumes custody and responsibility for the safekeeping of the property. A person who pays or delivers property to the administrator in good faith is relieved of all liability to the extent of the value of the property paid or delivered for any claim then existing or which thereafter may arise or be made in respect to the property.

B. A holder who has paid money to the administrator pursuant to the Uniform Unclaimed Property Act [this article] may make payment to any person appearing to the holder to be entitled to payment and, upon filing proof of payment and proof that the payee was entitled thereto, the administrator shall promptly reimburse the holder for the payment without imposing any 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 shall be reimbursed under this subsection upon filing proof that the instrument was duly presented and that payment was made to a person who appeared to the holder to be entitled to payment. The holder shall be reimbursed for payment made under this subsection even if the payment was made to a person whose claim was barred under Subsection A of Section 7-8-29 NMSA 1978.

C. A holder who has delivered property, including a certificate of any interest in a business association other than money to the administrator pursuant to the Uniform Unclaimed Property Act may reclaim the property if still in the possession of the administrator, without paying any fee or other charge, upon filing proof that the owner has claimed the property from the holder.

D. The administrator may accept the holder's affidavit as sufficient proof of the facts that entitle the holder to recover money and property under this section.

E. If the 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.

F. For the purposes of this section, "good faith" means that:

(1) payment or delivery was made in a reasonable attempt to comply with the Uniform Unclaimed Property Act;

(2) the person delivering the property was not a fiduciary then in breach of trust in respect to the property and had a reasonable basis for believing, based on the facts then known to him that the property was abandoned for the purposes of the Uniform Unclaimed Property Act; and

(3) there is no showing that the records pursuant to which the delivery was made did not meet reasonable commercial standards of practice in the industry.

G. Property removed from a safe deposit box or other safekeeping repository is received by the administrator subject to the holder's right under this subsection to be reimbursed for the actual 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 or pay the holder out of the proceeds remaining after deducting the administrator's selling cost.

History: 1978 Comp., § 7-8-20, enacted by Laws 1989, ch. 293, § 21.

Repeals and reenactments. - Laws 1989, ch. 293, § 21 repeals former 7-8-20 NMSA 1978, as amended by Laws 1981, ch. 195, § 2, relating to ownership in a business association presumed abandoned; cancellation and reissuance by business association in certain cases, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-20.1. Exercise of due diligence; liability; notice.

A. Notwithstanding any other provisions of the Uniform Unclaimed Property Act [this article], 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 Sections 7-8-3 and 7-8-6 through 7-8-16 NMSA 1978 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 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 Sections 7-8-8, 7-8-9, 7-8-11, 7-8-13 and 7-8-15 NMSA 1978 shall be made at least thirty days, but not more than ninety days, prior to the due date on which the report pursuant to Section 7-8-17 NMSA 1978 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 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.

Cross-references. - As to general rules for taking custody of intangible unclaimed property, see 7-8-4 NMSA 1978.

Effective dates. - Laws 1990, ch. 98 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

7-8-21. Crediting of dividends, interest, or increments to owner's account.

Whenever property other than money is paid or delivered to the administrator under the Uniform Unclaimed Property Act [this article], the owner is entitled to receive from the administrator any dividends, interest or other increments realized or accruing on the property at or before liquidation or conversion thereof into money.

History: 1978 Comp., § 7-8-21, enacted by Laws 1989, ch. 293, § 22.

Repeals and reenactments. - Laws 1989, ch. 293, § 22 repeals former 7-8-21 NMSA 1978, as amended by Laws 1961, ch. 171, § 3, relating to relief from liability; business association exercising preferential right or cancelling shares, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-22. Public sale of abandoned property.

A. Except as provided in Subsection B or C of this section, the administrator, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale in whatever city in the state affords, in the judgment of the administrator, the most favorable market for the property involved. The administrator may decline the highest bid and reoffer the property for sale if in the judgment of the administrator the bid is insufficient. If in the judgment of the administrator the probable cost of sale exceeds the value of the property, it need not be offered for sale. Any sale held under this section shall be preceded by a single publication of notice, at least three weeks in advance of 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 shall be sold at prices prevailing at the time of sale on the exchange. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the administrator considers advisable.

C. Unless the administrator considers it to be in the best interest of the state to do otherwise, all securities, other than those presumed abandoned under Section 7-8-10 NMSA 1978, delivered to the administrator shall be held for at least one year before he may sell them.

D. Unless the administrator considers it to be in the best interest of the state to do otherwise, all securities presumed abandoned under Section 7-8-10 NMSA 1978 and delivered to the administrator shall be held for at least three years before he may sell them. If the administrator sells any securities delivered pursuant to that section before the expiration of the three-year period, any person making a claim pursuant to the Uniform Unclaimed Property Act [this article] before the end of the three-year period is entitled to either the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever amount is greater, less any deduction for fees pursuant to Subsection B of Section 7-8-23 NMSA 1978. A person making a claim under that act after the expiration of this period is entitled to receive

either the securities delivered to the administrator by the holder, if they still remain in the hands of the administrator, or the proceeds received from sale, less any amounts deducted pursuant to Section B of Section 7-8-23 NMSA 1978, but no person has any claim under that act against the state, the holder, any transfer agent, registrar or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the administrator.

E. The purchaser of property at any sale conducted by the administrator pursuant to the Uniform Unclaimed Property Act takes the property free of all claims of the owner or previous holder thereof and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

History: 1978 Comp., § 7-8-22, enacted by Laws 1989, ch. 293, § 23.

Repeals and reenactments. - Laws 1989, ch. 293, § 23 repeals former 7-8-22 NMSA 1978, as amended by Laws 1985, ch. 48, § 12, relating to sale of abandoned property, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-23. Deposit of funds.

A. Except as otherwise provided by this section, the administrator shall promptly deposit in the general fund all funds received under the Uniform Unclaimed Property Act [this article], including the proceeds from the sale of abandoned property under Section 7-8-22 NMSA 1978. The administrator shall retain in unclaimed property suspense fund, hereby established in the state treasury, an amount not less than one hundred thousand dollars ($100,000) from which prompt payment of claims duly allowed shall be made by him. Before making the deposit, 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 contract listed in the report of an insurance company its number, the name of the company and the amount due. The record shall be available for public inspection at all reasonable business hours.

B. Before making any deposit to the credit of the general fund, the administrator may deduct:

(1) any costs in connection with the sale of abandoned property;

(2) costs of mailing and publication in connection with any abandoned property;

(3) reasonable service charges; and

(4) costs incurred in examining records of holders of property and in collecting the property from those holders.

History: 1978 Comp., § 7-8-23, enacted by Laws 1989, ch. 293, § 24.

Repeals and reenactments. - Laws 1989, ch. 293, § 24 repeals former 7-8-23 NMSA 1978, as amended by Laws 1965, ch. 298, § 12, relating to claim for abandoned property paid or delivered, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-24. Filing of claim with administrator.

A. A person, excluding another state, claiming an interest in any property paid or delivered to the administrator may file with him a claim on a form prescribed by him and verified by the claimant.

B. The administrator shall consider each claim within ninety days after it is filed and give written notice to the claimant if the claim is denied in whole or in part. The notice may be given by mailing it to the last address, if any, stated in the claim as the address to which notices are to be sent. If no address for notices is stated in the claim, the notice may be mailed to the last address, if any, of the claimant as stated in the claim. No notice of denial need be given if the claim fails to state either the last address to which notices are to be sent or the address of the claimant.

C. If a claim is allowed, the administrator shall pay over or deliver to the claimant the property or the amount the administrator actually received or the net proceeds if it has been sold by the administrator, together with any additional amount required by Section 7-8-21 NMSA 1978. If the claim is for property presumed abandoned under Section 7-8-10 NMSA 1978 which was sold by the administrator within three years after the date of delivery, the amount payable for that claim is the value of the property at the time the claim was made or the net proceeds of sale, whichever is greater. If the property claimed was interest-bearing to the owner on the date of surrender by the holder, the administrator also 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. No interest on interest-bearing property is payable for any period before the effective date of the Uniform Unclaimed Property Act.

D. Any holder who pays the owner for property that has been delivered to the state and which, if claimed from the administrator, would be subject to Subsection C of this section, shall add interest as provided in that subsection. The added interest shall be repaid to the holder by the administrator in the same manner as the principal.

History: 1978 Comp., § 7-8-24, enacted by Laws 1989, ch. 293, § 25.

Repeals and reenactments. - Laws 1989, ch. 293, § 25 repeals former 7-8-24 NMSA 1978, as amended by Laws 1985, ch. 48, § 13, relating to deposit of funds in reserve

fund; escheat provisions, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

Temporary provisions. - Laws 1989, ch. 293, § 43 provides that on November 1, 1989, the administrator shall cause the transfer of the balance of the suspense fund pursuant to Paragraph (4) of Subsection C of that version of Section 7-8-24 NMSA 1978 in effect prior to November 1, 1989, and such amount as the administrator deems appropriate from the reserve investment fund pursuant to Subsection A of that version of Section 7-8-24 NMSA 1978 in effect prior to November 1, 1989, to the unclaimed property suspense fund, and provides further that the balance in the reserve investment fund remaining after the transfer to the unclaimed property suspense fund authorized by this section shall be transferred to the general fund.

Effective date of the Uniform Unclaimed Property Act. - The phrase "effective date of the Uniform Unclaimed Property Act", referred to in Subsection C, means November 1, 1989, the effective date of Laws 1989, ch. 293.

7-8-25. Claim of another state to recover property; procedure.

A. At any time after property has been paid or delivered to the administrator under the Uniform Unclaimed Property Act [this article] another state may recover the property if:

(1) the property was subjected to custody by this state because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed abandoned under that act, and the other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(2) the last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder, is in the other state and under the laws of that state the property has escheated to 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 reflect the actual owner of the property and the last known address of the actual owner is in the other state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(4) the property was subjected to custody by this state under Subsection F of Section 7-8-4 NMSA 1978 and under the laws of the state of domicile of the holder the property has escheated to or become subject to a claim of abandonment by that state; or

(5) the property is the sum payable on a traveler's check, money order or other similar instrument that was subjected to custody by this state under Section 7-8-5 NMSA 1978,

and the instrument was purchased in the other state, and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state.

B. The claim of another state to recover escheated or abandoned property shall 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 if he determines that the other state is entitled to the abandoned property under Subsection A of this section.

C. The administrator shall require a state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim for the property.

History: 1978 Comp., § 7-8-25, enacted by Laws 1989, ch. 293, § 26.

Repeals and reenactments. - Laws 1989, ch. 293, § 26 repeals former 7-8-25 NMSA 1978, as amended by Laws 1965, ch. 298, § 14, relating to escheat proceedings, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-26. Action to establish claim.

A person aggrieved by a decision of the administrator or whose claim has not been acted upon within ninety days after its filing may bring an action to establish the claim in the district court of Santa Fe, naming the administrator as a defendant. The action shall be brought within ninety days after the decision of the administrator or within one hundred eighty days after the filing of the claim if he has failed to act on it. If the aggrieved person establishes the claim in an action against the administrator, the court shall award him costs and reasonable attorney's fees.

History: 1978 Comp., § 7-8-26, enacted by Laws 1989, ch. 293, § 27.

Repeals and reenactments. - Laws 1989, ch. 293, § 27 repeals former 7-8-26 NMSA 1978, as amended by Laws 1965, ch. 298, § 15, relating to determination of claims, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-27. Election to take payment or delivery.

A. The administrator may decline to receive any property reported under the Uniform Unclaimed Property Act [this article] which he considers to have a value less than the expense of giving notice and of sale. If the administrator elects not to receive custody of the property, the holder shall be notified within one hundred twenty days after filing the report required under Section 7-8-17 NMSA 1978.

B. A holder, with the written consent of the administrator and upon conditions and terms prescribed by him, may report and deliver property before the property is presumed abandoned. Property delivered under this subsection shall be held by the administrator and is not presumed abandoned until such time as it otherwise would be presumed abandoned under the Uniform Unclaimed Property Act.

History: 1978 Comp., § 7-8-27, enacted by Laws 1989, ch. 293, § 28.

Repeals and reenactments. - Laws 1989, ch. 293, § 28 repeals former 7-8-27 NMSA 1978, as amended by Laws 1965, ch. 298, § 16, relating to judicial action upon determinations, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-28. Destruction or disposition of property having insubstantial commercial value; immunity from liability.

If the administrator determines after investigation that any property delivered under the Uniform Unclaimed Property Act [this article] has insubstantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. No action or proceeding may be maintained against the state or any officer or against the holder for or on account of any action taken by the administrator pursuant to this section.

History: 1978 Comp., § 7-8-28, enacted by Laws 1989, ch. 293, § 29.

Repeals and reenactments. - Laws 1989, ch. 293, § 29 repeals former 7-8-28 NMSA 1978, as amended by Laws 1971, ch. 19, § 2, relating to election to take payment or delivery and destruction of property having no commercial value, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-29. Periods of limitation.

A. The expiration, before or after the effective date of the Uniform Unclaimed Property Act, of any period of time specified by contract, statute or court order, during which a claim for money or property can be made or during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or to recover property, shall not prevent the money or property from being presumed abandoned or affect any duty to file a report or to pay or deliver abandoned property to the administrator as required by that act [this article].

B. No action or proceeding may be commenced by the administrator with respect to any duty of a holder under that act more than ten years after the duty arose.

History: 1978 Comp., § 7-8-29, enacted by Laws 1989, ch. 293, § 30.

Repeals and reenactments. - Laws 1989, ch. 293, § 30 repeals former 7-8-29 NMSA 1978, as amended by Laws 1985, ch. 48, § 14, relating to examination of records, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

Effective date of the Uniform Unclaimed Property Act. - The phrase "effective date of the Uniform Unclaimed Property Act", appearing in Subsection A, means November 1, 1989, the effective date of Laws 1989, ch. 293.

7-8-30. Requests for reports and examination of records.

A. The administrator may require any person who has not filed a report to file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under the Uniform Unclaimed Property Act [this article].

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 provisions of that act. The administrator may conduct the examination even if the person believes it is not in possession of any property reportable or deliverable under that act.

C. If a person is treated under Section 7-8-12 NMSA 1978 as the holder of the property only insofar as the interest of the business association in the property is concerned, the administrator, pursuant to Subsection B of this section, may examine the records of the person if the administrator has given the notice required by Subsection B of this section, to both the person and the business association at least ninety days before the examination.

D. If an examination of the records of a person results in the disclosure of property reportable and deliverable under that act, the administrator may assess the cost of the examination against the holder at the rate of one hundred dollars ($100) a day for each examiner, but in no case may the charges exceed the value of the property found to be reportable and deliverable. The cost of examination made pursuant to Subsection C of this section may be imposed only against the business association.

E. If a holder fails after the effective date of that act to maintain the records required by Section 7-8-31 NMSA 1978 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 such amounts as may reasonably be estimated from any available records.

History: 1978 Comp., § 7-8-30, enacted by Laws 1989, ch. 293, § 31.

Repeals and reenactments. - Laws 1989, ch. 293, § 31 repeals former 7-8-30 NMSA 1978, as amended by Laws 1965, ch. 298, § 19, relating to proceeding to compel

delivery of abandoned property, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

Effective date of that act. - The phrase "effective date of that act", referred to in Subsection E, means November 1, 1989, the effective date of the Uniform Unclaimed Property Act, enacted by Laws 1989, ch. 293.

7-8-31. Retention of records.

A. Every holder required to file a report under Section 7-8-17 NMSA 1978, as to any property for which it has obtained the last known address of the owner, shall maintain a record of the name and last known address of the owner for ten years after the property becomes reportable, except to the extent that a shorter time is provided in Subsection B of this section or by rule of the administrator.

B. Any business association that sells in this state its traveler's checks, money orders or other similar written instruments, other than third-party bank checks on which the business association is directly liable, or that provides such instruments to others for sale in this state, shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue for three years after the date the property is reportable.

History: 1978 Comp., § 7-8-31, enacted by Laws 1989, ch. 293, § 32.

Repeals and reenactments. - Laws 1989, ch. 293, § 32 repeals former 7-8-31 NMSA 1978, as amended by Laws 1965, ch. 298, § 20, relating to prohibited acts and penalties therefore, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-32. Enforcement.

The administrator may bring an action in a court of competent jurisdiction to enforce the Uniform Unclaimed Property Act [this article].

History: 1978 Comp., § 7-8-32, enacted by Laws 1989, ch. 293, § 33.

Repeals and reenactments. - Laws 1989, ch. 293, § 33 repeals former 7-8-32 NMSA 1978, as amended by Laws 1965, ch. 298, § 21, relating to rules and regulations, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-33. Interstate agreements and cooperation; joint and reciprocal actions with other states.

A. The administrator may enter into agreements with other states to exchange information needed to enable this or another state to audit or otherwise determine unclaimed property that it or another state may be entitled to subject to a claim of custody. The administrator by rule may require the reporting of information needed to enable compliance with agreements made pursuant to this section and prescribe the form.

B. To avoid conflicts between the administrator's procedures and the procedures of administrators in other jurisdictions that enact a uniform unclaimed property act, the administrator, so far as is consistent with the purposes, policies and provisions of the Uniform Unclaimed Property Act [this article], before adopting, amending or repealing rules, shall advise and consult with administrators in other jurisdictions that enact substantially a uniform unclaimed property act and take into consideration the rules of administrators in other jurisdictions that enact a uniform unclaimed property act.

C. The administrator may join with other states to seek enforcement of the Uniform Unclaimed Property Act against any person who is or may be holding property reportable under that act.

D. At the request of another state, the attorney general of the state of New Mexico may bring an action in the name of the administrator of the other state in any court of competent jurisdiction to enforce the unclaimed property laws of the other state against a holder in this state 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 bringing the action.

E. The administrator may request that the attorney general of another state or any other person bring an action in the name of the administrator in the other state. This state shall pay all expenses including attorney's fees in any action under this subsection. The administrator may agree to pay the person bringing the action attorney's fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses paid pursuant to this subsection may not be deducted from the amount that is subject to the claim by the owner under the Uniform Unclaimed Property Act.

History: 1978 Comp., § 7-8-33, enacted by Laws 1989, ch. 293, § 34.

Repeals and reenactments. - Laws 1989, ch. 293, § 34 repeals former 7-8-33 NMSA 1978, as amended by Laws 1959, ch. 132, § 28, relating to effect of laws of other states, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-34. Interest and payments.

A. A person who fails to pay or deliver property within the time prescribed by the Uniform Unclaimed Property Act [this article] shall pay to the administrator interest at

the annual rate of interest established in Section 7-1-67 NMSA 1978 on the property or value thereof from the date the property should have been paid or delivered.

B. A person who willfully fails to render any report or perform other duties required under that act shall pay a civil penalty of one hundred dollars ($100) for each day the report is withheld or the duty is not performed, but not more than five thousand dollars ($5,000).

C. A person who willfully fails to pay or deliver property to the administrator as required under that act shall pay a civil penalty equal to twenty-five percent of the value of the property that should have been paid or delivered.

D. A person who willfully refuses after written demand by the administrator to pay or deliver property to the administrator as required under that act is guilty of a petty misdemeanor.

History: 1978 Comp., § 7-8-34, enacted by Laws 1989, ch. 293, § 35.

Repeals and reenactments. - Laws 1989, ch. 293, § 35 repeals former 7-8-34 NMSA 1978, as amended by Laws 1959, ch. 132, § 30, relating to uniformity of interpretation, and enacts the above section effective November 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

7-8-35. Agreement to locate reported property.

All agreements to pay compensation to recover or assist in the recovery of property reported under Section 7-8-17 NMSA 1978, made within twenty-four months after the date payment or delivery is made under Section 7-8-19 NMSA 1978, are unenforceable.

History: 1978 Comp., § 7-8-35, enacted by Laws 1989, ch. 293, § 36.

Effective dates. - Laws 1989, ch. 293, § 42 makes the act effective on November 1, 1989.

7-8-36. Foreign transactions.

The Uniform Unclaimed Property Act [this article] does not apply to any property held, due and owing in a foreign country and arising out of a foreign transaction.

History: 1978 Comp., § 7-8-36, enacted by Laws 1989, ch. 293, § 37.

Effective dates. - Laws 1989, ch. 293, § 42 makes the act effective on November 1, 1989.

7-8-37. Effect of new provisions; clarification of application.

A. The Uniform Unclaimed Property Act [this article] does not relieve a holder of a duty that arose before the effective date of that act to report, pay or deliver property. A holder who did not comply with the law in effect before the effective date of that act is subject to the applicable enforcement and penalty provisions that then existed and they are continued in effect for the purpose of this subsection, subject to Subsection B of Section 7-8-29 NMSA 1978.

B. The initial report filed under the Uniform Unclaimed Property Act for property that was not required to be reported before the effective date of that act but which is subject to that act shall include all items of property that would have been presumed abandoned during the ten-year period preceding the effective date of that act as if that act had been in effect during that period.

History: 1978 Comp., § 7-8-37, enacted by Laws 1989, ch. 293, § 38.

Effective dates. - Laws 1989, ch. 293, § 42 makes the act effective on November 1, 1989.

Effective date of that act. - The phrase "effective date of that act" referred to in Subsection A, means November 1, 1989, the effective date of the Uniform Unclaimed Property Act, enacted by Laws 1989, ch. 293.

7-8-38. Interpretation; rules.

The administrator shall interpret the provisions of the Uniform Unclaimed Property Act [this article] and may adopt in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978] necessary rules to carry out the provisions of the Uniform Unclaimed Property Act.

History: 1978 Comp., § 7-8-38, enacted by Laws 1989, ch. 293, § 39.

Effective dates. - Laws 1989, ch. 293, § 42 makes the act effective on November 1, 1989.

7-8-39. Severability.

If any provision of the Uniform Unclaimed Property Act [this article] or the application thereof to any person or circumstance is held invalid, the invalidity shall 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 that act are severable.

History: 1978 Comp., § 7-8-39, enacted by Laws 1989, ch. 293, § 40.

Effective dates. - Laws 1989, ch. 293, § 42 makes the act effective on November 1, 1989.

7-8-40. Uniformity of application and construction.

The Uniform Unclaimed Property Act [this article] shall be applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of that act among states enacting it.

History: 1978 Comp., § 7-8-40, enacted by Laws 1989, ch. 293, § 41.

Effective dates. - Laws 1989, ch. 293, § 42 makes the act effective on November 1, 1989.

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.

Cross-references. - For the applicability of the Tax Administration Act, see 7-1-2 NMSA 1978.

As to the duties, with respect to taxation, of successors in business, see 7-1-61 to 7-1-64 NMSA 1978.

As to municipal gross receipts taxes generally, see 7-19-1 NMSA 1978.

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, 83 N.M. 110, 488 P.2d 1214 (Ct. App.), cert. denied, 83 N.M. 105, 488 P.2d 1209 (1971), rev'd on other grounds, 409 U.S. 91, 93 S. Ct. 349, 34 L. Ed. 2d 325 (1972).

As are purchasers of property for lease but not lessees. - 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, 82 N.M. 82, 475 P.2d 779 (Ct. App.), cert. denied, 82 N.M. 81, 475 P.2d 778 (1970).

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).

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. - Where government contractor appeals the assessment of a gross receipts tax, penalty and interest, the appellant 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, 83 N.M. 722, 497 P.2d 233 (Ct. App.), cert. denied, 83 N.M. 741, 497 P.2d 743 (1972).

Regulation attacked only if taxpayer's contract properly subject thereunder. - Where 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, 83 N.M. 722, 497 P.2d 233 (Ct. App.), cert. denied, 83 N.M. 741, 497 P.2d 743 (1972).

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).

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).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 68 Am. Jur. 2d Sales and Use Taxes §§ 1, 3; 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 §§ 121 to 123.

7-9-2. Purpose.

The purpose of the Gross Receipts and Compensating Tax Act [this article] 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.

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), rehearing denied, 455 U.S. 929, 102 S. Ct. 1296, 71 L. Ed. 2d 474 (1982).

The 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, 85 N.M. 381, 512 P.2d 954 (Ct. App.), cert. quashed, 85 N.M. 388, 512 P.2d 961 (1973).

Gross Receipts and Compensating Tax Act is general and contains no obvious legislative intent to repeal the special "in lieu of" provision of 60-1-15 NMSA 1978 concerning horse racing licenses. Santa Fe Downs, Inc. v. Bureau of Revenue, 85 N.M. 115, 509 P.2d 882 (Ct. App. 1973).

Gross receipts tax and compensating tax not double taxation. - Where the gross receipts tax and compensating tax were not imposed upon a single transaction, as appellant contented, 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, 82 N.M. 82, 475 P.2d 779 (Ct. App.), cert. denied, 82 N.M. 81, 475 P.2d 778 (1970).

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. New Mexico Bureau of Revenue, 90 N.M. 164, 561 P.2d 26 (Ct. App. 1976).

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, 83 N.M. 743, 497 P.2d 745 (Ct. App.), cert. denied, 83 N.M. 740, 497 P.2d 742 (1972). But see 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 Compensation Tax Act is to provide revenue, and any deductions must receive strict construction in favor of the taxing authority. Reed v. Jones, 81 N.M. 481, 468 P.2d 882 (Ct. App. 1970).

Therefore 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, 81 N.M. 481, 468 P.2d 882 (Ct. App. 1970).

Due to statute's implied rational basis. - Where 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 Adv. Co. v. Bureau of Revenue, 88 N.M. 176, 538 P.2d 1198 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975).

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. (Effective until July 1, 1993.)

As used in the Gross Receipts and Compensating Tax Act [this article]:

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. "buying" or "selling" means any transfer of property for consideration or any performance of service for consideration;

C. "construction" means building, altering, repairing or demolishing in the ordinary course of business any:

(1) road, highway, bridge, parking area or related project;

(2) building, stadium or other structure;

(3) airport, subway or similar facility;

(4) park, trail, athletic field, golf course or similar facility;

(5) dam, reservoir, canal, ditch or similar facility;

(6) 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;

(7) sewerage, water, gas or other pipeline;

(8) transmission line;

(9) radio, television or other tower;

(10) water, oil or other storage tank;

(11) shaft, tunnel or other mining appurtenance;

(12) microwave station or similar facility; or

(13) similar work;

"construction" also means:

(14) leveling or clearing land;

(15) excavating earth;

(16) drilling wells of any type, including seismograph shot holes or core drilling; or

(17) similar work;

D. "financial corporation" means any savings and loan association or any incorporated savings and loan company, trust company, mortgage banking company, consumer finance company or other financial corporation;

E. "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit;

F. "gross receipts" means the total amount of money or the value of other consideration received from selling property in New Mexico, from leasing property 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 and includes any receipts from sales of tangible personal property handled on consignment but excludes cash discounts allowed and taken, New Mexico gross receipts tax payable on transactions for the reporting period and taxes imposed pursuant to the provisions of any local option gross receipts tax 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 property or service exchanged, "gross receipts" means the reasonable value of the property or service exchanged.

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 his interest in any such contract to a third person, he shall pay the gross receipts tax upon the full sale or leasing contract amount, excluding any type of time-price differential.

"Gross receipts", for the purpose of the business of buying, selling or promoting the purchase, sale or leasing, as an agent or broker on a commission or fee basis, of any property, service, stock, bond or security, includes the total commissions or fees derived from the business.

"Gross receipts" also includes 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 and amounts received from transmitting messages or conversations by persons providing telephone or telegraph services,

including interstate and international messages or conversations that either originate or terminate in New Mexico and are billed to a New Mexico telephone number or account;

G. "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;

H. "person" means:

(1) any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, 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) the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof;

I. "property" means real property, tangible personal property, licenses, franchises, patents, trademarks and copyrights. Tangible personal property includes electricity and manufactured homes;

J. "leasing" means any 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 the sale of a license and not a lease;

K. "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. Such 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. However, 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;

L. "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;

M. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

N. "manufactured home" means a moveable or portable housing structure 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 for human occupancy;

O. "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;

P. "research and development services" means any 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) the development of 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) the development of 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) analytical or survey activities incorporating technology review, application, trade-off study, modelling, simulation, conceptual design or similar activities, whether or not offered for sale, lease or other transfer; or

(6) the design and development of prototypes or the integration of systems incorporating advances, developments or improvements included in Paragraphs (1) through (5) of this subsection; and

Q. "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 Gross Receipts Tax Act [7-19-1 to 7-19-9 NMSA 1978], Supplemental Municipal Gross

Receipts Tax Act [7-19-10 to 7-19-18 NMSA 1978], Special Municipal Gross Receipts Tax Act [7-19A-1 to 7-19A-7 NMSA 1978], Municipal Environmental Services Gross Receipts Tax Act [7-19B-1 to 7-19B-7 NMSA 1978], County Gross Receipts Tax Act [7-20-1 to 7-20-9 NMSA 1978], County Fire Protection Excise Tax Act [7-20A-1 to 7-20A-9 NMSA 1978], Special County Hospital Gross Receipts Tax Act [7-24B-1 to 7-24B-10 NMSA 1978], County Environmental Services Gross Receipts Tax Act [7-20B-1 to 7-20B-7 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.

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.

I. General Consideration.
II. Construction.
III. Engaging in Business.
IV. Gross Receipts.
A. In General.
B. Out-of-State.
C. Leases.
D. Time-Price Differential.
E. Agents.
V. Property.
VI. Service.

ANNOTATIONS

I. GENERAL CONSIDERATION.

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.

1991 amendments. - Laws 1991, ch. 197, § 1, effective July 1, 1991, in Subsection F, inserting "the Leased Vehicle Gross Receipts Tax Act" near the middle of the first paragraph and making minor stylistic changes, was approved on April 4, 1991. However, Laws 1991, ch. 203, § 1, also effective July 1, 1991, deleting "or 'division'" following "'department'" in Subsection A; in Subsection F, substituting "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 inserting "nation" following "Indian" in two places in the second sentence thereof; substituting "manufactured homes" for "mobile homes" at the end of Subsection I; adding "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; deleting "'director' or" at the beginning of Subsection M; rewriting 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"; adding Subsection Q; and making a related stylistic change, was approved later on April 4, 1991. The section is set out as amended by Laws 1991, ch. 203, § 1. See 12-1-8 NMSA 1978.

Temporary provisions. - Laws 1989, ch. 262, § 9, effective July 1, 1989, provides that any taxpayer who, on or after July 1, 1989, becomes liable for additional tax because of changes to Section 7-9-3 NMSA 1978 by the enactment of § 1 of this act on the receipts from a contract entered into prior to July 1, 1989, for the sale of the product of a service which is initially used in New Mexico, which the taxpayer became contractually obligated to perform prior to the date on which the changes became law, is entitled to a credit to be computed under this section and deducted from the gross receipts taxes due on the receipts from the contract during the period July 1, 1989 through June 30, 1993 if the contract does not allow the taxpayer to obtain reimbursement for the additional gross receipts tax imposed and if the taxpayer would incur additional gross receipts tax liability of at least one thousand dollars ($1,000) but for the provisions of this section, provides that the credit allowed is the total amount of additional tax required to be paid pursuant to the changes made to Section 7-9-3 NMSA 1978, and further provides that the burden of showing entitlement to a credit is on the taxpayer and that procedures for claiming the credit shall be established by regulation of the secretary of taxation and revenue.

Compiler's note. - 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.

Language of this section is definite and unambiguous. Miller v. Bureau of Revenue, 93 N.M. 252, 599 P.2d 1049 (Ct. App. 1979), cert. denied, 92 N.M. 532, 591 P.2d 286 (1979).

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., 93 N.M. 301, 599 P.2d 1098 (Ct. App. 1979).

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, 83 N.M. 152, 489 P.2d 660 (Ct. App.), cert. denied, 83 N.M. 151, 489 P.2d 659 (1971).

Legal incidence of gross receipts tax on seller. - The statutory language of Subsection F and 7-9-4 NMSA 1978 places the legal incidence of the gross receipts tax on the seller. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

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, 87 N.M. 118, 529 P.2d 1239 (Ct. App.), cert. denied, 87 N.M. 111, 529 P.2d 1232 (1974).

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 7-9-65 NMSA 1978. Runco Acidizing & Fracturing Co. v. Bureau of Revenue, 87 N.M. 146, 530 P.2d 410 (Ct. App. 1974).

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, 87 N.M. 118, 529 P.2d 1239 (Ct. App.), cert. denied, 87 N.M. 111, 529 P.2d 1232 (1974).

Renting or leasing is a "use" of property. Rust Tractor Co. v. Bureau of Revenue, 82 N.M. 82, 475 P.2d 779 (Ct. App.), cert. denied, 82 N.M. 81, 475 P.2d 778 (1970).

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, 83 N.M. 743, 497 P.2d 745 (Ct. App.), cert. denied, 83 N.M. 740, 497 P.2d 742 (1972). But see 7-9-40 NMSA 1978 which now exempts receipts from horse race purses.

Law reviews. - For annual survey of New Mexico law relating to Indian law, see 12 N.M.L. Rev. 409 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 68 Am. Jur. 2d Sales and Use Taxes §§ 65 to 67, 76, 77, 81, 82, 129.

II. CONSTRUCTION.

Construction work incidental to "severing" exempt from gross 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, 86 N.M. 355, 524 P.2d 527 (Ct. App. 1974).

"Fence" not a "structure". - The word "structure" in paragraph (2) of Subsection C, 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, 84 N.M. 314, 502 P.2d 1004 (Ct. App. 1972).

Therefore not within definition of "construction". - The result is that construction of fences does not come within the definition of "construction" in Subsection C; that the fencing material sold is not a component part of a construction project. Cardinal Fence Co. v. Commissioner of Bureau of Revenue, 84 N.M. 314, 502 P.2d 1004 (Ct. App. 1972).

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), rehearing denied, 455 U.S. 929, 102 S. Ct. 1296, 71 L. Ed. 2d 474 (1982).

But imposition of tax on tribal organization impermissible. - Where 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 School Bd., Inc. v. Bureau of Revenue, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

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 School Bd., Inc. v. Bureau of Revenue, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

"Construction" deemed question of fact. - Whether activities of a party constitute "construction," as defined in Subsection C, is a question of fact for a jury. United States v. New Mexico, 642 F.2d 397 (10th Cir. 1981).

III. ENGAGING IN 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. Commissioner of Revenue, 85 N.M. 279, 511 P.2d 765 (Ct. App. 1973).

"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, 87 N.M. 330, 533 P.2d 103 (1975). See also, AAA v. Bureau of Revenue, 88 N.M. 462, 541 P.2d 967 (1975).

A taxpayer is "engaging in business" as defined by Subsection E when it is doing what it was organized and authorized to do. Baskin-Robbins Ice Cream Co. v. Revenue Div., 93 N.M. 301, 599 P.2d 1098 (Ct. App. 1979).

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, 93 N.M. 389, 600 P.2d 841 (Ct. App. 1979), cert. denied, 93 N.M. 205, 598 P.2d 1165 (1979).

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, 89 N.M. 345, 552 P.2d 476 (Ct. App.), cert. denied, 90 N.M. 7, 558 P.2d 619 (1976).

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, 83 N.M. 29, 487 P.2d 1099 (Ct. App.), cert. denied, 83 N.M. 22, 487 P.2d 1092 (1971).

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, 87 N.M. 300, 533 P.2d 103 (1975).

Independent contractor subject to gross receipts taxes. - Where 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. New Mexico Bureau of Revenue, 90 N.M. 43, 559 P.2d 420 (Ct. App. 1976), cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977).

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, (10th Cir. 1978).

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, 93 N.M. 743, 605 P.2d 251 (Ct. App. 1979).

IV. GROSS RECEIPTS.

A. IN GENERAL.

"Gross receipts" means the total amount of money or the value of other considerations received from selling property or from performing services. New Mexico Enters., Inc. v. Bureau of Revenue, 86 N.M. 799, 528 P.2d 212 (Ct. App. 1974).

Gross receipts tax upon non-Indians working on reservations valid. - Where 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), rehearing 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).

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).

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).

B. 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).

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).

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).

But mere accounting device will not avoid tax. - Where 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).

Apportionment between in-state and out-of-state activity does not arise where the tax is levied only upon receipts resulting from the taxpayer's activities in New Mexico. Mountain States Adv., Inc. v. Bureau of Revenue, 89 N.M. 331, 552 P.2d 233 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

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, 74 N.M. 377, 394 P.2d 141 (1964)(decided under prior gross receipts law).

However, 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 Adv., Inc. v. Bureau of Revenue, 89 N.M. 331, 552 P.2d 233 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

But 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 Schools, Inc. v. Bureau of Revenue, 89 N.M. 79, 547 P.2d 562 (1976).

Tax applicable to foreign franchisor. - Where 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, 93 N.M. 389, 600 P.2d 841 (Ct. App. 1979), cert. denied, 93 N.M. 205, 598 P.2d 1165 (1979).

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, 93 N.M. 389, 600 P.2d 841 (Ct. App. 1979), cert. denied, 93 N.M. 205, 598 P.2d 1165 (1979).

Tax applicable to foreign corporation. - Where the taxpayer, a Delaware corporation, has no employees or offices located in this state, but 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., 93 N.M. 301, 599 P.2d 1098 (Ct. App. 1979).

C. 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, 82 N.M. 82, 475 P.2d 779 (Ct. App.), cert. denied, 82 N.M. 81, 475 P.2d 778 (1970).

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., 93 N.M. 301, 599 P.2d 1098 (Ct. App. 1979).

Gross receipts tax levied upon lessor of equipment, not user. Co-Con, Inc. v. Bureau of Revenue, 87 N.M. 118, 529 P.2d 1239 (Ct. App.), cert. denied, 87 N.M. 111, 529 P.2d 1232 (1974).

Treating transactions as rentals for federal tax implies leasing arrangements. - Where 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, it was held that 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, 87 N.M. 118, 529 P.2d 1239 (Ct. App.), cert. denied, 87 N.M. 111, 529 P.2d 1232 (1974).

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 Properties, Inc. v. New Mexico Bureau of Revenue, 93 N.M. 262, 599 P.2d 1059 (Ct. App. 1979).

Franchisor's arrangements with its licensees fall within definition of leasing." American Dairy Queen Corp. v. Taxation & Revenue Dep't, 93 N.M. 743, 605 P.2d 251 (Ct. App. 1979).

D. 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 where 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, 87 N.M. 118, 529 P.2d 1239 (Ct. App.), cert. denied, 87 N.M. 111, 529 P.2d 1232 (1974).

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 where no part of time-price differential was a "gross receipt"

under the statute chargeable to taxpayer. Davis v. Commissioner of Revenue, 83 N.M. 152, 489 P.2d 660 (Ct. App.), cert. denied, 83 N.M. 151, 489 P.2d 659 (1971) (decided prior to the 1972 amendment which changed Subsection F's treatment of time-price differential arrangements).

E. AGENTS.

Not agency when purchases for others merely incidental to work. - Carpenter was not liable for assessment of gross receipts tax on purchases of materials where 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. New Mexico Bureau of Revenue, 90 N.M. 43, 559 P.2d 420 (Ct. App. 1976), cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977).

Nor when purchaser consultant to client-buyers. - Where 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. New Mexico Enters., Inc. v. Bureau of Revenue, 86 N.M. 799, 528 P.2d 212 (Ct. App. 1974).

V. 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. New Mexico Sheriffs & Police Ass'n v. Bureau of Revenue, 85 N.M. 565, 514 P.2d 616 (Ct. App. 1973).

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, 87 N.M. 259, 531 P.2d 1232 (Ct. App. 1975).

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 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 7-9-31

NMSA 1978) and telephone communications. Leaco Rural Tel. Coop. v. Bureau of Revenue, 86 N.M. 629, 526 P.2d 426 (Ct. App. 1974).

VI. SERVICE.

Subsection K focus changed test from product's value to seller's activity. - The 1976 amendment to Subsection K 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. Director, Revenue Div. Taxation & Revenue Dep't, 94 N.M. 143, 607 P.2d 1161 (Ct. App.), cert. denied, 94 N.M. 628, 614 P.2d 545 (1979).

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, 89 N.M. 345, 552 P.2d 476 (Ct. App.), cert. denied, 90 N.M. 7, 558 P.2d 619 (1976).

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, 89 N.M. 345, 552 P.2d 476 (Ct. App.), cert. denied, 90 N.M. 7, 558 P.2d 619 (1976).

Intent of legislature to grant tax immunity to nonprofit corporation. - The court believes 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, 89 N.M. 345, 552 P.2d 476 (Ct. App.), cert. denied, 90 N.M. 7, 558 P.2d 619 (1976).

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 School Bd., Inc. v. Bureau of Revenue, 95 N.M. 708, 625 P.2d 1225 (Ct. App. 1980), 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. - Where 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 School Bd., Inc. v. Bureau of Revenue, 95 N.M. 708, 625 P.2d 1225 (Ct. App. 1980), 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". - Where 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, 83 N.M. 743, 497 P.2d 745 (Ct. App.), cert. denied, 83 N.M. 740, 497 P.2d 742 (1972). But see 7-9-40 NMSA 1978 which now exempts receipts from horse race purses.

That part of attorney's inheritance designated attorney fees taxable. - Where 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, 87 N.M. 240, 531 P.2d 1213 (Ct. App. 1975).

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, 87 N.M. 240, 531 P.2d 1213 (Ct. App. 1975).

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 Adv., Inc. v. Bureau of Revenue, 89 N.M. 331, 552 P.2d 233 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

7-9-3. Definitions. (Effective July 1, 1993.)

As used in the Gross Receipts and Compensating Tax Act [this article]:

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. "buying" or "selling" means any transfer of property for consideration or any performance of service for consideration;

C. "construction" means building, altering, repairing or demolishing in the ordinary course of business any:

(1) road, highway, bridge, parking area or related project;

(2) building, stadium or other structure;

(3) airport, subway or similar facility;

(4) park, trail, athletic field, golf course or similar facility;

(5) dam, reservoir, canal, ditch or similar facility;

(6) 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;

(7) sewerage, water, gas or other pipeline;

(8) transmission line;

(9) radio, television or other tower;

(10) water, oil or other storage tank;

(11) shaft, tunnel or other mining appurtenance;

(12) microwave station or similar facility; or

(13) similar work;

"construction" also means:

(14) leveling or clearing land;

(15) excavating earth;

(16) drilling wells of any type, including seismograph shot holes or core drilling; or

(17) similar work;

D. "financial corporation" means any savings and loan association or any incorporated savings and loan company, trust company, mortgage banking company, consumer finance company or other financial corporation;

E. "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit;

F. "gross receipts" means the total amount of money or the value of other consideration received from selling property in New Mexico, from leasing property employed in New Mexico or from performing services in New Mexico and includes any receipts from sales of tangible personal property handled on consignment but excludes cash discounts allowed and taken, New Mexico gross receipts tax payable on transactions for the reporting period and taxes imposed pursuant to the provisions of any local option gross receipts tax 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 property or service exchanged, "gross receipts" means the reasonable value of the property or service exchanged.

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 his interest in any such contract to a third person, he shall pay the gross receipts tax upon the full sale or leasing contract amount, excluding any type of time-price differential.

"Gross receipts", for the purpose of the business of buying, selling or promoting the purchase, sale or leasing, as an agent or broker on a commission or fee basis, of any property, service, stock, bond or security, includes the total commissions or fees derived from the business.

"Gross receipts" also includes 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 and amounts received from transmitting messages or conversations by persons providing telephone or telegraph services, including interstate and international messages or conversations that either originate or terminate in New Mexico and are billed to a New Mexico telephone number or account;

G. "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;

H. "person" means:

(1) any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, 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) the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof;

I. "property" means real property, tangible personal property, licenses, franchises, patents, trademarks and copyrights. Tangible personal property includes electricity and manufactured homes;

J. "leasing" means any 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 the sale of a license and not a lease;

K. "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. Such 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. However, 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;

L. "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;

M. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

N. "manufactured home" means a moveable or portable housing structure 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 for human occupancy; and

O. "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 Gross Receipts Tax Act [7-19-1 to 7-19-9 NMSA 1978], Supplemental Municipal Gross Receipts Tax Act [7-19-10 to 7-19-18 NMSA 1978], Special Municipal Gross Receipts Tax Act [7-19A-1 to 7-19A-7 NMSA 1978], Municipal Environmental Services Gross Receipts Tax Act [7-19B-1 to 7-19B-7 NMSA 1978], County Gross Receipts Tax Act [7-20-1 to 7-20-9 NMSA 1978], County Fire Protection Excise Tax Act [7-20A-1 to 7-20A-9 NMSA 1978], Special County Hospital Gross Receipts Tax Act [7-24B-1 to 7-24B-10 NMSA 1978], County Environmental Services Gross Receipts Tax Act [7-20B-1 to 7-20B-7 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.

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; 1990, ch. 27, § 1; 1991, ch. 197, § 2; 1991, ch. 203, § 2.

The 1990 amendment, effective July 1, 1993, substituted "which is payable" for "which are payable" near the end of the first sentence of Subsection F and deleted former Subsection O which defined "'initial use' or 'initially used'."

1991 amendments. - Laws 1991, ch. 197, § 2, effective July 1, 1993, in Subsection F, inserting "the Leased Vehicle Gross Receipts Tax Act" near the middle of the first paragraph and making minor stylistic changes, was approved on April 4, 1991. However, Laws 1991, ch. 203, § 2, also effective July 1, 1993, deleting "or 'division'" following "'department'" in Subsection A; in Subsection F, deleting "from selling services performed outside New Mexico the product of which is initially used in New Mexico" following "employed in New Mexico" near the beginning of the first paragraph, substituting "any local option gross receipts tax that" for "the County Fire Protection Excise Tax Act or any municipality or county sales or gross receipts tax which" near the middle of the first paragraph and inserting "nation" following "Indian" in two places in the second sentence in the first paragraph; substituting "manufactured homes" for "mobile homes" at the end of Subsection I; adding "except that granting of a license to use property is the sale of a license and not a lease" at the end of Subsection J; deleting "'director' or" at the beginning of Subsection M; rewriting 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"; adding "Subsection O" and making a related stylistic change, was approved later on April 4, 1991. The section is set out as amended by Laws 1991, ch. 203, § 2. See 12-1-8 NMSA 1978.

Compiler's note. - Laws 1990, ch. 27, § 2B, effective May 16, 1990, repeals Laws 1989, ch. 262, §§ 2 and 3, which had repealed and reenacted new versions of this section effective July 1, 1990, and July 1, 1993, respectively.

7-9-3.1. Additional definition.

As used in the Gross Receipts and Compensating Tax Act [this article], "livestock" means animals raised principally as food for human consumption, for the production of or for use in the production of food for human consumption or for fiber, hides or pelts.

History: 1978 Comp., § 7-9-3.1, enacted by Laws 1991, ch. 9, § 26.

Effective dates. - Laws 1991, ch. 9, § 47A makes this section effective on July 1, 1991.

7-9-3.2. Additional definition.

As used in the Gross Receipts and Compensating Tax Act [this article], "governmental gross receipts" means:

A. all receipts of the state of New Mexico and any agency, institution, instrumentality or political subdivision thereof from the sale of tangible personal property from facilities open to the general public, the performance of or admissions to recreational, athletic or entertainment services or events in facilities open to the general public, refuse

collection, sewage services and all receipts from the sale of water by a utility owned or operated by a county, municipality or other political subdivision of the state; and

B. all receipts from the sale of tangible personal property to the state of New Mexico and any agency, institution, instrumentality or political subdivision thereof, other than receipts from:

(1) sales of food to the state of New Mexico and any agency, institution, instrumentality or political subdivision thereof;

(2) purchases of tangible personal property paid from the proceeds of bonds;

(3) sales of tangible personal property to state post-secondary educational institutions and public school districts; and

(4) sales of tangible personal property to hospitals and health care facilities.

History: 1978 Comp., § 7-9-3.2, enacted by Laws 1991, ch. 8, § 1.

Effective dates. - Laws 1991, ch. 8, § 5 makes the act effective on July 1, 1991.

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 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.

I. General Consideration.
II. Applicability.
III. Out-of-State.

ANNOTATIONS

I. GENERAL CONSIDERATION.

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 1990 amendment, effective July 1, 1990, substituted "five percent" for "four and three-fourths percent" in Subsection A.

Compiler's note. - Laws 1990 (1st S.S.), ch. 1, § 1, effective June 18, 1990, provides that the purpose of the tax increases provided in this act is to ensure the availability of sufficient funds to provide salary increases pursuant to the ACE plan, salary increases for other state employees and salary increases for public school personnel and personnel of post-secondary educational institutions and further provides that the salary increases provided for in this section are necessary and the additional burden of funding these salary increases should be supported through statewide tax increases.

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, 64 N.M. 454, 330 P.2d 131 (1958).

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, 64 N.M. 454, 330 P.2d 131 (1958).

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, 64 N.M. 454, 330 P.2d 131 (1958)(decided under former law).

Law reviews. - For comment, "Taxation of National Banks: A Novel Approach in the New Mexico Courts," see 10 Nat. Resources J. 615 (1970).

For annual survey of New Mexico law relating to Indian law, see 12 N.M.L. Rev. 409 (1982).

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).

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).

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).

Tax valid where contractors not agents of United States. - Where 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).

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 where its legal incidence falls elsewhere. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

If bank can pass tax on, it is not real taxpayer. - Where 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, 80 N.M. 699, 460 P.2d 64 (Ct. App.), cert. denied, 80 N.M. 707, 460 P.2d 72 (1969), 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 where 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, 96 N.M. 296, 629 P.2d 1225 (1981).

Where tax ultimately falls on tribal organization. - Where 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 School Bd., Inc. v. Bureau of Revenue, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

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 School 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, where 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. Center, Inc. v. Taxation & Revenue Dep't, 108 N.M. 355, 772 P.2d 885 (Ct. App. 1988), aff'd, 108 N.M. 228, 770 P.2d 873 (1989).

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, 83 N.M. 743, 497 P.2d 745 (Ct. App.), cert. denied, 83 N.M. 740, 497 P.2d 742 (1972). But see 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, 86 N.M. 355, 524 P.2d 527 (Ct. App. 1974).

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 ex rel. State, 111 N.M. 735, 809 P.2d 649 (Ct. App. 1991) (decided on facts existing prior to enactment of Pawnbrokers Act, 56-12-1 NMSA 1978 et seq.)

III. OUT-OF-STATE.

Mere contracts are not commerce at all, neither intrastate nor interstate. Baskin-Robbins Ice Cream Co. v. Revenue Div., 93 N.M. 301, 599 P.2d 1098 (Ct. App. 1979).

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., 99 N.M. 545, 660 P.2d 1027 (Ct. App.), 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, 85 N.M. 388, 512 P.2d 961 (1973).

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).

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. - Where 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 Adv. Co. v. Bureau of Revenue, 88 N.M. 176, 538 P.2d 1198 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975).

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 Adv. Co. v. Bureau of Revenue, 88 N.M. 176, 538 P.2d 1198 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975).

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 Adv. Co. v. Bureau of Revenue, 88 N.M. 176, 538 P.2d 1198 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975).

However, 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 Adv. Co. v. Bureau of Revenue, 88 N.M. 176, 538 P.2d 1198 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975).

Traffic between states absent in franchise agreement. - Where 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., 93 N.M. 301, 599 P.2d 1098 (Ct. App. 1979).

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., 99 N.M. 545, 660 P.2d 1027 (Ct. App.), appeal dismissed, 464 U.S. 923, 104 S. Ct. 323, 78 L. Ed. 2d 296 (1983).

Tax applicable to foreign franchisor. - Where 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, 93 N.M. 389, 600 P.2d 841 (Ct. App. 1979), cert. denied, 93 N.M. 205, 598 P.2d 1165 (1979).

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 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, 93 N.M. 389, 600 P.2d 841 (Ct. App. 1979), cert. denied, 93 N.M. 205, 598 P.2d 1165 (1979).

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, 61 N.M. 16, 293 P.2d 977 (1956).

7-9-4.1. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 41, § 10 repeals 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 1988 Replacement Pamphlet.

7-9-4.2. Temporary provision; credit; gross receipts tax.

A. Any taxpayer who becomes liable for additional tax because of an increase on July 1, 1990, in the rate specified in Subsection A of Section 7-9-4 NMSA 1978 on the receipts from a fixed fee, unit price construction contract with a federal agency or instrumentality or local public body or any other applicable contract entered into prior to July 1, 1990, which the taxpayer became contractually obligated to perform prior to the date on which the increase became law, is entitled to a credit to be computed under this section and deducted from the gross receipts taxes due on the receipts from the contract if the contract does not allow the taxpayer to obtain reimbursement for the additional gross receipts tax imposed and if the taxpayer would incur additional gross receipts tax liability of at least one thousand five hundred dollars ($1,500) but for the provisions of this section.

B. The credit allowed is the total amount of additional tax required to be paid pursuant to an increase on July 1, 1990, in the rate in Section 7-9-4 NMSA 1978 less one thousand five hundred dollars ($1,500).

C. The burden of showing entitlement to a credit authorized under this section is on the taxpayer claiming the credit. The taxpayer shall, upon demand, furnish to the department copies of the contract upon which the taxpayer's claim for credit is based and shall maintain a copy of the contract and related records of receipts for three years from the last date that credit is claimed under this section on tax due on receipts from the contract.

D. Procedures for claiming the credit authorized under this section shall be established by regulation of the secretary. The regulation may provide for a requirement that the taxpayer, in order to be entitled to claim the credit under this section, must give notice to the department of the taxpayer's intention to claim a credit under this section, within one hundred twenty days after the tax rate increase becomes law, in a form as specified by regulation.

History: 1978 Comp., § 7-9-4.2, enacted by Laws 1990 (1st S.S.), ch. 1, § 3.

Effective dates. - Laws 1990 (1st S.S.), ch. 1, § 10 makes this section effective on July 1, 1990.

Compiler's note. - Laws 1990 (1st S.S.), ch. 1, § 1, effective June 18, 1990, provides that the purpose of the tax increases provided in this act is to ensure the availability of

sufficient funds to provide salary increases pursuant to the ACE plan, salary increases for other state employees and salary increases for public school personnel and personnel of post-secondary educational institutions and further provides that the salary increases provided for in this section are necessary and the additional burden of funding these salary increases should be supported through statewide tax increases.

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 the state of New Mexico and any agency, institution, instrumentality or political subdivision thereof 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.

Effective dates. - Laws 1991, ch. 8, § 5 makes the act effective on July 1, 1991.

Compiler's note. - 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 has been compiled as 7-9-4.3 NMSA 1978.

7-9-5. Presumption of taxability.

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 [Chapter 7, Article 9 NMSA 1978] shall not be required to register or file a return under this act.

History: 1953 Comp., § 72-16A-5, enacted by Laws 1966, ch. 47, § 5.

Meaning of "this act". - 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.

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, 83 N.M. 743, 497 P.2d 745 (Ct. App.), cert. denied, 83 N.M. 740, 497 P.2d 742 (1972). But see 7-9-40 NMSA 1978 which now exempts receipts from horse race purses.

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.

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 property in New Mexico, there is imposed on the person using property an excise tax equal to five percent of the value of property that was:

(1) manufactured by the person using the property in the state;

(2) acquired outside this state as the result of a transaction that would have been subject to the gross receipts tax had it occurred within this state; or

(3) acquired as the result of a transaction which 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.

For the purpose of this subsection, value of property shall be determined as of the time of acquisition or introduction into this state or of conversion to use, whichever is later.

B. 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 which 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.

C. 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.

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.

Compiler's note. - Laws 1990 (1st S.S.), ch. 1, § 1, effective June 18, 1990, provides that the purpose of the tax increases provided in this act is to ensure the availability of sufficient funds to provide salary increases pursuant to the ACE plan, salary increases for other state employees and salary increases for public school personnel and personnel of post-secondary educational institutions and further provides that the salary increases provided for in this section are necessary and the additional burden of funding these salary increases should be supported through statewide tax increases.

The use or compensating tax is an excise tax and not an ad valorem tax. Robert E. McKee, Gen. Contractor v. Bureau of Revenue, 63 N.M. 185, 315 P.2d 832 (1957)(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, 64 N.M. 454, 330 P.2d 131 (1958)(decided under former law).

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 County Feedlot, Inc. v. Vigil, 79 N.M. 684, 448 P.2d 485 (Ct. App. 1968).

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).

Transportation costs excluded from sales price when paid by buyer. - Under a regulation promulgated by the bureau (now department) pursuant to 7-1-5 NMSA 1978, 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, where, 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, it

was held that 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. New Mexico Bureau of Revenue, 90 N.M. 164, 561 P.2d 26 (Ct. App. 1976).

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. New Mexico Taxation & Revenue Dep't, 107 N.M. 392, 758 P.2d 806 (Ct. App. 1988).

Contractor furnishing purchased materials to federal government liable for tax. - Where 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 v. Bureau of Revenue, 63 N.M. 185, 315 P.2d 832 (1957).

Existence of promissory note does not make sale executory. - Where 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, 85 N.M. 547, 514 P.2d 304 (Ct. App. 1973).

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. New Mexico Taxation & Revenue Dep't, 109 N.M. 487, 786 P.2d 1221 (Ct. App. 1990).

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.

7-9-8. 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.

The 1990 amendment, effective July 1, 1990, substituted "department" for "division" at the end of the section and made a minor stylistic change.

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.

B. To insure 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.

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 [Chapter 7, Article 9 NMSA 1978] 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.

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. 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.

Compiler's note. - Section 7-9-42 NMSA 1978, referred to in this section, was repealed in 1984.

Inequalities which result from singling out of one particular class for taxation or exemption, infringe no constitutional limitation. Dikewood Corp. v. Bureau of Revenue, 74 N.M. 75, 390 P.2d 661 (1964).

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 v. Bureau of Revenue, 63 N.M. 185, 315 P.2d 832 (1957)(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 v. Revenue Div. of Dep't of Taxation & Revenue, 107 N.M. 399, 759 P.2d 186 (1988).

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 Properties, Inc. v. New Mexico Bureau of Revenue, 93 N.M. 262, 599 P.2d 1059 (Ct. App. 1979).

Burden rests squarely on taxpayer to prove entitlement to exemption. Al Zuni Traders v. Bureau of Revenue, 90 N.M. 258, 561 P.2d 1351 (Ct. App. 1977).

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, 90 N.M. 258, 561 P.2d 1351 (Ct. App. 1977).

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. New Mexico Bureau of Revenue, 90 N.M. 164, 561 P.2d 26 (Ct. App. 1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 68 Am. Jur. 2d Sales and Use Taxes § 217 to 229.

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.

7-9-12.1. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 41, § 10 repeals 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 1988 Replacement Pamphlet.

7-9-13. Exemption; gross receipts tax; governmental agencies.

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.

Receipts from the sale of gas or electricity by a utility owned or operated by a county, municipality or other political subdivision of the state 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.

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, where 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. (Effective until July 1, 1993.)

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.

Delayed repeals. - Laws 1989, ch. 262, § 11 repeals 7-9-13.1 NMSA 1978, as enacted by Laws 1989, ch. 262, § 4, effective July 1, 1993.

Effective dates. - Laws 1989, ch. 262, § 12A makes the act effective on July 1, 1989.

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 any agency or instrumentality thereof or the state of New Mexico or any political subdivision 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; or

(2) the use of tangible personal property that becomes an ingredient or component part of a construction project.

B. Exempted from the compensating tax is the use of property by the governing body of any Indian nation, tribe or pueblo 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.

Cross-references. - For Development Incentive Act, see ch. 3, art. 64 NMSA 1978.

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".

Metropolitan Redevelopment Code. - See 3-60A-1 NMSA 1978 and notes thereto.

Taxing contractor furnishing materials to federal government not taxing government. - Where 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 v. Bureau of Revenue, 63 N.M. 185, 315 P.2d 832 (1957).

Tax ultimately falling on tribal organization impermissible. - Where 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 School Bd., Inc. v. Bureau of Revenue, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

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 School 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.

Cross-references. - For the exemption of certain organizations from the gross receipts tax, see 7-9-29 NMSA 1978.

The 1990 amendment, effective July 1, 1990, substituted "department" for "division" in the first sentence.

Internal Revenue Code. - Sections 501(c)(3) and 513 of the United States Internal Revenue Code of 1954 appear as 26 U.S.C. §§ 501(c)(3) and 513, respectively.

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.

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, 84 N.M. 226, 501 P.2d 670 (Ct. App.), cert. denied, 84 N.M. 219, 501 P.2d 663 (1972).

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, 87 N.M. 360, 533 P.2d 593 (Ct. App. 1975).

Same taxation scheme used for both state and federal purposes. - Where carpenter filed self-employment returns with the internal revenue service for social security purposes where 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. New Mexico Bureau of Revenue, 90

N.M. 43, 559 P.2d 420 (Ct. App. 1976), cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977).

Percentages paid jockeys not exempt. - Where 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. Commissioner of Revenue, 83 N.M. 478, 493 P.2d 963 (Ct. App. 1972)(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; agricultural products.

Exempted from the gross receipts tax are the receipts from selling livestock or horses and receipts of growers, producers, trappers or nonprofit marketing associations from selling live poultry, unprocessed agricultural products, hides or pelts. Persons engaged in the business of buying and selling wool or mohair on their own account are producers for the purposes of this section.

Receipts from selling dairy products at retail are not exempted from the gross receipts tax.

History: 1953 Comp., § 72-16A-12.6, enacted by Laws 1969, ch. 144, § 11; 1991, ch. 9, § 27.

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; 1987, ch. 304, § 1.

Compiler's note. - Laws 1987, ch. 264, § 13 and Laws 1987, ch. 304, § 1 enacted identical versions of this section. This section is set out as enacted by Laws 1987, ch. 304, § 1. See 12-1-8 NMSA 1978.

U.S.C. Title 7, Chapter 51. - Title 7 of Chapter 51 of the United States Code appears as 7 U.S.C. §§ 2011 to 2030.

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 not 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.

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.

Compiler's note. - 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.

Internal Revenue Code. - Section 528 of the Internal Revenue Code appears as 26 U.S.C. § 528.

7-9-21. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 37, § 97 repeals 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 [7-14-1 to 7-14-11 NMSA 1978] and on vehicles subject to registration under Section 66-3-16 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.

There is legislative policy treating taxation of motor vehicles sales differently from the taxation of most other business activities. City of Alamagordo v. Walker Motor Co., 94 N.M. 690, 616 P.2d 403 (1980).

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, 88 N.M. 649, 545 P.2d 1027 (Ct. App. 1976).

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 [7-14-1 to 7-14-11 NMSA 1978] has been paid and on the use of vehicles subject to registration under Section 66-3-16 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.

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.

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 ex rel. State, 111 N.M. 735, 809 P.2d 649 (Ct. App. 1991) (decided on facts existing prior to enactment of Pawnbrokers Act, 56-12-1 NMSA 1978 et seq.)

7-9-26. Exemption; gross receipts and compensating tax; fuel.

A. Exempted from the gross receipts and compensating tax are the receipts from selling and the use of gasoline or special fuel on which the tax imposed by Section 7-13-3 or Section 7-16-3 NMSA 1978 has been paid and not refunded.

B. Exempted from the gross receipts and compensating tax are the receipts from selling and the use of ethanol blended fuel for which a deduction is provided in Sections 7-13-4.1 and 7-13-4.2 NMSA 1978 for the period July 1, 1980 through June 30, 1991.

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.

Cross-references. - As to other fuel related exemptions, see 7-9-32 to 7-9-34, 7-9-36 and 7-9-37 NMSA 1978.

Constitutionality of deduction for ethanol-blended fuel. - Section 7-13-4.1 NMSA 1978 discriminates between the tax treatment of ethanol-blended fuel manufactured in New Mexico and ethanol-blended fuel manufactured elsewhere; this discrimination

violates the commerce clause. Giant Indus. Arizona, Inc. v. Taxation & Revenue Dep't, 110 N.M. 442, 796 P.2d 1138 (Ct. App. 1990).

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.

7-9-27. 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.

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.

Cross-references. - For the exemption of certain organizations from the compensating tax, see 7-9-15 NMSA 1978.

The 1990 amendment, effective July 1, 1990, substituted "department" for "division" in Subsections A and B.

Internal Revenue Code. - Sections 501 and 513 of the Internal Revenue Code of 1954 appear as 26 U.S.C. §§ 501 and 513.

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.

7-9-30. Exemption; compensating tax; railroad equipment and aircraft.

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.

History: 1953 Comp., § 72-16A-12.18, enacted by Laws 1969, ch. 144, § 23; 1988, ch. 148, § 1.

Applicability of former provision limited. - Former 72-17-4I, 1953 Comp., 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, 80 N.M. 462, 457 P.2d 710 (1969).

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.

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 [this article] 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.

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 [this article] 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.

Cross-references. - As to meaning of "processor," as defined by the Natural Gas Processors Tax Act, 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, 94 N.M. 630, 614 P.2d 547 (Ct. App. 1980).

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.

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 Compensation Tax Act and any other taxes imposed by any tax act which is applicable to the taxpayer pursuant to the NMSA 1978."

Applicability. - Laws 1984, ch. 2, § 13, makes the provisions of §§ 2 to 5, 8 and 9 of the act applicable to taxable events occurring on or after January 1, 1980.

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 v. Revenue Div. of Dep't of Tax., 103 N.M. 20, 702 P.2d 10 (1985).

Construction work incidental to "severing" exempt. - The exemption provided by this section applies where "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, 86 N.M. 355, 524 P.2d 527 (Ct. App. 1974).

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, 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 v. New Mexico Bureau of Revenue, 92 N.M. 591, 592 P.2d 191 (Ct. App. 1979).

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. Ranchers-Tufco Limestone Project Joint Venture v. Revenue Div., 100 N.M. 632, 674 P.2d 522 (Ct. App. 1983)(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 and transmission of electricity.

Exempted from the compensating tax is electricity used in the production and transmission of electricity.

History: 1953 Comp., § 72-16A-12.26, enacted by Laws 1969, ch. 144, § 31.

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.

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, 88 N.M. 462, 541 P.2d 967 (1975).

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, 89 N.M. 345, 552 P.2d 476 (Ct. App.), cert. denied, 90 N.M. 7, 558 P.2d 619 (1976).

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 A.A.A.'s activities are from dues and registration fees. AAA v. Bureau of Revenue, 88 N.M. 462, 541 P.2d 967 (1975).

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.

Cross-references. - As to 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 catchline; and in Subsection B restructured former Paragraph (2) so as to constitute the present 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. - Where 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, 83 N.M. 743, 497 P.2d 745 (Ct. App.), cert. denied, 83 N.M. 740, 497 P.2d 742 (1972).

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.

Internal Revenue Code. - Sections 501(c)(3) and 513 of the United States Internal Revenue Code of 1954 appear as 26 U.S.C. §§ 501(c)(3) and 513, respectively.

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.

7-9-42. Repealed.

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Repeals. - Laws 1984, ch. 2, § 11, repeals 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 provisions of former section, see 1983 replacement pamphlet. 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; fee; renewal.

A. Subject to the provisions of Subsection D of this section, all nontaxable transaction certificates executed by buyers or lessees should be in the possession of the seller or lessor for nontaxable transactions at the time the nontaxable transactions occur. If the seller or lessor is not in possession of these 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. The nontaxable transaction certificates shall contain the information and be in a form prescribed by the department. 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. 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 nontaxable transactions occur. 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. Notification, as that term is 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 from whom the documents are required.

D. After January 1, 1992, any nontaxable transaction certificate issued prior to that date shall be void. Buyers or lessees upon payment of an initial fee of one hundred dollars ($100) may apply to the department for issuance of appropriate nontaxable transaction certificates. Upon the department's approval of the application, the buyer or lessee may request appropriate nontaxable transaction certificates. Except for nontaxable transaction certificates issued by the department during calendar year 1992, a nontaxable transaction certificate issued by the department to a buyer or lessee shall expire at the end of the month four years after the month in which the application of the buyer or lessee was approved. During the period beginning six months prior to the expiration date of the nontaxable transaction certificate and ending on the expiration date, a buyer or lessee may apply for renewal of each appropriate nontaxable transaction certificate issued to the buyer or lessee. A nontaxable transaction certificate issued by the department to the buyer or lessee as a renewal shall expire on the day four years after the expiration date of the nontaxable transaction certificate for which renewal is sought.

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.

The 1990 amendment, effective July 1, 1990, substituted "department" for "division" throughout the section, substituted "department" for "director or his delegate" following

"lessor by the" in the first sentence of Subsection A and following "seller by the" in the second sentence of Subsection B, and made minor stylistic changes in Subsections A and B.

The 1991 amendment, effective June 14, 1991, in the catchline, 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.

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, 94 N.M. 630, 614 P.2d 547 (Ct. App. 1980).

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. Rainbo Baking Co. v. Commissioner of Revenue, 84 N.M. 303, 502 P.2d 406 (Ct. App. 1972).

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. v. Bureau of Revenue, 86 N.M. 629, 526 P.2d 426 (Ct. App. 1974).

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. v. Bureau of Revenue, 86 N.M. 629, 526 P.2d 426 (Ct. App. 1974).

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, 92 N.M. 599, 592 P.2d 515 (Ct. App. 1979).

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 by the department of alcoholic beverage control is not required to obtain a nontaxable transaction certificate from a liquor retailer licensed by the department of

alcoholic beverage control for the purpose of taking deductions under the Gross Receipts and Compensating Tax Act [this article].

History: Laws 1981, ch. 333, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 68 Am. Jur. 2d Sales and Use Taxes, §§ 104, 115.

7-9-44. Suspension of the right to use a nontaxable transaction certificate.

The secretary may suspend for not more than one year the right of a person to use nontaxable transaction certificates if that person 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 use of a nontaxable transaction certificate.

History: 1953 Comp., § 72-16A-13.1, enacted by Laws 1969, ch. 144, § 34; 1983, ch. 220, § 8; 1990, ch. 41, § 7.

The 1990 amendment, effective July 1, 1990, substituted "secretary" for "director".

7-9-45. Deductions.

In computing the gross receipts tax due, only those receipts specified in Sections 7-9-46 through 7-9-76.2 NMSA 1978 may be deducted. Receipts, whether specified once or several times in Sections 7-9-46 through 7-9-76.2 NMSA 1978, may be deducted only once from gross receipts. Receipts that are exempted from the gross receipts tax may not be deducted from gross receipts. Receipts that are deducted from gross receipts may not be exempted from the gross receipts tax.

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.

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, 82 N.M. 97, 476 P.2d 67 (Ct. App. 1970).

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, 82 N.M. 97, 476 P.2d 67 (Ct. App. 1970).

Thus 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, 82 N.M. 97, 476 P.2d 67 (Ct. App. 1970).

7-9-46. Deduction; gross receipts tax; sales to manufacturers.

Receipts from selling tangible personal property 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 incorporate the tangible personal property as an ingredient or component part of the product which he is in the business of manufacturing.

History: 1953 Comp., § 72-16A-14.1, enacted by Laws 1969, ch. 144, § 36.

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.

7-9-47. Deduction; gross receipts tax; sale of tangible personal property for resale.

Receipts from selling tangible personal property 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 must resell the tangible personal property either by itself or in combination with other tangible personal property in the ordinary course of business.

History: 1953 Comp., § 72-16A-14.2, enacted by Laws 1969, ch. 144, § 37.

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. New Mexico Newspapers, Inc. v. Bureau of Revenue, 82 N.M. 436, 483 P.2d 317 (Ct. App. 1971).

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. Rainbo Baking Co. v. Commissioner of Revenue, 84 N.M. 303, 502 P.2d 406 (Ct. App. 1972).

But authority does not extend to modifying legislative authorizations. - The commissioner (now secretary) has authority to regulate the possession of nontaxable transaction certificates, but this authority does not extend to imposing a time requirement which would abridge or modify the deduction authorized by the legislature. Rainbo Baking Co. v. Commissioner of Revenue, 84 N.M. 303, 502 P.2d 406 (Ct. App. 1972).

Certificate required. - Where 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).

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. New Mexico Taxation & Revenue Dep't, 107 N.M. 392, 758 P.2d 806 (Ct. App. 1988).

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).

7-9-48. Deduction; gross receipts tax; sale of a service for resale.

Receipts from selling a service for resale may be deducted from gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate. The buyer delivering the nontaxable transaction certificate must separately state the value of the service purchased in his charge for the service on its subsequent sale, and the subsequent sale must be in the ordinary course of business and subject to the gross receipts tax.

History: 1953 Comp., § 72-16A-14.3, enacted by Laws 1969, ch. 144, § 38.

7-9-49. Deduction; gross receipts tax; sale of tangible personal property for leasing.

A. Except as otherwise provided by Subsection B of this section, receipts from selling tangible personal property 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 which derives a substantial portion of its receipts from leasing or selling tangible personal property of the type sold. The buyer may not utilize 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.

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.

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.

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.

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 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 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.

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 tangible personal property to persons engaged in the construction business.

A. Receipts from selling tangible personal property 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 tangible personal property as:

(1) an ingredient or component part of a construction project which 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; or

(2) an ingredient or component part of a construction project which 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.

History: 1953 Comp., § 72-16A-14.6, enacted by Laws 1969, ch. 144, § 41.

7-9-52. Deduction; gross receipts tax; sale of construction services to persons engaged in the construction business.

A. Receipts from selling a construction 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.

B. The buyer delivering the nontaxable transaction certificate must have the construction services performed upon:

(1) a construction project which 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; or

(2) a construction project which 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.

History: 1953 Comp., § 72-16A-14.7, enacted by Laws 1969, ch. 144, § 42.

Language of this section is definite and unambiguous. Miller v. Bureau of Revenue, 93 N.M. 252, 599 P.2d 1049 (Ct. App.), cert. denied, 92 N.M. 532, 591 P.2d 286 (1979).

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, 93 N.M. 252, 599 P.2d 1049 (Ct. App.), cert. denied, 92 N.M. 532, 591 P.2d 286 (1979).

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 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.

Cross-references. - As to deduction of real estate commissions from gross receipts tax, see 7-9-66.1 NMSA 1978.

The 1991 amendment, effective July 1, 1991, substituted "manufactured" for "mobile" in the catchline and throughout the section.

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 where 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. Dona Ana Dev. Corp. v. Commissioner of Revenue, 84 N.M. 641, 506 P.2d 798 (Ct. App. 1973).

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, 82 N.M. 97, 476 P.2d 67 (Ct. App. 1970).

Yearly lease of motel. - Where 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, 82 N.M. 97, 476 P.2d 67 (Ct. App. 1970).

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, 87 N.M. 259, 531 P.2d 1232 (Ct. App. 1975).

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; sales to governmental agencies.

A. Except as provided otherwise in Subsection C of this section, receipts from selling tangible personal property to the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof may be deducted from gross receipts.

B. Except as provided otherwise in Subsection C of this section, receipts from selling tangible personal property to the governing body of an Indian tribe or Indian pueblo for use on Indian reservations or pueblo grants may be deducted from gross receipts.

C. Unless contrary to federal law, the deduction provided by this section does not apply to:

(1) receipts from selling nonfissionable metalliferous mineral ore;

(2) receipts from selling tangible personal property which is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code;

(3) receipts from selling tangible personal property that will become an ingredient or component part of a construction project; or

(4) that portion of the receipts from performing a service as defined in Subsection K of Section 7-9-3 NMSA 1978 which reflects the value of tangible personal property utilized or produced in performance of such service is not deductible.

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.

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).

Metropolitan Redevelopment Code. - See 3-60A-1 NMSA 1978 and notes thereto.

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).

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. - Where 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).

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 and rev'd in part on other grounds, 624 F.2d 111 (10th Cir. 1981), 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 and rev'd in part on other grounds, 624 F.2d 111 (10th Cir. 1981), aff'd, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

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 and rev'd in part on other grounds, 624 F.2d 111 (10th Cir. 1981), 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), rehearing denied, 455 U.S. 929, 102 S. Ct. 1296, 71 L. Ed. 2d 474 (1982).

Educational and instructional materials. - Contracts between taxpayer and certain government agencies for the creation, production and delivery of reproducible originals of instructional books, manuals, films, magnetic audio tapes and other items constitute sales of tangible personal property within the contemplation of this section, despite the fact that the value of the instructional materials produced depended largely upon the skills, learning and technical abilities of the taxpayer, rather than tangible materials which went into their makeup. Evco v. Jones, 81 N.M. 724, 472 P.2d 987 (Ct. App.), cert. denied, 81 N.M. 772, 473 P.2d 911 (1970), vacated and remanded for reconsideration on other grounds, 83 N.M. 110, 488 P.2d 1214 (Ct. App.), cert. denied,

402 U.S. 969, 91 S. Ct. 1655, 29 L. Ed. 2d 134, cert. denied, 83 N.M. 105, 488 P.2d 1209 (1971), rev'd on other grounds, 409 U.S. 91, 93 S. Ct. 349, 34 L. Ed. 2d 325 (1972).

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 7-9-3I 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. v. Bureau of Revenue, 86 N.M. 629, 526 P.2d 426 (Ct. App. 1974).

7-9-55. Deduction; gross receipts tax; transaction in interstate commerce.

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.

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: 1978 Comp., § 7-9-55, enacted by Laws 1986, ch. 52, §§ 2, 5.

Compiler's note. - Laws 1988, ch. 19, § 5, effective July 1, 1988, repeals Laws 1986, ch. 20, § 129 and Laws 1986, ch. 52, § 5, which enacted amended versions of this section which were to take effect July 1, 1988.

Laws 1990, ch. 27, § 2A, effective May 16, 1990, repeals Laws 1988, ch. 19, § 2, which had repealed and reenacted this section effective July 1, 1990.

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. New Mexico Taxation & Revenue Dep't, 107 N.M. 392, 758 P.2d 806 (Ct. App. 1988).

All interstate commerce is not per se immune from taxation. Spillers v. Commissioner of Revenue, 82 N.M. 41, 475 P.2d 41 (Ct. App.), cert. denied, 82 N.M. 81, 475 P.2d 778 (1970).

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, 82 N.M. 41, 475 P.2d 41 (Ct. App.), cert. denied, 82 N.M. 81, 475 P.2d 778 (1970).

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, 82 N.M. 41, 475 P.2d 41 (Ct. App.), cert. denied, 82 N.M. 81, 475 P.2d 778 (1970).

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. New Mexico Newspapers, Inc. v. Bureau of Revenue, 82 N.M. 436, 483 P.2d 317 (Ct. App. 1971).

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. New Mexico Newspapers, Inc. v. Bureau of Revenue, 82 N.M. 436, 483 P.2d 317 (Ct. App. 1971).

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. New Mexico Newspapers, Inc. v. Bureau of Revenue, 82 N.M. 436, 483 P.2d 317 (Ct. App. 1971).

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, 89 N.M. 160, 548 P.2d 440 (1976).

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. New Mexico Newspapers, Inc. v. Bureau of Revenue, 82 N.M. 436, 483 P.2d 317 (Ct. App. 1971).

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, 82 N.M. 41, 475 P.2d 41 (Ct. App.), cert. denied, 82 N.M. 81, 475 P.2d 778 (1970).

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. New Mexico Newspapers, Inc. v. Bureau of Revenue, 82 N.M. 436, 483 P.2d 317 (Ct. App. 1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 68 Am. Jur. 2d Sales and Use Taxes §§ 37, 38.

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, are 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 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 which will be used by other persons in providing telephone or telegraph services to the final user and thirty percent of the receipts of persons providing interstate and foreign telephone or telegraph services from transmitting interstate messages or conversations may be deducted from gross receipts.

History: 1953 Comp., § 72-16A-14.11, enacted by Laws 1969, ch. 144, § 46; 1971, ch. 166, § 1; 1986, ch. 20, §§ 66, 130; 1986, ch. 52, §§ 3, 6; 1988, ch. 19, § 3.

Compiler's note. - Laws 1988, ch. 19, § 5, effective July 1, 1990, repeals Laws 1986, ch. 20, § 130 and Laws 1986, ch. 52, § 6, which enacted delayed versions of this section which were to take effect July 1, 1988.

Laws 1990, ch. 27, § 2A, effective May 16, 1990, repeals Laws 1988, ch. 19, § 4 which had repealed and reenacted this section effective July 1, 1990.

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, 92 N.M. 599, 592 P.2d 515 (Ct. App. 1979).

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, 92 N.M. 599, 592 P.2d 515 (Ct. App. 1979).

7-9-57. Deduction; gross receipts tax; sale of certain services to an out-of-state buyer. (Effective until July 1, 1993.)

A. Receipts from performing a service may be deducted from gross receipts if the sale of the service is made to a buyer who delivers to the seller either a nontaxable transaction certificate or other evidence acceptable to the secretary that the transaction does not contravene the conditions set out in Subsection C of this section.

B. The buyer delivering the nontaxable transaction certificate or other evidence acceptable to the secretary shall not contravene the conditions set out in Subsection C of this section.

C. Receipts from performance of a service shall not be subject to the deduction provided in this section if the buyer of the service or any of the buyer's employees or agents:

(1) makes initial use of the product of the service in New Mexico; or

(2) takes delivery of the product of the service in New Mexico.

D. Receipts from performing a service which initially qualified for the deduction provided in this section but which no longer meets the criteria set forth in Subsection C 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.

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" 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, 81 N.M. 481, 468 P.2d 882 (Ct. App. 1970).

7-9-57. Deduction; gross receipts tax; sale of certain services to an out-of-state buyer. (Effective July 1, 1993.)

A. Receipts from performing a service may be deducted from gross receipts if the sale of the service is made to a buyer who delivers to the seller either a nontaxable transaction certificate or other evidence acceptable to the secretary that the transaction does not contravene the conditions set out in Subsection C of this section.

B. The buyer delivering the nontaxable transaction certificate or other evidence acceptable to the secretary shall not contravene the conditions set out in Subsection C of this section.

C. Receipts from performance of a service shall not be subject to the deduction provided in this section if the buyer of the service or any of the buyer's employees or agents:

(1) makes initial use of the product of the service in New Mexico;

(2) takes delivery of the product of the service in New Mexico; or

(3) 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.

D. Receipts from performing a service which initially qualified for the deduction provided in this section but which no longer meets the criteria set forth in Subsection C of this section shall be deductible for the period prior to the disqualification.

History: 1978 Comp., § 7-9-57, enacted by Laws 1989, ch. 262, § 7.

Repeals and reenactments. - Laws 1989, ch. 262, § 7 repeals 7-9-57 NMSA 1978, as amended by Laws 1989, ch. 262, § 6, and enacts the above section, effective July 1, 1993.

7-9-58. Deduction; gross receipts tax; feed; fertilizers.

Receipts from selling feed for livestock, fish raised for human consumption, poultry or for animals raised for their hides or pelts, 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 the raising of animals for their hides or pelts. 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.

1991 amendments. - Laws 1991, ch. 9, § 30, effective January 1, 1992, designating the formerly undesignated first and second sentences as Subsections A and B and, in Subsection A, substituting "and from selling" for "fish raised for human consumption, poultry or for animals raised for their hides or pelts", inserting "germicides", and deleting "states in writing that he" following "person who" near the end, was approved on March 15, 1991. However, Laws 1991, ch. 203, § 6, effective July 1, 1991, inserting "germicides" in the first sentence, was approved on April 4, 1991. The section is 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 or processing for growers, producers or nonprofit marketing associations of other 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.

7-9-60. Deduction; gross receipts tax; sales to certain organizations.

Receipts from selling tangible personal property, other than metalliferous mineral ore, 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 United States Internal Revenue Code of 1954, as amended or renumbered, may be deducted from 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 must employ the tangible personal property in the conduct of functions described in Section 501(c)(3) and must 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 1954, as amended or renumbered. 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.

History: Laws 1969, ch. 144, § 50; 1953 Comp., § 72-16A-14.15; Laws 1970, ch. 12, § 4.

Internal Revenue Code. - Sections 501(c)(3) and 513 of the United States Internal Revenue Code of 1954 appear as 26 U.S.C. §§ 501(c)(3) and 513, respectively.

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 7-9-3I 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. v. Bureau of Revenue, 86 N.M. 629, 526 P.2d 426 (Ct. App. 1974).

Erection of fences not construction. - As the construction of fences does not come within the definition of "construction" in 7-9-3C NMSA 1978, 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, 84 N.M. 314, 502 P.2d 1004 (Ct. App. 1972).

7-9-61. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 37, § 97, repeals 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.

"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, 107 N.M. 540, 760 P.2d 1306 (Ct. App. 1988).

7-9-62. Deduction; gross receipts tax; agricultural implements; aircraft; vehicles that are not required to be registered.

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 [Articles 1 to 8, Chapter 66 NMSA 1978] 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 section is computed.

History: 1953 Comp., § 72-16A-14.17, enacted by Laws 1969, ch. 144, § 52; 1975, ch. 159, § 1.

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, 82 N.M. 82, 475 P.2d 779 (Ct. App.), cert. denied, 82 N.M. 81, 475 P.2d 778 (1970).

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.

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. New Mexico Taxation & Revenue Dep't, 109 N.M. 487, 786 P.2d 1221 (Ct. App. 1990).

Royalties from advertising. - Where 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. New Mexico Sheriffs & Police Ass'n v. Bureau of Revenue, 85 N.M. 565, 514 P.2d 616 (Ct. App. 1973).

No double taxation shown. - Where 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. New Mexico Sheriffs & Police Ass'n v. Bureau of Revenue, 85 N.M. 565, 514 P.2d 616 (Ct. App. 1973).

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.

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. New Mexico Taxation & Revenue Dep't, 109 N.M. 487, 786 P.2d 1221 (Ct. App. 1990).

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.

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, 87 N.M. 146, 530 P.2d 410 (Ct. App. 1974).

Aggregation of deliveries not authorized. - Where 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, 87 N.M. 146, 530 P.2d 410 (Ct. App. 1974).

7-9-66. Deduction; gross receipts tax; commissions.

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.

History: 1953 Comp., § 72-16A-14.22, enacted by Laws 1969, ch. 144, § 57.

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.

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.

Compiler's note. - 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.

7-9-67. Deduction; gross receipts tax; refunds; uncollectible debts.

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.

History: 1953 Comp., § 72-16A-14.23, enacted by Laws 1969, ch. 144, § 58.

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 corporation for administrative, managerial and accounting services performed by it for an affiliated corporation upon a nonprofit or cost basis and receipts from an affiliated corporation 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: "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. For the purposes of this subsection, "control" means ownership of stock in a corporation which:

(1) represents at least eighty percent of the total voting power of that corporation; and

(2) has a value equal to at least eighty percent of the total value of the stock of that corporation.

History: 1953 Comp., § 72-16A-14.26, enacted by Laws 1969, ch. 144, § 61; 1990, ch. 43, § 1.

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, 87 N.M. 118, 529 P.2d 1239 (Ct. App.), cert. denied, 87 N.M. 111, 529 P.2d 1232 (1974).

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.

The 1991 amendment, effective July 1, 1991, substituted "manufactured" for "mobile".

7-9-72. Deduction; gross receipts tax; special fuel.

A. Receipts from the sale of special fuel, as defined in the Special Fuels Tax Act [7-16-1 to 7-16-26 NMSA 1978], may be deducted from gross receipts if the purchaser is a tax-excluded user under Section 7-16-4.2 NMSA 1978 who delivers a nontaxable transaction certificate to the seller. If the purchaser delivering the nontaxable transaction certificate is not subsequently required to pay the excise tax imposed by the Special Fuels Tax Act on a quantity of the special fuel purchased, the compensating tax is due on the value of the fuel upon which the excise tax was not paid when the special fuel is used.

B. Receipts from the sale of special fuel may be deducted from gross receipts if the special fuel is delivered into the supply tank of a vehicle and the dealer is required to pay the special fuel tax on the amount of fuel delivered and if the user of the vehicle is a tax-included user under Section 7-16-4.1 NMSA 1978.

History: 1953 Comp., § 72-16A-14.29, enacted by Laws 1970, ch. 77, § 2; 1979, ch. 87, § 1; 1988, ch. 73, § 10.

7-9-73. Deduction; gross receipts tax; sale of prosthetic devices.

Receipts from selling prosthetic devices may be deducted from gross receipts if the sale is made to a person who is licensed to practice medicine, osteopathy, 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.

7-9-73.1. Deduction; gross receipts tax; general hospitals.

Fifty percent of the receipts of general hospitals may be deducted from gross receipts.

History: Laws 1991, ch. 8, § 3.

Effective dates. - Laws 1991, ch. 8, § 5 makes the act effective on July 1, 1991.

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 the sum of one thousand dollars ($1,000) 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.

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.

The 1990 amendment, effective July 1, 1990, substituted "department" for "director" and made a minor stylistic change in the second sentence.

The 1991 amendment, effective July 1, 1991, substituted "manufactured" for "mobile" in the catchline and throughout the section.

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.

Compiler's note. - Laws 1984, ch. 129, § 2, also enacted a 7-9-76.2 NMSA 1978, but that section, which relates to a deduction of real estate commissions from the gross receipts tax, has been 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 [Articles 1 to 8, Chapter 66 NMSA 1978] may be deducted from the value in computing the compensating tax due. Any deduction allowed under Subsection B of this section is to be taken before the deduction allowed by this subsection is computed.

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.

"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., 96 N.M. 117, 628 P.2d 687 (Ct. App. 1981).

Neither dragline nor continuous miner within scope of section. - Because neither a dragline nor a continuous miner can be classified as a vehicle under 66-1-4B 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., 96 N.M. 117, 628 P.2d 687 (Ct. App. 1981); Pittsburgh & Midway Coal Mining Co. v. Revenue Div., 99 N.M. 545, 660 P.2d 1027 (Ct. App.), appeal dismissed, 464 U.S. 923, 104 S. Ct. 323, 78 L. Ed. 2d 296 (1983).

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.

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, 88 N.M. 432, 540 P.2d 1321 (Ct. App. 1975).

Lease and bailment distinguished. - Where 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, 88 N.M. 432, 540 P.2d 1321 (Ct. App. 1975).

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 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 Properties, Inc. v. New Mexico Bureau of Revenue, 93 N.M. 262, 599 P.2d 1059 (Ct. App. 1979).

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. New Mexico Bureau of Revenue, 85 N.M. 583, 514 P.2d 1079 (Ct. App. 1973).

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. New Mexico Bureau of Revenue, 85 N.M. 583, 514 P.2d 1079 (Ct. App. 1973).

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, 74 N.M. 775, 399 P.2d 105 (1965).

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.

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 during the period July 1, 1989 through June 30, 1993 from the sale in New Mexico of the product of the services performed outside this state.

History: 1978 Comp., § 7-9-79.1, enacted by Laws 1989, ch. 262, § 8.

Effective dates. - Laws 1989, ch. 262, § 12A makes the act effective on July 1, 1989.

7-9-80. Repealed.

ANNOTATIONS

Repeals. - Laws 1982, ch. 18, § 27, repeals 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.

7-9-80.1, 7-9-81. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 115, § 6A repeals 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. For provisions of former sections, see 1988 Replacement Pamphlet.

7-9-82. Credit; gross receipts tax; municipal gross receipts tax paid.

A credit shall be allowed for each reporting period against the gross receipts tax for:

A. an amount of the municipal gross receipts tax equal to one-half of one percent of the taxable gross receipts for which the taxpayer is liable for that reporting period imposed by a municipality pursuant to Section 7-19-4 NMSA 1978 if that municipality has imposed a total municipal gross receipts tax rate of at least one-half of one percent; or

B. an amount of the municipal gross receipts tax equal to one-fourth of one percent of the taxable receipts for which the taxpayer is liable for that reporting period imposed by a municipality pursuant to Section 7-19-4 NMSA 1978 if that municipality has imposed a total municipal gross receipts tax rate of one-fourth of one percent.

History: 1978 Comp., § 7-9-82, enacted by Laws 1986, ch. 20, § 68.

Compiler's note. - Laws 1986, ch. 20, § 68 compiled this section as 7-9-80 NMSA 1978; however, as that section had previously been compiled with a different subject, since repealed, the section was compiled here.

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.

1991 amendments. - Identical amendments to this section were enacted by Laws 1991, ch. 159, § 1 approved April 3, 1991, and Laws 1991, ch. 162, § 1, approved later on April 3, 1991, both effective June 14, 1991, which substituted "Chapter 7, Article 9A NMSA 1978" for "Sections 1 through 11 of this Act". The section is treated as amended by Laws 1991, ch. 162, § 1. See 12-1-8 NMSA 1978.

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.

Applicability. - Laws 1983, ch. 206, § 8, makes the provisions of the act applicable to tax years beginning on or after January 1, 1984.

7-9A-3. Definitions.

As used in the Investment Credit Act [this article]:

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; 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.

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.

1991 amendments. - Identical amendments to this section were enacted by Laws 1991, ch. 159, § 2 approved April 3, 1991, and Laws 1991, ch. 162, § 2, approved later on April 3, 1991, both effective June 14, 1991, which 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 present Subsection E; and redesignated former Subsection E as Subsection F. The section is treated as amended by Laws 1991, ch. 162, § 2. See 12-1-8 NMSA 1978.

Internal Revenue Code. - The Internal Revenue Code, referred to in Subsection B, is codified as 26 U.S.C. § 1 et seq.

7-9A-4. Administration of the act.

The department is charged with the administration of the Investment Credit Act [this article].

History: Laws 1979, ch. 347, § 4; 1991, ch. 159, § 3; 1991, ch. 162, § 3.

1991 amendments. - Identical amendments to this section were enacted by Laws 1991, ch. 159, § 3 approved April 3, 1991, and Laws 1991, ch. 162, § 3, approved later on April 3, 1991, both effective June 14, 1991, which substituted "department" for "division". The section is treated 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 [this article] 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.

1991 amendments. - Identical amendments to this section were enacted by Laws 1991, ch. 159, § 4, approved April 3, 1991, and Laws 1991, ch. 162, § 4, approved later on April 3, 1991, both effective June 14, 1991, which deleted former Subsections B and C, relating to limitations on claims for investment credit, and made a related stylistic change. The section is treated as amended by Laws 1991, ch. 162, § 4. See 12-1-8 NMSA 1978.

Compiler's note. - Laws 1991, ch. 159, § 8 and Laws 1991, ch. 162, § 8, effective June 14, 1991, repeal 7-9A-5 NMSA 1978, as enacted by Laws 1990, ch. 3, § 3, which was to become effective on January 1, 1994.

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.

Cross-references. - As to 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. (Effective until January 1, 1994.)

The value of qualified equipment shall be the adjusted basis established for the equipment under the applicable provisions of the Internal Revenue Code.

History: Laws 1979, ch. 347, § 7; 1983, ch. 206, § 5; 1990, ch. 3, § 5; 1991, ch. 159, § 5; 1991, ch. 162, § 5.

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.

1991 amendments. - Identical amendments to this section were enacted by Laws 1991, ch. 159, § 5, approved April 3, 1991, and Laws 1991, ch. 162, § 5, approved later on April 3, 1991, both effective June 14, 1991, which 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." The section is treated as amended by Laws 1991, ch. 162, § 5. See 12-1-8 NMSA 1978.

7-9A-7. Value of qualified equipment. (Effective January 1, 1994.)

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: 1978 Comp., § 7-9A-7, enacted by Laws 1990, ch. 3, § 6.

Repeals and reenactments. - Laws 1990, ch. 3, § 6 repeals former 7-9A-7 NMSA 1978, as amended by Laws 1990, ch. 3, § 5, and enacts the above section, effective January 1, 1994.

7-9A-7.1. Employment requirements. (Effective until January 1, 1994.)

A. To be eligible to claim a credit pursuant to the Investment Credit Act [this article], 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) two hundred fifty thousand dollars ($250,000), 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 two million dollars ($2,000,000);

(2) five hundred thousand dollars ($500,000), or portion of that amount, in value of qualified equipment over two million dollars ($2,000,000) claimed by the taxpayer in a taxable year in the same claim, up to a value of thirty million dollars ($30,000,000); and

(3) 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. 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 he was only being trained prior to that date or his employment is 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.

The 1990 amendment, effective January 1, 1991, rewrote the first sentence which read: "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 first day of January of the calendar year or the taxable year for which the credit claimed is a part", substituted "department" for "director" in the second and third sentences, deleted "other" following "require" in the second sentence, and, in the third sentence, substituted "earlier than one year prior to the day on which the taxpayer applies for the credit" for "before the first day of January", substituted "or" for "and" preceding "his employment" and deleted "after the first day of January" at the end.

1991 amendments. - Identical amendments to this section were enacted by Laws 1991, ch. 159, § 6, approved April 3, 1991, and Laws 1991, ch. 162, § 6, approved later on April 3, 1991, both effective June 14, 1991, which rewrote this section to the extent that a detailed analysis is impracticable. The section is treated as amended by Laws 1991, ch. 162, § 6. See 12-1-8 NMSA 1978.

7-9A-7.1. Employment requirements. (Effective January 1, 1994.)

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 first day of January of the calendar year or the taxable year for which the credit is claimed is a part. The department may require other evidence showing compliance with this section. The department may find that an additional employee meets the requirements of this section, although employed before the first of January, if he was only being trained prior to that date and his employment is necessitated by the use of the qualified equipment after the first of January.

History: 1978 Comp., § 7-9A-7.1, enacted by Laws 1990, ch. 3, § 8.

Repeals and reenactments. - Laws 1990, ch. 3, § 8 repeals former 7-9A-7.1 NMSA 1978, as amended by Laws 1990, ch. 3, § 7, and enacts the above section, effective January 1, 1994.

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. 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.

B. A taxpayer having applied for and been granted approval for an investment credit pursuant to the Investment Credit Act may claim a refund of an amount of available credit upon evidence satisfactory to the secretary of taxation and revenue that an element of the price denominated a gross receipts tax has been paid on the purchase of tangible personal property for the manufacturing operation or on the purchase of construction services used in connection with qualified equipment or that compensating tax has been paid and not refunded on the value of the qualified equipment for which the credit was approved.

History: Laws 1979, ch. 347, § 8; 1983, ch. 206, § 7; 1988, ch. 123, § 1; 1990, ch. 3, § 9.

Cross-references. - For withholding tax, see Chapter 7, Article 3 NMSA 1978.

For gross receipts tax, see Chapter 7, Article 9 NMSA 1978.

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."

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.

1991 amendments. - Identical amendments to this section were enacted by Laws 1991, ch. 159, § 7, approved April 3, 1991, and Laws 1991, ch. 162, § 7, approved later on April 3, 1991, both effective June 14, 1991, which substituted "department" for "division" in the first sentence and "shall" for "must" in two places in the second sentence. The section is treated 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, repeals 7-9A-10 NMSA 1978, relating to the inapplicability of the Investment Credit Act for equipment introduced or purchased after January 1, 1982.

Laws 1981, ch. 177, contains no effective date provision, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

ARTICLE 10
GROSS RECEIPTS TAX REGISTRATION

7-10-1. Short title.

This act may be cited as the "Gross Receipts Tax Registration Act".

History: 1953 Comp., § 72-16A-30, enacted by Laws 1970, ch. 26, § 1.

Meaning of "this act". - The term "this act", referred to in this section, means Laws 1970, Chapter 26, the Gross Receipts Tax Registration Act, which appears as 7-10-1 to 7-10-5 NMSA 1978.

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 bureau for payment of the gross receipts tax.

History: 1953 Comp., § 72-16A-31, enacted by Laws 1970, ch. 26, § 2.

Meaning of "bureau". - See 7-10-3A NMSA 1978.

Gross Receipts Tax Registration Act. - See 7-10-1 NMSA 1978 and notes thereto.

7-10-3. Definitions.

As used in the Gross Receipts Tax Registration Act:

A. "bureau" 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;

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.

Gross Receipts Tax Registration Act. - See 7-10-1 NMSA 1978 and notes thereto.

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, must be registered with the bureau to pay the gross receipts tax.

History: 1953 Comp., § 72-16A-33, enacted by Laws 1970, ch. 26, § 4.

Gross Receipts Tax Registration Act. - See 7-10-1 NMSA 1978 and notes thereto.

7-10-5. Penalty for noncompliance.

If any person, who leases or sells property to or performs services for the state, 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 bureau to pay the gross receipts tax.

History: 1953 Comp., § 72-16A-34, enacted by Laws 1970, ch. 26, § 5.

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.

Repeals and reenactments. - Laws 1982, ch. 18, § 17, repeals former 7-11-1 NMSA 1978, relating to definitions, and enacts the above 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 [this article]:

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.

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 § 176.

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 1987 and subsequent calendar years a tax of three 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.

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.

Repeals and reenactments. - Laws 1982, ch. 18, § 20, repeals 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 enacts the above 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.

Repeals and reenactments. - Laws 1982, ch. 18, § 22, repeals 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 enacts the above section.

7-11-7 to 7-11-12. Repealed.

ANNOTATIONS

Repeals. - Laws 1982, ch. 18, § 27, repeals 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.

Cross-references. - For applicability of the Tax Administration Act to the Cigarette Tax Act, see 7-1-2 NMSA 1978.

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.

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, 47 N.M. 230, 141 P.2d 192 (1943).

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, 47 N.M. 230, 141 P.2d 192 (1943).

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, 47 N.M. 230, 141 P.2d 192 (1943).

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 [this article]:

A. "cigarette" means any roll of tobacco or any substitute therefor wrapped in paper or any substance other than tobacco;

B. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity;

C. "bureau", "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;

D. "commissioner", "director" or "secretary" means the secretary of taxation and revenue or the secretary's delegate;

E. "stamp" means any authorized label which is issued to cover the tax in multiples of five cigarettes and upon which is printed the words "State of New Mexico" and "tobacco tax" and which is coated with an adhesive to affix the stamp to a package so that the stamp, once affixed, cannot be removed without destroying it;

F. "stamped" means a package or container of cigarettes to which a cigarette tax stamp has been affixed as provided in the Cigarette Tax Act; and

G. "unstamped" means a package or container of cigarettes to which the cigarette tax stamp provided for in the Cigarette Tax Act has not been affixed.

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.

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 rate of seventy-five one-hundredths of one cent ($.0075) for each cigarette sold, given or consumed in this state.

B. The tax imposed by the Cigarette Tax Act [this Article] 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.

7-12-3.1. Cigarette inventory tax; imposition of tax; date payment of tax due.

A. A cigarette inventory tax is imposed measured by the quantity of cigarette stamps, whether or not affixed to packages of cigarettes, in the possession of a person who is required by Subsection C of Section 7-12-5 NMSA 1978 to affix stamps on the date on which an increase in the excise tax imposed by Section 7-12-3 NMSA 1978 is effective. The taxable event is the existence of an inventory of cigarette stamps, whether or not affixed to packages of cigarettes, in the possession of a person who is required by Subsection C of Section 7-12-5 NMSA 1978 to affix stamps on the date on which an increase in the excise tax imposed by Section 7-12-3 NMSA 1978 is effective. The rate of the cigarette inventory tax to apply to cigarette stamps held in inventory shall be the amount of the increase in the cigarette tax imposed by Section 7-12-3 NMSA 1978.

B. The cigarette inventory tax is to be paid to the division on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

History: 1978 Comp., § 7-12-3.1, enacted by Laws 1986, ch. 13, § 3.

7-12-3.2. Cigarette [stamp] inventories.

A. On any date on which the excise tax imposed by Section 7-12-3 NMSA 1978 is increased, each person who is required by Subsection C of Section 7-12-5 NMSA 1978 to affix stamps shall take inventory of cigarette stamps on hand, including stamps affixed to packages of cigarettes.

B. Each person required to take an inventory by Subsection A of this section shall report the total number of cigarette stamps in inventory on the date on which the tax imposed by Section 7-12-3 NMSA 1978 changes and pay any tax due imposed by Section 7-12-3.1 NMSA 1978.

History: 1978 Comp., § 7-12-3.2, enacted by Laws 1986, ch. 13, § 4.

7-12-4. Exemption.

Exempted from the cigarette tax are sales of cigarettes to the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof, and sales which the state is prohibited from taxing by a provision of the United States constitution or the constitution of the state of New Mexico. As used herein, 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.

7-12-5. Affixing stamps; license fee.

A. All cigarettes, the sale, gift or consumption of which is subject to the cigarette tax, shall be placed in packages or containers to which a stamp may be affixed.

B. Packages or containers to which a stamp is required to be affixed and which contain cigarettes that are not in multiples of five cigarettes shall have affixed a stamp of the next higher multiple of five cigarettes.

C. Unless the requirements of this section are waived pursuant to Section 7-12-6 NMSA 1978, a stamp shall be affixed to each package or container of cigarettes the sale, gift or consumption of which is subject to the cigarette tax. The stamp shall be affixed by any person who sells in New Mexico cigarettes manufactured by that person or who receives on consignment or buys unstamped cigarettes for sale, gift or consumption in New Mexico.

D. 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. The license fee shall be one-eighth of one percent of the gross receipts derived from selling cigarettes stamped outside New Mexico. The license fee imposed by this subsection is

to be paid on or before the twenty-fifth day of the month following the month in which sales of cigarettes stamped outside New Mexico are made.

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.

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:

A. the cigarettes are sold on railroad passenger trains in New Mexico. When unstamped cigarettes are sold on railroad passenger trains in New Mexico, the seller shall remit to the bureau the tax imposed in Section 7-12-3 NMSA 1978 on or before the twenty-fifth day of the month following the month in which sales of unstamped cigarettes are made on railroad passenger trains in New Mexico; or

B. the cigarettes are distributed by a cigarette manufacturer to consumers within the state of New Mexico as free samples. When unstamped cigarettes are distributed by a cigarette manufacturer in New Mexico as free samples, the manufacturer shall remit to the bureau the tax imposed in Section 7-12-3 NMSA 1978 on or before the twenty-fifth day of the month following the month in which distributions of unstamped cigarettes are made.

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.

7-12-7. Sale of stamps; prices.

A. The department shall sell stamps to any person who sells in New Mexico cigarettes manufactured by that person and to any person who receives on consignment or buys unstamped cigarettes for sale, gift or consumption in New Mexico, provided such persons are registered with the department under the provisions of Section 7-1-12 NMSA 1978. Stamps shall be sold at their face value with the following discounts:

(1) four percent less than the face value of the first thirty thousand dollars ($30,000) of stamps purchased in one calendar month;

(2) three percent less than the face value of the second thirty thousand dollars ($30,000) of stamps purchased in one calendar month; and

(3) two percent less than the face value of all stamps purchased in excess of sixty thousand dollars ($60,000) in one calendar month.

B. If the face value of 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.

C. Payment for 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.

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.

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. License necessary to engage in business of selling cigarettes in New Mexico.

Each person engaged in the business of selling cigarettes in New Mexico shall register and comply with the provisions of Section 7-1-12 NMSA 1978. Every person selling cigarettes in New Mexico shall furnish such information as may be requested by the department concerning that person's vending machines or other places of business where cigarettes are sold.

History: Laws 1943, ch. 95, § 4; 1941 Comp. Supp., § 76-1604; Laws 1947, ch. 84, § 4; 1949, ch. 180, § 4; 1953 Comp., § 72-14-4; Laws 1970, ch. 70, § 2; reenacted as 1953 Comp., § 72-14-9 by Laws 1971, ch. 77, § 9; 1988, ch. 95, § 7.

7-12-10. Retention of invoices and records; inspection by department.

A. Each person who sells cigarettes 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 in which the sale was made. The invoices shall indicate the date of sale, quantity of cigarettes sold, the price received and the name and address of the buyer.

B. Each person who sells cigarettes in New Mexico shall maintain a file of copies of the invoices under which the cigarettes were purchased for three years from the end of the year during which cigarettes were purchased. The invoices shall indicate the date of purchase, the quantity of cigarettes 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 cigarettes in the possession of the seller.

History: Laws 1943, ch. 95, § 7; 1941 Comp. Supp., § 76-1607; 1953 Comp., § 72-14-7; reenacted as 1953 Comp., § 72-14-10 by Laws 1971, ch. 77, § 10; 1988, ch. 95, § 8.

7-12-11. Export sellers; physical segregation of cigarettes to be exported.

Any person selling and shipping cigarettes outside New Mexico may maintain unstamped cigarettes on his premises if the unstamped cigarettes to be shipped outside the state are kept in a separate part of his place of business, physically segregated from cigarettes to be sold inside New Mexico and clearly identified as cigarettes for shipment outside the state. If cigarettes to be sold outside New Mexico are intermingled with cigarettes to be sold inside New Mexico, they shall be stamped and treated for purposes of the Cigarette Tax Act [Chapter 7, Article 12 NMSA 1978] as cigarettes to be sold inside New Mexico.

History: 1953 Comp., § 72-14-11, enacted by Laws 1971, ch. 77, § 11.

Repeals and reenactments. - Laws 1971, ch. 77, § 11, repeals 72-14-11, 1953 Comp., relating to revenue stamps, and enacts the above section.

7-12-12. Shipment of unstamped cigarettes in New Mexico.

The secretary may, by regulation, require and prescribe the contents of reports to be filed with the department by persons transporting unstamped cigarettes in New Mexico.

History: 1953 Comp., § 72-14-12, enacted by Laws 1971, ch. 77, § 12; 1988, ch. 95, § 9.

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.

7-12-13. Penalties.

A. Any person selling cigarettes in New Mexico and required by the provisions of Section 7-12-10 NMSA 1978 to retain invoices who willfully fails to retain such invoices

shall, upon conviction, be fined not less than twenty-five dollars ($25.00) or more than two hundred dollars ($200). Jurisdiction over such actions is granted to the magistrate courts.

B. Any person not a manufacturer of cigarettes who sells cigarettes in New Mexico without the stamps required by Section 7-12-5 NMSA 1978 affixed thereto and without that requirement having been waived under Section 7-12-6 NMSA 1978 shall, upon conviction, be fined not less than one hundred dollars ($100) or more than five hundred dollars ($500) or imprisoned not more than ninety days in the county jail, or both. Jurisdiction over such actions is granted to the magistrate courts.

C. The department shall seize and sell cigarettes which are not stamped as required by the Cigarette Tax Act. The sale shall be made pursuant to the provisions of Sections 7-1-41 through 7-1-49 and 7-1-51 NMSA 1978. The department shall collect the amount of cigarette tax due on such unstamped cigarettes, plus fifty percent thereof as penalty, from the proceeds of sale.

History: Laws 1943, ch. 95, § 8; 1941 Comp. Supp., § 76-1608; Laws 1949, ch. 180, § 7; 1953 Comp., § 72-14-8; Laws 1970, ch. 70, § 5; reenacted as 1953 Comp., § 72-14-13 by Laws 1971, ch. 77, § 13; 1988, ch. 95, § 10.

7-12-14. Repealed.

ANNOTATIONS

Repeals. - Laws 1983, ch. 211, § 42, repeals 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. 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.

History: Laws 1971, ch. 77, § 14; 1988, ch. 95, § 11.

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.

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 [this article]:

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. "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit;

C. "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 sold in New Mexico in the ordinary course of business;

D. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity or the state of New Mexico or any political subdivision thereof;

E. "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

F. "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.

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 for sale in the ordinary course of business, 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.

7-12A-4. Exemption; tobacco products tax.

Exempted from the tobacco products tax is the product value of tobacco products sold to or by the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof. 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.

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 [this article]; 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 [this Article] 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.

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 [this article]:

A. "gasoline" means any flammable liquid used primarily as fuel for the propulsion of motor vehicles, motorboats or aircraft. "Gasoline" does not include diesel-engine fuel,

kerosene, liquefied petroleum gas, natural gas and products specially prepared and sold for use in the turbo-prop or jet-type engines;

B. "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;

C. "director" or "secretary" means the secretary of taxation and revenue or the secretary's delegate;

D. "motor vehicle" means any self-propelled vehicle suitable for operation on the highways;

E. "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 or not it is temporarily closed;

F. "distributor" means any person, but 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 within the meaning of "received" as defined in this section;

G. "wholesaler" means any person not a distributor 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;

H. "retailer" means any person who sells gasoline in quantities of thirty-five gallons or less and delivers such gasoline into the fuel supply tanks of motor vehicles;

I. the definitions of "distributor", "wholesaler" and "retailer" shall be construed so that a person may at the same time be a retailer and a distributor or a retailer and a wholesaler;

J. "person" means:

(1) any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, 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) the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof;

K. "received" means:

(1) (a) gasoline which is produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state by any person is received by such person when it is loaded there into tank cars, tank trucks, tank wagons or other types of transportation equipment, or when it is placed into any tank or other container from which sales or deliveries not involving transportation are made;

(b) when, however, such gasoline is shipped or delivered to another person registered as a distributor under the Gasoline Tax Act, then it is received by the distributor to whom it is so shipped or delivered; and

(c) further, when such gasoline is shipped or delivered to another person not registered as a distributor under the Gasoline Tax Act for the account of a person that is so registered, it is received by the distributor for whose account it is shipped;

(2) notwithstanding the provisions of Paragraph (1) of this subsection, when gasoline is shipped or delivered from a refinery or pipeline terminal to another refinery or pipeline terminal, such gasoline is not received by reason of such shipment or delivery;

(3) any product other than gasoline that is blended to produce gasoline other than at a refinery or pipeline terminal in this state is received by a person who is the owner thereof at the time and place the blending is completed; and

(4) except as otherwise provided, gasoline is received at the time and place it is first unloaded in this state and by the person who is the owner thereof immediately preceding the unloading, unless the owner immediately after the unloading is a registered distributor, in which case such registered distributor is considered as having received the gasoline;

L. "drip gasoline" means a combustible hydrocarbon liquid formed as a product of condensation from either associated or nonassociated natural or casing-head gas which remains a liquid at existing atmospheric temperature and pressure;

M. "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 must report on the same basis for a period of at least one year; and

N. "ethanol blended fuel manufactured exclusively in New Mexico" means gasoline received in New Mexico containing a minimum of ten percent by volume of denatured ethanol manufactured exclusively in New Mexico, of at least one hundred ninety-nine proof, exclusive of denaturants.

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.

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. Except as provided in the County and Municipal Gasoline Tax Act [Chapter 7, Article 24A NMSA 1978], no municipality or other political subdivision of the state may impose an excise or occupation tax upon, or measured by, gasoline received, sold, used, stored or handled therein.

B. The tax imposed by Subsection A of this section shall be sixteen cents ($.16) per gallon received in New Mexico.

C. Any person paying the gasoline excise tax who in turn sells such gasoline to another, whether or not for use, shall include the tax as part of the selling price of the gasoline. Any person thereafter purchasing such gasoline and who subsequently resells such gasoline shall include the increment so paid as part of the selling price of the gasoline.

D. 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.

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. Continental Oil Co., 256 U.S. 642, 41 S. Ct. 606, 65 L. Ed. 1139 (1921).

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. Transcontinental & W. Air, Inc. v. Lujan, 36 N.M. 64, 8 P.2d 103 (1931).

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 July 1 of the calendar year 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 July 1 of the calendar year 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 through June of the calendar year in which the gasoline excise tax is increased subtracted from the increased gasoline excise tax rate imposed on July 1 of that same calendar year, expressed in cents per gallon.

B. Any person paying the gasoline inventory tax who in turn sells such gasoline to another, whether or not for use, shall include the gasoline inventory tax as part of the selling price of the gasoline. Any person thereafter purchasing such gasoline and who subsequently resells such gasoline shall include the increment so paid as part of the selling price of the gasoline.

C. The gasoline inventory tax is to be paid to the division 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.

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 July 1 of the calendar year in which the excise tax is imposed by Section 7-13-3 NMSA 1978, 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 July 1 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 July 1 and shall not increase or reduce the price of the gasoline sold until the inventory is disposed of in the ordinary course of business.

D. The division shall promulgate regulations required to administer this section.

History: 1978 Comp., § 7-13-3.2, enacted by Laws 1979, ch. 166, § 8; 1985, ch. 35, § 2.

7-13-3.3. Gasoline inventory tax rebate.

A gasoline tax rebate is established measured by the quantity of gallons of gasoline in the possession of a distributor or wholesaler on July 1 of the calendar year in which a decrease in the excise tax imposed by Section 7-13-3 NMSA 1978 is effective. The rebate event is the existence of an inventory in the possession of a distributor or wholesaler on July 1 of the calendar year in which a decrease in the excise tax imposed by Section 7-13-3 NMSA 1978 is effective. The rebate is to be calculated by determining the difference between the gasoline excise tax rate imposed in July of the calendar year in which the gasoline excise tax is decreased, subtracted from the

gasoline excise tax rate imposed through June of that same calendar year, expressed in cents per gallon. The refund rate so determined is then multiplied by each gallon in inventory as determined under Section 7-13-3.2 NMSA 1978.

History: 1978 Comp., § 7-13-3.3, enacted by Laws 1979, ch. 166, § 9.

7-13-3.4. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 124, § 23 repeals 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 1988 Replacement Pamphlet.

7-13-4. Deductions; gasoline tax. (Effective until July 1, 1992.)

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 that satisfactory proof thereof is furnished to the department:

A. gasoline received in New Mexico but sold for export or exported from this state by a distributor other than in the fuel supply tank of a motor vehicle; and

B. gasoline received in New Mexico 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; and

C. one percent of the taxable gallons of gasoline remaining after all other deductions have been taken as a flat allowance to cover evaporation, shrinkage and losses from unknown causes, regardless of the actual amount thereof; provided that if the distributor is not compensated for the gasoline based on the gallons delivered into the fuel supply tanks of motor vehicles, he shall make available to the retailer so compensated an allowance of two percent as shown by delivery invoices signed by that retailer.

History: 1953 Comp., § 72-27-4, enacted by Laws 1971, ch. 207, § 4; 1983, ch. 204, § 3; 1985, ch. 84, § 1; 1991, ch. 9, § 31.

The 1991 amendment, effective July 1, 1991, substituted "department" for "division" at the end of the introductory paragraph; added "and" at the end of Subsection A; inserted "received in New Mexico" in Subsection B; and substituted "one percent" for "two percent" at the beginning of Subsection C.

7-13-4. Deductions; gasoline tax. (Effective July 1, 1992.)

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 that satisfactory proof thereof is furnished to the department:

A. gasoline received in New Mexico, but sold for export or exported from this state by a distributor other than in the fuel supply tank of a motor vehicle; and

B. gasoline received in New Mexico 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.

History: 1978 Comp., § 7-13-4, enacted by Laws 1991, ch. 9, § 32.

Repeals and reenactments. - Laws 1991, ch. 9, § 32 repeals 7-13-4 NMSA 1978, as amended by Laws 1991, ch. 9, § 31 and enacts the above section, effective July 1, 1992.

7-13-4.1. Deduction; ethanol blended fuel.

In computing the gasoline tax due, gasoline received in New Mexico containing a minimum of ten percent by volume of denatured ethanol alcohol manufactured exclusively in New Mexico, of at least one hundred ninety-nine proof, exclusive of denaturants, known as "ethanol blended fuel," may be deducted from the total amount of gasoline received in New Mexico during the period July 1, 1980 through June 30, 1987, provided that satisfactory proof thereof is furnished to the revenue division of the taxation and revenue department.

History: 1978 Comp., § 7-13-4.1, enacted by Laws 1980, ch. 105, § 3; 1981, ch. 175, § 2; 1983, ch. 204, § 4; 1983, ch. 225, § 2.

Constitutionality. - This section discriminates between the tax treatment of ethanol-blended fuel manufactured in New Mexico and ethanol-blended fuel manufactured elsewhere; this discrimination violates the commerce clause. Giant Indus. Arizona, Inc. v. Taxation & Revenue Dep't, 110 N.M. 442, 796 P.2d 1138 (Ct. App. 1990).

Nonseverability of unconstitutional provisions. - Because economic protectionism was the primary purpose of the deduction provided for in 7-13-4.1 to 7-13-4.3 NMSA 1978, the legislature would not have enacted the deduction had it known that the objectionable part was invalid. Thus, the unconstitutional portion of the statutes cannot be severed and the entire deduction must fail. Giant Indus. Arizona, Inc. v. Taxation & Revenue Dep't, 110 N.M. 442, 796 P.2d 1138 (Ct. App. 1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 616, 628, 632.

7-13-4.2. Deduction; ethanol blended fuel produced using New Mexico agricultural products.

A. In computing the gasoline tax due, ethanol blended fuel manufactured exclusively in New Mexico shall be deducted from the total amount of gasoline received in New Mexico in the following amounts and during the specified periods, provided that at least fifty percent of the agricultural feedstocks by volume used in fermentation are produced in New Mexico and provided further that satisfactory proof is furnished to the department:

(1) from July 1, 1987 through June 30, 1988, eight cents ($.08) per gallon;

(2) from July 1, 1988 through June 30, 1989, eight cents ($.08) per gallon;

(3) from July 1, 1989 through June 30, 1990, three cents ($.03) per gallon; and

(4) from July 1, 1990 through June 30, 1991, two cents ($.02) per gallon.

B. The requirement of furnishing satisfactory proof to the department pursuant to Subsection A of this section applies only to the deduction provided in this section and does not apply to the deductions provided in Section 7-13-4.1 NMSA 1978.

History: 1978 Comp., § 7-13-4.2, enacted by Laws 1983, ch. 225, § 3; 1988, ch. 165, § 1.

Recompilations. - Laws 1983, ch. 225, § 4, recompiles former 7-13-4.2 NMSA 1978, relating to legislative findings and declarations of purpose for the encouragement of the production of gasohol, as 7-13-4.3 NMSA.

Nonseverability of unconstitutional provisions. - Because economic protectionism was the primary purpose of the deduction provided for in 7-13-4.1 to 7-13-4.3 NMSA 1978, the legislature would not have enacted the deduction had it known that the objectionable part was invalid. Thus, the unconstitutional portion of the statutes cannot be severed and the entire deduction must fail. Giant Indus. Arizona, Inc. v. Taxation & Revenue Dep't, 110 N.M. 442, 796 P.2d 1138 (Ct. App. 1990).

7-13-4.3. Findings and declaration of purpose.

The legislature finds and declares that the production and sale of ethanol blended fuel is of great importance to the state of New Mexico because such motor fuel pollutes the air less than conventional motor fuel, provides a new use and market for new Mexico agricultural products and reduces dependence on limited oil resources. Accordingly, it is declared to be the public policy of the state of New Mexico to encourage, through tax relief, the production within the state of ethanol blended fuel which contains denatured ethanol alcohol derived from New Mexico agricultural products.

History: Laws 1980, ch. 105, § 1; 1978 Comp., § 7-13-14.2, recompiled as 1978 Comp., § 7-13-14.3 by Laws 1983, ch. 225, § 4.

7-13-5. Tax returns; payment of tax.

Distributors shall file gasoline tax returns in form and content as prescribed by the director 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.

History: 1953 Comp., § 72-27-5, enacted by Laws 1971, ch. 207, § 5.

7-13-6. Returns by wholesalers; exception.

Wholesalers shall file information returns in form and content as prescribed by the director on or before the twenty-fifth day of the month following the month in which gasoline is sold in New Mexico. 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 director.

History: 1953 Comp., § 72-27-6, enacted by Laws 1971, ch. 207, § 6; 1977, ch. 154, § 1; 1983, ch. 204, § 6.

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, repeals 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.

Upon the submission of proof satisfactory to him, the director 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.

History: 1953 Comp., § 72-27-10, enacted by Laws 1971, ch. 207, § 10; 1983, ch. 204, § 9.

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 director. 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 must, upon demand, furnish proof acceptable to the director 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 [this article].

History: 1953 Comp., § 72-27-11, enacted by Laws 1971, ch. 207, § 11; 1983, ch. 204, § 10.

7-13-13. Permit to purchase dyed gasoline and apply for refund of gasoline tax on gasoline not used in motor boats or in motor vehicles operated on highways of this state.

A. Each person who wishes to purchase gasoline dyed in accordance with the provisions of Section 7-13-15 NMSA 1978 and to claim a refund of gasoline tax paid on such gasoline under the provisions of Section 7-13-14 NMSA 1978 must apply for and obtain a permit to do so from the director. The application for the permit shall be in form and content as prescribed by the director.

B. The director may, upon notice and after hearing, suspend 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 under Section 7-13-14 NMSA 1978 who uses gasoline dyed in accordance with Section 7-13-15 NMSA 1978 in a motor boat or in a vehicle licensed to operate on the highways of this state or who violates any other provision of the Gasoline Tax Act [this article]. Such suspension may be, in the discretion of the director, for a period of up to one year.

History: 1953 Comp., § 72-27-12, enacted by Laws 1971, ch. 207, § 12; 1983, ch. 204, § 11.

7-13-14. Claim for refund of gasoline tax paid on gasoline not used in motor boats or in motor vehicles licensed to operate on highways of this state.

Upon submission of proof satisfactory to him, the director shall allow a claim for refund of gasoline tax paid on dyed gasoline purchased and used within six months prior to the filing of the claim by holders of permits issued under Section 7-13-13 NMSA 1978. The individual purchases of such gasoline, other than that to be used as aviation fuel, must have been made in quantities of fifty gallons or more. Purchasers of aviation fuel may accumulate invoices to reach the minimum required for filing a claim for refund. No claim for refund may be presented on less than one hundred gallons so purchased. The director may, by regulation, prescribe the documents necessary to support a claim for refund and the invoice and sales procedure to be followed by sellers and purchasers of gasoline not intended to be used in motor boats or in motor vehicles licensed to operate on the highways of this state by the motor vehicles division of the transportation department.

History: 1953 Comp., § 72-27-13, enacted by Laws 1971, ch. 207, § 13; 1983, ch. 204, § 12.

7-13-15. Gasoline wholesalers or distributors may sell gasoline to be used other than in motor boats or in vehicles licensed to be operated on the highways; identifying dye shall be added to such gasoline.

Gasoline wholesalers or distributors who are registered as such with the division may sell gasoline to be used other than in motor boats or in vehicles licensed to operate on the highways. Such persons shall mix with the gasoline identifying dye, which shall be furnished without cost by the division. Gasoline so dyed shall be sold only to persons who present a refund gasoline permit issued by the division under the provisions of Section 7-13-13 NMSA 1978. 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 may, upon proper showing, purchase gasoline to which dye has not been added and may claim a refund thereon under the provisions of Section 7-13-14 NMSA 1978.

History: 1953 Comp., § 72-27-14, enacted by Laws 1971, ch. 207, § 14; 1983, ch. 204, § 13.

7-13-16. Repealed.

ANNOTATIONS

Repeals. - Laws 1983, ch. 211, § 42, repeals 7-13-16 NMSA 1978, relating to the refund gasoline suspense fund, effective July 1, 1983.

Compiler's note. - Section 7-13-16 was amended by Laws 1983, ch. 204, § 14, which substituted "director" for "commissioner" and substituted "Sections" for "Section" near the middle of the first sentence. Chapter 204, § 14 was enacted at a session which

adjourned on March 19, 1983. However, Laws 1983, ch. 211, § 42, repealed Section 7-13-16. See 12-1-8 NMSA 1978.

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.

Effective dates. - Laws 1990, ch. 124, § 24 makes the act effective on July 1, 1990.

7-13A-2. Definitions.

As used in the Petroleum Products Loading Fee Act [this article]:

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 as a distributor for purposes of the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978] and any person who receives special fuel in this state;

C. "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;

D. "gasoline" means any flammable liquid used primarily as fuel for the propulsion of motor vehicles, motorboats or aircraft. "Gasoline" does not include diesel-engine fuel, kerosene and products specially prepared and sold for use in the turboprop or jet-type engines;

E. "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;

F. "motor vehicle" means any self-propelled vehicle suitable for operation on highways;

G. "person" means:

(1) any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, 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) the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof;

H. "petroleum product" means gasoline and special fuels;

I. "received" means:

(1)

(a) a 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 by any person is "received" by such person when it is loaded there into tank cars, tank trucks, tank wagons or other types of transportation equipment, or when it is placed into any tank or other container from which sales or deliveries not involving transportation are made;

(b) when, however, such a petroleum product is shipped or delivered to another distributor then it is "received" by the distributor to whom it is so shipped or delivered; and

(c) further, when such petroleum product is shipped or delivered to another person not a distributor for the account of a person that is a distributor, it is "received" by the distributor for whose account it is shipped;

(2) notwithstanding the provisions of Paragraph (1) of this subsection, when a petroleum product is shipped or delivered from a refinery or pipeline terminal to another refinery or pipeline terminal, the petroleum product is not "received" by reason of such shipment or delivery;

(3) any product other than gasoline that is blended to produce gasoline other than at a refinery or pipeline terminal in this state is "received" by a person who is the owner thereof at the time and place the blending is completed; and

(4) except as otherwise provided, a petroleum product is "received" at the time and place it is first unloaded in this state and by the person who is the owner thereof immediately preceding the unloading, unless the owner immediately after the unloading is a distributor, in which case the distributor is considered as having received the petroleum product;

J. "secretary" means the secretary of taxation and revenue or the secretary's delegate; and

K. "special fuel" means diesel-engine fuel, kerosene and all other liquid fuels used for the generation of power to propel a motor vehicle, except:

(1) gasoline as defined in Section 7-13-2 NMSA 1978;

(2) products specially prepared and sold for use in turboprop or jet-type aircraft; and

(3) liquified petroleum gases and natural gas.

History: 1978 Comp., § 7-13A-2, enacted by Laws 1990, ch. 124, § 15.

Effective dates. - Laws 1990, ch. 124, § 24 makes the act effective on July 1, 1990.

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 eighty dollars ($80.00) per load.

History: 1978 Comp., § 7-13A-3, enacted by Laws 1990, ch. 124, § 16.

Cross-references. - As to ground water protection corrective action fund, see 74-6B-7 NMSA 1978.

Effective dates. - Laws 1990, ch. 124, § 24 makes the act effective on July 1, 1990.

7-13A-4. Exemptions. (Effective until July 1, 1992.)

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.

C. One percent of all gasoline as allowed by Subsection C of Section 7-13-4 NMSA 1978 is exempt from the petroleum products loading fee.

History: 1978 Comp., § 7-13A-4, enacted by Laws 1990, ch. 124, § 17; 1991, ch. 9, § 33.

The 1991 amendment, effective July 1, 1991, substituted "One percent" for "Two percent" at the beginning of Subsection C.

Effective dates. - Laws 1990, ch. 124, § 24 makes the act effective on July 1, 1990.

7-13A-4. Exemptions. (Effective July 1, 1992.)

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.

Repeals and reenactments. - Laws 1991, ch. 9, § 34 repeals 7-13A-4 NMSA 1978, as amended by Laws 1991, ch. 9, § 33 and enacts the above section, effective July 1, 1992.

7-13A-5. Deduction; gasoline or special fuels returned.

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.

History: 1978 Comp., § 7-13A-5, enacted by Laws 1990, ch. 124, § 18.

Effective dates. - Laws 1990, ch. 124, § 24 makes the act effective on July 1, 1990.

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.

Effective dates. - Laws 1990, ch. 124, § 24 makes the act effective on July 1, 1990.

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 [Chapter 7, Article 14 NMSA 1978]:

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 [Articles 1 to 8, Chapter 66 NMSA 1978] to be registered in this state. To prevent evasion of the excise tax imposed by the Motor Vehicle Excise Tax Act [this article] 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.

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. Persons who acquire a vehicle out of state thirty or more days before establishing a domicile in this state are exempt from the tax if the vehicle was acquired for personal use.

B. Persons applying for a certificate of title for a vehicle registered in another state are exempt from the tax if they have previously registered and titled the vehicle in New Mexico and have owned the vehicle continuously since that time.

C. Certificates of title for all vehicles owned by this state or any political subdivision are exempt from the tax.

D. A vehicle subject to registration under Section 66-3-16 NMSA 1978 is exempt from the tax.

History: 1978 Comp., § 7-14-6, enacted by Laws 1988, ch. 73, § 16; 1990, ch. 24, § 1.

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 motor vehicle excise tax and issue a certificate of title without payment of the motor vehicle excise tax for any vehicle the leasing of which is subject to the Leased Vehicle Gross Receipts Tax Act [7-14A-1 to 7-14A-11 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. By the end of the month following the end of each calendar quarter, the owner of any vehicle for which payment of the motor vehicle excise tax is suspended pursuant to Subsection A of this section shall submit a report to the department in a form prescribed by the secretary. The report shall show for each vehicle owned at the end of the calendar quarter for which payment of the motor vehicle excise tax is suspended pursuant to Subsection A of this section at any time during the quarter: the date on which the certificate of title was issued, the amount of motor vehicle excise tax suspended, the amount of leased vehicle gross receipts tax paid with respect to each vehicle during the quarter, the total cumulative amount of leased vehicle gross receipts tax paid with respect to each vehicle and any other information the secretary may require.

C. The amount of leased vehicle gross receipts tax paid with respect to a vehicle for which payment of the motor vehicle excise tax is suspended pursuant to Subsection A of this section shall be credited against the amount of motor vehicle excise tax due on that vehicle.

D. 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, 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.

E. If, by the end of the fourth calendar quarter following the quarter in which a vehicle is acquired for which payment of the motor vehicle excise tax is suspended pursuant to

Subsection A of this section, the total amount of leased vehicle gross receipts tax credited with respect to that vehicle is less than the amount of motor vehicle excise tax suspended for that vehicle, the owner of the vehicle shall pay the difference to the department. Payment shall accompany the report required by Subsection B of this section for that quarter.

F. A vehicle for which payment of the motor vehicle excise tax is suspended pursuant to Subsection A of this section shall not be transferred to another person and a new certificate of title shall not be issued until the owner of the vehicle pays to the department the excess, if any, of the amount of motor vehicle excise tax suspended pursuant to Subsection A of this section and the amount of leased vehicle gross receipts tax credited with respect to that vehicle.

History: 1978 Comp., § 7-14-7.1, enacted by Laws 1991, ch. 197, § 4.

Effective dates. - Laws 1991, ch. 197, § 16 makes the act effective on July 1, 1991.

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; protests; procedures.

A. If any person believes that he has made payment of any motor vehicle excise tax in excess of that for which he 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. Any person whose claim for refund 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.

C. 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.

7-14-10. Distribution of proceeds.

The receipts from the motor vehicle excise 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 motor vehicle excise tax and associated penalties and interest shall be distributed as follows:

A. three-fourths to the general fund; and

B. one-fourth to the local government's road fund.

History: 1978 Comp., § 7-14-10, enacted by Laws 1988, ch. 73, § 20; 1991, ch. 9, § 35.

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 present Subsections A and B; substituted "three-fourths" for "one-third" in present Subsection A; and substituted "one-fourth" for "the remainder" in present 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 [Chapter 7, Article 14 NMSA 1978] 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.

Sections 5 through 15 [7-14A-1 to 7-14A-11 NMSA 1978] of this act may be cited as the "Leased Vehicle Gross Receipts Tax Act".

History: Laws 1991, ch. 197, § 5.

Effective dates. - Laws 1991, ch. 197, § 16 makes the Leased Vehicle Gross Receipts Tax Act effective on July 1, 1991.

7-14A-2. Definitions.

As used in the Leased Vehicle Gross Receipts Tax Act [7-14A-1 to 7-14A-11 NMSA 1978]:

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. "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 the County Fire Protection Excise Tax Act [7-20A-1 to 7-20A-9 NMSA 1978] or any municipality or county sales or gross receipts tax 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 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 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 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.

Effective dates. - Laws 1991, ch. 197, § 16 makes the Leased Vehicle Gross Receipts Tax Act effective on July 1, 1991.

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.

Effective dates. - Laws 1991, ch. 197, § 16 makes the Leased Vehicle Gross Receipts Tax Act effective on July 1, 1991.

7-14A-4. Presumption of taxability.

To prevent evasion of the leased vehicle 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 leased vehicle gross receipts tax.

History: Laws 1991, ch. 197, § 8.

Effective dates. - Laws 1991, ch. 197, § 16 makes the Leased Vehicle Gross Receipts Tax Act effective on July 1, 1991.

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.

Effective dates. - Laws 1991, ch. 197, § 16 makes the Leased Vehicle Gross Receipts Tax Act effective on July 1, 1991.

7-14A-6. Date payment due.

The tax imposed by the Leased Vehicle Gross Receipts Tax Act [7-14A-1 to 7-14A-11 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 1991, ch. 197, § 10.

Effective dates. - Laws 1991, ch. 197, § 16 makes the Leased Vehicle Gross Receipts Tax Act effective on July 1, 1991.

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.

Effective dates. - Laws 1991, ch. 197, § 16 makes the Leased Vehicle Gross Receipts Tax Act effective on July 1, 1991.

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.

Effective dates. - Laws 1991, ch. 197, § 16 makes the Leased Vehicle Gross Receipts Tax Act effective on July 1, 1991.

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.

Effective dates. - Laws 1991, ch. 197, § 16 makes the Leased Vehicle Gross Receipts Tax Act effective on July 1, 1991.

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. five-twelfths to the state road fund;

B. one-third to the general fund; and

C. the remainder to the local governments road fund.

History: Laws 1991, ch. 197, § 14.

Effective dates. - Laws 1991, ch. 197, § 16 makes the Leased Vehicle Gross Receipts Tax Act effective on July 1, 1991.

7-14A-11. Administration.

A. The department shall interpret the provisions of the Leased Vehicle Gross Receipts Tax Act [7-14A-1 to 7-14A-11 NMSA 1978].

B. The department shall administer and enforce the collection of the leased vehicle 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. 197, § 15.

Effective dates. - Laws 1991, ch. 197, § 16 makes the Leased Vehicle Gross Receipts Tax Act effective on July 1, 1991.

ARTICLE 15
TRIP TAX

7-15-1. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1988, ch. 73, § 24 recompiles 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, repeals 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. For provisions of former section, see 1986 Replacement Pamphlet.

7-15-2.1. Definitions.

As used in the Trip Tax Act [Chapter 7, Article 15 NMSA 1978]:

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 taxation and revenue department, the secretary of taxation and revenue 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.

7-15-3. Repealed.

ANNOTATIONS

Repeals. - Laws 1988, ch. 73, § 56A repeals 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. For provisions of former section, see 1986 Replacement Pamphlet.

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 which 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 Subsection C 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, five cents ($.05) 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, nine cents ($.09) 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, eleven cents ($.11) 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, 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.

C. The department, by regulation, may authorize flat fee permits for trips by a single vehicle within a definite period of time, not to exceed seven days. If the department establishes such a permit, the fee shall be sixty-five dollars ($65.00) per day and the fee so paid shall be in lieu of paying the trip tax based on the computations specified in Subsection B of this section and the special fuel tax imposed pursuant to Section 7-16-3 NMSA 1978.

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.

Temporary provisions. - Laws 1988, ch. 73, § 57E, effective July 1, 1988, provides that all valid existing orders, rulings, rules and regulations promulgated by the secretary or any other competent official of the taxation and revenue department for the administration and enforcement of the trip tax, the Special Fuels Act and Sections 66-6-27 and 66-6-28 NMSA 1978, as those sections were in effect immediately prior to July 1, 1988, shall remain in full force and effect until repealed, replaced, superseded or amended.

Laws 1988, ch. 73, § 57F, effective July 1, 1988, provides that any protests, claims for refund, court proceedings or other actions ongoing under the provisions of Sections 7-15-1 to 7-15-4 NMSA 1978, the Special Fuels Act or the Motor Vehicle Code with respect to the provisions of Section 66-6-27 and 66-6-28 NMSA 1978 on July 1, 1988, will be finally determined under the provisions of the applicable law in force at the time the tax or fee was due or action was taken.

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.

7-15-4. 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.

Repeals and reenactments. - Laws 1988, ch. 73, § 25 repeals 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 enacts the above section, effective July 1, 1988. For provisions of former section, see 1986 Replacement Pamphlet.

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 [Chapter 7, Article 15 NMSA 1978] 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.

Cross-references. - As to bond required of persons paying tax pursuant to Special Fuels Tax Act or Weight Distance Tax Act, see 7-1-13.2 NMSA 1978.

7-15A-2. Definitions.

As used in the Weight Distance Tax Act [Chapter 7, Article 15A NMSA 1978]:

A. "bus" means every motor vehicle designed and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation;

B. "declared gross weight" means the declared gross weight for purposes of the Motor Transportation Act;

C. "department" means the taxation and revenue department, the secretary of taxation and revenue or 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. "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 an agency, department or instrumentality thereof;

G. "registrant" means any 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; and

J. "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., § 7-15A-2, enacted by Laws 1988, ch. 73, § 29.

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.

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; and

C. buses operated by religious or nonprofit charitable organizations.

History: 1978 Comp., § 7-15A-5, enacted by Laws 1988, ch. 73, § 32.

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	Tax Rate

(Gross Vehicle Weight)	(Mills per Mile)
26,000 to 28,000	7.97
28,001 to 30,000	8.60
30,001 to 32,000	9.24
32,001 to 34,000	9.87
34,001 to 36,000	10.51
36,001 to 38,000	11.14
38,001 to 40,000	12.11
40,001 to 42,000	13.06
42,001 to 44,000	14.01
44,001 to 46,000	14.97
46,001 to 48,000	15.93
48,001 to 50,000	16.88
50,001 to 52,000	17.84
52,001 to 54,000	18.79
54,001 to 56,000	19.75
56,001 to 58,000	20.71
58,001 to 60,000	21.66
60,001 to 62,000	22.61
62,001 to 64,000	23.58
64,001 to 66,000	24.53
66,001 to 68,000	25.48
68,001 to 70,000	26.43
70,001 to	

72,000	27.40
72,001 to 74,000	28.41
74,001 to 76,000	29.46
76,001 to 78,000	30.55
78,001 and over	31.68.

B. All motor vehicles for which the tax is computed under Subsection A of this section shall pay a tax which 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 which 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, 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.

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)
26,000 to 28,000	7.97
28,001 to 30,000	8.60
30,001 to 32,000	9.24
32,001 to	

34,000	9.87
34,001 to 36,000	10.52
36,001 to 38,000	11.15
38,001 to 40,000	12.12
40,001 to 42,000	13.07
42,001 to 44,000	14.02
44,001 to 46,000	14.97
46,001 to 48,000	15.94
48,001 to 50,000	16.89
50,001 to 52,000	17.85
52,001 to 54,000	18.80
54,001 and over	19.76.

History: 1978 Comp., § 7-15A-7, enacted by Laws 1988, ch. 73, § 34.

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 [Chapter 7, Article 15A NMSA 1978] 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 [Articles 1 to 8 of Chapter 66 NMSA 1978, except 66-7-102.1 NMSA 1978] or the Motor Transportation Act. 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.

Motor Transportation Act. - See 65-1-1 NMSA 1978 and notes thereto.

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 25 for the first quarterly period of January 1 through March 31, by July 25 for the second quarterly period of April 1 through June 30, by October 25 for the third quarterly period of July 1 through September 30 and by January 25 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 to the special fuel tax whose total combined liability to 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 25 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 should pay a 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 according to the schedule of Subsection A of this section.

C. Any registrant, owner or operator not liable to the special fuel tax who has not previously been liable to the weight distance tax and whose liability 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 to the special fuel tax who has not previously been liable to the weight distance tax and whose total combined liability to 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 according to the schedule of 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.

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.

Temporary provisions. - Laws 1989, ch. 148, § 3, effective July 1, 1990, provides that traveling expenses and subsistence incurred by the department prior to July 1, 1990, with respect to examinations conducted under 7-15A-9 or 65-1-18 NMSA 1978, if not paid by the owner, registrant or operator before July 1, 1990, remain due and payable to the taxation and revenue department until paid.

7-15A-10. Annual filing fee.

In addition to any weight distance tax or use fee for the use of the public highways, every person required to pay during the prior calendar year a weight distance tax or a use fee for the use of the public highways of this state with respect to any commercial motor carrier vehicle shall pay in January an annual fee of three dollars ($3.00) for each commercial motor carrier vehicle. In each year, this fee is required to be paid with the report required to be submitted in January in connection with any weight distance tax or use fee for the use of the public highways of this state.

History: Laws 1988, ch. 24, § 9.

7-15A-11. Annual safety and training fee; schedule.

A. In addition to any weight distance tax, use fee or annual safety and training fee for the use of the public highways, every person required to pay during the prior calendar year a weight distance tax or a use fee for the use of the public highways of this state with respect to any commercial motor carrier vehicle, as defined in the Motor Transportation Act [Chapter 65, Articles 1, 3 and 5 NMSA 1978], shall pay in January an annual fee based on the following schedule:

Number of Commercial Motor Vehicles Operated by the Taxpayer	Fee Amount
1 - 5	$ 10.00
6 - 10	25.00
11 - 50	125.00
51 - 100	200.00
101 - 300	350.00
301 or greater	400.00.

B. In any year, the fee imposed pursuant to Subsection A of this section shall be paid with the report required to be submitted in January in connection with any weight distance tax or use fee for the use of the public highways of this state.

C. Fees collected pursuant to this section shall be deposited in the general fund.

D. The provisions of this section shall be administered pursuant to the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

History: Laws 1988, ch. 14, § 2; 1991, ch. 44, § 1.

The 1991 amendment, effective July 1, 1991, at the end of the catchline, deleted "Distribution" and, in Subsection C, substituted "general fund" for "motor vehicle suspense fund and distributed at the end of each month" and deleted the former second and third sentences, pertaining to the distribution of funds.

ARTICLE 16
SPECIAL FUELS TAX

7-16-1. Short title.

Sections 7-16-1 through 7-16-26 NMSA 1978 may be cited as the "Special Fuels Tax Act".

History: 1953 Comp., § 64-26-66, enacted by Laws 1957, ch. 175, § 1; 1980, ch. 98, § 1; 1988, ch. 73, § 37.

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

Temporary provisions. - Laws 1988, ch. 73, § 57B, effective July 1, 1988, provides that the interest rate specified in Section 7-1-67 NMSA 1978 shall apply to any amounts

due to the state under the provisions of the Special Fuels Act and Section 66-6-28 NMSA 1978, as those laws were in effect immediately prior to July 1, 1988, only on or after July 1, 1988, and that amounts due under the provisions of the Special Fuels Act and Section 66-6-28 NMSA 1978, as those laws were in effect immediately prior to July 1, 1988, shall bear interest as provided in applicable law until July 1, 1988, and thereafter at the rate specified in Section 7-1-67 NMSA 1978.

Laws 1988, ch. 73, § 57C, effective July 1, 1988, provides that the interest rate specified in Section 7-1-68 NMSA 1978 on amounts due to a taxpayer under the provisions of the Special Fuels Act and Section 66-6-28 NMSA 1978, as those laws were in effect immediately prior to July 1, 1988, shall apply to the amounts only on or after July 1, 1988, and that any amounts due a taxpayer under the provisions of the Special Fuels Act and Section 66-6-28 NMSA 1978, as those laws were in effect immediately prior to July 1, 1988, prior to July 1, 1988, shall bear interest as provided in applicable law.

Laws 1988, ch. 73, § 57D, effective July 1, 1988, provides that the penalties specified in the Tax Administration Act "apply to any amounts due to the state under the provisions of the Special Fuels Act and Section 66-6-28 NMSA 1978, as those laws were in effect immediately prior to July 1, 1988, only on or after July 1, 1988; provided that, if a penalty imposed by the Special Fuels Act or Motor Vehicle Code with respect to a transaction occurring prior to July 1, 1988, exceeds the penalty that would otherwise be imposed by the Tax Administration Act, the penalty specified by the Special Fuels Act or the Motor Vehicle Code, as appropriate, shall be imposed and the Tax Administration Act penalty shall not be imposed. Any penalty specified in the Special Fuels Act or the Motor Vehicle Code with respect to amounts due under the Special Fuels Act or Section 66-6-28 NMSA 1978, as those laws were in effect immediately prior to July 1, 1988, shall remain in full force and effect for periods and transactions prior to July 1, 1988.

Laws 1988, ch. 73, § 57E, effective July 1, 1988, provides that all valid existing orders, rulings, rules and regulations promulgated by the secretary or any other competent official of the taxation and revenue department for the administration and enforcement of the trip tax, the Special Fuels Act and Sections 66-6-27 and 66-6-28 NMSA 1978, as those sections were in effect immediately prior to July 1, 1988, shall remain in full force and effect until repealed, replaced, superseded or amended.

Laws 1988, ch. 73, § 57F, effective July 1, 1988, provides that any protests, claims for refund, court proceedings or other actions ongoing under the provisions of Sections 7-15-1 through 7-15-4 NMSA 1978, the Special Fuels Act or the Motor Vehicle Code with respect to the provisions of Section 66-6-27 and 66-6-28 NMSA 1978 on July 1, 1988, will be finally determined under the provisions of the applicable law in force at the time the tax or fee was due or action was taken.

Law reviews. - For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

7-16-2. Definitions.

As used in the Special Fuels Tax Act [7-16-1 to 7-16-26 NMSA 1978]:

A. "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;

B. "bulk storage user" means a tax-excluded user who operates, owns or maintains bulk storage in this state from which the tax-excluded user places special fuel into the supply tanks of motor vehicles owned or operated by that user;

C. "dealer" means any person who sells and delivers special fuel to a tax-included user or a tax-excluded user and includes bulk sales and deliveries to tax-included users;

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

E. "government-licensed vehicle" means a motor vehicle lawfully displaying a registration plate, as defined in the Motor Vehicle Code [Articles 1 to 8, Chapter 66 NMSA 1978, except 66-7-102.1 NMSA 1978], issued by the United States or by any state identifying the motor vehicle as belonging to the United States or any of its agencies or instrumentalities or to the state of New Mexico or any of its political subdivisions, agencies or instrumentalities;

F. "gross vehicle weight" means the weight of a vehicle without load, plus the weight of any load thereon;

G. "highway" means every road, highway, thoroughfare, street or way 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 every self-propelled vehicle operated or suitable for operation on the highways that is registered for use and is used in whole or in part on the highways;

I. "person" means a person, firm, partnership, company, public or private or municipal corporation, association, receiver, common-law trust, statutory trust, the state, county, city, municipality or any political subdivision thereof, the state highway commission and whatever concern by whatever name known or however organized;

J. "registrant" means any person who has registered the 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. "special bulk storage user" means a tax-included user who owns, operates, utilizes or maintains bulk storage facilities solely for placing fuel into the supply tank of a tax-included vehicle owned or operated by that tax-included user;

N. "special fuel" means diesel-engine fuel, kerosene, all other liquid fuels, including liquefied petroleum gases, and natural gas, used for the generation of power to propel a motor vehicle, except gasoline as defined in Section 7-13-2 NMSA 1978;

O. "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;

P. "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 into which special fuel is delivered;

Q. "tax" means the special fuel tax imposed under the Special Fuels Tax Act;

R. "tax-excluded user" means any user who is required by the Special Fuels Tax Act to pay the special fuel tax to the department;

S. "tax-included user" means any user who is required by the Special Fuels Tax Act to pay the special fuel tax at the time of purchase;

T. "use" means either the receipt or placing of special fuels by a special fuel user into the fuel supply tank of any motor vehicle registered, owned or operated by the special fuel user; the consumption by a special fuel user of special fuels in the propulsion of a motor vehicle on the highways; or the importation of special fuels in the fuel supply tank of any motor vehicle as fuel for the propulsion of the motor vehicle on the highways; and

U. "user" means any person who uses special fuel to propel a motor vehicle on the highways.

History: 1978 Comp., § 7-16-2, enacted by Laws 1988, ch. 73, § 38.

Repeals and reenactments. - Laws 1988, ch. 73, § 38 repeals former 7-16-2 NMSA 1978, as amended by Laws 1985, ch. 35, § 3, relating to definitions, and enacts the above section, effective July 1, 1988. For provisions of former section, see 1986 Replacement Pamphlet.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 616 to 634.

7-16-3. Special fuel tax; imposition; rate.

A. An excise tax is imposed at a rate provided in Subsection B of this section on the use of each gallon of special fuel in any motor vehicle, as a toll for the use of the highways. This tax shall be known as the "special fuel tax".

B. The tax imposed by Subsection A of this section shall be sixteen cents ($.16) per gallon of special fuel used.

History: 1953 Comp., § 64-26-68, enacted by Laws 1957, ch. 175, § 3; 1967, ch. 170, § 9; 1977, ch. 250, § 72; 1979, ch. 166, § 12; 1980, ch. 98, § 3; 1985, ch. 35, § 4; 1987, ch. 347, § 14; 1988, ch. 73, § 39.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 616 to 634.

Constitutionality and construction of gasoline inspection and tax statutes, 47 A.L.R. 980, 84 A.L.R. 839, 111 A.L.R. 185.

Tax collected by dealer or manufacturer under unconstitutional statute, rights in respect of, as between dealer or manufacturer and taxing authorities, 93 A.L.R. 1485, 119 A.L.R. 542.

Recovery of tax when statute or ordinance imposing it is held invalid, 111 A.L.R. 212.

Right of user of gasoline to question validity of statute imposing tax upon dealer, 125 A.L.R. 734.

Tax on motor fuel as a revenue measure, 126 A.L.R. 1402.

53 C.J.S. Licenses § 34.

7-16-3.1. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 124, § 23 repeals 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 1988 Replacement Pamphlet.

7-16-3.2. Payment of tax.

For purposes of administration of the tax, the taxable event occurs and the tax is payable as follows:

A. the taxable event with respect to all special fuel delivered by a dealer into a supply tank of a motor vehicle occurs at the time of the delivery and receipt, except as otherwise provided in the Special Fuels Tax Act [7-16-1 to 7-16-26 NMSA 1978] and shall be collected by the dealer from the purchaser or recipient of the special fuel and reported and paid to the department as provided in the Special Fuels Tax Act;

B. the taxable event with respect to all special fuel sold and delivered as tax-excluded by a dealer to a user who is qualified under the Special Fuels Tax Act to report and pay the tax to the department occurs at the time of the actual use of the special fuel to propel a motor vehicle on the highway and shall be reported and paid to the department by the user as provided in the Special Fuels Tax Act;

C. the taxable event with respect to all special fuel sold by a dealer other than for use to propel a motor vehicle on the highway, but which is later placed into the supply tank of a motor vehicle, occurs at the time of actual use of the special fuel to propel a motor vehicle on the highway and shall be reported and paid by the user to the department as provided in the Special Fuels Tax Act;

D. the taxable event with respect to all special fuel acquired by any user in any other manner than from a dealer occurs at the time of actual use of the special fuel to propel a motor vehicle on the highway and shall be reported and paid by the user to the department as provided in the Special Fuels Tax Act; and

E. the taxable event with respect to special fuel imported into this state in the supply tank of a foreign-based commercial motor carrier vehicle as defined in the Motor Transportation Act which exceeds twenty-six thousand pounds gross vehicle weight or twenty-six thousand pounds combination gross vehicle weight and which is not registered with the department shall occur at the time of entry of the commercial motor carrier vehicle into this state and shall be paid on a consumption basis, which shall be determined by the department according to the declared trip mileage with one entrance and one exit of this state only. Each such vehicle shall obtain, at the time the tax is assessed, a temporary tax-excluded permit as provided for in Section 7-16-7 NMSA 1978.

History: 1978 Comp., § 7-16-3.1, enacted by Laws 1988, ch. 73, § 40.

Compiler's note. - Laws 1988, ch. 73, § 40 enacted this section as 7-16-3.1 NMSA 1978, but, since Laws 1988, ch. 70, § 11 had already enacted a section designated 7-16-3.1 NMSA 1978, this section has been recompiled as 7-16-3.2 NMSA 1978.

7-16-4. Flat tax for liquefied petroleum gas-powered and natural gas-powered vehicles; LPG user permit.

A. In lieu of all other provisions of the Special Fuels Tax Act [7-16-1 to 7-16-26 NMSA 1978], any user who registers, owns or operates a motor vehicle whose gross weight does not exceed twenty-six thousand pounds which is propelled by liquefied petroleum gas or natural gas may elect to pay a tax on an annual basis in accordance with the following schedule:

Gross Vehicle Weight	Annual Tax
0 to 8,000 pounds	$ 75.00
8,001 to 16,000 pounds	150.00
16,001 to 26,000 pounds	375.00.

B. Any user electing to pay the tax under the provisions of this section shall make application to the department. Upon approval of the application and payment of the appropriate amount, the department shall issue an LPG user permit for each vehicle which identifies the vehicle and specifies that the tax for that vehicle has been paid. The permit shall remain in the vehicle at all times.

C. The permit issued under Subsection B of this section is valid from January 1 through December 31 of each year. Such permits may be renewed for succeeding years if a renewal application is filed with the department by November 30 for the next year.

History: 1978 Comp., § 7-16-4, enacted by Laws 1978, ch. 119, § 1; 1987, ch. 347, § 15; 1988, ch. 73, § 41.

Applicability. - Laws 1987, ch. 347, § 24 makes the provisions of § 15 of the act applicable to fees due for 1988 and subsequent years.

7-16-4.1. Tax-included users.

A. Tax-included users are the registrants, owners or operators of all other motor vehicles using special fuel having a gross vehicle weight of twenty-six thousand pounds or less, unless such registrants, owners or operators thereof elect and qualify to pay the annual flat fee for liquefied petroleum gas or natural gas as provided in Section 7-16-4 NMSA 1978 in lieu of the special fuel tax.

B. Tax-included users are subject to all provisions of the Special Fuels Tax Act [7-16-1 to 7-16-26 NMSA 1978] but are not required to have a permit, furnish bond or submit

reports, except as required for users who pay a flat annual fee or who are also special bulk storage users.

C. Tax-included users, unless otherwise provided in the Special Fuels Tax Act, shall pay the special fuel tax at the time of purchase of the special fuel. Any fuel sale for a vehicle, other than to a government-licensed vehicle, not possessing a valid tax-excluded user permit, flat fee permit or for off-highway purposes shall be considered a tax-included sale, particularly in the case of a vehicle without any kind of special fuel permit.

History: 1978 Comp., § 7-16-4.1, enacted by Laws 1980, ch. 98, § 4; 1988, ch. 73, § 42.

7-16-4.2. Tax-excluded users.

A. Tax-excluded users are the registrants, owners or operators of:

(1) any motor vehicle registered with the state using special fuel and having a gross vehicle weight over twenty-six thousand pounds; or

(2) any motor vehicle using special fuel who are New Mexico bulk storage users.

B. Tax-excluded users are subject to all provisions of the Special Fuels Tax Act [7-16-1 to 7-16-26 NMSA 1978].

C. Tax-excluded users shall qualify to report and pay the special fuel tax to the department as provided by the Special Fuels Tax Act.

History: 1978 Comp., § 7-16-4.2, enacted by Laws 1980, ch. 98, § 5; 1988, ch. 73, § 43.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 629.

7-16-5. Dealer licenses; application; fee renewal; cancellation.

A. It is unlawful for any person to act as a special fuel dealer unless the person is the holder of an uncanceled special fuel dealer license issued to that person by the department. A separate special fuel dealer license must be obtained for each separate place of business or branch.

B. To secure a special fuel dealer license, a person must file with the department an application on a form furnished by the department. Each application must be accompanied by a fee of five dollars ($5.00) and such bond, cash or securities as are required by the Special Fuels Tax Act [7-16-1 to 7-16-26 NMSA 1978]. The department shall, thereupon, issue to that person a special fuel dealer license to run until December

31 of the year for which it is issued unless otherwise terminated sooner. Such license must be prominently displayed at the place of business for which it is issued.

C. The full term of a special fuel dealer license is from January 1 through December 31 of each year.

D. Application for renewal must be made in the same manner as provided in this section for an original application for a special fuel dealer license. Application for renewal must be filed with the department by November 30 of each year.

E. A special fuel dealer license may be suspended or canceled as provided in the Special Fuels Tax Act.

History: 1953 Comp., § 64-26-69, enacted by Laws 1957, ch. 175, § 4; 1977, ch. 250, § 73; 1988, ch. 73, § 44.

7-16-6. Permits; tax-excluded users; penalty.

A. It is unlawful and a violation of the Special Fuels Tax Act [7-16-1 to 7-16-26 NMSA 1978] for any person to act as a tax-excluded user unless the person holds a valid tax-excluded user permit issued to that person by the department for each tax-excluded vehicle.

B. To secure a tax-excluded user permit, a person shall:

(1) file with the department an application on a form furnished by the department;

(2) remit the annual tax-excluded user permit fee of two dollars ($2.00) promptly when billed and due for each vehicle registered, owned or operated by the applicant for which a tax-excluded user permit is required; and

(3) submit with the application a bond, cash or securities as required by Section 7-16-10 NMSA 1978.

C. Upon receipt of the application, fee and bond, cash or securities, the department shall determine if the applicant qualifies to be a tax-excluded user and, upon making such determination, shall issue a separate and distinguishable tax-excluded user permit for each qualifying vehicle for the remainder of the permit year. Tax-excluded user permits are valid from January 1 through December 31 of the year in which issued unless canceled, surrendered or revoked.

D. Tax-excluded user permits may be renewed by the department for a succeeding calendar year upon payment of the annual permit fee; provided such application for renewal is filed with the department on or before November 30 of each year in a manner prescribed by regulation.

E. The department shall issue to the tax-excluded user for each motor vehicle an identification card to be known as a "cab card" which shall be carried in the motor vehicle for which issued at all times when the tax-excluded user permit is valid. The cab card is valid for the motor vehicle only when the motor vehicle's permit is valid. The cab card shall show:

(1) the tax-excluded user permit number;

(2) the manufacturer's serial number of the motor vehicle for which it is to be used and the unit number; and

(3) other information the department may require to show that the vehicle is qualified to receive special fuel under a "tax-excluded" status.

F. It is unlawful and a violation of the Special Fuels Tax Act [7-16-1 to 7-16-26 NMSA 1978] for a dealer to sell or deliver special fuel "tax-excluded" into the supply tank of a motor vehicle registered, owned or operated by any person who does not have a valid tax-excluded user permit issued by the department for that vehicle as required by the Special Fuels Tax Act. The special fuel dealer shall record the information contained on the cab card on forms approved by the department. Violation of the provisions of this section is a misdemeanor and is punishable as prescribed in Section 7-16-26 NMSA 1978.

History: 1978 Comp., § 7-16-6, enacted by Laws 1980, ch. 98, § 6; 1983, ch. 133, § 1; 1988, ch. 73, § 45.

Cross-references. - As to motor carrier vehicle tax identification cards, see 65-1-26 NMSA 1978.

Compiler's note. - Laws 1988, ch. 73, § 56 repealed 7-16-26 NMSA 1978, referred to in Subsection F, effective July 1, 1988.

7-16-7. Temporary tax-excluded permits; temporary highway user permits.

A. The department may issue temporary tax-excluded user permits which shall be valid for one entrance and one exit of the state, within a period which shall not exceed forty-eight hours from the time of issuance, to vehicles not registered with the department.

B. Temporary tax-excluded user permits shall be secured from the department.

C. The fee for a temporary tax-excluded user permit is five dollars ($5.00) for each motor vehicle.

D. It is unlawful and a violation of the Special Fuels Tax Act [7-16-1 to 7-16-26 NMSA 1978] for any person to act as a temporary tax-excluded user without obtaining a valid temporary tax-excluded user permit from the department.

E. The department may issue a temporary highway user permit to the registrant, owner or operator of any vehicle which is required to be registered with the department. The permit shall be valid for a period of up to ninety days from the date of issuance. A person holding a temporary highway user permit is deemed a valid tax-excluded user for the period shown on the permit and is subject to all of the provisions of the Special Fuels Tax Act relating to tax-excluded users. A temporary highway user permit shall be issued only to registrants, owners or operators of motor vehicles which qualify as tax-excluded users under the provisions of Section 7-16-4.2 NMSA 1978. Temporary highway user permits shall be secured from the department or from such other agency or agent as the department authorizes.

F. In the event a tax-excluded user later acquires or equips for use or accepts for use any additional motor vehicle that uses special fuel, that motor vehicle shall not be placed into service until the tax-excluded user has obtained a tax-excluded user permit; provided, however, the tax-excluded user may place that motor vehicle into service if a temporary highway user permit has been obtained for that motor vehicle, in which case the use of that motor vehicle shall not exceed up to ninety days; and provided further that the vehicle shall not be placed into service under the provisions of this subsection until the registrant, owner or operator of that vehicle has furnished a bond, cash or securities in the amount required by the department.

G. It is unlawful and a violation of the Special Fuels Tax Act for any person to act as a temporary highway user without obtaining a valid temporary highway user permit from the department.

History: 1978 Comp., § 7-16-7, enacted by Laws 1980, ch. 98, § 7; 1988, ch. 73, § 46.

Cross-references. - For compliance as condition to exemption of certain motor carriers from registration, see 65-1-25 NMSA 1978.

7-16-8. Repealed.

ANNOTATIONS

Repeals. - Laws 1980, ch. 98, § 15, repeals 7-16-8 NMSA 1978, relating to exemptions to temporary user permits, effective July 1, 1980.

7-16-8.1. Bulk storage users; permits; prohibited acts.

It is unlawful and a violation of the provisions of the Special Fuels Tax Act [7-16-1 to 7-16-26 NMSA 1978] for any bulk storage user to:

A. operate, own, utilize or maintain any bulk storage location unless the bulk storage user has a valid tax-excluded user permit or valid LPG user permit for all vehicles;

B. operate, own, utilize or maintain a bulk storage location jointly with any other tax-excluded user receiving special fuel through separate meterings unless each user has a valid tax-excluded user permit or valid LPG user permit for each vehicle; or

C. place special fuel from such bulk storage into the supply tank of any motor vehicle other than a tax-excluded motor vehicle registered, owned or operated by that user.

History: 1978 Comp., § 7-16-8.1, enacted by Laws 1980, ch. 98, § 8; 1988, ch. 73, § 47.

7-16-8.2. Special bulk storage user permit.

A. The department may issue an annual special bulk storage user permit to a tax-included user which shall entitle that tax-included user to own, operate, utilize or maintain bulk storage for the sole purpose of placing special fuel from it into the supply tank of a tax-included vehicle registered, owned or operated by that user.

B. To secure a special bulk storage user permit, an applicant shall:

(1) file with the department upon a form furnished by the department an application for a special bulk storage user permit;

(2) accompany such application with payment of an annual special bulk storage user permit fee in the amount of ten dollars ($10.00); and

(3) accompany the application with a signed affidavit to the effect that the signer thereof shall use the special fuel from the special bulk storage only for the purpose of placing it into the supply tank of a specified tax-included vehicle registered, owned or operated by the signer.

C. It is unlawful and a violation of the Special Fuels Tax Act [7-16-1 to 7-16-26 NMSA 1978] for any special bulk storage user to sell special fuel from the user's special bulk storage to any other person or to deliver special fuel from the user's special bulk storage into the supply tank of any motor vehicle except a tax-included vehicle registered, owned or operated by the special bulk storage user which is listed with the department.

D. The department may revoke after due notice and hearing, as provided in Section 7-1-24 NMSA 1978, any special bulk storage user permit of any tax-included user found to be in violation of any provision of the Special Fuels Tax Act.

E. Special fuel purchased for bulk storage under a special bulk storage user permit shall be tax-included.

F. All special fuel acquired, purchased or received under a special bulk storage user permit shall be acquired, purchased or received from a licensed dealer. It is unlawful for any person to sell special fuel in bulk quantities to special bulk storage users without having been issued and maintaining a valid dealer's license.

History: 1978 Comp., § 7-16-8.2, enacted by Laws 1980, ch. 98, § 9; 1983, ch. 133, § 2; 1988, ch. 73, § 48.

7-16-9. Repealed.

ANNOTATIONS

Repeals. - Laws 1980, ch. 98, § 15, repeals 7-16-9 NMSA 1978, relating to who shall and who may qualify to pay special fuel tax, effective July 1, 1980.

7-16-10. Bond required of dealer.

A. Every dealer 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 to transact business in this state as surety thereon and upon which bond the dealer 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 dealer to the department of all special fuel taxes levied or imposed by this state, together with all penalties and interest thereon.

B. In lieu of such bond, the dealer may elect to file with the department cash or bonds of the United States or New Mexico or of any political subdivision thereof.

C. The total amount of the bond, cash or securities required of any dealer 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 dealer, the department shall require an equivalent in total amount to at least one and one-half times the amount of the department's estimate of the dealer's quarterly special fuel tax, determined in such manner as the secretary may deem proper; provided, however, that the total amount of bond, cash or securities required of a dealer 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 tax and any penalties and interest for which the dealer is or may at any time become liable, then the dealer shall forthwith, upon written demand of the department mailed to the last known address of the dealer 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 dealer of all

taxes, penalties and interest due under the Special Fuels Tax Act [7-16-1 to 7-16-26 NMSA 1978], failing which the department shall revoke the license of the dealer as provided in Section 7-1-24 NMSA 1978.

F. Any surety on any bond furnished by any dealer as required by this section shall be released and discharged from any and all liability accruing on such bond after the expiration of ninety days from the date upon which such 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 such surety from any liability already accrued or which 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. The department promptly on receipt of notice of such request shall notify the dealer who furnished such bond, and, unless the dealer 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, the department shall revoke the license of the dealer as provided in Section 7-1-24 NMSA 1978.

G. The dealer 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.

History: 1953 Comp., § 64-26-73, enacted by Laws 1957, ch. 175, § 8; 1963, ch. 226, § 1; 1972, ch. 7, § 23; 1974, ch. 79, § 5; 1977, ch. 250, § 77; 1980, ch. 98, § 10; 1981, ch. 188, § 1; 1983, ch. 133, § 3; 1988, ch. 73, § 49.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Reasonableness of amount of bond of motor fuel distributor, 107 A.L.R. 1500.

7-16-10.1. Bond requirement; exception.

A. Notwithstanding the provisions of Section 7-16-10 NMSA 1978, a dealer who has been licensed for five consecutive years and who, during this period, has not been delinquent in the payment of taxes imposed by the Special Fuels Tax Act [7-16-1 to 7-16-26 NMSA 1978] shall be exempt from the requirement to file a bond or any other evidence of financial responsibility required under Section 7-16-10 NMSA 1978.

B. If any delinquency in the payment of the taxes imposed by the Special Fuels Tax Act subsequently occurs, the secretary may reinstate the requirement of a bond or other evidence of financial responsibility to meet the requirements for a license.

History: 1978 Comp., § 7-16-10.1, enacted by Laws 1989, ch. 202, § 1.

Effective dates. - Laws 1989, ch. 202 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

7-16-11. Quarterly tax reports.

A. Every dealer and every tax-excluded user shall file not later than the twenty-fifth day of each reporting month with the department reports signed by the dealer or his authorized agent or by the tax-excluded user or his authorized agent showing such information as the department may require from the dealer or tax-excluded user.

B. Except as provided otherwise in Subsection C of this section, the reporting months and the due days are:

(1) April 25 for the first quarterly period of January 1 through March 31;

(2) July 25 for the second quarterly period of April 1 through June 30;

(3) October 25 for the third quarterly period of July 1 through September 30; and

(4) January 25 for the fourth quarterly period of October 1 through December 31.

C. Any tax-excluded user not liable to the weight distance tax whose total special fuel tax for the previous calendar year was less than five hundred dollars ($500) may elect to pay the special fuel tax on an annual basis. Any tax-excluded user liable for the weight distance 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) and who has elected to pay the weight distance tax annually shall also elect to pay the special fuel 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 tax due for the current calendar year shall be paid to the department by January 25 of the following year. If, however, any tax-excluded user is or becomes delinquent in excess of thirty days in any payment of the special fuel tax, he shall make all future payments according to the schedule in Subsection B of this section. If any tax-excluded user who has made an election under this subsection pays a total special fuel tax or total combined special fuel tax and weight distance tax, as applicable, of five hundred dollars ($500) or more for any calendar year, he shall make the succeeding year's payments according to the schedule in Subsection B of this section.

D. Any tax-excluded user not liable for the weight distance tax who has not previously been liable for the special fuel tax and whose liability is expected to be less than five hundred dollars ($500) annually may, with the approval of the department, pay the special fuel tax as provided in Subsection C of this section. Any tax-excluded user liable for the weight distance tax who has not previously been liable for the special fuel tax and whose total combined liability for the weight distance tax and the special fuel tax is expected to be less than five hundred dollars ($500) annually and who has elected, with

the approval of the department, to pay the weight distance tax annually, shall also elect to pay the special fuel tax as provided in Subsection C 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 user shall make payments according to the schedule in Subsection B of this section.

E. The reports of every dealer shall contain a complete accounting of all bulk storage and receipts of special fuel from which any delivery was made or is to be made into the supply tank of a motor vehicle, including the number of gallons on hand at the beginning and at the end of each month, the number of gallons received, the number of gallons sold or delivered into the supply tanks of motor vehicles, tax-excluded, and a statement in the form furnished by the department showing the number of gallons sold and delivered other than into supply tanks of motor vehicles. The report shall also include such other information and detail schedules the department may require.

F. The reports of every tax-excluded user shall include in the manner required by the department:

(1) a complete accounting of bulk storage of special fuel maintained in this state from which any delivery was made or is to be made into the supply tanks of motor vehicles owned or operated by the tax-excluded user;

(2) the total miles traveled in this state for all motor vehicles qualified by annual permit and using special fuel and, in the case of a tax-excluded user who operates motor vehicles partly within and partly without the state, the total miles traveled in this state and elsewhere; and

(3) the total gallons of special fuel used everywhere and the total gallons used on highways in this state.

History: 1953 Comp., § 64-26-74, enacted by Laws 1957, ch. 175, § 9; 1972, ch. 7, § 24; 1974, ch. 79, § 6; 1977, ch. 250, § 78; 1980, ch. 98, § 11; 1988, ch. 73, § 50.

7-16-12. Computation and payment of tax; records.

A. Each report by a dealer shall be accompanied by a remittance of the amount of tax imposed by the Special Fuels Tax Act [7-16-1 to 7-16-26 NMSA 1978] upon the actual number of gallons of special fuel sold in the state except special fuel sold to tax-excluded users, government-licensed vehicles, LPG user permit vehicles and special fuel sold for nonhighway use. This accounting and remittance includes bulk fuel sales to special bulk storage users.

B. A deduction of two percent of the net taxable gallonage reported shall be allowed to dealers only to cover evaporation, shrinkage and losses resulting from unknown causes, irrespective of the actual amount thereof.

C. Each report by a tax-excluded user shall be accompanied by a remittance of the amount of tax imposed by the Special Fuels Tax Act upon the actual number of gallons of special fuel used on the highways in this state.

D. If, in the opinion of the department, the number of gallons of special fuel used on the highways in this state can more accurately be determined on a mileage basis in the case of tax-excluded users whose motor vehicles operate partly within and partly without the state and tax-excluded users who maintain bulk storage and if the department deems it more practicable to so determine the gallons, it shall use the following procedure in making such determination: the gallons of special fuel used on the highways in this state shall be determined by dividing the total miles traveled in this state by the applicable mileage factor, determined by dividing the total miles traveled everywhere by the total number of gallons of special fuel used everywhere.

History: 1953 Comp., § 64-26-75, enacted by Laws 1957, ch. 175, § 10; 1963, ch. 144, § 1; 1967, ch. 170, § 10; 1972, ch. 7, § 25; 1977, ch. 250, § 79; 1980, ch. 98, § 12; 1988, ch. 73, § 51.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 628 to 634.

Collection of gasoline tax, 111 A.L.R. 212.

Payment over to state of tax received from public, distributor's duty as to, 114 A.L.R. 726.

53 C.J.S. Licenses § 69.

7-16-13. Invoices required from dealers.

A. Every dealer who sells or delivers special fuel to a tax-excluded user, a flat fee permit holder, a special bulk storage user, an off-highway user or a government-licensed vehicle operator in this state shall, at the time of such sale or delivery, prepare and deliver to such persons an invoice covering each such sale or delivery. Such invoice shall be prepared in not less than two copies, shall be serially numbered, the serial number not to be repeated during any one calendar year, and shall show thereon the name and address of the dealer and his special fuel license number, the name and address of the tax-excluded user, flat fee permit holder, special bulk storage user, purchaser of fuel for off-highway use or government agency and the special fuel identification number of the motor vehicle or the special bulk storage user permit number, the number of gallons of special fuel delivered or sold separately, the tax imposed and collected under the Special Fuels Tax Act [7-16-1 to 7-16-26 NMSA 1978] in the case of the special bulk storage user or the words "tax excluded" or "flat fee permit", as the case may be, and such other information as the department may require. Each such invoice must be signed by the tax-excluded user, flat fee permit holder, special bulk storage user, off-highway user or government-licensed vehicle operator. If

the special fuel is delivered by a dealer into the supply tank of a motor vehicle owned or operated by him, an invoice shall be prepared as prescribed in this subsection if the vehicle is a tax-excluded user or flat fee permit vehicle.

B. The invoices required by this section shall be demanded by every tax-excluded user, flat fee permit holder, special bulk storage user, purchaser of fuel for off-highway use and government-licensed vehicle operator purchasing or receiving delivery of special fuel at the time of such delivery.

C. The violation of any of the provisions of this section is a misdemeanor and shall be punishable by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for a definite term of less than one year or by both such imprisonment and fine.

History: 1953 Comp., § 64-26-76, enacted by Laws 1957, ch. 175, § 11; 1977, ch. 250, § 80; 1980, ch. 98, § 13; 1983, ch. 133, § 4; 1988, ch. 73, § 52.

7-16-14. Repealed.

ANNOTATIONS

Repeals. - Laws 1988, ch. 73, § 56 repeals 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. For provisions of former section, see 1986 Replacement Pamphlet.

7-16-15. Delivery and use of special fuel prohibited in certain cases.

It is unlawful to do any of the following acts:

A. operate any motor vehicle upon the highways of this state with connection from cargo or other tank or container, not considered in the Special Fuels Tax Act [7-16-1 to 7-16-26 NMSA 1978] as being the motor vehicle's fuel supply tank, to carburetor or other fuel supplying device method; 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 Tax Act by a registered and licensed liquefied petroleum gas dealer who is also a special fuel dealer when made by such dealer from the cargo tank of a vehicle operated by such dealer, which tank is specially designed to make this type of special fuel delivery.

History: 1953 Comp., § 64-26-78, enacted by Laws 1957, ch. 175, § 13; 1977, ch. 356, § 4; 1979, ch. 69, § 3; 1980, ch. 98, § 14; 1988, ch. 73, § 53.

7-16-16, 7-16-17. Repealed.

ANNOTATIONS

Repeals. - Laws 1988, ch. 73, § 56 repeals 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. For provisions of former sections, see 1986 and 1988 Replacement Pamphlets.

7-16-18. Power to suspend or cancel license; surrender bond.

A. Upon ten days' notice mailed to the last known address as shown on the records of the department of any special fuel dealer or special fuel user and a hearing as provided in Section 7-1-24 NMSA 1978, unless such notice or hearing be waived, any license held by a special fuel dealer or permit held by a special fuel user, in addition to other reasons herein specifically provided, may be suspended or canceled for any one or more of the following reasons:

(1) filing of a false report of the data or information required by the Special Fuels Tax Act [7-16-1 to 7-16-26 NMSA 1978];

(2) failure to file any report required under the Special Fuels Tax Act;

(3) failure to pay the full amount due, at the time and in the manner required by the Special Fuels Tax Act;

(4) failure to keep records of special fuel received, acquired, used, sold or delivered by such special fuel dealer or special fuel user as required by the Special Fuels Tax Act;

(5) failure to affix or display, or both, a special fuel dealer's license or a special fuel user's permit and identification as required by the Special Fuels Tax Act; or

(6) violation of any other provisions of the Special Fuels Tax Act with intent to defraud the state or evade payment of any taxes, penalties or interest imposed by the Special Fuels Tax Act.

B. Upon receipt of written request from any special fuel dealer or special fuel user under the Special Fuels Tax Act to cancel the license issued to such special fuel dealer or permit issued to such special fuel user, the department shall have the power to suspend or cancel such license or permit respectively, but no such license or permit shall be suspended or canceled upon the request of any such dealer or user until such dealer or user shall, prior to the date of such cancellation, have paid to the department all taxes

payable under the Special Fuels Tax Act together with any penalties and interest accruing under any of the provisions of the Special Fuels Tax Act, and until such dealer or user shall have surrendered to the department the license or permit respectively theretofore issued to such dealer or user. If, upon investigation, the department shall ascertain and find that any person to whom a license or permit has been issued under the Special Fuels Tax Act is no longer engaged in the sale or use of special fuel as a special fuel dealer or special fuel user and has not been so engaged for a period of six months, the department has the power to cancel such license by giving such person thirty days' prior notice of such cancellation in which event the license or permit theretofore issued to such person shall be surrendered to the department.

C. In the event that the license of any special fuel dealer or the permit of any special fuel user shall be canceled by the department as provided in this section, and in the further event that the special fuel dealer or special fuel user shall have paid to the department all taxes, penalties and interest due under the Special Fuels Tax Act, then the department shall return the cash or securities deposited in lieu of bond.

History: 1953 Comp., § 64-26-81, enacted by Laws 1957, ch. 175, § 16; 1977, ch. 250, § 83; 1983, ch. 133, § 6; 1988, ch. 73, § 54.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 53 C.J.S. Licenses §§ 50 to 63.

7-16-19 to 7-16-26. Repealed.

ANNOTATIONS

Repeals. - Laws 1988, ch. 73, § 56 repeals 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. For provisions of former sections, see 1986 Replacement Pamphlet.

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.

Cross-references. - As to duty of successor in business, see 7-1-61 to 7-1-64 NMSA 1978.

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 [Chapter 7, Article 17 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;

(1) "spirituous liquors" means alcoholic beverages except fermented beverages such as wine, beer and ale;

(2) "beer" means any 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; and

(3) "wine" includes the words "fruit juices" and means alcoholic beverages 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, that do not contain less than one-half of one percent nor more than twenty-one percent alcohol by volume;

B. "distribute" means the transfer of alcoholic beverages by a wholesaler to another person by any means other than by sale but does not include the return by a wholesaler to a distiller, rectifier, brewer or winer of alcoholic beverages that are spoiled or otherwise damaged so as to be unfit for sale or consumption;

C. "department", "director" 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;

D. "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;

E. "small winer or winegrower" means any person who produces less than two hundred twenty thousand liters of wine in a year and, with respect to the period January 1, 1991 through June 30, 1994, who is a small domestic producer for the purposes of Section 5041 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, or, with respect to the period July 1, 1987 through December 31, 1990, who would have been a small domestic producer had the version of Section 5041 of the

Internal Revenue Code in effect on January 1, 1991 been in effect throughout that period; and

F. "wholesaler" means any person holding a license issued under Section 60-6A-1 NMSA 1978 or any person selling alcoholic beverages that were not purchased from a person holding a license issued under Section 60-6A-1 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.

The 1991 amendment, effective July 1, 1987, added present Subsection E; redesignated former Subsection E as Subsection F; and made minor stylistic changes in Subsections A and B.

Internal Revenue Code. - Section 5041 of the Internal Revenue Code of 1986, referred to in Subsection E, Revenue Code of 1986, referred to in Subsection E, appears as 26 U.S.C. § 5041.

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 1982, ch. 111, § 4, made the act effective immediately.

Laws 1983, ch. 213, § 38, repeals 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, repeals 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.

There is imposed on any wholesaler who sells or distributes 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 or distributed:

A. on spirituous liquors, one dollar four cents ($1.04) per liter;

B. on beer, eighteen cents ($.18) per gallon;

C. on wine, except as provided in Subsection D of this section, twenty-five cents ($.25) per liter; and

D. on wine manufactured or produced by each small winer or winegrower sold in this state provided that proof is furnished to the department that the wine was manufactured or produced by a small winer or winegrower:

(1) from July 1, 1987 to June 30, 1990, one cent ($.01) per liter on the first eighty thousand liters sold and five cents ($.05) per liter on all liters sold over eighty thousand but less than one hundred fifty thousand;

(2) from July 1, 1990 to June 30, 1992, five cents ($.05) per liter on the first eighty thousand liters sold and ten cents ($.10) per liter on all liters sold over eighty thousand but less than two hundred twenty thousand;

(3) from July 1, 1992 to June 30, 1994, ten cents ($.10) per liter on the first eighty thousand liters sold and twenty cents ($.20) per liter on all liters sold over eighty thousand but less than two hundred twenty thousand; and

(4) after June 30, 1994, twenty-five cents ($.25) per liter on all liters sold.

History: 1953 Comp., § 46-7-19, enacted by Laws 1966, ch. 49, § 5; recompiled as 1953 Comp., § 72-32-5, by Laws 1973, ch. 166, § 2; 1981, ch. 39, § 123; 1982, ch. 111, § 1; reenacted by 1983, ch. 213, § 17; 1984, ch. 85, § 3; 1987, ch. 98, § 1; 1991, ch. 161, § 2.

Cross-references. - As to the deposit in the community alcoholism treatment and detoxification fund of the proceeds of the tax imposed by this section, see 43-3-7 NMSA 1978.

The 1991 amendment, effective July 1, 1987, in Subsection D, rewrote the introductory paragraph which read "on wine manufactured or produced by each winer or grower in New Mexico, provided that at least fifty percent by volume of the grapes, fruits or other agricultural products used in the manufacturing or production are grown or produced in New Mexico, and provided further that proof is furnished to the department", added "but less than one hundred fifty thousand" at the end of Paragraph (1) and added "but less than two hundred twenty thousand" at the end of Paragraphs (2) and (3).

Temporary provisions. - Laws 1991, ch. 161, § 3, effective July 1, 1987, provides that, notwithstanding the limitation in Subsection B of Section 7-1-26 NMSA 1978 on the time in which a claim for a refund may be made or allowed, any wholesaler that paid, during the period July 1, 1987 through December 31, 1987, the liquor excise tax at the rate specified in Subsection C of Section 7-17-5 NMSA 1978 on wine manufactured or produced by a small winer or winegrower may claim a refund for the difference in tax due resulting from applying the rates set out in Subsection D of Section 7-17-5 NMSA 1978 and the amount actually paid if the claim for refund is made by December 31, 1991 and if the difference in tax had not been refunded previously.

7-17-5.1. Repealed.

ANNOTATIONS

Repeals. - Laws 1983, ch. 213, § 38, repeals 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.

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 [Chapter 7, Article 17 NMSA 1978]; provided that the director may require the wholesaler to submit evidence satisfactory to the director that the units have been sold and shipped to a person in another state.

History: 1978 Comp., § 7-17-6, enacted by Laws 1984, ch. 85, § 4.

Repeals and reenactments. - Laws 1984, ch. 85, § 4, repeals 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 enacts the above section. For provisions of former section, see 1983 Replacement Pamphlet. For present comparable provisions, see 7-17-9 NMSA 1978.

7-17-7, 7-17-8. Repealed.

ANNOTATIONS

Repeals. - Laws 1984, ch. 85, § 12, repeals 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 [Chapter 7, Article 17 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: 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 director 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 director 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.

7-17-12. Interpretation of act; administration and enforcement of tax.

A. The division shall interpret the provisions of the Liquor Excise Tax Act [Chapter 7, Article 17 NMSA 1978].

B. The division 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.

ARTICLE 18
ELECTRICAL ENERGY TAX

7-18-1 to 7-18-6. Repealed.

ANNOTATIONS

Repeals. - Laws 1982, ch. 18, § 27, repeals 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

7-18A-1. Short title.

Sections 2 through 8 [7-18A-1 to 7-18A-7 NMSA 1978] of this act may be cited as the "Controlled Substance Tax Act".

History: Laws 1989, ch. 327, § 2.

Effective dates. - Laws 1989, ch. 327, § 10 makes the Controlled Substance Tax Act effective on July 1, 1989.

7-18A-2. Definitions.

As used in the Controlled Substance Tax Act [7-18A-1 to 7-18A-7 NMSA 1978]:

A. "controlled substance" means any substance included in Schedule I, II, III, IV or V in Sections 30-31-6 through 30-31-10 NMSA 1978 and any controlled substance analog of any substance included in Schedules I, II, III, IV or V in Sections 30-31-6 through 30-31-10 NMSA 1978, as those sections may be amended or renumbered;

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; and

C. "taxable privilege" means engaging in the unlawful possession, sale, use, consumption, distribution, manufacture, derivation, production, transportation or storage of any controlled substance.

History: Laws 1989, ch. 327, § 3.

Effective dates. - Laws 1989, ch. 327, § 10 makes the Controlled Substance Tax Act effective on July 1, 1989.

7-18A-3. Imposition and rate of tax; denomination as "controlled substance tax".

A. A tax is levied on the exercise of any taxable privilege with regard to controlled substances at the following rates:

(1) all narcotic drugs listed in Schedules I and II of Sections 30-31-6 and 30-31-7 NMSA 1978, three hundred dollars ($300) per gram or fraction thereof, except for cocaine and amphetamines;

(2) cocaine, one hundred dollars ($100) per gram or fraction thereof;

(3) amphetamines, one hundred dollars ($100) per gram or fraction thereof;

(4) all non narcotic drugs listed in Schedules I and II of Sections 30-31-6 and 30-31-7 NMSA 1978, except for LSD and marijuana, one hundred fifty dollars ($150) per gram or fraction thereof;

(5) marijuana, fifty dollars ($50.00) for one ounce or less; one hundred dollars ($100) per ounce or fraction thereof for more than one ounce and less than eight ounces; two hundred dollars ($200) per ounce or fraction thereof for eight ounces or more;

(6) LSD, one dollar ($1.00) per twenty-five micrograms or fraction thereof;

(7) all controlled substances listed in Schedules III, IV and V of Sections 30-31-8 through 30-31-10 NMSA 1978, except phencyclidine, fifty dollars ($50.00) per gram or fraction thereof; and

(8) phencyclidine, three hundred dollars ($300) per gram or fraction thereof.

B. The tax imposed by Subsection A of this section may be referred to as the "controlled substance tax".

C. Each law enforcement agency shall report no later than the twenty-fifth of each month the amount of all controlled substances seized during the previous month, the name of each taxpayer from whom the controlled substances were seized, each taxpayer's address and any information developed during the course of the investigation regarding properties owned by each taxpayer.

D. The department shall assess the taxpayer for any tax, penalty and interest due under the Controlled Substance Tax Act [7-18A-1 to 7-18A-7 NMSA 1978] after the receipt of the report required by Subsection C of this section, unless the taxpayer has already paid the tax.

E. Any assessment of the controlled substance tax shall be effective when mailed or delivered by personal service by the department to the address furnished to the department under the provisions of Subsection C of this section.

History: Laws 1989, ch. 327, § 4.

Effective dates. - Laws 1989, ch. 327, § 10 makes the Controlled Substance Tax Act effective on July 1, 1989.

Appropriations. - Laws 1989, ch. 327, § 9, effective July 1, 1989, appropriates $25,000 from the proceeds of the Controlled Substance Tax to the taxation and revenue department for expenditure in the seventy-eighth fiscal year for the purpose of administering the Controlled Substance Tax Act and further provides that any unexpended or unencumbered balance remaining at the end of the seventy-eighth fiscal year shall revert to the general fund.

7-18A-4. Exemption; controlled substance tax.

The possession, sale, use, consumption, distribution, manufacture, derivation, production, transportation or storage of any controlled substance by a federal, state or local government officer or employee, or his agent, acting in his official capacity and necessary in the performance of their duties is exempt from the controlled substance tax.

History: Laws 1989, ch. 327, § 5.

Effective dates. - Laws 1989, ch. 327, § 10 makes the Controlled Substance Tax Act effective on July 1, 1989.

7-18A-5. Administration.

A. The department shall interpret the provisions of the Controlled Substance Tax Act [this article].

B. The department shall administer and enforce the collection of the controlled substance tax, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of the tax.

C. Neither this section nor the assessment or collection of taxes under this section shall be construed as making lawful the transaction or incident which is the subject of the tax.

History: Laws 1989, ch. 327, § 6.

Effective dates. - Laws 1989, ch. 327, § 10 makes the Controlled Substance Tax Act effective on July 1, 1989.

7-18A-6. Judicial proceedings.

The disposition of any judicial proceeding in a criminal case involving a transaction or incident taxable under the Controlled Substance Tax Act [7-18A-1 to 7-18A-7 NMSA 1978] or the dismissal of criminal charges in such a case shall not affect any assessment made under the Controlled Substance Tax Act.

History: Laws 1989, ch. 327, § 7.

Effective dates. - Laws 1989, ch. 327, § 10 makes the Controlled Substance Tax Act effective on July 1, 1989.

7-18A-7. Notification of district attorney.

The department shall notify the district attorney of the appropriate judicial district of an assessment made under the Controlled Substance Tax Act [7-18A-1 to 7-18A-7 NMSA 1978]. The department may settle or compromise any tax, penalty or interest imposed under this section only pursuant to the provisions of Section 7-1-20 NMSA 1978.

History: Laws 1989, ch. 327, § 8.

Effective dates. - Laws 1989, ch. 327, § 10 makes the Controlled Substance Tax Act effective on July 1, 1989.

ARTICLE 19
MUNICIPAL GROSS RECEIPTS TAX

7-19-1. Short title.

Sections 7-19-1 through 7-19-9 NMSA 1978 may be cited as the "Municipal Gross Receipts Tax Act".

History: 1953 Comp., § 14-61-1, enacted by Laws 1975 (S.S.), ch. 16, § 1; 1983, ch. 211, § 29.

Cross-references. - As to Gross Receipts and Compensating Tax Act, see 7-9-1 NMSA 1978 et seq.

As to Gross Receipts Tax Registration Act, see 7-10-1 NMSA 1978 et seq.

As to municipal and county gross receipts tax on liquor, see 7-24-1 NMSA 1978 et seq.

Compiler's note. - The Attorney General Opinions included in the annotations to Chapter 7 NMSA 1978 are probably not enforceable, since the regulations promulgated

under the Tax Administration Act (see 7-1-1 NMSA 1978) are controlling. See 7-1-5 NMSA 1978 and notes thereto.

7-19-2. Definitions.

As used in the Municipal Gross Receipts Tax Act [7-19-1 to 7-19-9 NMSA 1978]:

A. "bureau", "department" or "revenue 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 city, the board of trustees of a town or village and the board of county commissioners of H-class counties;

C. "municipal gross receipts tax" means the tax authorized to be imposed under the Municipal Gross Receipts Tax Act;

D. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, and H-class counties;

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.

History: 1953 Comp., § 14-61-2, enacted by Laws 1975 (S.S.), ch. 16, § 2; 1977, ch. 249, § 23; 1986, ch. 20, § 75.

7-19-3. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 37, § 95, repeals 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. For present provisions, see 7-19-4 NMSA 1978.

7-19-4. 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-fourth percent of the gross receipts of 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 "municipal gross receipts tax."

B. A tax imposed pursuant to Subsection A of 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-fourth percent of the gross receipts of a person engaging in business. Municipalities with a population of at least forty-five thousand according to the last federal decennial census may impose increments of one-eighth of one percent. All other municipalities may impose increments of one-fourth of one percent. 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.

C. Any ordinance enacted under the provisions of Subsection A of this section or any ordinance amending such ordinance to change the purposes for which the revenue is dedicated or to increase the rate of tax 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 enacted by the governing body. Any such ordinance shall become effective on the date specified unless an election is held pursuant to this section. 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 homerule charter or on a date set by the governing body and pursuant to the provisions of the Municipal Election Code [Articles 8 and 9 of Chapter 3 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.

D. The signatures on the petition 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 C 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.

E. If at an election called pursuant to Subsection C of this section a majority of the registered voters voting on the question approves the ordinance imposing the tax, then the ordinance shall become effective on either July 1 or January 1, whichever date occurs first after the expiration of three months from the date when the results of the election are certified to be in favor of its adoption. If at such an election a majority of the registered voters voting on the question disapproves the ordinance, then 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.

F. Any municipality that has lawfully imposed by the requirements of the Special Municipal Gross Receipts Tax Act [7-19A-1 to 7-19A-7 NMSA 1978] 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 the Municipal Gross Receipts Tax Act [7-19-1 to 7-19-9 NMSA 1978].

G. Any rate of tax deemed to be imposed pursuant to Subsection F of this section 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 which imposes or authorizes the imposition of a municipal gross receipts tax or which 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 which 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.

Cross-references. - As to procedure for adoption of ordinance imposing or increasing tax rate and effective date thereof, see 7-19-7 NMSA 1978.

Validating clauses. - Laws 1982, ch. 3, § 3, declares that the enactment by any municipality of a single ordinance imposing a one-half of 1 percent municipal gross receipts tax rate pursuant to Laws 1981, ch. 37, § 11, is hereby validated, ratified, approved and confirmed with respect only to the imposition of the tax rate of one-half of 1 percent.

7-19-4.1. Municipal gross receipts tax rate limit.

No municipality shall impose a municipal gross receipts tax rate under the Municipal Gross Receipts Tax Act [7-19-1 to 7-19-9 NMSA 1978] that in the aggregate is greater than one and one-fourth percent.

History: 1978 Comp., § 7-19-4.1, enacted by Laws 1979, ch. 155, § 2; 1983, ch. 213, § 19; 1986, ch. 20, § 77.

7-19-5. Specific exemptions.

No municipal gross receipts tax shall be imposed on the gross receipts arising from:

A. the transmission of messages by wire or other means from one point within the municipality to another point outside the municipality;

B. 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

C. 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 Subsection C of Section 7-1-6.4 NMSA 1978.

History: 1953 Comp., § 14-61-4, enacted by Laws 1975 (S.S.), ch. 16, § 4; 1977, ch. 315, § 1; 1983, ch. 211, § 30.

7-19-6. Ordinance must conform to certain provisions of the Gross Receipts and Compensating Tax Act.

Any ordinance imposing a 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].

History: 1953 Comp., § 14-61-5, enacted by Laws 1975 (S.S.), ch. 16, § 5; 1979, ch. 155, § 3.

7-19-7. Procedure for adoption; effective date.

A. The governing body of any municipality imposing or increasing the municipal gross receipts tax must adopt the model ordinances furnished to the municipality by the revenue division.

B. Any ordinance adopted or repealed under the provisions of Section 7-19-4 NMSA 1978, shall become effective on either July 1 or January 1 after the expiration of at least three months from the date the ordinance is adopted or repealed by the governing body or by the electorate, whichever action is later.

C. Any ordinance enacted under the provisions of Section 7-19-4 NMSA 1978 or any ordinance amending such ordinance to change the purposes for which the revenue is dedicated or to increase the rate of tax shall include an effective date of either July 1 or January 1 after the expiration of at least three months from the date the ordinance is enacted by the governing body.

D. A certified copy of any ordinance imposing a municipal gross receipts tax shall be mailed to the revenue division within five days after the ordinance is adopted by either:

(1) the expiration of the period for filing of a petition under Section 7-19-4 NMSA 1978; or

(2) the approval by the electorate under Section 7-19-4 NMSA 1978, as the case may be.

History: 1953 Comp., § 14-61-6, enacted by Laws 1975 (S.S.), ch. 16, § 6; 1976 (S.S.), ch. 3, § 3; 1979, ch. 155, § 4; 1981, ch. 37, § 12.

7-19-8. Collection by revenue division; distribution of proceeds; deductions.

A. The revenue division shall collect the municipal gross receipts tax in the same manner and at the same time it collects the state gross receipts tax.

B. The revenue division may deduct an amount not to exceed three percent of the portion of municipal gross receipts tax arising from a municipal gross receipts tax rate in excess of one-half of one percent 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. The revenue division shall remit to each municipality for which it is collecting a municipal gross receipts tax the amount of the tax collected less any deduction for administrative cost and less any disbursements for tax credits, refunds and the payment of interest applicable to the municipal gross receipts tax.

Distribution of the tax to a municipality shall be made within the month following the month in which the tax is collected.

History: 1953 Comp., § 14-61-7, enacted by Laws 1975 (S.S.), ch. 16, § 7; 1983, ch. 211, § 31; 1983, ch. 213, § 20.

7-19-9. Interpretation of act; administration and enforcement of tax.

A. The bureau shall interpret the provisions of the Municipal Gross Receipts Tax [7-19-1 to 7-19-9 NMSA 1978].

B. The bureau shall administer and enforce the collection of the 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: 1953 Comp., § 14-61-8, enacted by Laws 1975 (S.S.), ch. 16, § 8.

Meaning of "bureau". - See 7-19-2A NMSA 1978.

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.

Cross-references. - For Municipal Gross Receipts Tax Act, see 7-19-1 NMSA 1978 et seq.

7-19-11. Definitions.

As used in the Supplemental Municipal Gross Receipts Tax Act [7-19-10 to 7-19-18 NMSA 1978]:

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 a population under twelve thousand as determined by the last official United States census and being located within a class C county;

D. "person" means an individual or any other legal entity;

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]; and

F. "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.

7-19-12. Authorization to impose supplemental municipal gross receipts tax; authorization for issuance of supplemental municipal gross receipts bonds; election required; authorization removed.

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 registered 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 and registered 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 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 [7-19-10 to 7-19-18 NMSA 1978] 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. No ordinance pursuant to the provisions of the Supplemental Municipal Gross Receipts Tax Act shall be effective unless it is enacted and the required election is held prior to February 1, 1986.

History: Laws 1979, ch. 397, § 3; 1980, ch. 106, § 2; 1986, ch. 6, § 1; 1986, ch. 20, § 80.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 68 Am. Jur. 2d Sales and Use Taxes § 8.

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. the transmission of messages by wire or other means from one point within the municipality to another point outside the municipality;

B. 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

C. 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 Subsection C of Section 7-1-6.4 NMSA 1978.

History: Laws 1979, ch. 397, § 5; 1983, ch. 211, § 33.

7-19-15. Collection by division; transfer of proceeds; deductions.

A. The division 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 division may deduct an amount not to exceed three percent of the supplemental 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. The division shall transfer to each municipality for which it is collecting a supplemental municipal gross receipts tax the amount of the tax collected less any deduction for administrative cost 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.

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 [7-19-10 to 7-19-18 NMSA 1978].

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 [7-19-10 to 7-19-18 NMSA 1978] 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.

7-19-18. Supplemental municipal gross receipts tax; use of proceeds; restriction.

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 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 [7-19-10 to 7-19-18 NMSA 1978], the funding of any reserves and other accounts in connection with such bonds, and to the extent not needed for such purposes, the improvement of the municipality's water system. When the supplemental municipal gross receipts bonds are fully paid, any supplemental municipal gross receipts tax shall cease to be imposed. Any money remaining in a special improvement account after the obligations for the supplemental municipal gross receipts 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.

ARTICLE 19A
SPECIAL MUNICIPAL GROSS RECEIPTS TAX

7-19A-1. Short title. (Effective until July 1, 1996.)

This act [7-19A-1 to 7-19A-7 NMSA 1978] may be cited as the "Special Municipal Gross Receipts Tax Act".

History: Laws 1984, ch. 3, § 1.

Delayed repeals. - Laws 1986, ch. 20, § 136E repeals 7-19A-1 NMSA 1978, as enacted by Laws 1984, ch. 3, § 1, the short title of the Special Municipal Gross Receipts Tax Act, effective July 1, 1996.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 251, 258.

15 C.J.S. Commerce §§ 107, 114(2).

7-19A-2. Definitions. (Effective until July 1, 1996.)

As used in the Special Municipal Gross Receipts Tax Act [7-19A-1 to 7-19A-7 NMSA 1978]:

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 city, the board of trustees of a town or village or 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 H-class counties;

D. "person" means an individual or any other legal entity;

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]; and

F. "special municipal gross receipts tax" means the tax authorized to be imposed under the Special Municipal Gross Receipts Tax Act.

History: Laws 1984, ch. 3, § 2; 1986, ch. 20, § 81.

Delayed repeals. - Laws 1986, ch. 20, § 136 repeals 7-19A-2 NMSA 1978, as enacted by Laws 1984, ch. 3, § 2, containing definitions for the Special Municipal Gross Receipts Tax Act, effective July 1, 1996.

Cross-references. - As to creation and establishment of H-class counties, see 4-44-3 NMSA 1978.

7-19A-3. Special municipal gross receipts tax; authority to impose; ordinance requirements; authorization removed. (Effective until July 1, 1996.)

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 municipality for the privilege of engaging in business. This tax is to be referred to as the "special municipal gross receipts tax". The rate of the tax shall be one-fourth of one percent of the gross receipts of the person engaging in business.

B. 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 repair and replacement of infrastructure improvements, specifically, sanitary sewer lines, storm sewers and other drainage improvements, streets and alleys and acquisition of rights-of-way, and related facilities within the municipality or within the extraterritorial zone of the municipality. 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 municipality for that purpose.

C. Any ordinance enacted under 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 results of the election are certified to be in favor of its adoption.

D. The ordinance shall not go into effect until after an election is held and a simple majority of the qualified electors of the municipality, voting in the election, vote in favor of imposing the special municipal gross receipts tax. The governing body shall, within five days of the adoption of the ordinance, adopt an election resolution calling for an election on the question of imposing a special municipal gross receipts tax within sixty days after the date the ordinance is adopted. Such question may be submitted to the registered voters of the municipality and voted upon at any regular municipal election as a separate question 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 the same manner as provided by law in the Municipal Election Code. If the question of imposing a special municipal gross receipts tax fails, the governing body shall not again propose a special municipal gross receipts tax for a period of one year from the date of the election.

E. Any ordinance repealed under the provisions of the Special Municipal Gross Receipts Tax Act shall be repealed effective on either July 1 or January 1.

F. No ordinance pursuant to the provisions of the Special Municipal Gross Receipts Tax Act shall be effective unless it is enacted prior to February 1, 1986 and the required election is held prior to April 1, 1986.

G. If a municipality has exercised the authority to impose a special municipal gross receipts tax at a rate of at least one-half of one percent by enacting an ordinance on or prior to February 1, 1986, the rate of tax is deemed to be one-fourth of one percent, and one-fourth of one percent of the tax rate is deemed imposed pursuant to Subsection F of Section 7-19-4 NMSA 1978. If a municipality has exercised the authority to impose a special municipal gross receipts tax at a rate of one-fourth of one percent by enacting an ordinance on or prior to February 1, 1986, the one-fourth of one percent tax rate is deemed imposed pursuant to Subsection F of Section 7-19-4 NMSA 1978.

H. Any ordinance enacted under the provisions of Subsection A of this section shall not be effective after July 1, 1991, unless an ordinance pledging the receipts of the tax to payment of revenue bonds has been enacted prior to February 1, 1986, in which case the expiration date of the ordinance shall be extended to July 1 or January 1 next after full payment of the original bond issue.

History: Laws 1984, ch. 3, § 3; 1985, ch. 208, § 122; 1986, ch. 20, § 82.

Delayed repeals. - Laws 1986, ch. 20, § 136 repeals 7-19A-3 NMSA 1978, as enacted by Laws 1984, ch. 3, § 3, relating to the authority to impose a special municipal gross receipts tax, effective July 1, 1996.

7-19A-4. Ordinance must conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the division. (Effective until July 1, 1996.)

A. Any ordinance imposing a special 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 special 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 1984, ch. 3, § 4.

Delayed repeals. - Laws 1986, ch. 20, § 136 repeals 7-19A-4 NMSA 1978, as enacted by Laws 1984, ch. 3, § 4, relating to the conformance of the special municipal gross receipts tax to the Gross Receipts and Compensating Tax Act, effective July 1, 1996.

7-19A-5. Specific exemptions. (Effective until July 1, 1996.)

No special municipal gross receipts tax shall be imposed on the gross receipts arising from:

A. the transmission of messages by wire or other means from one point within the municipality to another point outside the municipality;

B. 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

C. 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 Subsection C of Section 7-1-6.4 NMSA 1978.

History: Laws 1984, ch. 3, § 5.

Delayed repeals. - Laws 1986, ch. 20, § 136 repeals 7-19A-5 NMSA 1978, as enacted by Laws 1984, ch. 3, § 5, relating to exemptions from the special municipal gross receipts tax, effective July 1, 1996.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 392.

7-19A-6. Collection by division; distribution of proceeds; deductions. (Effective until July 1, 1996.)

A. The division shall collect the special municipal gross receipts tax in the same manner and at the same time it collects the state gross receipts tax.

B. The division may deduct an amount not to exceed three percent of the special 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. The division shall remit to each municipality for which it is collecting a special municipal gross receipts tax the amount of the tax collected less any deduction for administrative cost and less any disbursements for tax credits, refunds and the payment of interest applicable to the special municipal gross receipts tax. Distribution of the tax to a municipality shall be made within the month following the month in which the tax is collected.

History: Laws 1984, ch. 3, § 6.

Delayed repeals. - Laws 1986, ch. 20, § 136 repeals 7-19A-6 NMSA 1978, as enacted by Laws 1984, ch. 3, § 6, relating to the collection and distribution of the special municipal gross receipts tax, effective July 1, 1996.

7-19A-7. Interpretation of act; administration and enforcement of tax. (Effective until July 1, 1996.)

A. The division shall interpret the provisions of the Special Municipal Gross Receipts Tax Act [7-19A-1 to 7-19A-7 NMSA 1978].

B. The division shall administer and enforce the collection of the special 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 1984, ch. 3, § 7.

Delayed repeals. - Laws 1986, ch. 20, § 136 repeals 7-19A-7 NMSA 1978, as enacted by Laws 1984, ch. 3, § 7, relating to the administration and enforcement of the special municipal gross receipts tax, effective July 1, 1996.

ARTICLE 19B
MUNICIPAL ENVIRONMENTAL SERVICES GROSS RECEIPTS TAX

7-19B-1. Short title.

Sections 49 through 55 [7-19B-1 to 7-19B-7 NMSA 1978] of this act may be cited as the "Municipal Environmental Services Gross Receipts Tax Act".

History: Laws 1990, ch. 99, § 49.

Cross-references. - As to issuance of revenue bond, see 3-31-1 NMSA 1978.

As to solid waste act, see 74-9-1 NMSA 1978.

Emergency clauses. - Laws 1990, ch. 99, § 74 makes the Municipal Environmental Services Gross Receipts Tax effective immediately. Approved March 5, 1990.

7-19B-2. Definitions.

As used in the Municipal Environmental Services Gross Receipts Tax Act [7-19B-1 to 7-19B-7 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. "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. "municipal environmental services gross receipts tax" means the tax authorized to be imposed under the Municipal Environmental Services Gross Receipts Tax Act;

D. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, and H class counties;

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: Laws 1990, ch. 99, § 50.

Emergency clauses. - Laws 1990, ch. 99, § 74 makes the Municipal Environmental Services Gross Receipts Tax effective immediately. Approved March 5, 1990.

7-19B-3. Municipal environmental services gross receipts tax; authority to impose; ordinance requirements; authorization removed.

A. 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. This tax is to be referred to as the "municipal environmental services gross receipts tax". The rate of the tax shall be one-sixteenth of one percent of the gross receipts of the person engaging in business. The imposition of this tax is not subject to referendum of any kind unless required by a municipal charter.

B. 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.

C. Any ordinance enacted under 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 enacted by the governing body. Any such ordinance shall become effective on the date specified.

D. Any ordinance repealed under the provisions of the Municipal Environmental Services Gross Receipts Tax Act [7-19B-1 to 7-19B-7 NMSA 1978] shall be repealed effective on either July 1 or January 1.

E. A certified copy of any ordinance imposing or repealing a municipal gross receipts tax shall be mailed to the department within five days after the ordinance is adopted.

History: Laws 1990, ch. 99, § 51.

Emergency clauses. - Laws 1990, ch. 99, § 74 makes the Municipal Environmental Services Gross Receipts Tax effective immediately. Approved March 5, 1990.

7-19B-4. Specific exemptions.

No municipal environmental services gross receipts tax shall be imposed on the gross receipts arising from:

A. the transmission of messages by wire or other means from one point within the municipality to another point outside the municipality;

B. 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

C. 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 Subsection C of Section 7-1-6.4 NMSA 1978.

History: Laws 1990, ch. 99, § 52.

Emergency clauses. - Laws 1990, ch. 99, § 74 makes the Municipal Environmental Services Gross Receipts Tax effective immediately. Approved March 5, 1990.

7-19B-5. Ordinance shall conform to certain provisions of the gross receipts and compensating tax act and requirements of the department.

A. Any ordinance imposing the municipal environmental services 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 the municipal environmental services gross receipts tax shall adopt the model ordinances furnished to the county by the department.

History: Laws 1990, ch. 99, § 53.

Emergency clauses. - Laws 1990, ch. 99, § 74 makes the Municipal Environmental Services Gross Receipts Tax effective immediately. Approved March 5, 1990.

7-19B-6. Collection by department; transfer of proceeds; deductions.

A. The department shall collect the municipal environmental services 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 municipality for which it is collecting a municipal environmental services gross receipts tax the amount of the tax collected less any disbursement for tax credits, refunds and the payment of interest applicable to the municipal environmental services 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 1990, ch. 99, § 54.

Emergency clauses. - Laws 1990, ch. 99, § 74 makes the Municipal Environmental Services Gross Receipts Tax effective immediately. Approved March 5, 1990.

7-19B-7. Interpretation of act; administration and enforcement of tax.

A. The department shall interpret the provisions of the Municipal Environmental Services Gross Receipts Tax Act [7-19B-1 to 7-19B-7 NMSA 1978].

B. The department shall administer and enforce the collection of the municipal environmental services 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 1990, ch. 99, § 55.

Emergency clauses. - Laws 1990, ch. 99, § 74 makes the Municipal Environmental Services Gross Receipts Tax effective immediately. Approved March 5, 1990.

ARTICLE 19C
MUNICIPAL INFRASTRUCTURE GROSS RECEIPTS TAX

7-19C-1. Short title.

Sections 1 through 7 [7-19C-1 to 7-19C-7 NMSA 1978] of this act may be cited as the "Municipal Infrastructure Gross Receipts Tax Act".

History: Laws 1991, ch. 9, § 1.

Effective dates. - Laws 1991, ch. 9, § 47A makes the Municipal Infrastructure Gross Receipts Tax Act effective July 1, 1991.

7-19C-2. Definitions.

As used in the Municipal Infrastructure Gross Receipts Tax Act [7-19C-1 to 7-19C-7 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. "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 H-class counties;

C. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, and H-class counties;

D. "person" means an individual or any other legal entity;

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]; and

F. "municipal infrastructure gross receipts tax" means the tax authorized to be imposed under the Municipal Infrastructure Gross Receipts Tax Act.

History: Laws 1991, ch. 9, § 2.

Effective dates. - Laws 1991, ch. 9, § 47A makes the Municipal Infrastructure Gross Receipts Tax Act effective July 1, 1991.

7-19C-3. Municipal infrastructure gross receipts tax; authority by municipality to impose; ordinance requirements.

A. Subject to the provisions of Subsection C of this section, the majority of the members of the governing body of a municipality may enact an ordinance or ordinances 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-eighth of one percent of the gross receipts of the person engaging in business and shall be imposed in one-sixteenth increments by separate ordinances. Any ordinance enacted is not subject to a referendum of any kind notwithstanding any requirement of any charter municipality.

B. The tax imposed pursuant to Subsection A of this section shall be referred to as the "municipal infrastructure gross receipts tax".

C. Enactment of the ordinance imposing a second one-sixteenth of one percent tax may be imposed by a municipality if the department of finance and administration has set a property tax rate under the Property Tax Code [Articles 35 through 38 of Chapter 7 NMSA 1978] for the use of the municipality for general purposes pursuant to Paragraph (3) of Subsection B of Section 7-37-7 NMSA 1978 of not less than one-half of the unimposed rate for each one thousand dollars ($1,000) of net taxable value of both residential and nonresidential property allocated to the municipality.

D. The governing body of a municipality shall, at the time of enacting any ordinance imposing the rate of the tax authorized in Subsection A of this section, dedicate the revenue either for payment of special obligation bonds issued pursuant to a revenue bond act or for repair, replacement, construction and acquisition of infrastructure improvements, including but not limited to sanitary sewer lines, storm sewers and other drainage improvements, water, water rights, water lines and utilities, streets, alleys, rights-of-way, easements and land within the municipality or within the extraterritorial zone of the municipality.

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, whichever date occurs first after the expiration of at least three months from the date any ordinance is enacted by the governing body. Any ordinance enacted shall become effective on the date specified.

F. The effective date of the repeal of the tax imposed pursuant to Subsection A of this section shall be either July 1 or January 1.

G. A copy of any ordinance enacting or repealing the municipal infrastructure gross receipts tax shall be mailed to the department within five days after the ordinance is adopted.

History: Laws 1991, ch. 9, § 3.

Effective dates. - Laws 1991, ch. 9, § 47A makes the Municipal Infrastructure Gross Receipts Tax Act effective July 1, 1991.

7-19C-4. Ordinance shall conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the department.

A. Any ordinance imposing a municipal infrastructure 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 the municipal infrastructure gross receipts tax shall adopt the language of the model ordinance furnished to the municipality by the department for the portion of the ordinance relating to the tax.

History: Laws 1991, ch. 9, § 4.

Effective dates. - Laws 1991, ch. 9, § 47A makes the Municipal Infrastructure Gross Receipts Tax Act effective July 1, 1991.

7-19C-5. Specific exemptions.

No municipal infrastructure gross receipts tax shall be imposed on the gross receipts arising from:

A. the transmission of messages by wire or other means from one point within the municipality to another point outside the municipality;

B. 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

C. 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 Subsection C of Section 7-1-6.4 NMSA 1978.

History: Laws 1991, ch. 9, § 5.

Effective dates. - Laws 1991, ch. 9, § 47A makes the Municipal Infrastructure Gross Receipts Tax Act effective July 1, 1991.

7-19C-6. Collection by department; distribution of proceeds; deductions.

A. The department shall collect the municipal infrastructure gross receipts tax in the same manner and at the same time it collects the state gross receipts tax.

B. The department may deduct an amount not to exceed three percent of the municipal infrastructure 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. The department shall remit to each municipality for which it is collecting a municipal infrastructure gross receipts tax the amount of the tax collected less any deduction for administrative cost and less any disbursements for tax credits, refunds and the payment of interest applicable to the municipal infrastructure gross receipts tax. Distribution of the tax to a municipality shall be made within the month following the month in which the tax is collected.

History: Laws 1991, ch. 9, § 6.

Effective dates. - Laws 1991, ch. 9, § 47A makes the Municipal Infrastructure Gross Receipts Tax Act effective July 1, 1991.

7-19C-7. Interpretation of act; administration and enforcement of tax.

A. The department shall interpret the provisions of the Municipal Infrastructure Gross Receipts Tax Act [7-19C-1 to 7-19C-7 NMSA 1978].

B. The department shall administer and enforce the collection of the municipal infrastructure 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. 9, § 7.

Effective dates. - Laws 1991, ch. 9, § 47A makes the Municipal Infrastructure Gross Receipts Tax Act effective July 1, 1991.

ARTICLE 20
COUNTY GROSS RECEIPTS TAX

7-20-1. Short title.

Sections 28 through 36 [7-20-1 to 7-20-9 NMSA 1978] of this act may be cited as the "County Gross Receipts Tax Act".

History: Laws 1983, ch. 213, § 28.

Repeals. - Laws 1979, ch. 88, § 1, repeals former 7-20-1 to 7-20-9 NMSA 1978, relating to the county gross receipts tax.

Laws 1979, ch. 88 contains no effective date provision, but was enacted at the session which adjourned on March 17, 1979. See N.M. Const., art. IV, § 23.

7-20-2. Definitions.

As used in the County Gross Receipts Tax Act [7-20-1 to 7-20-9 NMSA 1978]:

A. "county" means a county of the state of New Mexico;

B. "county gross receipts tax" means the tax authorized to be imposed under the County Gross Receipts Tax Act;

C. "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;

D. "governing body" means the board of county commissioners of a 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: Laws 1983, ch. 213, § 29; 1985 (1st S.S.), ch. 13, § 1; 1986, ch. 20, § 83.

7-20-3. County gross receipts tax; authority to impose rate; indigent fund requirements.

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 independent increments of one-eighth percent which shall be separately denominated as "first one-eighth", "second one-eighth" and "third one-eighth", respectively, not to exceed an aggregate amount of three-eighths percent. This tax is to be referred to as the "county gross receipts tax".

B. Any class A county 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 enacting the second or third one-eighth percent 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 for each additional increment of one-eighth percent enacted, 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.

C. Imposition by any county of the second one-eighth percent 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.

D. Any county, except a class A county 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, imposing the second one-eighth percent 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 percent increment for the support of indigent patients who are residents of that county. Fifty percent of the revenue produced by the imposition of the third one-eighth percent increment shall be dedicated to the support of indigent patients who are residents of that county. The requirements of

this subsection shall apply regardless of the combination or sequence of one-eighth percent increments enacted.

E. Counties that provide for indigent care in an amount equal to or greater than the amount anticipated to be required to be dedicated by Subsection D of this section from revenue arising from the imposition of a rate greater than the first one-eighth percent increment may use the county gross receipts tax revenue produced by imposition of the increments in excess of the first one-eighth percent increment for general purposes; however, at any time the revenue to be provided for indigent care is anticipated to be less than the amount required to be dedicated pursuant to Subsection D of this section, then revenue from the receipts of the increments in excess of the first one-eighth percent increment of the county gross receipts tax shall be dedicated to indigent care to the extent necessary to provide indigent care revenue equal to the amount required to be dedicated by Subsection D of this section.

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, whichever date occurs first after the expiration of at least three months from the date the ordinance is enacted by the governing body. Any such ordinance shall become effective on the date specified.

History: Laws 1983, ch. 213, § 30; 1986, ch. 20, § 84; 1989, ch. 169, § 1; 1991, ch. 212, § 16.

The 1989 amendment, effective April 3, 1989, added the third sentence of Subsection B.

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" preceding "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.

County Sales Tax Act. - The County Sales Tax Act, referred to in Subsection G, formerly appeared as 7-21-1 to 7-21-7 NMSA 1978, but was repealed by Laws 1986, ch. 20, § 136A, effective July 1, 1986.

"Effective date of this 1986 act". - The term "the effective date of this 1986 act", as used in Subsection G, means the effective date of Laws 1986, ch. 20, which, according to § 13A of that act, is July 1, 1986.

7-20-3.1. County gross receipts tax; authority to impose additional rate in lieu of property tax.

A. In addition to the rate of tax authorized by Section 7-20-3 NMSA 1978, 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 or the maximum rate determined under Subsection C of this section, whichever is lower. Any ordinance adopted under this section shall be in effect only for the twelve-month period beginning with the effective date of the ordinance.

B. The tax authorized by this section may be first 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 Subparagraph (b) 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.

C. 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).

D. Any ordinance enacted under this section shall include an effective date of the January 1 or July 1, whichever date occurs first, after the expiration of three months from the date the ordinance is enacted by the governing body. The ordinance shall contain an expiration date of the January 1 or July 1, whichever date occurs first, one year after the effective date. Within ten days of the enactment of the ordinance the governing body shall notify the department of the enactment of the ordinance under this section.

E. The governing body, at the same time it notifies the department required under Subsection D of this section, may request the department to make an advance distribution for each whole month occurring between the date notification is made to the department and the effective date of the ordinance enacting a tax under this section. 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.

Effective dates. - Laws 1989, ch. 239 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

Compiler's note. - After the 1990 amendment to 7-37-7 NMSA 1978 by Laws 1990, ch. 125, § 5, the reference in Subsection B to Subparagraph (b) of Paragraph (1) of Subsection B of Section 7-37-7 NMSA 1978, should now be simply to Paragraph (1) of Subsection B, the current location of that subject matter.

7-20-4. Ordinance must conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the division.

A. Any ordinance imposing the county 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 gross receipts tax shall adopt the model ordinances furnished to the county by the division.

History: Laws 1983, ch. 213, § 31.

7-20-5. Referendum requirements.

A. After the first increment of the tax imposed by ordinance adopted pursuant to Section 7-20-3 NMSA 1978 has been in effect at least nine months but less than twelve months, an election may be called in the county on the question of disapproving such ordinance enacted pursuant to Section 7-20-3 NMSA 1978:

(1) if, 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, if, between the ninth and twelfth months after the imposition of the tax, a petition requesting such an election is filed with the county clerk 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 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.

C. If, at an election called pursuant to Subsection A of this section, a majority of the registered voters voting on the question approves the ordinance imposing the tax, the ordinance shall continue in effect. 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 effective the next January 1 or July 1, whichever is earlier, and the question of imposing the 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.

D. An ordinance imposing the third increment of the county gross receipts tax by any county 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 vote in favor of imposing the third increment of one-eighth percent. The board of county commissioners shall provide for an election on the question of imposing a county gross receipts tax within sixty days after the date the ordinance is adopted. 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 county commissioners. 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 third increment of the county gross receipts tax fails, the board of county commissioners shall

not again propose a third increment of the county gross receipts tax for a period of one year after the election.

History: Laws 1983, ch. 213, § 32; 1986, ch. 20, § 85.

7-20-6. Specific exemptions.

No county gross receipts tax shall be imposed on the gross receipts arising from:

A. the transmission of messages by wire or other means from one point within the county to another point outside the county; or

B. 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 1983, ch. 213, § 33.

7-20-7. Collection by division; distribution of proceeds; deductions.

A. The division shall collect the county gross receipts tax in the same manner and at the same time as it collects the state gross receipts tax.

B. The division may deduct an amount not to exceed three percent of the county 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. The division shall remit to each county for which it is collecting the tax the amount of the tax collected less any deduction for administrative costs and less any disbursements for tax credits, refunds and the payment of interest applicable to the tax. Distribution of the tax to a county shall be made within the month following the month in which the tax is collected.

History: Laws 1983, ch. 213, § 34.

7-20-8. Use of county gross receipts tax.

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 percent increment imposed pursuant to Subsection A of Section 7-20-3 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.

7-20-9. Interpretation of act; administration and enforcement of tax.

A. The division shall interpret the provisions of the County Gross Receipts Tax Act [7-20-1 to 7-20-9 NMSA 1978].

B. The division shall administer and enforce the collection of the county 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 1983, ch. 213, § 36.

7-20-10 to 7-20-18. Repealed.

ANNOTATIONS

Repeals. - Laws 1979, ch. 88, § 1, repeals 7-20-10 to 7-20-18 NMSA 1978, relating to the county gross receipts tax.

Laws 1979, ch 88, contains no effective date provision, but was enacted at the session which adjourned on March 17, 1979. See N.M. Const., art. IV, § 23.

7-20-19. Short title.

Sections 1 through 8 [7-20-19 to 7-20-26 NMSA 1978] of this act may be cited as the "Special County Hospital Gross Receipts Tax Act".

History: Laws 1987, ch. 45, § 1.

7-20-20. Definitions.

As used in the Special County Hospital Gross Receipts Tax Act [7-20-19 to 7-20-26 NMSA 1978]:

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 [Articles 35 to 38 of Chapter 7 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 [Ad Valorem] 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 Gross Receipts Tax Act;

B. "special county hospital gross receipts tax" means the tax authorized to be imposed under the Special County Hospital Gross Receipts Tax Act;

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 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: Laws 1987, ch. 45, § 2.

Bracketed material. - As enacted by Laws 1987, ch. 45, § 2, the first reference to the Oil and Gas Production Equipment Ad Valorem Tax Act in Subsection A(2) contained the language which has been bracketed by the compiler as surplusage.

7-20-21. Special county hospital gross receipts tax; authority to impose; ordinance requirements.

A. The majority of the members elected to 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. This tax is to be referred to as the "special county hospital gross receipts tax". The rate of the tax shall be one-eighth percent of the gross receipts of the person engaging in business. The special county hospital gross receipts 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.

B. 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 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.

C. Any ordinance enacted under 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 five months from the date the ordinance is approved by the electorate.

D. 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 gross receipts 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 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.

E. A single election may be held on the question of imposing a special county hospital gross receipts tax as authorized in the Special County [Hospital] Gross Receipts Tax Act [7-20-19 to 7-20-26 NMSA 1978], 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].

F. Any ordinance repealed under the provisions of the Special County Hospital Gross Receipts Tax Act shall be repealed effective on either July 1 or January 1.

History: Laws 1987, ch. 45, § 3.

7-20-22. Ordinance shall conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the department.

A. Any ordinance imposing the special county 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 1987, ch. 45, § 4.

7-20-23. Specific exemptions.

No special county hospital gross receipts tax shall be imposed on the gross receipts arising from:

A. the transmission of messages by wire or other means from one point within the county to another point outside the county; or

B. 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 1987, ch. 45, § 5.

7-20-24. Collection by department; transfer of proceeds; deductions.

A. The department shall collect the special county hospital gross receipts tax in the same manner and at the same time it collects the state gross receipts tax.

B. The department may deduct an amount not to exceed three percent of the special county 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. The department shall transfer to each county for which it is collecting such tax the amount of the tax collected less any deduction for administrative costs 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 1987, ch. 45, § 6.

7-20-25. Interpretation of act; administration and enforcement of tax.

A. The department shall interpret the provisions of the Special County Hospital Gross Receipts Tax Act [7-20-19 to 7-20-26 NMSA 1978].

B. The department shall administer and enforce the collection of the special county 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 1987, ch. 45, § 7.

7-20-26. Distribution.

The funds provided through the special county hospital gross receipts tax shall be administered by the governing body and 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.

ARTICLE 20A
COUNTY FIRE PROTECTION EXCISE TAX

7-20A-1. Short title.

This act [7-20A-1 to 7-20A-9 NMSA 1978] may be cited as the "County Fire Protection Excise Tax Act".

History: Laws 1979, ch. 398, § 1.

7-20A-2. Definitions.

As used in the County Fire Protection Excise Tax Act [7-20A-1 to 7-20A-9 NMSA 1978]:

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 board of county commissioners of a county;

C. "county area" means that portion of a county located outside the boundaries of any municipality;

D. "person" means an individual or any other legal entity;

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];

F. "county fire protection excise tax" means the tax authorized to be imposed under the County Fire Protection Excise Tax Act; and

G. "qualified elector" means a registered voter of the county area.

History: Laws 1979, ch. 398, § 2; 1983, ch. 222, § 1; 1986, ch. 20, § 88.

7-20A-3. County fire protection excise tax; authority to impose; ordinance requirements.

A. The majority of the members elected to 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. This tax is to be referred to as the "county fire protection excise tax." The rate of the tax shall be one-fourth of one percent or one-eighth of one percent of the gross receipts of the person engaging in business. The tax provided in the County Fire Protection Excise Tax Act [7-20A-1 to 7-20A-9 NMSA 1978] shall be imposed for a period not more than five years from the effective date of the ordinance imposing the tax.

B. The governing body of a county must, 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 must clearly state the purpose to which the revenue will be dedicated and must be used by the county for that purpose.

C. Any ordinance enacted under 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 five months from the date the ordinance is approved by the electorate.

D. 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, vote in favor of imposing the county fire protection excise tax. The governing body shall 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. 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.

E. Any ordinance repealed under the provisions of the County Fire Protection Excise Tax Act shall be repealed effective on either July 1 or January 1.

History: Laws 1979, ch. 398, § 3; 1983, ch. 222, § 2.

7-20A-4. Ordinance must conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the division.

A. Any ordinance imposing the county fire protection excise 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 must adopt the model ordinances furnished to the county by the division.

History: Laws 1979, ch. 398, § 4.

Cross-references. - As to definitions under Gross Receipts and Compensating Tax Act, see 7-9-3 NMSA 1978.

For exemption and deduction provisions of Gross Receipts and Compensating Tax Act, see 7-9-12 to 7-9-78 NMSA 1978.

7-20A-5. Specific exemptions.

No county fire protection excise tax shall be imposed on the gross receipts arising from:

A. the transmission of messages by wire or other means from one point within the county area to another point outside the county area; or

B. transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the county area to another point outside the county area.

History: Laws 1979, ch. 398, § 5.

7-20A-6. Collection by division; transfer of proceeds; deductions.

A. The division shall collect the county fire protection excise tax in the same manner and at the same time it collects the state gross receipts tax.

B. The division may deduct an amount not to exceed three percent of the county fire protection excise 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. The division shall transfer to each county for which it is collecting such tax the amount of the tax collected less any deduction for administrative costs 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 1979, ch. 398, § 6; 1983, ch. 211, § 35.

7-20A-7. Interpretation of act; administration and enforcement of tax.

A. The division shall interpret the provisions of the County Fire Protection Excise Tax Act [7-20A-1 to 7-20A-9 NMSA 1978].

B. The division shall administer and enforce the collection of the county fire protection excise 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. 398, § 7.

7-20A-8. Distribution.

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.

History: Laws 1979, ch. 398, § 8; 1983, ch. 222, § 3.

7-20A-9. Budgetary limitation.

A. The board of county commissioners 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.

B. The department of finance and administration shall not approve the budget of any county which violates the provisions of Subsection A of this section.

History: Laws 1979, ch. 398, § 9; 1983, ch. 222, § 4.

ARTICLE 20B
COUNTY ENVIRONMENTAL SERVICES GROSS RECEIPTS TAX

7-20B-1. Short title.

Sections 56 through 62 [7-20B-1 to 7-20B-7 NMSA 1978] of this act may be cited as the "County Environmental Services Gross Receipts Tax Act".

History: Laws 1990, ch. 99, § 56.

Cross-references. - As to Solid Waste Act, see 74-9-1 NMSA 1978 et seq.

Emergency clauses. - Laws 1990, ch. 99, § 74 makes the County Environmental Services Gross Receipts Tax effective immediately. Approved March 5, 1990.

7-20B-2. Definitions.

As used in the County Environmental Services Gross Receipts Tax Act [7-20B-1 to 7-20B-7 NMSA 1978]:

A. "county area" means that portion of a county located outside the boundaries of any municipality;

B. "county environmental services gross receipts tax" means the tax authorized to be imposed under the County Environmental Services Gross Receipts Tax Act;

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 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: Laws 1990, ch. 99, § 57.

Emergency clauses. - Laws 1990, ch. 99, § 74 makes the County Environmental Services Gross Receipts Tax effective immediately. Approved March 5, 1990.

7-20B-3. County 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 in the county area. This tax is to be referred to as the "county environmental services gross receipts tax".

B. 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.

C. Any county 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.

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, whichever date occurs first after

the expiration of at least three months from the date the ordinance is enacted by the governing body. Any such ordinance shall become effective on the date specified.

E. Any ordinance repealed under the provisions of the County Environmental Services Gross Receipts Tax Act [7-20B-1 to 7-20B-7 NMSA 1978] shall be repealed effective on either July 1 or January 1.

F. A certified copy of any ordinance imposing or repealing a county gross receipts tax shall be mailed to the department within five days after the ordinance is adopted.

History: Laws 1990, ch. 99, § 58.

Emergency clauses. - Laws 1990, ch. 99, § 74 makes the County Environmental Services Gross Receipts Tax effective immediately. Approved March 5, 1990.

7-20B-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 environmental services 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 environmental services gross receipts tax shall adopt the model ordinances furnished to the county by the department.

History: Laws 1990, ch. 99, § 59.

Emergency clauses. - Laws 1990, ch. 99, § 74 makes the County Environmental Services Gross Receipts Tax effective immediately. Approved March 5, 1990.

7-20B-5. Collection by department; transfer of proceeds; deductions.

A. The department shall collect the county environmental services 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 environmental services 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 environmental services 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 1990, ch. 99, § 60.

Emergency clauses. - Laws 1990, ch. 99, § 74 makes the County Environmental Services Gross Receipts Tax effective immediately. Approved March 5, 1990.

7-20B-6. Specific exemptions.

No county environmental services gross receipts tax shall be imposed on the gross receipts arising from:

A. the transmission of messages by wire or other means from one point within the county to another point outside the county; or

B. 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 1990, ch. 99, § 61.

Emergency clauses. - Laws 1990, ch. 99, § 74 makes the County Environmental Services Gross Receipts Tax effective immediately. Approved March 5, 1990.

7-20B-7. Interpretation of act; administration and enforcement of tax.

A. The department shall interpret the provisions of the County Environmental Services Gross Receipts Tax Act [7-20B-1 to 7-20B-7 NMSA 1978].

B. The department shall administer and enforce the collection of the county 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 1990, ch. 99, § 62.

Emergency clauses. - Laws 1990, ch. 99, § 74 makes the County Environmental Services Gross Receipts Tax effective immediately. Approved March 5, 1990.

ARTICLE 20C
LOCAL HOSPITAL GROSS RECEIPTS TAX

7-20C-1. Short title.

Sections 1 through 15 [7-20C-1 to 7-20C-15 NMSA 1978] of this act may be cited as the "Local Hospital Gross Receipts Tax Act".

History: Laws 1991, ch. 176, § 1.

Emergency clauses. - Laws 1991, ch. 176, § 18 makes the Local Hospital Gross Receipts Tax Act effective immediately. Approved April 4, 1991.

7-20C-2. Definitions.

As used in the Local Hospital Gross Receipts Tax Act [7-20C-1 to 7-20C-15 NMSA 1978]:

A. "county" means a class B county in New Mexico 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);

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. "local hospital gross receipts tax" means the tax authorized to be imposed under the Local Hospital Gross Receipts Tax Act;

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: Laws 1991, ch. 176, § 2.

Emergency clauses. - Laws 1991, ch. 176, § 18 makes the Local Hospital Gross Receipts Tax Act effective immediately. Approved April 4, 1991.

7-20C-3. Local hospital gross receipts tax; authority to impose; ordinance requirements.

A. Not later than July 1, 1992, the majority of the members elected to 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. This tax is to be referred to as the "local hospital gross receipts tax". The rate of the tax shall be one-half of one percent of the gross receipts of the person engaging in business. The local hospital gross receipts tax 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.

B. The governing body of a county, 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. 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.

C. 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. 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 local hospital gross receipts 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 any election called 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, whichever date occurs first after the expiration of at least three months from the date the ordinance is approved by the electorate.

E. Any ordinance repealed under the provisions of the Local Hospital Gross Receipts Tax Act [7-20C-1 to 7-20C-15 NMSA 1978] shall be repealed effective on either July 1 or January 1.

History: Laws 1991, ch. 176, § 3.

Emergency clauses. - Laws 1991, ch. 176, § 18 makes the Local Hospital Gross Receipts Tax Act effective immediately. Approved April 4, 1991.

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.

Emergency clauses. - Laws 1991, ch. 176, § 18 makes the Local Hospital Gross Receipts Tax Act effective immediately. Approved April 4, 1991.

7-20C-5. Specific exemptions.

No local hospital gross receipts tax shall be imposed on the gross receipts arising from:

A. the transmission of messages by wire or other means from one point within the county to another point outside the county; or

B. 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.

Emergency clauses. - Laws 1991, ch. 176, § 18 makes the Local Hospital Gross Receipts Tax Act effective immediately. Approved April 4, 1991.

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 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. The department shall transfer to each county for which it is collecting such tax the amount of the tax collected less any deduction for administrative costs 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.

Emergency clauses. - Laws 1991, ch. 176, § 18 makes the Local Hospital Gross Receipts Tax Act effective immediately. Approved April 4, 1991.

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 [7-20C-1 to 7-20C-15 NMSA 1978].

B. The department shall administer and enforce the collection of the local hospital gross receipts tax, and the Tax Administration Act [7-1-1 to 7-1-82 NMSA 1978] applies to the administration and enforcement of the tax.

History: Laws 1991, ch. 176, § 7.

Emergency clauses. - Laws 1991, ch. 176, § 18 makes the Local Hospital Gross Receipts Tax Act effective immediately. Approved April 4, 1991.

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 [7-20C-1 to 7-20C-15 NMSA 1978].

History: Laws 1991, ch. 176, § 8.

Emergency clauses. - Laws 1991, ch. 176, § 18 makes the Local Hospital Gross Receipts Tax Act effective immediately. Approved April 4, 1991.

7-20C-9. Local hospital revenue bonds; authority to issue; pledge of revenues.

A. A county may issue local hospital revenue bonds pursuant to the Local Hospital Gross Receipts Tax Act [7-20C-1 to 7-20C-15 NMSA 1978] for the purpose of acquiring land for and designing, constructing, equipping and furnishing a county hospital facility to be operated by the county or by another party pursuant to a lease with the county.

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 any other revenues as necessary for the payment of principal and interest on the revenue bonds.

History: Laws 1991, ch. 176, § 9.

Emergency clauses. - Laws 1991, ch. 176, § 18 makes the Local Hospital Gross Receipts Tax Act effective immediately. Approved April 4, 1991.

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 [7-20C-1 to 7-20C-15 NMSA 1978], 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.

Emergency clauses. - Laws 1991, ch. 176, § 18 makes the Local Hospital Gross Receipts Tax Act effective immediately. Approved April 4, 1991.

7-20C-11. Revenue bonds; terms.

Local hospital revenue bonds:

A. shall bear interest payable annually or semiannually and may or may not be evidenced by coupons; provided the first interest payment date may be for interest accruing for any period not exceeding one year;

B. may be subject to a prior redemption at the option of the county at such time or times and upon such terms and conditions, with or without the payment of such premium or premiums, as may be provided by resolution;

C. may mature at any time not exceeding ten 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 resolution 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 private sale.

History: Laws 1991, ch. 176, § 11.

Emergency clauses. - Laws 1991, ch. 176, § 18 makes the Local Hospital Gross Receipts Tax Act effective immediately. Approved April 4, 1991.

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 [this article] 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.

Emergency clauses. - Laws 1991, ch. 176, § 18 makes the Local Hospital Gross Receipts Tax Act effective immediately. Approved April 4, 1991.

7-20C-13. Revenue bonds; exemption from taxation.

The local hospital revenue bonds issued under authority of the Local Hospital Gross Receipts Tax Act [this article] 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.

Emergency clauses. - Laws 1991, ch. 176, § 18 makes the Local Hospital Gross Receipts Tax Act effective immediately. Approved April 4, 1991.

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.

Emergency clauses. - Laws 1991, ch. 176, § 18 makes the Local Hospital Gross Receipts Tax Act effective immediately. Approved April 4, 1991.

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 [this article], except as provided in that act.

History: Laws 1991, ch. 176, § 15.

Emergency clauses. - Laws 1991, ch. 176, § 18 makes the Local Hospital Gross Receipts Tax Act effective immediately. Approved April 4, 1991.

ARTICLE 20D
COUNTY HEALTH CARE GROSS RECEIPTS TAX

7-20D-1. Short title.

Sections 5 through 11 [7-20D-1 to 7-20D-7 NMSA 1978] of this act may be cited as the "County Health Care Gross Receipts Tax Act".

History: Laws 1991, ch. 212, § 5.

Cross-references. - For Statewide Health Care Act, see ch. 27, art. 10 NMSA 1978.

Effective dates. - Laws 1991, ch. 212, § 24 makes the County Health Care Gross Receipts Tax Act effective on July 1, 1991.

7-20D-2. Definitions.

As used in the County Health Care Gross Receipts Tax Act [7-20D-1 to 7-20D-7 NMSA 1978]:

A. "county" means a county of the state of New Mexico;

B. "county health care gross receipts tax" means the tax authorized to be imposed under the County Health Care Gross Receipts Tax Act;

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 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: Laws 1991, ch. 212, § 6.

Effective dates. - Laws 1991, ch. 212, § 24 makes the County Health Care Gross Receipts Tax Act effective on July 1, 1991.

7-20D-3. 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 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 not be subject to a referendum. This tax is to be referred to as the "county health care gross receipts tax". The governing body of a county shall, at the time of enacting an ordinance imposing the county health care gross receipts tax, dedicate the revenue to the county-supported medicaid fund.

B. Any ordinance enacted under 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 enacted by the governing body. Any such ordinance shall become effective on the date specified, and if subsequently repealed, the ordinance shall be repealed effective either January 1 or July 1, provided that the effective date of repeal occurs after the expiration of at least one year from the effective date the ordinance is enacted by the governing body. A certified copy of an ordinance enacting or repealing a county health care gross receipts tax shall be mailed to the department within five days after the ordinance is adopted.

History: Laws 1991, ch. 212, § 7.

Effective dates. - Laws 1991, ch. 212, § 24 makes the County Health Care Gross Receipts Tax Act effective on July 1, 1991.

7-20D-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 health care 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 health care gross receipts tax shall adopt the model ordinances furnished to the county by the department.

History: Laws 1991, ch. 212, § 8.

Effective dates. - Laws 1991, ch. 212, § 24 makes the County Health Care Gross Receipts Tax Act effective on July 1, 1991.

7-20D-5. Specific exemptions.

No county health care gross receipts tax shall be imposed on the gross receipts arising from:

A. the transmission of messages by wire or other means from one point within the county to another point outside the county; or

B. 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. 212, § 9.

Effective dates. - Laws 1991, ch. 212, § 24 makes the County Health Care Gross Receipts Tax Act effective on July 1, 1991.

7-20D-6. Collection by department; distribution of proceeds; deductions.

A. The department shall collect the county health care gross receipts tax in the same manner and at the same time as it collects the state gross receipts tax.

B. The department may deduct an amount not to exceed three percent of the county health care 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. The department shall distribute to the county-supported medicaid fund the amount of the tax collected less any deduction for administrative costs and less any disbursements for tax credits, refunds and the payment of interest applicable to the tax. Distribution to the fund shall be made within the month following the month in which the tax is collected.

History: Laws 1991, ch. 212, § 10.

Effective dates. - Laws 1991, ch. 212, § 24 makes the County Health Care Gross Receipts Tax Act effective on July 1, 1991.

7-20D-7. Interpretation of act; administration and enforcement of tax.

A. The department shall interpret the provisions of the County Health Care Gross Receipts Tax Act [7-20D-1 to 7-20D-7 NMSA 1978].

B. The department shall administer and enforce the collection of the county health care 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. 212, § 11.

Effective dates. - Laws 1991, ch. 212, § 24 makes the County Health Care Gross Receipts Tax Act effective on July 1, 1991.

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 repeals former 7-21-1 through 7-21-7, relating to the county sales tax, effective July 1, 1986. For provisions of former sections, see 1983 Replacement Pamphlet.

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, repeals 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.

Cross-references. - As to livestock board generally, see 77-2-1 NMSA 1978 et seq.

As to inspection of slaughterhouses and hides, see 77-9-33 NMSA 1978.

As to licensing of butchers and slaughterers, see 77-17-1 NMSA 1978 et seq.

As to retention of hides for inspection by persons not licensed as meat retailers, see 77-17-16 NMSA 1978.

Bracketed material. - The bracketed reference in this section to the livestock board was inserted by the compiler, as the cattle sanitary board was replaced by the livestock board. See 77-2-1 NMSA 1978 et seq.

The bracketed reference to "magistrate" in this section was inserted by the compiler as justices of the peace have been abolished and replaced by magistrate courts. See 35-1-38 NMSA 1978.

The bracketed references were not enacted by the legislature and are not part of the law.

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.

A. Except as provided in Subsection B of this section, 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 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 one thousand dollars ($1,000), 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.

B. Until June 1, 1991, one hundred dollars ($100) of the license tax authorized in Subsection A of this section to any municipality in a class A county shall be allocated to the university of New Mexico medical center for the purposes of funding a home-free program to provide free rides home when requested by intoxicated persons.

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.

Cross-references. - As to municipal gross receipts tax generally, see 7-19-1 NMSA 1978 et seq.

As to state licensing requirements relating to alcoholic beverages generally, see Chapter 60-3A-1 et seq. NMSA 1978.

The 1990 amendment, effective March 2, 1990, designated the former section 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.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

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, 79 N.M. 260, 442 P.2d 572 (1968).

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, 79 N.M. 260, 442 P. 2d 572 (1968).

But 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, 79 N.M. 512, 445 P.2d 389 (1968).

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, 79 N.M. 260, 442 P.2d 572 (1968).

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 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, 102 N.M. 41, 690 P.2d 1035 (1984).

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 hereby 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 this act to operate within such counties, outside of the municipalities contemplated by Section 60-6-1 NMSA 1978 as retailers, dispensers, canopy licensees, restaurant licensees or club licensees. The amount of such license tax, which shall not exceed one thousand dollars ($1,000), and the dates and manner of the payment thereof shall be fixed by the resolution imposing the same; provided, that in case such county permits the payment thereof in installments, no bond shall be required to secure the payment of the deferred installments, but that the remedy for the collection thereof 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.

Meaning of "this act". - The term "this act" refers to Laws 1939, ch. 236, which is presently compiled as 7-24-1 to 7-24-5 NMSA 1978. Most of Laws 1939, ch. 236, was repealed by Laws 1981, ch. 39.

Section 60-6-1 NMSA 1978, referred to near the end of the first sentence, 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 § 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.

Compiler's note. - For meaning of the words "this act," see note under 7-24-2 NMSA 1978.

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.

Compiler's note. - The reference to "Sections 1102 and 1103" in this section may be intended as references to Sections 1103 and 1104, 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.

Compiler's note. - Sections 702 (c) and 702 (f), referred to in this section, were repealed by Laws 1981, ch. 39, § 128.

For meaning of "this act," see note under 7-24-2 NMSA 1978.

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, repeals 7-24-6 and 7-24-7 NMSA 1978, relating to hearings and procedures for hearings upon application for liquor licenses.

Laws 1979, ch. 201, contains no effective date provision, but was enacted at the session which adjourned on March 17, 1979. See N.M. Const., art. IV, § 23.

7-24-8. Short title.

Sections 1 through 9 [7-24-8 to 7-24-16 NMSA 1978] of this act may be cited as the "Local Liquor Excise Tax Act".

History: Laws 1989, ch. 326, § 1.

Effective dates. - Laws 1989, ch. 326 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

7-24-9. Definitions.

As used in the Local Liquor Excise Tax Act [7-24-8 to 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.

Effective dates. - Laws 1989, ch. 326 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

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 five 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 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 a 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 a 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 which imposes a local liquor excise tax or changes the rate of tax imposed shall include an effective date which is the first day of any month which 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 which 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.

Effective dates. - Laws 1989, ch. 326 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

7-24-11. Date payment due.

The tax imposed by the Local Liquor Excise Tax Act [7-24-8 to 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.

Effective dates. - Laws 1989, ch. 326 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

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.

Effective dates. - Laws 1989, ch. 326 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

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.

Effective dates. - Laws 1989, ch. 326 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

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.

Effective dates. - Laws 1989, ch. 326 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

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 to 7-24-16 NMSA 1978].

History: Laws 1989, ch. 326, § 8.

Effective dates. - Laws 1989, ch. 326 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

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 to 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.

Effective dates. - Laws 1989, ch. 326 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

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.

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. (Effective until July 1, 1996.)

As used in the County and Municipal Gasoline Tax Act [this Article]:

A. "county" means a class A county, an H class county or a class B county having a population of more than fifty-six thousand but less than sixty thousand according to the 1990 federal decennial census;

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, an H class county or a class B county having a population of more than fifty-six thousand but less than sixty thousand according to the 1990 federal decennial census;

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, an H class county or a class B county having a population of more than fifty-six thousand but less than sixty thousand according to the 1990 federal decennial census;

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 except that in a class B county having a population of more than fifty-six thousand but less than sixty thousand according to the 1990 federal decennial census "transit route" means south main street in Roswell from the Roswell industrial air center to McGaffey street; 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 1978, ch. 182, § 2; 1985, ch. 196, § 1; 1986, ch. 20, § 90; 1990, ch. 88, § 3; 1991, ch. 156, § 1.

Cross-references. - As to county classifications, see 4-44-1 NMSA 1978.

The 1990 amendment, effective May 16, 1990, deleted former Subsection B which defined "'department' or 'division'", redesignated former Subsections C and D as present Subsections B and C, and added present Subsection D.

The 1991 amendment, effective July 1, 1991, added "or a class B county having a population of more than fifty-six thousand but less than sixty thousand according to the 1990 federal decennial census" in Subsections A, B and C; added the exception in Subsection E and made related stylistic changes.

7-24A-2. Definitions. (Effective July 1, 1996.)

As used in the County and Municipal Gasoline Tax Act [this Article]:

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.

Repeals and reenactments. - Laws 1991, ch. 156, § 2 repeals 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 enacts the above section, effective July 1, 1996.

7-24A-3. Use of proceeds.

A. The proceeds of the county or municipal gasoline tax shall be used for bridge and road projects on transit routes 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 to 3-52-13 NMSA 1978] or as provided in the County and Municipal Gasoline Tax Act [this article], for operation of a vehicle emission inspection program or for road, street or highway construction, repair or maintenance on transit routes in the county or municipality. 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. The governing body may enact ordinances and resolutions and promulgate rules and regulations 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. The 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. The county or municipality, as an operating entity, may enter into contracts for special transportation service, charter buses, advertising and any other function which a private enterprise operating a public transit facility could do or perform for revenue.

H. The 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 of New Mexico 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.

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 and other regulatory bodies having jurisdiction in the matter.

History: 1978 Comp., § 7-24A-4, enacted by Laws 1978, ch. 182, § 4.

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.

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.

The 1990 amendment, effective May 16, 1990, added "County gasoline tax" at the beginning and deleted "effective date" at the end of the catchline; deleted former Subsection A, relating to notice to and action by the division on a proposed ordinance; designated former Subsection B as present 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 present 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 [this article] 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.

The 1990 amendment, effective May 16, 1990, added "imposition," "rate" and "election" in the catchline, 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 [Chapter 7, Article 13 NMSA 1978].

History: 1978 Comp., § 7-24A-7, enacted by Laws 1978, ch. 182, § 7; 1990, ch. 88, § 7.

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.

Effective dates. - Laws 1990, ch. 88 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

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 [this article]. 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.

The 1990 amendment, effective May 16, 1990, deleted "by division" following "gasoline tax" and "Transfer of proceeds" at the end of the catchline; 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 repeals 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 1988 Replacement Pamphlet.

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.

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 [Articles 8 and 9 of Chapter 3 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.

The 1990 amendment, effective May 16, 1990, added "Municipal gasoline tax" at the beginning and deleted "effective date" at the end of the catchline; 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 [this article]. 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.

The 1990 amendment, effective May 16, 1990, deleted "by division" following "gasoline tax" and "Transfer of proceeds" at the end of the catchline; 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 repeals 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 1988 Replacement Pamphlet.

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 on transit routes or for refunding bonds previously issued for such purpose or both 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; or

(4) any 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.

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 to 6-14-3 NMSA 1978] or the Public Securities Short-term Interest Rate Act [6-18-1 to 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 [this article] 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.

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 [Chapter 7, Article 24A NMSA 1978].

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.

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 [this article]:

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 [Articles 35 to 38 of Chapter 7 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.

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.

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.

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 repeals 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 1989 Cumulative Supplement.

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.

Effective dates. - Laws 1990, ch. 88, contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

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.

The 1990 amendment, effective May 16, 1990, substituted "shall conform" for "must conform" in the catchline 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. 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.

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 [this article], on the question of imposing a special county hospital gross receipts tax as authorized in the Special County Hospital Gross Receipts Tax Act [7-20-19 to 7-20-26 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, § 16; 1990, ch. 88, § 18.

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 [this article]. 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.

The 1990 amendment, effective May 16, 1990, deleted "by department" following "gasoline tax" and "Transfer of proceeds" at the end of the catchline; 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 [this article].

History: Laws 1987, ch. 45, § 18; 1990, ch. 88, § 20.

The 1990 amendment, effective May 16, 1990, substituted "county" for "department".

7-24B-10. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 88, § 21 repeals 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 1989 Cumulative Supplement.

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.

Cross-references. - As to provisions governing administration and enforcement, see 7-1-2 NMSA 1978.

As to duty of successor in business with respect to this act, see 7-1-61 to 7-1-64 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).

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 § 170.

7-25-2. Purpose.

The purpose of the Resources Excise Tax Act [Chapter 7, Article 25 NMSA 1978] 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.

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 7-9-1 to 7-9-81 NMSA 1978). Carter & Sons v. New Mexico Bureau of Revenue, 92 N.M. 591, 592 P.2d 191 (Ct. App. 1978).

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 7-9-1 to 7-9-81 NMSA 1978) by the provisions of 7-9-35 NMSA 1978, while being taxable under the Resources Excise Tax Act. Carter & Sons v. New Mexico Bureau of Revenue, 92 N.M. 591, 592 P.2d 191 (Ct. App. 1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 84 C.J.S. Taxation § 170.

7-25-3. Definitions.

As used in the Resources Excise Tax Act [Chapter 7, Article 25 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. "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 or carbon dioxide;

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.

Internal Revenue Code. - Sections 501(c)(3) and 513 of the United States Internal Revenue Code of 1954, referred to in Subsection I, appear as 26 U.S.C. §§ 501(c)(3) and 513, respectively.

"Severing" includes incidental development work. - The exemption from the gross receipts tax provided by 7-9-35 NMSA 1978 applies where 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 7-25-6 NMSA 1978 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).

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., 94 N.M. 39, 607 P.2d 126 (Ct. App. 1979).

"Taxable value" includes reimbursements for tax increases. - Where 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. Ranchers-Tufco Limestone Project Joint Venture v. Revenue Div., 100 N.M. 632, 674 P.2d 522 (Ct. App. 1983).

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-quarters 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.

Cross-references. - As to exemption of natural resource on which processors tax is paid, see 7-25-7 NMSA 1978.

"Severing" includes incidental development work. - The exemption from the gross receipts tax provided by 7-9-35 NMSA 1978 applies where 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 7-25-6 NMSA 1978 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).

Resources tax not based on value of property used for severance. - The resources tax is based on the taxable value of natural resources; it is not based on the component parts of the property used in severing the natural resources. Ranchers-Tufco Limestone Project Joint Venture v. Revenue Div., 100 N.M. 632, 674 P.2d 522 (Ct. App. 1983).

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 § 170.

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 resource:

(1) all natural resources except timber, potash and molybdenum - three-quarters 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.

Applicability. - Laws 1985 (1st S.S.), ch. 3, § 3 makes the provisions of § 2 of the act applicable to taxable events occurring on and after July 1, 1988.

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 § 170.

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 4 and 5 [7-25-4, 7-25-5 NMSA 1978] of the Resources Excise Tax Act, 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.

Severance alone does not give rise to taxable event. Yankee Atomic Elec. Co. v. New Mexico & Ariz. Land Co., 632 F.2d 855 (10th Cir. 1980).

But 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. New Mexico & 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 7-9-35 NMSA 1978 applies where 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.

84 C.J.S. Taxation § 170.

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.

Cross-references. - As to resources tax, see 7-25-4 NMSA 1978.

As to 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 [Chapter 7, Article 25 NMSA 1978], 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.

Cross-references. - As to exception to exemption from gross receipts tax of persons liable for resources excise tax, see 7-9-35 NMSA 1978.

Applicability. - Laws 1984, ch. 2, § 13, makes the provisions of §§ 2 to 5, 8 and 9 of that act applicable to taxable events occurring on or after January 1, 1980.

7-25-9. Date payment due.

The taxes imposed by the Resources Excise Tax Act [Chapter 7, Article 25 NMSA 1978] 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.

Cross-references. - As to deposit of receipts in suspense fund, see 7-1-6 NMSA 1978.

Severability clauses. - Laws 1966, ch. 48, § 12, provides for the severability of the act if any part or application thereof is held invalid.

Compiler's note. - Laws 1966, ch. 48, § 10, directed where the act should be compiled in the 1953 Compilation.

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.

Cross-references. - As to provisions governing administration and enforcement, see 7-1-2 NMSA 1978.

As to oil and gas severance tax, see 7-29-1 to 7-29-22 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 [7-26-1 to 7-26-8 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. "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; 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.

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 [7-26-1 to 7-26-8 NMSA 1978]. 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.

Responsibility for payment attaches at time of sale. - The legal incidence or the responsibility for the payment of the severence tax attaches at the time that a sale is made. United Nuclear Corp. v. Revenue Div., 98 N.M. 296, 648 P.2d 335 (Ct. App. 1982).

And 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., 98 N.M. 296, 648 P.2d 335 (Ct. App. 1982).

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 [7-26-1 to 7-26-8 NMSA 1978] 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.

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 where raw ore is sold; the U3O8 later lost in the milling process is not involved. Ranchers-Tufco Limestone Project Joint Venture v. Revenue Div., 100 N.M. 632, 674 P.2d 522 (Ct. App. 1983).

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., 98 N.M. 296, 648 P.2d 335 (Ct. App. 1982).

"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., 98 N.M. 296, 648 P.2d 335 (Ct. App. 1982).

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. Ranchers-Tufco Limestone Project Joint Venture v. Revenue Div., 100 N.M. 632, 674 P.2d 522 (Ct. App. 1983).

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, 106 N.M. 517, 745 P.2d 1170 (Ct. App. 1987), aff'd sub nom. Cotton Petro. Corp. v. New Mexico, 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.

Repeals. - Laws 1971, ch. 65, § 7, repeals 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, 1993, 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 consumer price index from the calendar year 1991 to the calendar year just prior to the year in which the surtax rates are computed. The rates so computed shall be computed by the department in April of 1993 and in April of each year thereafter and published on or before May 1, 1993 and on or before May 1 of each year thereafter.

For the purposes of this section, the "consumer price index" means the index of consumer prices, United States average for all items, prepared by the United States department of labor and published by the United States department of commerce. If the manner in which the consumer price index is determined 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 which would produce results equivalent, as nearly as possible, to those which would have been obtained if the consumer price index 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 cost of living shall be adopted by the department by regulation.

D. As used in this section:

(1) "surface coal" means coal which is severed using surface mining methods;

(2) "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, auger mining, mountain top removal mining, box cut mining, open pit mining and area mining; and

(3) "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.

Cross-references. - As to conservation tax on coal, see 7-30-1 to 7-30-26 NMSA 1978.

The 1989 amendment, effective July 1, 1989, added "; surtax" to the catchline; 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 present fourth sentence, redesignated former Subparagraphs (a) and (b) as present Paragraphs (1) and (2), and made minor stylistic changes; added present Subsections B and C; and redesignated former Subsection C as present 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 repeals 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. For provisions of former section, see 1983 Replacement Pamphlet.

7-26-6.2. Coal surtax exemption; qualification requirements.

A. The following coal is exempt, until July 1, 2009, 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, and before June 30, 1994, 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 contract minimum, whichever is greater.

B. If a contract existing on July 1, 1990, is renegotiated between a producer and a purchaser prior to the end of its term, the surtax imposed by Subsection B of Section 7-26-6 NMSA 1978 shall apply for the remainder of the contract term. If the initial contract would have expired under its terms during the period after July 1, 1990, but before June 30, 1994, the exemption from the surtax imposed by Subsections B and C of Section 7-26-6 NMSA 1978 applies from the day following the last date the initial contract would have been in effect.

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 any calendar year after June 30, 1994, 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 taxation and revenue 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 any person who is a party to the contract has taken any 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. 84, § 1.

Effective dates. - Laws 1990, ch. 84, § 2 makes the act effective on July 1, 1990.

Compiler's note. - Laws 1990, ch. 83, § 1 and Laws 1990, ch. 84, § 1 enacted identical versions of this section. The section is set out above as enacted by Laws 1990, ch. 84, § 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.

Cross-references. - As to conservation tax on uranium, see 7-30-1 to 7-30-26 NMSA 1978.

Repeals. - Laws 1971, ch. 65, § 7, repeals former 72-18-7, 1953 Comp., relating to deducting severance taxes from royalties, etc.

Severance alone does not give rise to taxable event. Yankee Atomic Elec. Co. v. New Mexico & Ariz. Land Co., 632 F.2d 855 (10th Cir. 1980).

But 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. New Mexico & 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., 98 N.M. 296, 648 P.2d 335 (Ct. App. 1982).

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 where raw ore is sold; the U3O8 later lost in the milling process is not involved. Ranchers-Tufco Limestone Project Joint Venture v. Revenue Div., 100 N.M. 632, 674 P.2d 522 (Ct. App. 1983).

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 repeals 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. For provisions of former section, see 1983 Replacement Pamphlet.

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.

Cross-references. - As to deposit of receipts from taxes in severance tax bonding fund, see 7-27-2 NMSA 1978.

Repeals. - Laws 1971, ch. 65, § 7, repeals former 72-18-8, 1953 Comp., relating to deduction of severance taxes by purchasers.

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 repeals 7-26-9 NMSA 1978, as amended by Laws 1987, ch. 315, § 1, relating to severance tax surtax, effective July 1, 1989. For provisions of former section, see 1988 Cumulative Supplement.

Laws 1971, ch. 65, § 7, repeals former 72-18-9, 1953 Comp., relating to deduction of severance taxes by purchasers and requiring reports and payment of deductions.

7-26-10. Purpose of act.

The purpose of this act is to impose a unified system of severance taxes upon the severance of energy resources in the form of oil, gas, coal and uranium, taking into

account the quantity of energy producible, in addition to the value of the product or natural resource, in a manner consistent with a unified system.

The legislature finds that certain interferences with the market and certain existing contracts have from time to time imposed restrictions which require variances from the stated purpose of the act. Until such time as these restrictions are removed, the achievement of its goal is not possible, but this act achieves as much of that goal as is currently possible.

History: 1978 Comp., 7-26-10, enacted by Laws 1977, ch. 102, § 1.

Compiler's note. - This section was not compiled in the 1953 Compilation.

Meaning of "this act". - The words "this act" refer to Laws 1977, ch. 102, which repealed and reenacted, added or amended provisions presently compiled as 7-26-1 to 7-26-3, 7-26-5, 7-26-7 to 7-26-10 and 7-30-5 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).

7-26-11. Temporary provision; prohibition of double taxation.

The provisions of this act shall not be applied to subject previously taxed resources to duplicate severance taxation nor to permit previously untaxed resources to escape taxation under the Severance Tax Act [7-26-1 to 7-26-8 NMSA 1978] or the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978].

History: Laws 1980, ch. 62, § 12.

Meaning of "this act". - The words "this act" refer to Laws 1980, ch. 62, which repealed and reenacted, added or amended provisions presently compiled as 7-26-7, 7-26-11, and 7-29-4 to 7-29-4.3, 7-29-4.6 and 7-29-4.7 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).

ARTICLE 27
SEVERANCE TAX BONDING ACT

7-27-1. Short title.

This act may be cited as the "Severance Tax Bonding Act".

History: 1953 Comp., § 72-18-29, enacted by Laws 1961, ch. 5, § 2.

Meaning of "this act". - Laws 1961, ch. 5, § 1, repeals former 72-18-29 to 72-18-47, 1953 Comp. Laws 1961, ch. 5, §§ 2 to 27, enact the Severance Tax Bonding Act, presently compiled as 7-27-1, 7-27-2, 7-27-6 to 7-27-11, 7-27-12, and 7-27-14 to 7-27-27 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.

Law reviews. - For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

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 to 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.

Cross-references. - As to transfers from severance tax bonding fund to severance tax permanent fund, see 7-27-8 NMSA 1978.

7-27-3. Severance tax permanent and income funds created.

There are created in the state treasury the "severance tax permanent fund" and the "severance tax income fund".

History: 1953 Comp., § 72-18-30.1, enacted by Laws 1973, ch. 294, § 2.

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.

7-27-4. Severance tax permanent fund; disposition of income.

Earnings from the investment of the severance tax permanent fund shall be deposited in the severance tax income fund. Any balances in the severance tax income fund remaining after the transfers as provided in the Severance Tax Income Bonding Act shall be transferred to the general fund.

History: 1953 Comp., § 72-18-30.2, enacted by Laws 1973, ch. 294, § 4; 1981 (1st S.S.), ch. 9, § 21; 1984, ch. 4, § 1; 1986, ch. 20, § 94.

Cross-references. - As to investment of state funds generally, see 6-8-1 to 6-8-18, 6-10-10 NMSA 1978.

As to investment of the severance tax permanent fund, see also 7-27-5 NMSA 1978.

Severance Tax Income Bonding Act. - The Severance Tax Income Bonding Act, referred to in this section, is presently compiled as 7-27-4, 7-27-31, 7-27-32, 7-27-42 to 7-27-44, 7-27-46, and 7-27-47 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Interest: Liability of public officer for interest or other earnings received on public money in his possession, 5 A.L.R.2d 257.

7-27-5. Investment of severance tax permanent fund.

The severance tax permanent fund shall be invested for two general purposes, to provide income to the fund and to stimulate the economy of New Mexico, preferably on a continuing basis. The investments in Sections 7-27-5.1 and 7-27-5.6 NMSA 1978 shall be those intended to provide maximum income to the fund and shall be referred to as the market rate investments. The investments permitted in 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 shall be those intended

to stimulate the economy of New Mexico and shall be referred to as the differential rate investments. The prudent man rule shall be applied to the market rate investments, and the state investment officer shall keep separate records of the earnings of the market rate investments. All transactions entered into on or after July 1, 1991, 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.

Cross-references. - As to investment of state funds generally, see 6-8-1 to 6-8-18, 6-10-10 NMSA 1978.

As to investment of severance tax permanent fund, see also 7-27-4 NMSA 1978.

The 1989 amendment, effective April 5, 1989, added "7-27-5.13" in the third sentence.

1990 amendments. - Laws 1990, ch. 126, § 2, effective May 16, 1990, inserting a reference to 7-27-5.15 NMSA 1978 in the third sentence, was approved March 7, 1990. However, Laws 1990, ch. 127, § 9, effective March 30, 1990, inserting the reference to 7-27-5.14 NMSA 1978 in the third sentence, was approved later on March 7, 1990. The section is set out as amended by Laws 1990, ch. 127, § 9. See 12-1-8 NMSA 1978.

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 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".

Temporary provisions. - Laws 1991, ch. 83, § 3, effective July 1, 1991, provides that all transactions entered into prior to July 1, 1991, shall continue to be accounted for in accordance with the accounting method used for such transaction prior to July 1, 1991.

7-27-5.1. Market rate investments.

A. The severance tax permanent fund may be invested in the following market rate investments:

(1) bonds, notes or other obligations of the United States government, its agencies or instrumentalities;

(2) bonds, notes, debentures or other obligations issued under the act of congress of June 27, 1934, known as the Federal Farm Loan Act, as amended, and the federal Farm Credit Act, as amended;

(3) bonds, notes, debentures or other obligations issued or guaranteed by any national mortgage association under the act of congress of June 27, 1934, known as the National Housing Act, as amended;

(4) preferred stock, common stock or convertible issues of any corporation organized and operating within the United States; provided that it shall have a minimum net worth of twenty-five million dollars ($25,000,000) and securities listed either on one or more national stock exchanges or on the federal reserve board margin list; and provided further that the fund shall not own more than five percent of the voting stock of any company. Common stock shall not be purchased if, at the time, it will exceed or will with the purchase exceed twenty percent of the book value of the severance tax permanent fund. Common stocks should represent a diversified portfolio with an above-average current yield and the prospects for dividend increases and capital appreciation;

(5) bonds, notes, debentures or other evidence of indebtedness, excluding commercial paper of any corporation organized and operating within the United States; provided that the bonds, notes, debentures or other evidence of indebtedness are rated at least Baa or BBB or the equivalent by a national rating service. No more than ten percent of the severance tax permanent fund shall be invested in bonds, notes, debentures or other evidence of indebtedness which are rated Baa or BBB or the equivalent by a national rating service;

(6) commercial paper rated "prime" quality by a national rating service, issued by corporations organized and operating within the United States;

(7) prime bankers' acceptances issued by money center banks;

(8) contracts for the present purchase and resale at a specified time in the future, not to exceed one year, of specific securities at specific prices at a price differential representing the interest income to be earned by the state. No such contract shall be invested in unless the contract is fully secured by obligations of the United States, or other securities backed by the United States, having a market value of at least one hundred two percent of the amount of the contract;

(9) contracts for the temporary exchange of state-owned securities for the use of broker-dealers, banks or other recognized institutional investors in securities, for periods not to exceed one year, for a specified fee rate. No such contract shall be invested in unless the contract is fully secured by exchange of an irrevocable letter of credit running to the state, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged. Such contracts may authorize the state investment officer to invest cash collateral in instruments or securities that are authorized investments for the funds, and may authorize payment of a fee from the funds, or from income generated by the investment of cash collateral, to the borrower of securities providing cash as collateral. The state investment officer may enter into a contract that apportions income derived from the investment of cash to pay its agent in securities-lending transactions; and

(10) participation interests in New Mexico real property-related business loans. The actual amount invested under this paragraph shall not exceed ten percent of the severance tax permanent fund and shall be included in any minimum amount of severance tax permanent fund investments required to be placed in New Mexico certificates of deposit. Investments authorized in this paragraph are subject to the following:

(a) the state investment officer may purchase from eligible institutions a participation interest of eighty percent in any loan secured by a first mortgage or a deed of trust on the real property located in New Mexico of an eligible business entity, or its subsidiary, which is operating or shall use loan proceeds to commence operations within New Mexico plus any other guarantees or collateral that may be judged by the eligible institution or the state investment officer to be prudent. To be eligible for investment the following minimum requirements shall be met: 1) the loan proceeds shall be used exclusively for the purpose of expanding or establishing businesses in New Mexico, including the refinancing of such businesses for expansion purposes only. If a portion of the loan proceeds were used for refinancing or repaying an existing loan and payment of principal and interest to the state has not been made within ninety days from the due date, the originating institution shall buy back the state's participation interest in the loan; 2) eligible business entities shall not include public utilities or financial institutions or shopping centers, apartment buildings or other such passive investments; 3) the minimum loan amount shall be five hundred thousand dollars ($500,000) and may be met by packaging up to five separate loans satisfying the requirements of this paragraph. The maximum loan amount shall be two million dollars ($2,000,000); 4) the loan maturity shall be not less than five years or more than thirty years; 5) the maximum loan-to-value ratio shall be seventy-five percent and based on current MAI appraisal of the real property, or other equivalent appraisal as approved by the state investment officer, which shall be made not more than one hundred eighty days from the loan origination date; 6) the interest rate of the loan shall be fixed for five years and shall be adjusted at every fifth anniversary of the note to the rate specified in Item 7) of this subparagraph; 7) the yield on the state's participation interest shall in no case be less than the greater of the then-prevailing yield on United States treasury securities of five-year maturity plus two and one-half percent or the yield received by the lending institution calculated exclusive of servicing fees; 8) if payment of principal or interest has not been made within one hundred eighty days from the due date, unless extended pursuant to agreement between the originating institution and the state investment officer, the originating institution shall buy back the state's participation interest in the loan, substitute another qualifying loan or begin foreclosure proceedings; and 9) if foreclosure proceedings are commenced, the state and the originating institution shall share in proportion to their participation interest, as provided in this subparagraph, in the legal and other foreclosure expenses and in any loss incurred as a result of a foreclosure sale;

(b) a standardized participation agreement, the form of which shall be approved by the attorney general's office, shall be executed between the investment office and each eligible originating institution. The participation agreement shall provide that the

originating institution shall not assign its interest in any loan covered by the agreement without the prior written consent of the state investment officer;

(c) a formal forward commitment program may be instituted by the state investment officer with the approval of the council;

(d) the council shall adopt regulations: 1) defining passive investments; 2) establishing underwriting guidelines; 3) ensuring diversification across a variety of types of collateral, types of businesses and regions of the state; and 4) providing for the review by the state investment officer of servicing and other fees that may be charged by the eligible institution;

(e) eligible institutions include banks, savings and loan associations and credit unions operating in the state; and

(f) real property is defined as land and attached buildings, but excludes all interests that may be secured by a security interest under Article 9 of the Uniform Commercial Code [Chapter 55, Article 9 NMSA 1978], and mineral resource values.

B. The collateral required for either of the forms of investment specified in Paragraph (8) or (9) of Subsection A of this section shall be delivered to the state fiscal agent or its designee contemporaneously with the transfer of funds or delivery of the securities, at the earliest time industry practice permits, but in all cases settlement shall be on a same-day basis.

C. Neither of the contracts specified in Paragraph (8) or (9) of Subsection A of this section shall be invested in unless the contracting bank, brokerage firm or recognized institutional investor has a net worth in excess of five hundred million dollars ($500,000,000) or is a primary broker or primary dealer.

History: 1978 Comp., § 7-27-5.1, enacted by Laws 1983, ch. 306, § 8; 1987, ch. 306, § 1; 1988, ch. 132, § 1; 1988, ch. 133, § 1; 1989, ch. 98, § 3; 1990, ch. 91, § 2.

The 1989 amendment, effective June 16, 1989, designated the formerly undesignated introductory paragraph as Subsection A; redesignated former Subsection A as present Subsection A(1), while substituting therein "government, its agencies or instrumentalities" for "or those guaranteed by the United States or for which the credit of the United States is pledged for the payment of principal and interest or dividends thereof"; redesignated former Subsections B through F as present Subsections A(2) through A(6); added Subsections A(7) through A(9); redesignated former Subsection G as present Subsection A(10), while making minor stylistic changes throughout the subsection; and added present Subsections B and C.

The 1990 amendment, effective March 5, 1990, in Subsection A, added the last two sentences in Paragraph (9) and made stylistic changes and, in Subsection C, added "or is a primary broker or primary dealer" at the end.

Compiler's note. - The Federal Farm Loan Acts and the Federal Farm Credit Acts of various years appear generally in Title 12 of the United States Code.

The National Housing Act referred to in Subsection A(3) appears generally in Title 12 of the United States Code, and primarily as 12 U.S.C. §§ 1701 to 1703, 1705 to 1742.

7-27-5.2. Deposits in New Mexico banks, savings and loan associations or credit unions.

A. The severance tax permanent fund may be invested in certificates of deposit in New Mexico banks and savings and loan associations qualified as insured public depositories 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, 6-10-17, 6-10-18, 6-10-20, 6-10-24.1, 6-10-29 and 6-10-35 NMSA 1978.

B. The severance tax permanent fund may be invested in deposits in New Mexico banks and savings and loan associations qualified as insured public depositories for a term of maturity not to exceed eight years at an interest rate to be set by the council. The recipients of such deposits:

(1) shall pledge to the council, at the time such funds are initially deposited, promissory notes secured by first mortgages on single-family residential dwellings or multi-family residential dwellings of twenty units or less situated in New Mexico, except that no such promissory note shall have an outstanding balance of more than five hundred thousand dollars ($500,000), which notes have an aggregate outstanding principal balance equal to or exceeding one hundred twenty percent of the amount of the deposit, which collateral shall be held by the state fiscal agent or other depository institutions as determined by the state treasurer;

(2) shall maintain, after the time such funds are initially deposited, notes secured by qualifying mortgages with an aggregate outstanding principal balance equal to or exceeding one hundred percent of the amount of the deposit;

(3) shall report quarterly, or more often as required by the council, on the outstanding principal balance, whether the notes secured by the mortgage is current or past due and such other relevant information as the council may require;

(4) shall, within ten days after a request is made by the state investment officer, provide substitute notes secured by qualifying mortgages or additional qualifying mortgage notes with aggregate outstanding principal balances, including qualified mortgage notes currently pledged, not to exceed two hundred percent of the amount on deposit as may be required by the state investment officer to protect the integrity of the fund;

(5) may, with the approval of the state investment officer, substitute qualifying mortgage notes for those notes pledged to secure the deposit of funds; and

(6) with regard to any qualifying mortgage notes pledged prior to July 1, 1983, may withdraw such mortgage notes pledged having an outstanding principal balance in excess of one hundred twenty percent of the amount of the deposit or, at the option of the council, may pledge such qualifying mortgage notes as collateral for additional deposits, if available.

The council shall devise guidelines defining the requirement for an acceptable first mortgage note to be pledged for such deposits and any additional requirements or reports necessary to protect the integrity of the fund while at the same time encouraging the building of single-family residential dwellings or multi-family residential dwellings of twenty units or less in the state with an outstanding mortgage of five hundred thousand dollars ($500,000) or less.

C. In lieu of the mortgage collateral described in Subsection B of this section, the council may accept as security for severance tax permanent fund deposits irrevocable letters of credit issued by the federal home loan banks for the purpose of the collateralization of public unit deposits; such collateral shall be deemed to be a security for deposit of public money as set forth in Section 6-10-16 NMSA 1978 and shall be collateralized as required by Section 6-10-17 NMSA 1978. Such letters of credit shall be in a form acceptable to the council and shall be in an amount sufficient to fully collateralize the amount of the deposit and credited interest.

D. Any qualifying bank or savings and loan association that fails to maintain the pledge of qualifying collateral or other security for deposits made under Subsection A or B of this section or fails to substitute or provide additional qualifying collateral or security when requested by the council or state investment officer is subject to a penalty by the director of the financial institutions division of up to one hundred dollars ($100) a day for each two hundred fifty thousand dollars ($250,000) deposited for each day the violation continues.

E. The state investment officer shall report in writing to the state board of finance and the legislative finance committee each quarter on the current market value of all collateral pledged to secure deposits of state money.

F. The severance tax permanent fund may be invested in deposits in New Mexico credit unions, as long as 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. The term deposit in this section includes share, share certificate and share draft.

G. The rate of interest to be paid on deposits made under Subsections A, B and F of this section shall not be less than the bond equivalent yield at the time of the deposit on United States treasury bills of the same or closest maturity for deposits of three hundred sixty-five days or less. For deposits in excess of three hundred sixty-five days, the rate of interest shall not be less than the current offering yield at the time of the deposit on actively traded United States treasury notes or bonds of the same or closest maturity, excepting that special category of bonds which can be redeemed at par and accrued interest regardless of maturity in the payment toward federal estate taxes by the estate of a deceased owner. The amount of money invested and available to be invested pursuant to Subsections A and B of this section shall be maintained by the state investment officer at an amount not less than the amount invested on July 1, 1982. If at any time the total amount actually so invested falls below that figure, the state investment officer shall again make funds available at least at the July 1, 1982 level as soon as additional funds otherwise not invested become available.

H. The state investment officer, in making deposits or investments in New Mexico banks and savings and loan associations under either Subsections A or B of this section, shall not deposit or invest money from the severance tax permanent fund in any institution if that deposit or investment when added to the amount of state funds already deposited or invested in that institution would in total exceed four hundred percent of the total equity capital in the case of banks or four hundred percent of net worth in the case of savings and loan associations or twenty-five percent of the total of that financial institution's deposits, whichever is less. A newly chartered bank or savings and loan association in the first year of its operation shall be exempt from the limitation of twenty-five percent of its total deposits. 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 institution. In the event a bank or savings and loan association exceeds the limitations set forth in this subsection, any person charged with responsibility for investing or depositing state funds shall not deposit additional new funds, but may renew ninety percent of any maturing certificate of deposit at the interest rate applicable for new state funds deposits and may provide for the staged withdrawal of the amount of funds which exceeds such limitation from the bank or savings and loan association over a reasonable period of time in order to avoid causing the failure of the institution. If, however, withdrawal of the state funds is necessary to prevent loss of such funds, they shall be removed. The maximum funds on deposit or the investment limit set forth in this subsection shall not apply to:

(1) the state fiscal agent bank as to the funds held as such fiscal agent bank; or

(2) 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.

I. The council shall devise guidelines to cover the investment, deposit and allocation of funds, among institutions qualifying under this section, of the severance tax permanent fund.

J. No investment shall be made pursuant to this section after September 1, 1983 until the council has devised guidelines pursuant to this section. Prior to September 1, 1983 or prior to the adoption of guidelines by the council, the state investment officer may make investments pursuant to the guidelines approved by the state board of finance and in effect on July 1, 1983.

History: 1978 Comp., § 7-27-5.2, enacted by Laws 1983, ch. 306, § 9; 1986, ch. 77, § 1; 1987, ch. 79, § 21; 1987, ch. 266, § 2.

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.

Cross-references. - As to the severance tax permanent fund, see 7-27-3 NMSA 1978.

"Effective date of this act". - The phrase "the effective date of this act", referred to in Subsection B, means the effective date of Laws 1985, ch. 222, which is June 14, 1985.

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 equivalent to the yield available on United States treasury

issues of comparable maturity. 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 as may be agreed upon; 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 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 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 equivalent to the yield available on United States treasury issues of a comparable maturity plus fifty to 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.

Cross-references. - As to creation of severance tax permanent fund, see 7-27-3 NMSA 1978.

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.

The 1990 amendment, effective May 16, 1990, inserted "farm credit entities" in the first sentence of Subsection A.

Small Business Act. - The Small Business Act of 1953 is codified as 15 U.S.C. § 631 et seq.

Farmers Home Administration Act of 1946. - 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.

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 [21-21A-1 to 21-21A-23 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. Venture capital investments.

A. No more than one and one-half percent of the book value of the severance tax permanent fund may be invested in venture capital funds under this section.

B. If an investment is made under this section, not less than one million dollars ($1,000,000) or more than four million dollars ($4,000,000) of the amount authorized for investment pursuant to Subsection A of this section shall be invested in any one venture capital fund. The amount invested in any one venture capital fund shall not exceed twenty percent of the committed capital of that fund. Investments shall be made only in the initial offering of a venture capital fund, provided such investment may be made in one or more stages.

C. Notwithstanding the provisions of Subsection B of this section, if an investment is made in any venture capital fund organized and operating in New Mexico or in any venture capital fund that maintains an active office in New Mexico, the maximum amount that may be invested in any one such venture capital fund is six million dollars ($6,000,000). The amount of the fund invested in any one venture capital fund pursuant to this subsection shall not exceed forty percent of the committed capital of that fund.

D. In making investments pursuant to this section, the council shall give consideration to investments in venture capital funds whose investments enhance the economic development objectives of the state, provided such investments offer a rate of return and safety comparable to other venture capital investments currently available.

E. The state investment officer shall make investments pursuant to this section only upon approval of the council and upon review of the recommendation of the venture capital investment advisory committee.

F. As used in this section:

(1) "committed capital" means the sum of the fixed amounts of money which accredited investors have obligated for investment in a venture capital fund and which fixed amounts may be invested in that fund in one or more payments over time; and

(2) "venture capital fund" means any limited partnership 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 businesses for the purpose of providing capital for start-up, expansion, new product development or similar business purposes;

(b) holds out the prospects for capital appreciation from such investments comparable to similar investments made by other professionally managed venture capital funds;

(c) has a minimum committed capital of five million dollars ($5,000,000);

(d) accepts investments only from accredited investors as that term is defined in Section 2 of the Federal Securities Act of 1933, as amended, (15 U.S.C. Section 77(b)) and rules and regulations promulgated pursuant to that section;

(e) has full-time management with at least five years of experience in managing venture capital funds; and

(f) receives at least forty percent of the fund's capital from institutional investors. For purposes of this section "institutional investors" includes pension funds, insurance companies, trust funds and financial institutions.

History: 1978 Comp., § 7-27-5.6, enacted by Laws 1987, ch. 219, § 2; 1990, ch. 126, § 3.

The 1990 amendment, effective May 16, 1990, substituted "one and one-half percent" for "two percent" and inserted "under this section" in Subsection A and made several minor stylistic changes.

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 1990 Replacement Pamphlet.

7-27-5.8. Finding and purpose.

The legislature finds that the oil and gas industry in New Mexico is not only a major contributor to the economy of the state but through the severance tax and other state taxes contributes significantly to the support of state and local governments. The legislature further finds that the industry, because of national and international factors beyond its control, is in a dangerously depressed condition which in turn impinges upon the welfare and economy of the state as a whole. The purpose of this act is to provide a mechanism whereby private financial lending agencies will be stimulated to make loans to qualified oil and gas producers to initiate the drilling of and enhance the production from new wells in the state, thereby promoting the economic welfare of New Mexico.

History: Laws 1988, ch. 134, § 1.

Emergency clauses. - Laws 1988, ch. 134, § 8 makes the act effective immediately. Approved March 9, 1988.

Meaning of "this act". - The term "this act" means Laws 1988, Chapter 134, which appears as 7-27-5 and 7-27-5.7 to 7-27-5.12 NMSA 1978.

7-27-5.9. Oil and gas production assistance council created; purpose.

The oil and gas production assistance council is created for the purpose of promoting the economic development of the state through differential rate investment of the severance tax permanent fund to encourage loans by banks and savings and loan associations in New Mexico to qualified oil and gas producers upon the production potential of new wells drilled in this state.

History: Laws 1988, ch. 134, § 2.

Emergency clauses. - Laws 1988, ch. 134, § 8 makes the act effective immediately. Approved March 9, 1988.

7-27-5.10. Oil and gas production assistance council; composition.

The oil and gas production assistance council shall be composed of:

A. the secretary of energy, minerals and natural resources, who shall serve as chairman;

B. the director of the oil conservation commission;

C. the attorney general or his designee;

D. the state treasurer or his designee; and

E. three persons appointed by the governor, one who shall be representative of major oil and gas producers, one who shall be representative of independent oil and gas producers and one who is a qualified petroleum engineer or petroleum geologist.

History: Laws 1988, ch. 134, § 3.

Emergency clauses. - Laws 1988, ch. 134, § 8 makes the act effective immediately. Approved March 9, 1988.

7-27-5.11. Oil and gas production assistance council; meetings; compensation.

A. The oil and gas production assistance council shall meet upon the call of the chairman.

B. The appointed members of the council shall receive no compensation but shall be paid per diem and mileage for attendance at meetings of the council as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

History: Laws 1988, ch. 134, § 4.

Emergency clauses. - Laws 1988, ch. 134, § 8 makes the act effective immediately. Approved March 9, 1988.

7-27-5.12. Oil and gas production assistance council; powers and duties.

The oil and gas production assistance council shall review any proposed investment of severance tax permanent funds pursuant to Section 7-27-5.7 NMSA 1978 in notes, obligations or mortgages held by banks and savings and loan associations for loans made upon the production potential of new wells that have been drilled in New Mexico prior to recommending its approval or disapproval to the state investment officer. In reviewing each specific investment the council shall examine:

A. the loan applicant's business experience with respect to the production of oil and gas;

B. the loan applicant's financial position and credit rating and history;

C. the production potential of the new well drilled in New Mexico;

D. the possible impact upon the New Mexico economy because of such drilling and production, taking into consideration such factors as employment, effect upon service industries, market demand for crude oil and oil products and for natural gas and the long range implication for the economy of this state of a stable and expanding oil and gas industry; and

E. such other factors and guidelines as the council may adopt.

History: Laws 1988, ch. 134, § 5.

Emergency clauses. - Laws 1988, ch. 134, § 8 makes the act effective immediately. Approved March 9, 1988.

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.

Emergency clauses. - Laws 1989, ch. 265, § 4 makes the act effective immediately. Approved April 5, 1989.

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 venture capital 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 venture capital are developed. The purpose of this act is to provide a mechanism whereby the establishment of locally managed venture capital 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.

Effective dates. - Laws 1990, ch. 126 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

7-27-5.15. New Mexico venture capital fund investments.

A. No more than one-half of one percent of the book value of the severance tax permanent fund may be invested in New Mexico venture capital funds under this section.

B. If an investment is made under this section, not less than five hundred thousand dollars ($500,000) or more than three million dollars ($3,000,000) of the amount authorized for investment pursuant to Subsection A of this section shall be invested in any one New Mexico venture capital fund. The amount invested in any one New Mexico venture capital fund shall not exceed forty percent of the committed capital of that fund. Investments shall be made only in the initial offering of a New Mexico venture capital fund, provided that any investment may be made in one or more increments.

C. In making investments pursuant to this section, the council shall give consideration to investments in New Mexico venture capital funds whose investments enhance the economic development objectives of the state.

D. The state investment officer shall make investments pursuant to this section only upon approval of the council and upon review of the recommendation of the venture capital investment advisory committee. The state investment officer is authorized to make investments pursuant to this section contingent upon a New Mexico venture capital fund securing paid-in investments from other accredited investors for the balance of the minimum committed capital of the fund.

E. As used in this section:

(1) "committed capital" means the sum of the fixed amounts of money which accredited investors have obligated for investment in a New Mexico venture capital fund and which fixed amounts may be invested in that fund in one or more payments over time; and

(2) "New Mexico venture capital fund" means any limited partnership or corporation organized and operating in the United States and maintaining its principal active office in New Mexico that:

(a) has as its primary business activity the investment of funds in return for equity in businesses for the purpose of providing capital for start-up, expansion, product or market development or similar business purposes;

(b) holds out the prospects for capital appreciation from such investments;

(c) has a minimum committed capital of one million two hundred fifty thousand dollars ($1,250,000);

(d) has full-time management with at least three years of professional experience in assessing the growth prospects of businesses or evaluating business plans and who has established permanent residency in the state;

(e) is committed to investing in New Mexico one hundred percent of the investments made by the state investment officer pursuant to this section in businesses with a principal place of business in the state and holds promise for attracting additional capital from individual or institutional investors nationwide to businesses in the state;

(f) accepts investments only from accredited investors as that term is defined in Section 2 of the Federal Securities Act of 1933, as amended, (15 U.S.C. Section 77(b)) and rules and regulations promulgated to that section; and

(g) receives at least forty percent of the fund's capital from institutional investors. For the purposes of this section, "institutional investors" includes pension funds, insurance companies, corporations, trust funds, foundations, venture capital funds and financial institutions.

History: 1978 Comp., § 7-27-5.15, enacted by Laws 1990, ch. 126, § 5.

Effective dates. - Laws 1990, ch. 126 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

7-27-5.16. ONGARD system revenue bonds.

Subject to the approval of the state investment council, the severance tax permanent fund may be invested in revenue bonds issued by the commissioner of public lands under the authority of the ONGARD System Development Act [19-10B-1 to 19-10B-8 NMSA 1978].

History: 1978 Comp., § 7-27-5.14, enacted by Laws 1990, ch. 127, § 10.

Emergency clauses. - Laws 1990, ch. 127, § 11 makes the act effective immediately. Approved March 7, 1990.

Compiler's note. - Laws 1990, ch. 127, § 10 enacted this section as 7-27-5.14 NMSA 1978, but, since Laws 1990, ch. 126, § 4 had already enacted a section designated 7-27-5.14 NMSA 1978, and since Laws 1990, ch. 126, § 5 had already enacted a section designated 7-27-5.15 NMSA 1978, this section has been compiled as 7-27-5.16 NMSA 1978.

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, 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.

Effective dates. - Laws 1990 (2nd S.S.), ch. 3, § 10 makes the act effective on January 1, 1991.

Employers Mutual Company Act. - See 7-27-1 NMSA 1978 and notes thereto.

7-27-6. Severance tax bonding fund pledged.

The money in the severance tax bonding fund is first pledged for the payment of principal and interest on all bonds which have been issued and are outstanding at the time of the enactment of this Severance Tax Bonding Act, and for which the money derived from the severance tax levied by Sections 72-18-1 through 72-18-27, New Mexico Statutes Annotated, 1953 Compilation, and Sections 7-29-1 through 7-29-22 NMSA 1978 has been pledged by previous legislative action.

The money in the severance tax bonding fund is further pledged for the payment of principal and interest on all severance tax bonds issued after the enactment of this Severance Tax Bonding Act.

History: 1953 Comp., § 72-18-31, enacted by Laws 1961, ch. 5, § 4.

Compiler's note. - The reference to 72-18-1 to 72-18-27, 1953 Comp., in this section means the Severance Tax Act as it existed when this section was enacted in 1961. For the present provisions of the Severance Tax Act, see 7-26-1 to 7-26-8 NMSA 1978.

Severance Tax Bonding Act. - See 7-27-1 NMSA 1978 and notes thereto.

7-27-7. Special income to retire bonds.

When a law authorizing a 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 board of finance, 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.

Cross-references. - As to laws authorizing severance tax bond issues, see appendix to this article.

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.

All bonds hereafter issued wherein the money in the severance tax bonding fund is pledged for their retirement shall be known as "New Mexico severance tax bonds".

History: 1953 Comp., § 72-18-34, enacted by Laws 1961, ch. 5, § 7.

7-27-10. State board of finance shall issue bonds.

The state board of finance is authorized to issue and sell severance tax bonds within the provisions of this Severance Tax Bonding Act, and no other agency of the state is authorized to issue or sell severance tax bonds.

History: 1953 Comp., § 72-18-35, enacted by Laws 1961, ch. 5, § 8.

Severance Tax Bonding Act. - See 7-27-1 NMSA 1978 and notes thereto.

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 and other bonds payable from the

severance tax bonding fund 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. In performing an advanced refunding, the state board of finance shall use the level savings method of advance refunding to the greatest extent possible.

C. No bonds shall be issued to refund outstanding severance tax bonds or other bonds payable from the severance tax bonding fund if any of the refunding bonds have maturity dates after the latest maturity date of a bond to be refunded.

History: 1953 Comp., § 72-18-36, enacted by Laws 1961, ch. 5, § 9; 1985 (1st S.S.), ch. 15, § 13.

Cross-references. - As to the state board of finance, see 6-1-1 NMSA 1978.

Compiler's note. - In approving Laws 1985 (1st S.S.), ch. 15, the governor vetoed a Subsection D in this section, relating to additional bonding capacity realized from the level savings method of advance refunding.

7-27-11.1. Declaration of legislative intent.

It is the intent of the legislature in enacting Section 13 [7-27-11 NMSA 1978] of this act to limit the unrestricted authority of the state board of finance specified in Section 7-27-11 NMSA 1978 to refund outstanding severance tax bonded indebtedness.

History: Laws 1985 (1st S.S.), ch. 15, § 15.

Compiler's note. - In approving Laws 1985 (1st S.S.), ch. 15, the governor vetoed "and 14" following "Section 13".

7-27-12. When severance tax bonds to be issued.

The state board of finance shall issue and sell all severance tax bonds when authorized to do so by any law which sets out the amount of the issue and the recipient or recipients of the money.

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 streams [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 when and only when so instructed by resolution of the governing body of the recipient of the bond money.

History: 1953 Comp., § 72-18-37, enacted by Laws 1961, ch. 5, § 10; 1984, ch. 4, § 2.

Cross-references. - As to laws authorizing severance tax bond issues, see the appendix to this article.

As to state board of finance, see 6-1-1 NMSA 1978.

As to interstate stream commission, see 72-14-1 NMSA 1978.

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 which, together with such other income as may be deposited to the fund, will be sufficient to produce an amount which is at least the amount necessary to meet annual debt service charges on all outstanding severance tax bonds.

B. The state board of finance shall issue no severance tax bonds unless the aggregate amount outstanding, including any severance tax bonds authorized prior to the enactment of this Severance Tax Bonding Act, but not yet issued, and including the issue proposed, can be serviced with not more than fifty percent of the annual deposits into the severance tax bonding fund, as determined by the deposits during the preceding fiscal year.

C. The provisions of this section shall not be modified by the terms of any bonds hereafter issued.

History: 1953 Comp., § 72-18-38, enacted by Laws 1961, ch. 5, § 11.

Severance Tax Bonding Act. - See 7-27-1 NMSA 1978 and notes thereto.

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.

The state board of finance, except as otherwise specifically provided in this Severance Tax Bonding Act, shall determine at its discretion the terms, covenants and conditions of 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 bonds.

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.

Compiler's note. - In approving Laws 1985 (1st S.S.), ch. 15, the governor vetoed an amendment of this section by § 14 of the act.

Severance Tax Bonding Act. - See 7-27-1 NMSA 1978 and notes thereto.

7-27-17. Execution of bonds.

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 to 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.

7-27-18. Procedure for sale of bonds.

Severance tax bonds shall be sold by the state board of finance at such times and in such manner as said board may elect, consistent with the need of the board, commission or agency which is the recipient or recipients of the bond money, to the highest bidder for cash at not less than par and accrued interest.

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 each week for two consecutive weeks prior to the date fixed for such sale, the last publication thereof to be at least ten days prior to the date of 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 sealed bids therefor shall be received. All bids, except that of the state, shall be

accompanied by a deposit of five percent of the bid price. Deposits of unsuccessful bidders shall be returned upon rejection of the bid.

At the time and place specified in such notice the state board of finance shall open the bids in public and shall award the bonds, or any part thereof, 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 which 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 issue, or any part thereof, to the state at private sale.

History: 1953 Comp., § 72-18-42, enacted by Laws 1961, ch. 5, § 15.

7-27-19. Severance tax bonds legal investments.

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.

7-27-20. Expenses paid from severance tax bonding fund.

The expense incurred in the issuance of 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.

7-27-21. Treasurer to make bond payments and keep records.

Bonds payable from the severance tax bonding 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 shall require.

History: 1953 Comp., § 72-18-45, enacted by Laws 1961, ch. 5, § 18.

7-27-22. Severance Tax Bonding Act to be full authority for issuance of bonds.

The Severance Tax Bonding Act [7-27-4, 7-27-28 to 7-27-47 NMSA 1978] shall, without reference to any other act of the legislature, be full authority for the issuance and sale of severance tax bonds, which bonds and the coupons attached thereto shall have all the qualities of investment securities under the Uniform Commercial Code 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.

Cross-references. - As to investment securities under the Uniform Commercial Code, see Chapter 55, Article 8 NMSA 1978.

Severance Tax Bonding Act. - See 7-27-1 NMSA 1978 and notes thereto.

7-27-23. Suit may be brought to compel performance of officers.

Any holder of 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 this Severance Tax Bonding Act.

History: 1953 Comp., § 72-18-47, enacted by Laws 1961, ch. 5, § 20.

Severance Tax Bonding Act. - See 7-27-1 NMSA 1978 and notes thereto.

7-27-24. Bonds tax free.

All 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.

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.

Severance Tax Bonding Act. - See 7-27-1 NMSA 1978 and notes thereto.

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.

Compiler's note. - 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.

Severance Tax Bonding Act. - See 7-27-1 NMSA 1978 and notes thereto.

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 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 but not be limited to the construction of 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.

Severability clauses. - Laws 1961, ch. 5, § 24, provides for the severability of the act if any part or application thereof is held invalid.

Severance Tax Bonding Act. - See 7-27-1 NMSA 1978 and notes thereto.

7-27-28 to 7-27-30. Repealed.

ANNOTATIONS

Repeals. - Laws 1986, ch. 20, § 136C repeals 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. For provisions of former sections, see 1983 Replacement Pamphlet and 1985 Cumulative Supplement.

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.

Compiler's note. - Pursuant to Laws 1981 (1st S.S.), ch. 9, § 23, the effective date of the Severance Tax Income Bonding Act is July 1, 1981.

Severance Tax Income Bonding Act. - The Severance Tax Income Bonding Act, referred to in this section, is presently compiled as 7-27-4, 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 repeals 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. For provisions of former sections, see 1983 Replacement Pamphlet and 1985 Cumulative Supplement.

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 repeals 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. For provisions of former section, see 1983 Replacement Pamphlet.

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.

Severance Tax Income Bonding Act. - The Severance Tax Income Bonding Act, referred to in this section, is presently compiled as 7-27-4, 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.

Compiler's note. - Pursuant to Laws 1981 (1st S.S.), ch. 9, § 23, the effective date of the act is July 1, 1981.

Meaning of "this act". - The term "this act", referred to in this section, means Laws 1981 (1st S.S.), ch. 9, which is presently compiled as 7-27-4, 7-27-31, 7-27-32, 7-27-42 to 7-27-44, 7-27-46, and 7-27-47 NMSA 1978.

Appendix to Article 27
7-27-48.

Appendix to Article 27.

Appendix to Article 27

Authorized Severance Tax Bonds

Appendix to Article 27

The New Mexico Legislature has, since 1968, authorized issuance of the following severance tax bonds:

Appendix to Article 27

Laws 1968, ch. 15, $1,000,000, state park and recreation projects.

Appendix to Article 27

Laws 1968, ch. 16, $2,500,000, state police facilities.

Appendix to Article 27

Laws 1968, ch. 31, $3,000,000, state capitol facilities.

Appendix to Article 27

Laws 1968, ch. 33, $840,000, microwave circuits.

Appendix to Article 27

Laws 1968, ch. 34, $100,000, boy's school at Springer.

Appendix to Article 27

Laws 1969, ch. 64, $3,000,000, state capitol facilities.

Appendix to Article 27

Laws 1969, ch. 127, $2,121,000, state park and recreation projects.

Appendix to Article 27

Laws 1970, ch. 35, cultural properties review commission (now committee), various amounts for four projects.

Appendix to Article 27

Laws 1970, ch. 67, hospitals and institutions department and state commission of public records, various amounts for seven projects.

Appendix to Article 27

Laws 1970, ch. 84, $1,000,000, sewerage treatment facilities.

Appendix to Article 27

Laws 1971, ch. 257, $2,500,000, sewerage treatment facilities.

Appendix to Article 27

Laws 1971, ch. 262, $1,000,000, vocational training facilities.

Appendix to Article 27

Laws 1971, ch. 272, $374,000, botanical/zoological gardens.

Appendix to Article 27

Laws 1971, ch. 321, $1,000,000, medical school facilities.

Appendix to Article 27

Laws 1972, ch. 74, $3,000,000, state capitol facilities.

Appendix to Article 27

Laws 1973, ch. 396, amending Laws 1970, ch. 35.

Appendix to Article 27

Laws 1973, ch. 402, amending Laws 1970, ch. 84, and Laws 1971, ch. 257.

Appendix to Article 27

Laws 1974, ch. 44, $1,500,000, state park and recreation facilities.

Appendix to Article 27

Laws 1974, ch. 74, $3,795,000, employment security commission (now employment services division) office building.

Appendix to Article 27

Laws 1975, ch. 43, $7,500,000, Ute dam and reservoir.

Appendix to Article 27

Laws 1975, ch. 48, $2,000,000, Red Rock state park.

Appendix to Article 27

Laws 1975, ch. 110, $2,500,000, sewage treatment facilities.

Appendix to Article 27

Laws 1976, ch. 45, $2,013,000, institute of mining and technology.

Appendix to Article 27

Laws 1976 (S.S.), ch. 30, $600,000, rehabilitation center at Las Vegas.

Appendix to Article 27

Laws 1976 (S.S.), ch. 40, $400,000, Rio Grande Valley state park.

Appendix to Article 27

Laws 1976 (S.S.), ch. 41, $1,225,000, Brantley Dam state park.

Appendix to Article 27

Laws 1976 (S.S.), ch. 48, $7,000,000, natural gas pipeline, gathering and storage systems.

Appendix to Article 27

Laws 1976 (S.S.), ch. 56, $3,267,000, sewage treatment facilities.

Appendix to Article 27

Laws 1976 (S.S.), ch. 57, $2,475,000, water supply systems for communities.

Appendix to Article 27

Laws 1977, ch. 91, various amounts authorized for numerous state agencies.

Appendix to Article 27

Laws 1977, ch. 302, amending Laws 1970, ch. 35.

Appendix to Article 27

Laws 1978 (S.S.), ch. 2, §§ 1, 2, $6,000,000, Albuquerque independent community college.

Appendix to Article 27

Laws 1978, ch. 136, § 1, $10,500,000, Ute dam and reservoir.

Appendix to Article 27

Laws 1978, ch. 144, § 1, $3,200,000, New Mexico state university (New Mexico solar institute engineering laboratory building).

Appendix to Article 27

Laws 1978, ch. 157, §§ 1, 2, modifies Laws 1977, ch. 91, § 1.

Appendix to Article 27

Laws 1978, ch. 176, §§ 1 to 3, $18,000,000, improvement of energy resource development roads in northwest quadrant of the state and improvement of bridges and other highway structures within state.

Appendix to Article 27

Laws 1979, ch. 166, §§ 1 to 3 and 16, $35,000,000, improvement of certain highways, roads and streets and other community assistance purposes.

Appendix to Article 27

Laws 1979, ch. 210, § 1, $136,000, construction of livestock insect research laboratory building at New Mexico state university.

Appendix to Article 27

Laws 1979, ch. 211, § 2, $1,000,000, purchase of water rights to acquire water from any available source for use in Elephant Butte reservoir to replace the annual loss by evaporation and other causes of water in the recreation pool.

Appendix to Article 27

Laws 1979, ch. 309, § 1, various amounts for capital improvements for certain institutions of higher education and post-secondary academic and vocational institutions.

Appendix to Article 27

Laws 1980, ch. 19, § 1, $2,472,000, for the completion and improvement of various state parks.

Appendix to Article 27

Laws 1980, ch. 24, § 1, $10,000,000, for the restoration and improvement of the state penitentiary.

Appendix to Article 27

Laws 1980, ch. 34, § 1, $5,000,000, for acquisition of engineering and science equipment for certain four-year institutions of higher learning.

Appendix to Article 27

Laws 1980, ch. 60, § 1, $25,000,000, for highways and roads and related purposes.

Appendix to Article 27

Laws 1980, ch. 128, § 10, $8,000,000, for construction of a natural history museum facility.

Appendix to Article 27

Laws 1980, ch. 146, § 1, $5,000,000, for project grants pursuant to the New Mexico Community Assistance Act.

Appendix to Article 27

Laws 1980, ch. 154, § 1, $1,607,000, for improvements of various state parks.

Appendix to Article 27

Laws 1981, ch. 54, § 1, modifies Laws 1977, ch. 91, § 1.

Appendix to Article 27

Laws 1981, ch. 55, § 1, $517,800, for campus improvements at western New Mexico university.

Appendix to Article 27

Laws 1981, ch. 58, § 1, $2,843,000, for equipment for the university of New Mexico hospital.

Appendix to Article 27

Laws 1981, ch. 129, § 1, various amounts for capital outlay projects for certain institutions of higher education and post-secondary academic and vocational institutions.

Appendix to Article 27

Laws 1981, ch. 134, § 1, $5,000,000, for acquisition of engineering and science equipment for certain four-year institutions of higher learning.

Appendix to Article 27

Laws 1981, ch. 207, § 1, $6,300,000, for constructing, improving and developing Ute reservoir.

Appendix to Article 27

Laws 1981, ch. 240, §§ 2, 3, $80,000,000, for construction, reconstructing, improving and replacement of highways and bridges.

Appendix to Article 27

Laws 1981, ch. 346, § 1, amending Laws 1980, ch. 24, § 1.

Appendix to Article 27

Laws 1981, ch. 346, § 10, $25,500,000, for construction of medium security facility.

Appendix to Article 27

Laws 1981, ch. 363, § 1, amending Laws 1977, ch. 91, § 1.

Appendix to Article 27

Laws 1981, ch. 363, § 2, repeals Laws 1977, ch. 91, § 8.

Appendix to Article 27

Laws 1981 (1st S.S.), ch. 8, § 1, $3,652,200, to provide matching funds under the federal Clean Water Act of 1977.

Appendix to Article 27

Laws 1981 (1st S.S.), ch. 11, § 6, amending Laws 1979, ch. 166, § 16.

Appendix to Article 27

Laws 1981 (1st S.S.), ch. 11, § 7, $10,000,000, for project grants pursuant to the New Mexico Community Assistance Act.

Appendix to Article 27

Laws 1982, ch. 6, § 1, $1,580,000, for construction at the New Mexico state hospital in Las Vegas.

Appendix to Article 27

Laws 1982, ch. 33, § 1, $1,100,000, for making a grant to the city of Albuquerque for constructing a system to provide domestic water service.

Appendix to Article 27

Laws 1982, ch. 45, § 1, $2,636,500, for the purpose of reconstruction at the Lisboa Springs fish hatchery.

Appendix to Article 27

Laws 1982, ch. 47, § 1, $4,200,000, for constructing, improving and developing Ute reservoir.

Appendix to Article 27

Laws 1982, ch. 48, § 1, $1,125,000, for construction at the Grants branch of New Mexico state university.

Appendix to Article 27

Laws 1982, ch. 49, § 1, $6,450,000, for construction of facilities at certain vocational schools.

Appendix to Article 27

Laws 1982, ch. 50, § 1, $750,000, to provide funds to improve the road to Sims Mesa recreation area at Navajo Lake state park.

Appendix to Article 27

Laws 1982, ch. 58, § 1, $1,600,000, for construction and equipment at the Clovis branch of eastern New Mexico university.

Appendix to Article 27

Laws 1982, ch. 63, § 1, $2,250,000, for construction at the Roswell campus of eastern New Mexico university.

Appendix to Article 27

Laws 1982, ch. 64, § 1, $3,600,000, for constructing a music building at New Mexico state university.

Appendix to Article 27

Laws 1982, ch. 65, § 1, $500,000, for expansion of the bureau of mines and mineral resources.

Appendix to Article 27

Laws 1982, ch. 66, § 1, $1,600,000, for conversion of the communications building into a student services building on the main campus of eastern New Mexico university.

Appendix to Article 27

Laws 1982, ch. 67, § 1, $2,300,000, for renovation and construction at New Mexico highlands university.

Appendix to Article 27

Laws 1982, ch. 69, § 1, $2,600,000, for construction at the main campus of western New Mexico university.

Appendix to Article 27

Laws 1982, ch. 70, § 1, $1,600,000, for an amphitheater at San Jon.

Appendix to Article 27

Laws 1982, ch. 71, § 1, $6,400,000, for construction of a student services building at the university of New Mexico.

Appendix to Article 27

Laws 1982, ch. 74, § 1, $400,000, for upgrading the electrical system at Fort Bayard hospital.

Appendix to Article 27

Laws 1982, ch. 75, § 1, $5,000,000, for acquiring engineering and science equipment for certain four-year institutions of higher learning.

Appendix to Article 27

Laws 1982, ch. 76, § 5, amending Laws 1981, ch. 346, § 10.

Appendix to Article 27

Laws 1982, ch. 79, § 1, $2,651,500, for acquiring land and constructing a state office building in Farmington.

Appendix to Article 27

Laws 1982, ch. 80, § 1, $2,440,100, for the construction of office buildings for New Mexico state police district headquarters.

Appendix to Article 27

Laws 1982, ch. 84, § 1, $1,419,000, to the capital program fund for various projects.

Appendix to Article 27

Laws 1982, ch. 85, § 1, $6,025,000, for construction of phase two of the medium male security facility.

Appendix to Article 27

Laws 1982, ch. 94, § 1, $1,521,000, for construction at New Mexico state hospital and Fort Stanton hospital.

Appendix to Article 27

Laws 1982, ch. 95, § 1, $2,000,000, for repairing and maintaining school bus routes.

Appendix to Article 27

Laws 1982, ch. 96, § 2, $579,050, for construction, alteration and renovation of senior citizen centers.

Appendix to Article 27

Laws 1982, ch. 104, § 1, $14,733,800, for constructing a state office building in Santa Fe.

Appendix to Article 27

Laws 1982, ch. 112, § 1, $1,437,500, for constructing sewage treatment facilities.

Appendix to Article 27

Laws 1982, ch. 113, § 1, $1,400,200, for various corrections industries programs.

Appendix to Article 27

Laws 1983, ch. 67, § 1, $950,000, to the state corporation commission for purchasing a replacement airplane.

Appendix to Article 27

Laws 1983, ch. 118, § 1, $35,000,000, for construction of New Mexico highways and $20,000,000, for the continuation of the state penitentiary rebuilding and improvement program initiated pursuant to Laws 1980, ch. 24, and Laws 1981, ch. 346.

Appendix to Article 27

Laws 1983, ch. 120, § 1, $1,262,000, for improving and expanding the sewer system in Anthony, New Mexico.

Appendix to Article 27

Laws 1983, ch. 125, § 1, $300,000, for a drilling program to determine the suitability of a dam and reservoir at the Connor site on the Gila river.

Appendix to Article 27

Laws 1983, ch. 274, § 1, $1,000,000, for preliminary engineering, including right-of-way, mapping and design, for improving and upgrading state highway 264 in McKinley county to a four-lane highway.

Appendix to Article 27

Laws 1983, ch. 287, § 1, various amounts for various capital improvements.

Appendix to Article 27

Laws 1983, ch. 287, § 4, amending Laws 1979, ch. 211, § 2.

Appendix to Article 27

Laws 1983, ch. 287, § 5, amending Laws 1981, ch. 240, § 2.

Appendix to Article 27

Laws 1983, ch. 287, § 6, amending Laws 1982, ch. 84, § 1.

Appendix to Article 27

Laws 1983, ch. 287, § 9, repealing Laws 1982, ch. 72, § 1.

Appendix to Article 27

Laws 1983, ch. 298, § 4, $10,000,000, for the purpose of making project grants pursuant to the New Mexico Community Assistance Act.

Appendix to Article 27

Laws 1983, ch. 313, § 1, $300,000, for constructing a water transmission line together with the acquisition and installation of a pump and controls to connect a water well with the Hatch water system.

Appendix to Article 27

Laws 1983, ch. 316, § 7, $3,750,000, to the two-year college maintenance fund for the purposes of the Two-Year College Maintenance Act.

Appendix to Article 27

Laws 1983, ch. 326, § 1, $6,600,000, to the state highway department for the purpose of constructing the Rio Bravo bridge and access roads.

Appendix to Article 27

Laws 1983, ch. 329, § 8, $1,610,000, to the New Mexico veterans' service commission for the purpose of remodeling and improving the former Carrie Tingley crippled children's hospital at Truth or Consequences to convert it for use as a veterans' home.

Appendix to Article 27

Laws 1984, ch. 11, § 1, amending Laws 1983, ch. 287, § 1.

Appendix to Article 27

Laws 1984, ch. 12, § 3, amending Laws 1982, ch. 76, § 5.

Appendix to Article 27

Laws 1984, ch. 12, § 4, amending Laws 1982, ch. 85, § 1.

Appendix to Article 27

Laws 1984 (1st S.S.), ch. 10, §§ 1, 8, various amounts for various capital improvements.

Appendix to Article 27

Laws 1985, ch. 10, § 1, funds for El Pueblo bridge in Albuquerque.

Appendix to Article 27

Laws 1985, ch. 199, § 1, funds for the development of a wastewater system in Sunland Park.

Appendix to Article 27

Laws 1985 (1st S.S.), ch. 15, § 1, various amounts for various capital improvements.

Appendix to Article 27

Laws 1985 (1st S.S.), ch. 15, § 7, $376,750 for the construction of a state office building in Santa Fe.

Appendix to Article 27

Laws 1985 (1st S.S.), ch. 15, § 8, funds to expand Albuquerque's water system so as to provide a water supply to the east Mountainview area.

Appendix to Article 27

Laws 1985 (1st S.S.), ch. 15, § 9 voids tax bond authorizations for natural gas pipeline systems, for residential sewer connections and for solar heating incentives.

Appendix to Article 27

Laws 1986, ch. 14, § 1, amending Laws 1985 (1st S.S.), ch. 15, § 1.

Appendix to Article 27

Laws 1986, ch. 115, § 7, appropriates the balance of the proceeds from the sale of severance tax bonds authorized by Laws 1985, ch. 15, § 1Q(2) to the state highway department for the purpose of paving county roads in eligible counties.

Appendix to Article 27

Laws 1986, ch. 115, § 8, appropriates the proceeds from the sale of severance tax bonds authorized pursuant to Laws 1985, ch. 15, § 1T to the local government division of the department of finance and administration.

Appendix to Article 27

Laws 1987, ch. 354, §§ 1, 7, various amounts for various capital improvements.

Appendix to Article 27

Laws 1987, ch. 354, § 5, amending Laws 1983, ch. 287, § 1, Subsection Q and Laws 1986, ch. 115, § 1, Subsection H.

Appendix to Article 27

Laws 1987, ch. 354, §§ 1, 7, various amounts for various capital improvements.

Appendix to Article 27

Laws 1987, ch. 354, § 5, amending Laws 1983, ch. 287, § 1, Subsection Q and Laws 1986, ch. 115, § 1, Subsection H.

Appendix to Article 27

Laws 1988 (2nd S.S.), ch. 3, §§ 1, 3, 5, various amounts for various capital improvements.

Appendix to Article 27

Laws 1989, ch. 315, § 9, effective April 7, 1989, various amounts for various capital improvements.

Appendix to Article 27

Laws 1989, ch. 335, § 1, amending Laws 1988 (2nd S.S.), ch. 3, § 1, Subsection H.

Appendix to Article 27

Laws 1989, ch. 342, § 1, amending Laws 1987, ch. 354, § 1, Subsection H(13).

Appendix to Article 27

Laws 1989, ch. 364, § 1, amending Laws 1987, ch. 354, § 1, Subsection I(6).

Appendix to Article 27

Laws 1989, ch. 391, § 1, amending Laws 1987, ch. 354, § 1, Subsection E(6).

Appendix to Article 27

Laws 1990 (1st S.S.), ch. 6, § 5, various amounts for various capital improvements.

Appendix to Article 27

Laws 1990, ch. 129, § 1, amending Laws 1986, ch. 115, § 1C(4).

Appendix to Article 27

Laws 1990, ch. 132, § 12, various amounts for various capital improvements.

Appendix to Article 27

Laws 1990, ch. 132, § 13, amending Laws 1988 (2nd S.S.), ch. 3, § 1D(2) and Laws 1987, ch. 354, § 1H(13).

Appendix to Article 27

Laws 1990, ch. 132, § 14, amending Laws 1988 (2nd S.S.), ch. 3, § 1D(2).

Appendix to Article 27

Laws 1990, ch. 132, § 15, amending Laws 1988 (2nd S.S.), ch. 3, § 4.

Appendix to Article 27

Laws 1991, ch. 215, § 2, to the infrastructure revolving loan fund for the purposes of the Rural Infrastructure Act.

Appendix to Article 27

Laws 1991, ch. 259, various sections amending the purposes of the proceeds of various severance tax bond sales for various capital improvements authorized by different prior laws.

Appendix to Article 27

Laws 1991, ch. 261, §§ 1 to 13, various amounts for various capital improvements.

Appendix to Article 27

Laws 1991, ch. 261, § 14, amending Laws 1989, ch. 315, § 9.

ARTICLE 28
OIL AND GAS ACCOUNTING

7-28-1 to 7-28-13. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 65, § 46 repeals 7-28-1 to 7-28-13 NMSA 1978, relating to the Oil and Gas Accounting Commission Act, effective July 1, 1985. For provisions of former sections, see 1983 Replacement Pamphlet.

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.

Temporary provisions. - Laws 1985, ch. 65, §§ 51 and 52 provide that any protests, claims for refund, court proceedings or other actions ongoing under the provisions of the Oil and Gas Severance Tax Act on July 1, 1985, will be finally determined under the provisions of the tax act in force at the time the tax was due and that the provisions of the Tax Administration Act regarding protests and claims for refund with respect to taxes due in accordance with the Oil and Gas Severance Tax Act shall apply only to taxes due under the provisions of that act on or after July 1, 1985, and that any protest or claim for refund initiated on or after July 1, 1985, with respect to taxes due in accordance with the Oil and Gas Severance Tax Act prior to July 1, 1985, shall be made in accordance with the provisions of that act as if those provisions had remained in full force and effect.

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, 38 N.M. 131, 28 P.2d 889 (1934).

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 §§ 161, 170.

7-29-2. Definitions.

As used in the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978]:

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 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, or carbon dioxide;

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 Severance 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 which is determined by the value of such products; and

J. "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 and minerals department.

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.

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 repeals 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. For provisions of former section, see 1983 Replacement Pamphlet.

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. The measure of the tax and the rates are:

(1) on natural gas severed and sold:

(a) except as provided in Subparagraph (b) of this paragraph, whichever of the following rates produces the greater tax: 1) three and three-fourths percent of the value of products; or 2) using a pressure base of 15.025 pounds per square inch absolute and at a temperature of 60 degrees Fahrenheit, a tax per one thousand cubic feet (mcf) of sixteen and three tenths cents ($.163) until June 30, 1990, after which the rate of three and three-fourths percent of the taxable value determined under Section 7-29-4.1 NMSA 1978 of products shall be used; and

(b) from a new production natural gas well, three and three-fourths percent of the taxable value determined under Section 7-29-4.1 NMSA 1978;

(2) on oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead, three and three-fourths percent of taxable value determined under Section 7-29-4.1 NMSA 1978; and

(3) on carbon dioxide, three and three-fourths percent of the taxable value determined under Section 7-29-4.1 NMSA 1978.

B. Every interest owner shall be liable for this tax to the extent of his interest in such products. Any Indian tribe, Indian pueblo or Indian shall be liable for this tax to the extent authorized or permitted by law.

History: 1978 Comp., § 7-29-4, enacted by Laws 1980, ch. 62, §§ 3, 5; 1987, ch. 315, § 3; 1989, ch. 130, § 2.

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. Cotton Petroleum v. State, 106 N.M. 517, 745 P.2d 1170 (Ct. App. 1987), aff'd sub nom. Cotton Petro. Corp. v. New Mexico, 490 U.S. 163, 109 S. Ct. 1698, 104 L. Ed. 2d 209 (1989).

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; 84 C.J.S. Taxation §§ 640 to 643.

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 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.

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.

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 [this article] 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.

Cross-references. - As to 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.

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.

7-29-4.4, 7-29-4.5. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 130, § 14 repeals 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. For provisions of former sections, see 1986 Replacement Pamphlet.

7-29-4.6. Temporary provision; credit.

A. Any person who is liable for the payment of additional oil and gas severance taxes imposed by Section 7-26-9 NMSA 1978 or imposed by Section 7-29-4 NMSA 1978 because of changes in tax rates provided for in Laws 1980, Chapter 62, Sections 4 and 5 shall be entitled to a credit to be computed under this section and to be deducted from the payment of the indicated taxes if:

(1) a contract was entered into prior to January 1, 1977, providing for the sale of the severed products upon which the tax is imposed and that contract:

(a) does not allow the taxpayer to obtain reimbursement for all or any part of the additional taxes imposed; and

(b) the contract has not been amended in any manner after January 1, 1977; or

(2) a federal regulation exists that does not allow the taxpayer to obtain reimbursement from the purchaser for all or any part of the additional taxes imposed.

B. The credit authorized under this section is equal to the amount for which the taxpayer is not allowed to obtain reimbursement under Subsection A of this section, but the credit allowed shall not exceed an amount that reduces the tax liability to an amount that is the

amount of taxes that would have been required to have been paid on the severed resources under the provisions of the Oil and Gas Severance Tax Act [this article] existing immediately prior to the effective date of the 1977 act.

C. The burden of showing entitlement to a credit authorized under this section is on the taxpayer claiming it, and he shall furnish to the appropriate tax collecting authority copies of all or parts of any contract or federal regulation upon which he bases his claim which contract shall be subject to confidentiality rules adopted by the oil and gas accounting division which shall be comparable to confidentiality provisions of Section 7-1-8 NMSA 1978.

D. Procedures for claiming the credit authorized under this section shall be established by regulation of the appropriate tax collecting authority.

History: Laws 1980, ch. 62, § 11; 1985, ch. 65, § 29.

Compiler's note. - Section 7-26-9 NMSA 1978, referred to in Subsection A, was repealed by Laws 1989, ch. 261, § 2, effective July 1, 1989.

Laws 1980, ch. 62, §§ 4 and 5, referred to in Subsection A, amended 7-26-9 NMSA 1978 and 7-29-4 NMSA 1978, respectively.

"Effective date of the 1977 act". - The phrase "the effective date of the 1977 act", referred to at the end of Subsection B, means the effective date of Laws 1977, ch. 102, which is July 1, 1977.

7-29-4.7. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 130, § 14 repeals 7-29-4.7 NMSA 1978, as enacted by Laws 1980, ch. 62, § 13, relating to surtax applicability, effective June 16, 1989. For provisions of former section, see 1986 Replacement Pamphlet.

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.

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.

Meaning of "commission". - See 7-29-2A NMSA 1978.

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 [Chapter 7, Article 29 NMSA 1978] may be required.

History: 1953 Comp., § 72-19-10, enacted by Laws 1959, ch. 52, § 10; 1986, ch. 5, § 2.

Meaning of "division". - See 7-29-2A NMSA 1978.

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 [Chapter 7, Article 29 NMSA 1978] may be required.

History: 1953 Comp., § 72-19-11, enacted by Laws 1959, ch. 52, § 11; 1986, ch. 5, § 3.

Meaning of "division". - See 7-29-2A NMSA 1978.

7-29-9 to 7-29-22. Repealed.

ANNOTATIONS

Temporary provisions. - Laws 1985, ch. 65, § 47 provides that any balance remaining in any suspense fund, relating to protested payments of tax pursuant to former 7-29-12 NMSA 1978 on July 1, 1985, is transferred to the oil and gas protested payments suspense fund, and that any balance remaining in the oil and gas accounting commission severance tax fund, on July 1, 1985, is transferred to the extraction taxes suspense fund.

Laws 1985, ch. 65, § 50 provides that the oil and gas protested payments suspense fund is created in the state treasury and that the director of the oil and gas accounting division shall cause all taxes paid under protest in accordance with the provisions of former 7-29-12 NMSA 1978, as that section was in effect prior to July 1, 1985, to be deposited in the oil and gas protested payments suspense fund and that any balance in the oil and gas protested payments suspense fund is appropriated for the payment of refunds with respect to the taxes paid under protest and that amounts with respect to taxes paid under protest which are finally determined to be due the state shall be transferred to the extraction taxes suspense fund.

Repeals. - Laws 1985, ch. 65, § 46 repeals 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. For provisions of former sections, see 1983 Replacement Pamphlet.

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 [Chapter 7, Article 29 NMSA 1978] 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.

Effective dates. - Laws 1991, ch. 9, § 47A makes this section effective on July 1, 1991.

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.

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 [this article]:

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 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 or carbon dioxide;

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; and

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 which is determined by the value of such products.

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.

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 repeals 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. For provisions of former section, see 1983 Replacement Pamphlet.

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 which are severed and sold. The measure and rate of the tax shall be nineteen one-hundredths of one 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 such products or to the extent of the owner's 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.

B. In the event the unencumbered balance in the oil and gas reclamation fund equals or exceeds one million dollars ($1,000,000) for any one-month period computed after receipt of the tax for that month, then the rate of the tax levied by this section shall be eighteen one-hundredths of one percent beginning with the first day of the second month following the month in which the unencumbered balance equaled or exceeded one million dollars ($1,000,000) and no funds collected by the tax with respect to any period for which the rate is eighteen one-hundredths of one percent shall be distributed to the oil and gas reclamation fund. After having been reduced to eighteen one-hundredths of one percent, the rate of the tax imposed by this section shall remain at that rate until the unencumbered balance in the oil and gas reclamation fund is less than or equal to five hundred thousand dollars ($500,000), for any one-month period computed after receipt of the tax for that month, in which event the rate of the tax levied by this section shall be increased to nineteen one-hundredths of one percent beginning

with the first day of the second month following the month in which the unencumbered balance equalled or was less than five hundred thousand dollars ($500,000) and the additional funds with respect to any period for which the rate is nineteen one-hundredths of one percent shall be distributed to the oil and gas reclamation fund in accordance with the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

C. The department shall notify taxpayers of any change in the rate of tax imposed by this section.

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.

Cross-references. - As to the oil and gas reclamation fund, see 70-2-37 NMSA 1978.

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.

Meaning of "department". - See 7-30-2A NMSA 1978.

Severance alone does not give rise to taxable event. Yankee Atomic Elec. Co. v. New Mexico & Ariz. Land Co., 632 F.2d 855 (10th Cir. 1980).

But severance, coupled with sale, triggers imposition of tax. Yankee Atomic Elec. Co. v. New Mexico & 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 §§ 121, 123, 126.

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, or carbon dioxide, 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.

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.

The 1989 amendment, effective June 16, 1989, substituted "department" for "commission" in the catchline and throughout the section, and made minor stylistic changes.

Meaning of "department". - See 7-30-2A NMSA 1978.

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.

The 1989 amendment, effective June 16, 1989, substituted "department" for "commission" in the catchline and in the second sentence.

Meaning of "department". - See 7-30-2A NMSA 1978.

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.

The 1989 amendment, effective June 16, 1989, added the subsection designations, and substituted "department" for "commission" in the catchline and in Subsection C.

Meaning of "department". - See 7-30-2A NMSA 1978.

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. Any additional report or information the department may deem necessary for the proper administration of the Oil and Gas Conservation Tax Act [this article] may be required.

History: 1953 Comp., § 72-20-10, enacted by Laws 1959, ch. 53, § 10; 1986, ch. 5, § 4; 1989, ch. 130, § 10.

The 1989 amendment, effective June 16, 1989, substituted "department" for "division" throughout the section.

Meaning of "department". - See 7-30-2A NMSA 1978.

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 [this article] may be required.

History: 1953 Comp., § 72-20-11, enacted by Laws 1959, ch. 53, § 11; 1986, ch. 5, § 5; 1989, ch. 130, § 11.

The 1989 amendment, effective June 16, 1989, substituted "department" for "division" throughout the section.

Meaning of "department". - See 7-30-2A NMSA 1978.

7-30-12. Repealed.

ANNOTATIONS

Temporary provisions. - Laws 1985, ch. 65, § 47 provides that any balance remaining in any suspense fund, relating to protested payments of tax pursuant to former 7-30-16 NMSA 1978 on July 1, 1985, is transferred to the oil and gas protested payments suspense fund, and that any balance remaining in the oil and gas accounting commission conservation tax fund on July 1, 1985, is transferred to the extraction taxes suspense fund.

Repeals. - Laws 1985, ch. 65, § 46 repeals 7-30-12 NMSA 1978, as amended by Laws 1977, ch. 59, § 1, relating to the oil and gas accounting commission conservation tax fund, effective July 1, 1985. For provisions of former section, see 1983 Replacement Pamphlet.

7-30-13. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 65, § 46 repeals 7-30-13 NMSA 1978, as amended by Laws 1977, ch. 247, § 184, relating to the monthly report to the department of finance and administration, effective July 1, 1985. For provisions of former section, see 1983 Replacement Pamphlet.

7-30-14. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1989, ch. 130, § 12 recompiles 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

Temporary provisions. - Laws 1985, ch. 65, § 50 provides that the oil and gas protested payments suspense fund is created in the state treasury and that the director of the oil and gas accounting division shall cause all taxes paid under protest in accordance with the provisions of former 7-30-16 NMSA 1978, as that section was in effect prior to July 1, 1985, to be deposited in the oil and gas protested payments suspense fund and that any balance in the oil and gas protested payments suspense fund is appropriated for the payment of refunds with respect to the taxes paid under protest and that amounts with respect to taxes paid under protest which are finally determined to be due the state shall be transferred to the extraction taxes suspense fund.

Repeals. - Laws 1985, ch. 65, § 46 repeals 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. For provisions of former sections, see 1983 Replacement Pamphlet.

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 [this article] 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.

Effective dates. - Laws 1991, ch. 9, § 47A makes this section effective on July 1, 1991.

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.

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 [Chapter 7, Article 31 NMSA 1978]:

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 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, or carbon dioxide;

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 or other group or combination acting as a unit, and the plural as well as the singular number; and

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 which is determined by the value of such products.

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.

7-31-3. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 65, § 46 repeals 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. For provisions of former section, see 1983 Replacement Pamphlet.

7-31-4. Privilege tax levied; collected by division; rate; interest owner's liability to state; Indian liability.

There is levied and shall be collected by the division a privilege tax on the business of every person severing products in this state. The measure of the tax shall be three and fifteen one hundredths percent of the taxable value of such products.

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 such products, or to the extent of his interest as may be measured by the value of such products.

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.

Cross-references. - As to natural gas processors tax, see 7-33-1 to 7-33-8 NMSA 1978.

Meaning of "commission". - See 7-31-2A 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).

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. Cotton Petroleum v. State, 106 N.M. 517, 745 P.2d 1170 (Ct. App. 1987), aff'd sub nom. Cotton Petro. Corp. v. New Mexico, 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 §§ 121, 123, 126.

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.

Meaning of "commission". - See 7-31-2A NMSA 1978.

Meaning of "this act". - The term "this act", referred to in Subsection C, means Laws 1959, ch. 54, which is presently compiled as 7-31-1, 7-31-2, and 7-31-4 to 7-31-11 NMSA 1978.

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.

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.

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 [Chapter 7, Article 31, NMSA 1978] may be required.

History: 1953 Comp., § 72-21-10, enacted by Laws 1959, ch. 54, § 10; 1986, ch. 5, § 6.

Meaning of "division". - See 7-31-2A NMSA 1978.

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 [Chapter 7, Article 31 NMSA 1978] may be required.

History: 1953 Comp., § 72-21-11, enacted by Laws 1959, ch. 54, § 11; 1986, ch. 5, § 7.

Meaning of "division". - See 7-31-2A NMSA 1978.

7-31-12 to 7-31-25. Repealed.

ANNOTATIONS

Temporary provisions. - Laws 1985, ch. 65, § 47 provides that any balance remaining in any suspense fund, relating to protested payments of tax pursuant to former 7-31-15 NMSA 1978 on July 1, 1985, is transferred to the oil and gas protested payments suspense fund, and that any balance remaining in the oil and gas accounting commission emergency school tax fund on July 1, 1985, is transferred to the extraction taxes suspense fund.

Laws 1985, ch. 65, § 50 provides that the oil and gas protested payments suspense fund is created in the state treasury and that the director of the oil and gas accounting division shall cause all taxes paid under protest in accordance with the provisions of former 7-31-15 NMSA 1978, as that section was in effect prior to July 1, 1985, to be deposited in the oil and gas protested payments suspense fund and that any balance in the oil and gas protested payments suspense fund is appropriated for the payment of refunds with respect to the taxes paid under protest and that amounts with respect to taxes paid under protest which are finally determined to be due the state shall be transferred to the extraction taxes suspense fund.

Repeals. - Laws 1985, ch. 65, § 46 repeals 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. For provisions of former sections, see 1983 Replacement Pamphlet.

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 [this article] 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.

Effective dates. - Laws 1991, ch. 9, § 47A makes this section effective on July 1, 1991.

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.

Temporary provisions. - Laws 1985, ch. 65, §§ 51 and 52 provide that any protests, claims for refund, court proceedings or other actions ongoing under the provisions of the Oil and Gas Production Tax Act on July 1, 1985, will be finally determined under the provisions of the tax act in force at the time the tax was due and that the provisions of the Tax Administration Act regarding protests and claims for refund with respect to taxes due in accordance with the Oil and Gas Ad Valorem Production Tax Act shall apply only to taxes due under the provisions of that act on or after July 1, 1985, and that any protest or claim for refund initiated on or after July 1, 1985, with respect to taxes due in accordance with the Oil and Gas Ad Valorem Production Tax Act prior to July 1, 1985, shall be made in accordance with the provisions of that act as if those provisions had remained in full force and effect.

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 § 68.

7-32-2. Definitions.

As used in the Oil and Gas Ad Valorem Production Tax Act [this article]:

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, or carbon dioxide;

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 which is determined by the value of such products; and

J. "assessed value" means the value against which tax rates are applied.

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.

7-32-3. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 65, § 46 repeals 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. For provisions of former section, see 1983 Replacement Pamphlet.

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.

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, 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.

Cross-references. - As to 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 [7-32-1 to 7-32-27 NMSA 1978] 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.

Meaning of "commission". - See 7-32-2A NMSA 1978.

Meaning of "this act". - The term "this act", as it appears in Subsection C, means Laws 1959, ch. 55, which is presently 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.

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.

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.

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 [this article] may be required.

History: 1953 Comp., § 72-22-10, enacted by Laws 1959, ch. 55, § 10; 1986, ch. 5, § 8.

Emergency clauses. - Laws 1986, ch. 5, § 13 makes the act effective immediately. Approved February 12, 1986.

Temporary provisions. - Laws 1986, ch. 5, § 11 provides that to ensure an orderly transition to the new system of reporting and payment dates, the reports and payments with respect to products severed in the months of January, February and March 1986 required by the provisions of this section, as this section was in effect prior to the effective date of Laws 1986, Chapter 5, are due on April 7, 1986, May 5, 1986, and June 4, 1986, respectively.

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 [this article] may be required.

History: 1953 Comp., § 72-22-11, enacted by Laws 1959, ch. 55, § 11; 1986, ch. 5, § 9.

Meaning of "division". - See 7-32-2A NMSA 1978.

7-32-12. Repealed.

ANNOTATIONS

Temporary provisions. - Laws 1985, ch. 65, § 47, provides that any balance remaining in any suspense fund, relating to protested payments of tax pursuant to former 7-32-17 NMSA 1978 on July 1, 1985, is transferred to the oil and gas protested payments suspense fund, and that any balance remaining in the oil and gas accounting commission ad valorem tax fund, on July 1, 1985, is transferred to the extraction taxes suspense fund.

Repeals. - Laws 1985, ch. 65, § 46 repeals 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. For provisions of former section, see 1983 Replacement Pamphlet.

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 [this article] 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.

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 division 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 and school districts within the county, the secretary of finance and administration shall pay amounts due directly to municipalities 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.

Cross-references. - As to the oil and gas production tax fund, see 7-1-6.22 NMSA 1978.

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 [this article] 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.

Severability clauses. - Laws 1959, ch. 55, § 29, provides for the severability of the act if any part or application thereof is held invalid.

7-32-16 to 7-32-27. Repealed.

ANNOTATIONS

Temporary provisions. - Laws 1985, ch. 65, § 50 provides that the oil and gas protested payments suspense fund is created in the state treasury and that the director of the oil and gas accounting division shall cause all taxes paid under protest in accordance with the provisions of former 7-32-17 NMSA 1978, as that section was in effect prior to July 1, 1985, to be deposited in the oil and gas protested payments suspense fund and that any balance in the oil and gas protested payments suspense fund is appropriated for the payment of refunds with respect to the taxes paid under protest and that amounts with respect to taxes paid under protest which are finally determined to be due the state shall be transferred to the extraction taxes suspense fund.

Repeals. - Laws 1985, ch. 65, § 46 repeals 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. For provisions of former sections, see 1983 Replacement Pamphlet.

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 [this article] 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.

Effective dates. - Laws 1991, ch. 9, § 47A makes this section effective on July 1, 1991.

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.

Temporary provisions. - Laws 1985, ch. 65, §§ 51 and 52 provide that any protests, claims for refund, court proceedings or other actions ongoing under the provisions of the Natural Gas Processors Tax Act on July 1, 1985, will be finally determined under the provisions of the tax act in force at the time the tax was due and that the provisions of the Tax Administration Act regarding protests and claims for refund with respect to taxes due in accordance with the Natural Gas Processors Tax Act shall apply only to taxes due under the provisions of that act on or after July 1, 1985, and that any protest or claim for refund initiated on or after July 1, 1985, with respect to taxes due in accordance with the Natural Gas Processors Tax Act prior to July 1, 1985, shall be made in accordance with the provisions of that act as if those provisions had remained in full force and effect.

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 §§ 161, 170.

7-33-2. Definitions.

As used in the Natural Gas Processors Tax Act [this article]:

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. "processor" means a person who:

(1) processes natural gas or processes hydrocarbons incidental to the processing of natural gas; or

(2) extracts by-products from natural gas or other hydrocarbons incidental to the processing of natural gas, individually or any combination thereof. "Processor" does not mean a person who refines or processes oil, natural gas or liquid hydrocarbons or extracts by-products therefrom through a process which is commonly considered a field or lease operation, such as well-head separation, dehydration, purification, desulfurization, compression or trapping;

C. "product" means natural gas or liquid hydrocarbons, individually or any combination thereof, which has been processed by the processor or any by-product which has been derived therefrom by the processor. "Product" does not include distinct petrochemicals produced from hydrocarbons by chemical conversion in a petrochemical plant;

D. "value" means the actual price received for products by the processor at his plant; and

E. "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.

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.

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 American Petroleum Corp. v. El Paso Natural Gas Co., 82 N.M. 193, 477 P.2d 827 (1970).

7-33-3. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 115, § 6B repeals 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. For provisions of former section, see 1986 Replacement Pamphlet.

7-33-4. Privilege tax levied; collected by oil and gas accounting division of the taxation and revenue department; rate.

A. There is levied and shall be collected by the oil and gas accounting division of the taxation and revenue department, a privilege tax on processors for the privilege of

engaging in the business of processing based on the value of their products. The measure of the tax shall be forty-five one-hundredths of one percent of the value of the products.

B. This tax does not apply to the value of products:

(1) used for plant fuel by the processor;

(2) which are returned to the lease from which produced; or

(3) sold to:

(a) the government of the United States, its departments or agencies;

(b) the state of New Mexico or any of its political subdivisions; or

(c) nonprofit hospitals, religious or charitable organizations, when the products are used in the conduct of their regular functions.

C. Every interest owner is 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.

Any Indian tribe, Indian pueblo or Indian is liable for this 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.

Severability clauses. - Laws 1984, ch. 2, § 12, provides for the severability of that act, if any part or application thereof is held invalid.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 84 C.J.S. Taxation §§ 121, 123, 126.

7-33-5. Value may be determined by commission; standard.

A. The commission may determine the value of products of a processor when:

(1) the processor and purchaser are affiliated persons;

(2) the processor and purchaser are not engaged in an arm's length transaction; or

(3) products are removed from a processor's plant and a value is not established.

B. Value, when determined by the commission, shall be commensurate with products of like quality, character or use, for which value is determinable.

History: 1953 Comp., § 72-23-5, enacted by Laws 1963, ch. 179, § 5; 1970, ch. 13, § 6.

Meaning of "commission". - See 7-33-2A NMSA 1978.

7-33-6. 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 is 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., § 72-23-6, enacted by Laws 1963, ch. 179, § 6; 1985, ch. 65, § 42.

7-33-7. 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 is subject to the regulation of the commission.

History: 1953 Comp., § 72-23-7, enacted by Laws 1963, ch. 179, § 7.

Meaning of "commission". - See 7-33-2A NMSA 1978.

7-33-8. Tax report; tax remittance; additional information.

Within twenty-five days following the end of each calendar month, each processor shall, in the form and manner required by the commission, make a return to the commission showing the value, volume and kind of products sold from each plant for the calendar month. All taxes due, or to be remitted, by the processor shall accompany this return. Any additional report or information the commission may deem necessary for the proper administration of the Natural Gas Processors Tax Act [this article] may be required.

History: 1953 Comp., § 72-23-8, enacted by Laws 1963, ch. 179, § 8; 1970, ch. 13, § 7.

Meaning of "commission". - See 7-33-2A NMSA 1978.

7-33-9 to 7-33-22. Repealed.

ANNOTATIONS

Temporary provisions. - Laws 1985, ch. 65, § 47 provides that any balance remaining in any suspense fund, relating to protested payments of tax pursuant to former 7-33-12 NMSA 1978 on July 1, 1985, is transferred to the oil and gas protested payments suspense fund and that any balance remaining in the natural gas processors tax fund on July 1, 1985, is transferred to the extraction taxes suspense fund.

Laws 1985, ch. 65, § 50 provides that the oil and gas protested payments suspense fund is created in the state treasury and that the director of the oil and gas accounting division shall cause all taxes paid under protest in accordance with the provisions of former 7-33-12 NMSA 1978, as that section was in effect prior to July 1, 1985, to be deposited in the oil and gas protested payments suspense fund and that any balance in the oil and gas protested payments suspense fund is appropriated for the payment of refunds with respect to the taxes paid under protest and that amounts with respect to taxes paid under protest which are finally determined to be due the state shall be transferred to the extraction taxes suspense fund.

Repeals. - Laws 1985, ch. 65, § 46 repeals 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. For provisions of former sections, see 1983 Replacement Pamphlet.

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.

Temporary provisions. - Laws 1985, ch. 65, §§ 51 and 52 provide that any protests, claims for refund, court proceedings or other actions ongoing under the provisions of the Oil and Gas Production Equipment Ad Valorem Tax Act on July 1, 1985, will be finally determined under the provisions of the tax act in force at the time the tax was due and that the provisions of the Tax Administration Act regarding protests and claims for refund with respect to taxes due in accordance with the Oil and Gas Production Equipment Ad Valorem Tax Act shall apply only to taxes due under the provisions of that act on or after July 1, 1985, and that any protest or claim for refund initiated on or after July 1, 1985, with respect to taxes due in accordance with the Oil and Gas Production Equipment Ad Valorem Tax Act prior to July 1, 1985, shall be made in accordance with the provisions of that as if those provisions had remained in full force and effect.

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 [this article]:

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, or carbon dioxide;

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; and

I. "assessed value" means the value against which tax rates are applied.

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.

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.

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.

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.

Cross-references. - As to taxes being exclusive of any other ad valorem taxes, see 7-32-5B 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.

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.

Meaning of "commission". - See 7-34-2A NMSA 1978.

7-34-8. Repealed.

ANNOTATIONS

Temporary provisions. - Laws 1985, ch. 65, § 47 provides that any balance remaining in any suspense fund, relating to protested payments of tax pursuant to former 7-34-11 NMSA 1978 on July 1, 1985, is transferred to the oil and gas protested payments suspense fund, and that any balance remaining in the oil and gas accounting commission ad valorem equipment tax fund on July 1, 1985, is transferred to the extraction taxes suspense fund.

Repeals. - Laws 1985, ch. 65, § 46 repeals 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. For provisions of former section, see 1983 Replacement Pamphlet.

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 division 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 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: 1953 Comp., § 72-24-9, enacted by Laws 1969, ch. 119, § 9; 1977, ch. 247, § 188; 1983, ch. 221, § 2; 1985, ch. 65, § 45.

Cross-references. - As to the oil and gas equipment tax fund, see 7-1-6.22 NMSA 1978.

7-34-10 to 7-34-20. Repealed.

ANNOTATIONS

Temporary provisions. - Laws 1985, ch. 65, § 50 provides that the oil and gas protested payments suspense fund is created in the state treasury and that the director of the oil and gas accounting division shall cause all taxes paid under protest in accordance with the provisions of former 7-34-11 NMSA 1978, as that section was in effect prior to July 1, 1985, to be deposited in the oil and gas protested payments suspense fund and that any balance in the oil and gas protested payments suspense fund is appropriated for the payment of refunds with respect to the taxes paid under protest and that amounts with respect to taxes paid under protest which are finally determined to be due the state shall be transferred to the extraction taxes suspense fund.

Repeals. - Laws 1985, ch. 65, § 46 repeals 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. For provisions of former sections, see 1983 Replacement Pamphlet.

ARTICLE 35
PROPERTY TAX DEPARTMENT

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.

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 assessment of lands, see N.M. Const., art. VIII, § 6.

Severability clauses. - Laws 1973, ch. 258, § 157, provides for the severability of the act if any part or application thereof is held invalid.

Construction of Property Tax Code. - The Property Tax Code, 7-35-1 to 7-38-93 NMSA 1978, must be read and construed in its entirety. Brown v. Greig, 106 N.M. 202, 740 P.2d 1186 (Ct. App. 1987).

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 §§ 94 to 106.

7-35-2. Definitions.

As used in the Property Tax Code [Articles 35 and 38 of Chapter 7 NMSA 1978]:

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, horses, mules, sheep, goats, swine 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 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.

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 present 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.

Applicability. - Laws 1985, ch. 109, § 12 makes the provisions of the act applicable to the 1985 and subsequent property tax years.

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.

7-35-3. 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 [Articles 35 through 38 of Chapter 7 NMSA 1978] 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 and the reappraisal loan fund which was created pursuant to Section 72-2-21.11 NMSA 1953;

(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.

Cross-references. - As to 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 present 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 present 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".

Compiler's note. - Sections 72-2-21.1 and 72-2-21.11, 1953 Comp., referred to in Subsection B(1)(a), were repealed by Laws 1974, ch. 92, § 34 (amending Laws 1973, ch. 258, § 156).

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.

Cross-references. - As to 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 catchline; designated the formerly undesignated provision as Subsection A; and added Subsection B.

"Effective date of this 1991 act". - The phrase "effective date of this 1991 act", referred to in Subsection B, means June 14, 1991, the effective date of Laws 1991, ch. 166.

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 [Articles 35 to 38 of Chapter 7 NMSA 1978], 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: 1953 Comp., § 72-28-9, enacted by Laws 1973, ch. 258, § 9; 1974, ch. 92, § 2; 1981, ch. 37, § 61; 1991, ch. 166, § 3.

The 1991 amendment, effective June 14, 1991, rewrote the catchline 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 [Articles 35 to 38 of Chapter 7 NMSA 1978] 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 [Articles 35 to 38 of Chapter 7 NMSA 1978] 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, repeals 7-35-9 NMSA 1978, relating to the furnishing of annual reports by the property tax division of the taxation and revenue department.

Laws 1982, ch. 28, contains no effective date provision, but was enacted at the session which adjourned on February 18, 1982. See N.M. Const., art. IV, § 23.

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 [Articles 35 to 38 of Chapter 7 NMSA 1978].

History: 1953 Comp., § 72-29-1, enacted by Laws 1973, ch. 258, § 13.

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).

7-36-2. Allocation of responsibility for valuation and determining classification of property for property taxation purposes; county assessor and division.

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 division 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 division 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 or similar facility;

(g) sewerage, water, gas or other pipeline;

(h) transmission line;

(i) radio 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 director 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 division 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.

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.

Cross-references. - As to county assessors, see 4-39-1 NMSA 1978.

Applicability. - Laws 1985, ch. 109, § 12 makes the provisions of the act applicable to the 1985 and subsequent property tax years.

Different tax treatment based on use of contractor's equipment unconstitutional. - Where the effect of 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 7-36-9 NMSA 1978, that section is unconstitutional. Halliburton Co. v. Property Appraisal Dep't, 88 N.M. 476, 542 P.2d 56 (Ct. App. 1975).

And 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, 88 N.M. 476, 542 P.2d 56 (Ct. App. 1975).

And mineral value. - 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 property tax division of taxation and revenue department). Gerner v. State Tax Comm'n, 71 N.M. 385, 378 P.2d 619 (1963).

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., was affirmed since although there was conflicting evidence and it was for the director to choose between conflicting inferences. Halliburton Co. v. Property Appraisal Dep't, 88 N.M. 476, 542 P.2d 56 (Ct. App. 1975).

Use of machinery and equipment sufficient. - Section 72-6-4A(1)(c), 1953 Comp., 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. Property Appraisal Dep't, 88 N.M. 476, 542 P.2d 56 (Ct. App. 1975).

Assessed value is not competent direct evidence of value for purposes other than taxation. Gomez v. Board of Educ., 76 N.M. 305, 414 P.2d 522 (1966).

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 division by regulation, ruling, order or other directive shall provide for the implementation of a classification system and shall include a method or methods 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.

Cross-references. - As to general methods of valuation of property, see 7-36-15 NMSA 1978.

As to limitations on tax rates on residential property, see 7-37-7.1 NMSA 1978.

As to presumption of nonresidential classification, see 7-38-17.1 NMSA 1978.

7-36-3. Industrial revenue bond and pollution control bond project property; 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 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 [3-32-1 to 3-32-16 NMSA 1978], the County Industrial Revenue Bond Act [4-59-1 to 4-59-16 NMSA 1978] or the Pollution Control Revenue Bond Act [3-59-1 to 3-59-14 NMSA 1978] 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. The exemptions from property taxation under Subsections A and B of this section are not cumulative.

History: 1953 Comp., § 72-29-2.1, enacted by Laws 1975, ch. 218, § 1; 1977, ch. 137, § 1.

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 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.

Cross-references. - For Development Incentive Act, see ch. 3, art. 64 NMSA 1978.

Metropolitan Redevelopment Code. - See 3-60A-1 NMSA 1978 and notes thereto.

7-36-4. Fractional property interests; definitions.

As used in this section and Sections 7-36-5 and 7-36-6 NMSA 1978:

A. "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 and 7-36-3.1 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;

B. "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;

C. "improvements" includes surface and subsurface structures, fixtures, transmission lines, pipelines and other works, but "improvements" does not include:

(1) 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;

(2) a dwelling occupied by a low-income resident in a housing project authorized under the provisions of the Municipal Housing Law [3-45-1 to 3-45-25 NMSA 1978]; and

(3) those property interests described in Sections 7-36-3 and 7-36-3.1 NMSA 1978; and

D. "nonexempt entity" means any person that is not an exempt entity.

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.

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.

Enabling Act. - The Enabling Act for New Mexico, referred to in Subsection B, is set forth in Pamphlet 3.

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, 91 N.M. 215, 572 P.2d 943 (Ct. App. 1977).

"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, 91 N.M. 215, 572 P.2d 943 (Ct. App. 1977).

7-36-5. Fractional interests; legislative findings and purposes.

A. In the enactment of Section 7-36-6 NMSA 1978, the legislature finds that:

(1) it has legislative authority and should exercise it to impose the state's property tax on improvements owned or used by a nonexempt entity when the improvements are on the land of an exempt entity;

(2) nonexempt entities having fractional interests in exempt real property of Indian tribes, pueblos and individuals should be treated under the law in the same manner as nonexempt entities having fractional interests in exempt real property of other exempt entities; and

(3) for the purpose of property taxation, and only for that purpose, fractional interests are personal property and are thus subject to exemption by the legislature under the New Mexico constitution.

B. In the enactment of Section 7-36-6 NMSA 1978, it is the expressed legislative purpose that:

(1) fractional interests of a nonexempt entity in real property of an exempt entity be exempted from property taxation subject to the limitation contained in that section; and

(2) equal treatment under the law to be provided to all persons coming within the definition and classification of nonexempt entity.

History: 1953 Comp., § 72-29-2.3, enacted by Laws 1976, ch. 61, § 2.

All of section is void for vagueness. Cutter Flying Serv., Inc. v. Property Tax Dep't, 91 N.M. 215, 572 P.2d 943 (Ct. App. 1977).

7-36-6. Fractional interests; improvements; property tax status.

Fractional interests of nonexempt entities in real property of exempt entities are exempt from property taxation under the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978]. Nothing contained in this section shall affect the liability for tax of improvements located upon the real property of exempt entities.

History: 1953 Comp., § 72-29-2.4, enacted by Laws 1976, ch. 61, § 3.

Severability clauses. - Laws 1976, ch. 61, § 4, provides for the severability of the act if any part or application thereof is held invalid.

Second sentence of section is void for vagueness. Cutter Flying Serv., Inc. v. Property Tax Dep't, 91 N.M. 215, 572 P.2d 943 (Ct. App. 1977).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Duty to pay real-property taxes as affected by time of commencement or termination of life estate, 8 A.L.R.4th 643.

7-36-7. Property subject to valuation for property taxation purposes.

A. Except for the property listed in Subsection B of this section, all property is subject to valuation for property taxation purposes under the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] 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 this does not include property all or a part of the value of which is exempt because of the application of a veteran or head of family exemption nor does this provision excuse an owner from any obligations to report his 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;

(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.

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.

As to tax assessment of land by reference to numbers given by county surveyor, see 4-42-13 NMSA 1978.

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.

Applicability. - Laws 1990, ch. 125, § 18 provides that the provisions of the act are applicable to tax years and property tax years beginning on or after January 1, 1990.

Nonseverability. - Laws 1990, ch. 125, § 19 provides that the provisions of the Copper Production Ad Valorem Tax Act 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.

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., 88 N.M. 548, 543 P.2d 1176 (1975).

But 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., 88 N.M. 548, 543 P.2d 1176 (1975).

And 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., 88 N.M. 548, 543 P.2d 1176 (1975).

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 County Comm'rs, 64 N.M. 179, 326 P.2d 672 (1958).

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.

84 C.J.S. Taxation §§ 57 to 125.

7-36-8. Certain personal property exempt from property tax.

Tangible personal property owned by a person is exempt from property taxation except for:

A. tangible personal property used, produced, manufactured, held for sale, leased or maintained by a person for purposes of his profession, business or occupation, unless otherwise specifically exempted from property taxation by the federal or state constitutions or laws;

B. tangible personal property 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, unless otherwise specifically exempted from property taxation by the federal or state constitutions or laws; and

C. manufactured homes.

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.

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.

The 1991 amendment, effective June 14, 1991, deleted "as defined in Section 66-1-4 NMSA 1978" at the end of Subsection C.

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. Inventories of personal property exempt from property taxation; exceptions.

Personal property in the possession of a person, whether owned by him or not, and held as part of his inventory for sale or resale at wholesale, retail or on consignment is exempt from property taxation except for:

A. livestock; and

B. personal property inventories held by a person whose property used in connection with the maintenance of personal property inventories is subject to assessment by the department.

History: 1953 Comp., § 72-1-22, enacted by Laws 1973, ch. 374, § 2 and recompiled as § 72-29-3.2 by Laws 1974, ch. 92, § 35; 1986, ch. 20, § 108.

Meaning of "department". - See 7-35-2A NMSA 1978.

Different tax treatment based on use of contractor's equipment unconstitutional. - Where the effect of this section and 72-6-4A(1)(c), 1953 Comp. (predecessor of 7-36-2 NMSA 1978), 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 this section, that section is unconstitutional. Halliburton Co. v. Property Appraisal Dep't, 88 N.M. 476, 542 P.2d 56 (Ct. App. 1975).

And 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, 88 N.M. 476, 542 P.2d 56 (Ct. App. 1975).

7-36-10. Exemption from property taxation; motor vehicles registered under the Motor Vehicle Code; exceptions.

Motor vehicles registered under the provisions of the Motor Vehicle Code [Articles 1 to 8 of Chapter 6 NMSA, except 66-7-102.1 NMSA 1978] are exempt from property taxation except for manufactured homes.

History: 1953 Comp., § 72-1-23, enacted by Laws 1973, ch. 11, § 1 and recompiled as § 72-29-3.3 by Laws 1974, ch. 92, § 35; 1990, ch. 22, § 1; 1991, ch. 166, § 5.

Cross-references. - As to registered vehicle exempt from property tax and exception, see 66-6-26 NMSA 1978.

The 1990 amendment, effective May 16, 1990, substituted "manufactured homes" for "mobile homes" and "Section 66-1-4 NMSA 1978" for "Section 64-1-8 NMSA 1953" and made a minor correction in the catchline.

The 1991 amendment, effective June 14, 1991, deleted "as defined in Section 66-1-4 NMSA 1978" at the end of the section.

Applicability. - Laws 1990, ch. 22, § 13 makes the provisions of the act applicable to the 1990 and subsequent property tax years.

7-36-11. Reserved.

7-36-12. Exemption from property tax; aircraft registered under the Aircraft Registration Act.

All aircraft registered under the Aircraft Registration Act [64-4-1 to 64-4-15 NMSA 1978] are exempt from property taxation.

History: 1953 Comp., § 72-1-24, enacted by Laws 1973, ch. 10, § 1 and recompiled as § 72-29-3.4 by Laws 1974, ch. 92, § 35.

7-36-13. Exemption from property tax; private railroad cars, the earnings of which are subject to taxation under provisions of Section 7-11-2 [7-11-3] NMSA 1978.

All private railroad cars, the earnings of which are subject to taxation under the provisions of Section 7-11-2 [7-11-3] NMSA 1978, are exempt from property taxation.

History: 1953 Comp., § 72-1-25, enacted by Laws 1973, ch. 9, § 1 and recompiled as § 72-29-3.5 by Laws 1974, ch. 92, § 35.

Bracketed material. - The bracketed material in this section was inserted by the compiler, as Laws 1982, ch. 18 repealed and reenacted the provisions of Chapter 7, Article 11 NMSA 1978, including 7-11-2 NMSA 1978. The subject matter formerly covered by 7-11-2 NMSA 1978 is now covered by 7-11-3 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

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 [Articles 35 to 38 of Chapter 7 NMSA 1978] 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.

The 1985 amendment added Subsections A(4) and A(5).

Applicability. - Laws 1985, ch. 109, § 12 makes the provisions of the act applicable to the 1985 and subsequent property tax years.

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 [Articles 35 to 38 of Chapter 7 NMSA 1978] 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 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. In using any of the methods of valuation authorized by this subsection the valuation authority shall apply generally accepted appraisal techniques.

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 in accordance with the procedures in Section 7-38-88 NMSA 1978 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.

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.

Compiler's note. - Section 7-38-88 NMSA 1978, referred to in Subsection D, was repealed by Laws 1991, ch. 166, § 14. For present comparable provisions, see 7-38-90 NMSA 1978.

"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 Properties v. Valencia County Valuation Protests Bd., 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

"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 Properties v. Valencia County Valuation Protests Bd., 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976); New Mexico Baptist Found. v. Bernalillo County Assessor, 93 N.M. 363, 600 P.2d 309 (Ct. App. 1979).

"Comparable" is defined as capable of being compared with, worthy of comparison, and thus must necessarily include dissimilarities as well as similarities. Peterson Properties v. Valencia County Valuation Protests Bd., 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

"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 Properties v. Valencia County Valuation Protests Bd., 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

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. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

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 County Valuation Protest Bd., 90 N.M. 110, 560 P.2d 174 (Ct. App. 1977).

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 Properties v. Valencia County Valuation Protests Bd., 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

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 Properties v. Valencia County Valuation Protests Bd., 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

When comparable sales evidence not presented. - Where 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. New

Mexico Baptist Found. v. Bernalillo County Assessor, 93 N.M. 363, 600 P.2d 309 (Ct. App. 1979).

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 Properties v. Valencia County Valuation Protests Bd., 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

Proof of purchase price alone is not sufficient to fix market value without evidence of the details of the sale. Cobb v. Otero County Assessor, 100 N.M. 207, 668 P.2d 323 (Ct. App. 1983).

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., 101 N.M. 404, 683 P.2d 521 (Ct. App. 1984).

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. Partnership v. Assessor for County of Bernalillo, 104 N.M. 154, 717 P.2d 1123 (Ct. App. 1986).

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. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976); Bakel v. Bernalillo County Assessor, 95 N.M. 723, 625 P.2d 1240 (Ct. App. 1980).

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 County Assessor, 97 N.M. 318, 639 P.2d 605 (Ct. App. 1982).

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 Properties v. Valencia County Valuation Protests Bd., 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

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 County Assessor, 95 N.M. 723, 625 P.2d 1240 (Ct. App. 1980).

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 County Assessor, 97 N.M. 318, 639 P.2d 605 (Ct. App. 1982).

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 County Assessor, 97 N.M. 318, 639 P.2d 605 (Ct. App. 1982).

Admission of taxpayer's evidence where 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, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

Where presumption of assessor's valuation not overcome. - Where 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 Properties v. Valencia County Valuation Protests Bd., 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

Where taxpayer rebutted presumption of assessor's valuation. - Where 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. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

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 Properties v. Valencia County Valuation Protests Bd., 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

Including 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 Properties v. Valencia County Valuation Protests Bd., 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

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. Property Tax Dep't, 94 N.M. 202, 608 P.2d 514 (Ct. App. 1979), cert. denied, 94 N.M. 628, 614 P.2d 545 (1980).

No denial of due process in exclusion of irrelevant evidence. - Where 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 Properties v. Valencia County Valuation Protests Bd., 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

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 County Property Tax Protest Bd., 94 N.M. 709, 616 P.2d 422 (Ct. App. 1979).

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 County Valuation Protest Bd., 90 N.M. 110, 560 P.2d 174 (Ct. App. 1977).

But 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 County Valuation Protest Bd., 90 N.M. 110, 560 P.2d 174 (Ct. App. 1977).

Where 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 County Valuation Protest Bd., 89 N.M. 784, 558 P.2d 53 (Ct. App. 1976).

Scope of "structures and equipment" in Subsection C. - The inclusion of Subsection C in the section headed "general provisions" 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., 95 N.M. 685, 625 P.2d 1202 (Ct. App. 1980).

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 Properties v. Valencia County Valuation Protests Bd., 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

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. New Mexico State Tax Comm'n, 79 N.M. 357, 443 P.2d 850 (1968).

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 County Valuation Protest Bd., 90 N.M. 110, 560 P.2d 174 (Ct. App. 1977).

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. New Mexico State Tax Comm'n, 79 N.M. 357, 443 P.2d 850 (1968).

Law reviews. - For annual survey of New Mexico law relating to administrative law, see 13 N.M.L. Rev. 235 (1983).

For annual survey of New Mexico law relating to property, see 13 N.M.L. Rev. 435 (1983).

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 [Articles 35 to 38 of Chapter 7 NMSA 1978] and the regulations, orders, rulings and instructions of the department. 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 must 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.

Reappraisal of all comparable properties in same year not required. - Section 72-2-21.1, 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, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

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 County, 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 Trinchera Ranch, 85 N.M. 557, 514 P.2d 608 (1973).

Notice as to amount of taxation is essential due process requirement in the collection of property taxes. In re Miller, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

7-36-17. Repealed.

ANNOTATIONS

Repeals. - Laws 1979, ch. 268, § 3, repeals 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 [Articles 35 to 38 of Chapter 7 NMSA 1978] 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.

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. The burden of demonstrating primary agricultural use is on the owner of the land, and he must produce objective evidence of bona fide agricultural use for the year preceding the year in which application is made for his land to be valued under this section. The fact that land was devoted to agricultural use in the preceding year is not of itself sufficient evidence to support a finding of bona fide primary agricultural use when there is evidence that the agricultural use was subordinate to another use or purpose of the owner, such as holding for speculative land subdivision and sale, commercial use of a nonagricultural character, recreational use or other nonagricultural purpose.

B. For the purpose of this section, "agricultural use" means the use of land for the production of plants, crops, trees, forest products, orchard crops, livestock, poultry or fish. The term also includes the 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. The department shall adopt regulations for determining whether or not land is used primarily for agricultural purposes.

D. The department shall adopt regulations for determining the value of land used primarily for agricultural purposes. The regulations 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 for the consideration of determinations of any other governmental agency concerning the capacity of the same or similar lands to produce agricultural products;

(4) assure that land determined under the regulations to have the same or similar production capacity shall be valued uniformly throughout the state; and

(5) 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 must make application to the county assessor in each tax year in which the valuation method of this section is claimed to be applicable to his land. Application shall be made under oath, shall be in a form and contain the information required by department regulations and must be made no later than the last day of February of the tax year. If the owner of the land fails to make the application required by this subsection, the county assessor shall:

(1) if the land was valued under this section in the immediately preceding tax year and if he determines that the land continues to be entitled to valuation under this section, value the land under this section and impose a penalty for failure to make the required application in an amount equal to fifteen percent of the tax determined to be due on the land for that tax year; or

(2) if the land was valued under this section in the immediately preceding tax year and if he determines that the land is no longer entitled to valuation under this section, value the land in accordance with the applicable provisions of the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] and department regulations.

If land is initially valued under Paragraph (2) of this subsection and, due to subsequent action by the county assessor or as a result of a protest, the land is determined to be entitled to valuation as land used primarily for agricultural purposes, the penalty provided in Paragraph (1) of this subsection shall be applied.

History: 1953 Comp., § 72-29-9, enacted by Laws 1973, ch. 258, § 21; 1975, ch. 165, § 3.

Cross-references. - As to agriculture generally, see Chapter 76 NMSA 1978.

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, 84 N.M. 637, 506 P.2d 794 (Ct. App. 1973).

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, 94 N.M. 395, 611 P.2d 218 (1980).

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, 94 N.M. 395, 611 P.2d 218 (1980).

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, 89 N.M. 131, 548 P.2d 93 (Ct. App. 1976).

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, 94 N.M. 395, 611 P.2d 218 (1980).

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, 71 N.M. 385, 378 P.2d 619 (1963).

Including 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, 71 N.M. 385, 378 P.2d 619 (1963).

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.

Cross-references. - As to animals and animal industry, see 77-1-1 NMSA 1978 et seq.

7-36-21.1. Repealed.

ANNOTATIONS

Repeals. - Laws 1985 (1st S.S.), ch. 12, § 2 repeals 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 provisions of former section, see 1983 Replacement

Pamphlet. For present provisions on limitations on property tax rates on residential property, see 7-37-7.1 NMSA 1978.

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.

Cross-references. - As to 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.

Applicability. - Laws 1990, ch. 125, § 18 provides that the provisions of the act are applicable to tax years and property tax years beginning on or after January 1, 1990.

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.

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, 71 N.M. 385, 378 P.2d 619 (1963).

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 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, 93 N.M. 651, 603 P.2d 1108 (Ct. App. 1979).

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, 71 N.M. 385, 378 P.2d 619 (1963).

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 Section 616 of the Internal Revenue Code, 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 P.R.R. v. Property Tax Dep't, 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 [Articles 35 to 38 of Chapter 7 NMSA 1978]:

(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.

Cross-references. - As to 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, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

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, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

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, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

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, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

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, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

Legislative intention to authorize deduction must be clearly and unambiguously expressed in the statute. Kaiser Steel Corp. v. Property Appraisal Dep't, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

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., 63 N.M. 36, 312 P.2d 798 (1957).

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., 63 N.M. 36, 312 P.2d 798 (1957).

And 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., 63 N.M. 36, 312 P.2d 798 (1957).

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., 63 N.M. 36, 312 P.2d 798 (1957).

Owner of mineral estate will not lose interest through tax sale. - Where 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., 63 N.M. 36, 312 P.2d 798 (1957).

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 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, 93 N.M. 651, 603 P.2d 1108 (Ct. App. 1979).

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 P.R.R. v. Property Tax Dep't, 89 N.M. 446, 553 P.2d 726 (Ct. App. 1976).

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 P.R.R. v. Property Tax Dep't, 89 N.M. 446, 553 P.2d 726 (Ct. App. 1976).

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, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

Where finding not supported by evidence inference. - Where 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, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

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 [Articles 35 to 38 of Chapter 7 NMSA 1978].

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.

Cross-references. - As to gross value of potash for severance tax, see 7-26-4 NMSA 1978.

As to 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. National Potash Co. v. Property Tax Div., 101 N.M. 404, 683 P.2d 521 (Ct. App. 1984).

Fair market value is theoretically what a willing seller would take and a willing buyer offer. Kaiser Steel Corp. v. Property Appraisal Dep't, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

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, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

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, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

Valuation of potash fines where 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, 83 N.M. 402, 492 P.2d 1265 (Ct. App. 1971), cert. denied, 83 N.M. 395, 492 P.2d 1258 (1972).

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, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

Finding not supported by evidence inference. - Where 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, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

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 [Articles 35 to 38 of Chapter 7 NMSA 1978]:

(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 U3O8 contained in ore or solution determined on the basis of the U3O8 content of the ore or solution at fifty percent of the taxpayer's average unit sales price during the preceding calendar year of U3O8 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 U3O8 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.

Cross-references. - As to severance tax on uranium, see 7-26-7 NMSA 1978.

As to 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, 94 N.M. 202, 608 P.2d 514 (Ct. App. 1979), cert. denied, 94 N.M. 628, 614 P.2d 545 (1980).

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, 94 N.M. 202, 608 P.2d 514 (Ct. App. 1979), cert. denied, 94 N.M. 628, 614 P.2d 545 (1980).

Fair market value is theoretically what a willing seller would take and a willing buyer offer. Kaiser Steel Corp. v. Property Appraisal Dep't, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

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, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

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, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

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., 95 N.M. 685, 625 P.2d 1202 (Ct. App. 1980).

But not materials in shafts and drifts necessary to extraction of minerals. - 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., 95 N.M. 685, 625 P.2d 1202 (Ct. App. 1980).

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, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

Finding not supported by evidence inference. - Where 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, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

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.

Cross-references. - As to 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.

As to 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) "depreciation" means straight line depreciation over the useful life of the item of property;

(2) "direct customer distribution pipeline" means low or intermediate pressure distribution system pipeline of four inches or smaller diameter situated in urban areas;

(3) "large industrial sales meter" means a sales meter having an installed tangible property cost in excess of two thousand five hundred dollars ($2,500);

(4) "other justifiable factors" includes, but is not limited to, functional and economic obsolescence;

(5) "pipeline" means all pipe, appurtenances and devices used in systems for gathering, transmission or distribution, but excludes sales meters, pipeline operated exclusively for and constituting a part of a plant and direct customer distribution pipeline;

(6) "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;

(7) "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;

(8) "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;

(9) "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;

(10) "tank" means any storage tank or container, other than a natural reservoir, for storage that is not a component part of any plant; and

(11) "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 used or available to construct pipelines, plants, large industrial sales meters and tanks but which are not incorporated therein.

C. Sales meters, other than large industrial sales meters, shall be valued as follows:

(1) the division 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 foregoing determinations a schedule of value for sales meters for property taxation purposes shall be determined and set forth in a regulation adopted pursuant to Section 7-38-88 NMSA 1978.

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 which further affect the tangible property value of each item of property; 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 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. The division shall adopt regulations under Section 7-38-88 NMSA 1978 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.

Cross-references. - As to pipelines generally, see 70-3-1 to 70-3-20 NMSA 1978.

As to liens on wells and pipelines, see 70-4-1 to 70-4-15 NMSA 1978.

Applicability. - Laws 1985, ch. 109, § 12 makes the provisions of the act applicable to the 1985 and subsequent property tax years.

Compiler's note. - Section 7-38-88 NMSA 1978, referred to in Paragraph (3) of Subsection C and Subsection G, was repealed by Laws 1991, ch. 166, § 14. For present comparable provisions, see 7-38-90 NMSA 1978.

7-36-28. Special method of valuation; pipelines, tanks, sales meters, plants and hydrants used in the transmission, storage, measurement or distribution of water.

A. All pipelines, tanks, sales meters, plants and hydrants used in the transmission, storage, measurement or distribution of water 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, sales 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) "depreciation" means straight line depreciation over the useful life of the item of property;

(3) "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 transmission, storage, measurement or distribution of water;

(4) "gallons" means the measurement of water sold;

(5) "revenue" means gross utility operating revenue;

(6) "closed system" means a commercial water system in which water is gathered primarily by wells and stored in closed reservoirs and tanks; and

(7) "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 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;

(6) notwithstanding the calculations provided for above, 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. 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 on the basis of the percentage of the taxpayer's total investment in each governmental unit.

E. The department shall adopt regulations under Section 7-38-88 NMSA 1978 to implement the provisions of this section.

History: Laws 1973, ch. 258, § 29; 1953 Comp., § 72-29-17; Laws 1975, ch. 165, § 9.

Compiler's note. - Section 7-38-88 NMSA 1978, referred to in Subsection E, was repealed by Laws 1991, ch. 166, § 14. For present comparable provisions, see 7-38-90 NMSA 1978.

7-36-29. Special method of valuation; property used for the generation, transmission or distribution of electrical power or energy.

A. All property used for the generation, transmission or distribution of electrical 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 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 electrical 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;

(6) "other justifiable factors" includes, but is not limited to, functional and economic obsolescence, such as the limitation upon the use of the property based upon the available reserves committed to the property; and

(7) "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.

C. Electric plant shall be valued as follows:

(1) the department shall determine the tangible property cost of electric plant;

(2) such tangible property cost shall then be reduced by 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 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 to implement the provisions of this section.

History: Laws 1973, ch. 258, § 30; 1953 Comp., § 72-29-18; Laws 1975, ch. 165, § 10.

Compiler's note. - Section 7-38-88 NMSA 1978, referred to in Subsection G, was repealed by Laws 1991, ch. 166, § 14. For present comparable provisions, see 7-38-90 NMSA 1978.

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 § 159.

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 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.

The 1989 amendment, effective January 1, 1990, added present Subsection C; added the introductory paragraph of present Subsection D; designated the introductory paragraph of former Subsection C as present Subsection D(1); redesignated former Subsections C(1) through C(3) as present Subparagraphs (a) through (c) of Subsection D(1); redesignated former Subsections D through F as present Subsections D(2), D(3) and E; deleted former Subsection G, relating to election of alternate valuation; redesignated former Subsection H as present 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 present Subsection G.

Applicability. - Laws 1985, ch. 109, § 12 makes the provisions of the act applicable to the 1985 and subsequent property tax years.

Compiler's note. - Section 7-38-88 NMSA 1978, referred to in Subsection G, was repealed by Laws 1991, ch. 166, § 14. For present comparable provisions, see 7-38-90 NMSA 1978.

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 [Articles 35 to 38 of Chapter 7 NMSA 1978] 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 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. 165, § 12.

Cross-references. - As to tax levied in lieu of property taxes on railroad car companies, see 7-11-3 NMSA 1978.

As to private railroad cars being exempt from property tax, see 7-36-13 NMSA 1978.

Applicability. - Laws 1985, ch. 109, § 12 makes the provisions of the act applicable to the 1985 and subsequent property tax years.

Compiler's note. - Section 7-38-88 NMSA 1978, referred to in Subsection F, was repealed by Laws 1991, ch. 166, § 14. For present comparable provisions, see 7-88-90 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 §§ 171 to 182.

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 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.

Cross-references. - As to aircraft exempt from property tax, see 7-36-12 NMSA 1978.

Compiler's note. - Section 7-38-88 NMSA 1978, referred to in Subsection D, was repealed by Laws 1991, ch. 166, § 14. For present comparable provisions, see 7-38-90 NMSA 1978.

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.

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 to implement the provisions of this section.

History: 1953 Comp., § 72-29-22, enacted by Laws 1975, ch. 165, § 14; 1982, ch. 28, § 5.

Applicability. - Laws 1982, ch. 28, § 32, makes the provisions of §§ 3, 4, 5, 7 and 11 of the act applicable to the 1983 and subsequent tax years.

Compiler's note. - Section 167 of the Internal Revenue Code, cited in Subsection B(2), is compiled as 26 U.S.C. § 167.

Section 7-38-88 NMSA 1978, referred to in Paragraph (3) of Subsection E and Subsection H, was repealed by Laws 1991, ch. 166, § 14. For present comparable provisions, see 7-38-90 NMSA 1978.

Uranium mine development costs are tangible property costs subject to taxation. Kerr-McGee Nuclear Corp. v. Property Tax Div., 95 N.M. 685, 625 P.2d 1202 (Ct. App. 1980).

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., 95 N.M. 685, 625 P.2d 1202 (Ct. App. 1980).

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, 93 N.M. 651, 603 P.2d 1108 (Ct. App. 1979).

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, 94 N.M. 202, 608 P.2d 514 (Ct. App. 1979), 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, 94 N.M. 202, 608 P.2d 514 (Ct. App. 1979), 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 [Articles 35 to 38 of Chapter 7 NMSA 1978]; 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.

Cross-references. - As to elderly homeowners' maximum property tax liability and income tax credit or refund for excess, see 7-2-18 NMSA 1978.

As to exclusive ad valorem taxes on interests in oil, natural gas or liquid hydrocarbon production units, see 7-32-5B, 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).

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; or

(4) a single person, but only one person in a household may qualify as a head of family.

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.

Cross-references. - As to definition of "department," see 7-35-2A NMSA 1978.

For constitutional provision as to head of family exemption, see N.M. Const., art. VIII, § 5.

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 present second sentence of the introductory paragraph, and added Paragraphs (1) and (3); designated the former second sentence of Subsection A as present Subsection B; redesignated former Subsection B as present Subsection C, while substituting "department" for "division"; and redesignated former Subsections C and D as present Subsections D and E.

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.

Applicability. - Laws 1983, ch. 219, § 2, makes the provisions of the act applicable to 1984 and subsequent property tax years.

Laws 1989, ch. 81, § 2 makes the provisions of the act applicable to the 1989 and subsequent property tax years.

Internal Revenue Code. - Sections 671 to 677 of the Internal Revenue Code, referred to in Subsection A, appear as 26 U.S.C. §§ 671 to 677.

7-37-5. Veteran exemption.

A. Two thousand dollars ($2,000) 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, 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 taxable value of property to determine net taxable value of property.

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.

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;

(2) served in the armed forces of the United States on active duty continuously for ninety days, any part of which occurred during a period specified in Paragraph (3) of this subsection; and

(3) served in the armed forces of the United States during one or more of the following periods of armed conflict under orders of the president:

(a) any armed conflict prior to World War I;

(b) World War I which, for the purposes of this section, is defined as the period April 6, 1917 through April 1, 1920;

(c) World War II which, for the purposes of this section, is defined as the period December 7, 1941 through December 31, 1946;

(d) the Korean conflict which, for the purposes of this section, is defined as the period June 27, 1950 through January 31, 1955; or

(e) the Vietnam conflict which, for the purposes of this section, is defined as the period August 5, 1964 through May 7, 1975.

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 he served during the applicable period 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 Paragraph (1) of Subsection C of this section, a person has been "honorably discharged" unless he 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.

Cross-references. - For definition of "department," see 7-35-2A NMSA 1978.

For constitutional provision as to veteran exemption, see N.M. Const., art. VIII, § 5.

The 1989 amendments. - Identical amendments to this section were enacted by Laws 1989, ch. 236, § 1 and Laws 1989, ch. 353, § 1, both effective June 16, 1989, which, in Subsection B, substituted "department" for "division"; in Subsection C, corrected a misspelling in Paragraph (2); and added Subsection F. The section is set out above as amended by Laws 1989, ch. 353, § 1. See 12-1-8 NMSA 1978.

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.

Applicability. - Laws 1986, ch. 104, § 3 makes the provisions of that act applicable to the 1986 and subsequent property tax years.

Internal Revenue Code. - Sections 671 to 677 of the Internal Revenue Code, referred to in Subsection A, appear as 26 U.S.C. §§ 671 to 677.

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 County 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 County 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.

84 C.J.S. Taxation § 241.

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.

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) and (3) 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 [Articles 35 to 38 of Chapter 7 NMSA 1978] 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; and

(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 no

rate or imposition shall be authorized to pay any judgment other than one arising from a tort or workers' compensation claim.

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.

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.

Cross-references. - For constitutional provision as to property tax limits and exceptions, see N.M. Const., art. VIII, § 2.

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).

Applicability. - Laws 1990, ch. 125, § 18 provides that the provisions of the act are applicable to tax years and property tax years beginning on or after January 1, 1990.

Nonseverability. - Laws 1990, ch. 125, § 19 provides that the provisions of the Copper Production Ad Valorem Tax Act 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.

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 4 of the Statewide Health Care Act [27-10-1 to 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 residential and nonresidential property in a particular governmental unit in excess of a dollar amount derived by multiplying the growth control factor by the revenue due

from the imposition on residential and nonresidential property for the prior property tax year in the governmental unit of the rate, imposition or assessment for the specified purpose. The calculation described in this subsection shall be separately applied to residential and nonresidential property. Except as provided in Subsections D and E of this section, no tax rate or benefit assessment that will produce revenue from either class of property in a particular governmental unit in excess of the dollar amount allowed by the calculation shall be set or imposed. The rates imposed pursuant to Sections 7-32-4 and 7-34-4 NMSA 1978 shall be 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) V = **(base year value + net new value)**,

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 and nonresidential property subject to valuation under the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] in the governmental unit for the specified purpose in the prior property tax year;

(3) "net new value" means the additional value of residential and nonresidential property 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 and nonresidential property removed from the property tax schedule in the current year and, if applicable, the reductions described in Subparagraph (e) of this paragraph:

(a) residential and nonresidential property valued in the current year that was not valued at all in the prior year;

(b) improvements to existing residential and nonresidential property;

(c) additions to residential and nonresidential property 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 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 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 and nonresidential property 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, "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].

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.

Cross-references. - As to definition of "department," see 7-35-2 NMSA 1978.

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 present fifth sentence and present Paragraph (1), redesignated former Paragraphs (1) through (3) as present Paragraphs (2) through (4), in present Paragraph (3) inserted "if applicable, the reductions described in" in the introductory paragraph, and in present 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".

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 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.

Applicability. - Laws 1985 (1st S.S.), ch. 12, § 3 makes § 1 of the act, codified as 7-37-7.1 NMSA 1978, applicable to the 1985 and subsequent property tax years.

Laws 1989, ch. 198, § 3, effective June 16, 1989, makes the provisions of the act applicable to the 1989 and subsequent property tax years.

Laws 1990, ch. 125, § 18 provides that the provisions of the act are applicable to tax years and property tax years beginning on or after January 1, 1990.

Laws 1991, ch. 212, § 23 makes the provisions of §§ 12 to 14 and 17 of the act applicable to 1991 and subsequent property tax years.

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.

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 County Assessor, 95 N.M. 697, 625 P.2d 1214 (Ct. App. 1980).

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 County Assessor, 103 N.M. 65, 702 P.2d 1010 (Ct. App. 1985) (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 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 principal and interest on general obligation bonds issued by the district.

History: 1978 Comp., § 7-37-8, enacted by Laws 1978, ch. 128, § 1; 1983, ch. 301, § 12; 1988, ch. 64, § 1.

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 [Articles 35 to 38 of Chapter 7 NMSA 1978].

History: 1953 Comp., § 72-31-1, enacted by Laws 1973, ch. 258, § 41.

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, 83 N.M. 90, 488 P.2d 725 (1971).

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, 65 N.M. 241, 335 P.2d 567 (1958).

Otherwise, assumption 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, 65 N.M. 241, 335 P.2d 567 (1958).

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 [Articles 35 to 38 of Chapter 7 NMSA 1978], 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.

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 §§ 373 to 420.

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 [Articles 35 to 38 of Chapter 7 NMSA 1978] 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.

The 1990 amendment, effective May 16, 1990, in Paragraph (3) of Subsection A, added the Subparagraph designation "(a)" and added Subparagraph (b).

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.

Applicability. - Laws 1990, ch. 22, § 13 makes the provisions of the act applicable to the 1990 and subsequent property tax years.

Temporary provisions. - Laws 1990, ch. 22, § 11, effective May 16, 1990, provides that the changes made to 7-38-4 NMSA 1978 by the act shall not apply to any legal proceedings initiated prior to May 16, 1990 but shall apply only to proceedings begun on or after May 16, 1990.

7-38-5. Repealed.

ANNOTATIONS

Repeals. - Laws 1982, ch. 28, § 31, repeals 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.

Laws 1982, ch. 28, contains no effective date provision, but was enacted at the session which adjourned on February 18, 1982. See N.M. Const., art. IV, § 23.

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 [Articles 35 to 38 of Chapter 7 NMSA 1978] are presumed to be correct.

History: 1953 Comp., § 72-31-6, enacted by Laws 1973, ch. 258, § 46; 1981, ch. 37, § 67.

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 Properties v. Valencia County Valuation Protests Bd., 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

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. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976); New Mexico Baptist Found. v. Bernalillo County Assessor, 93 N.M. 363, 600 P.2d 309 (Ct. App. 1979).

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. New Mexico Baptist Found. v. Bernalillo County Assessor, 93 N.M. 363, 600 P.2d 309 (Ct. App. 1979); La Jara Land Developers, Inc. v. Bernalillo County Assessor, 97 N.M. 318, 639 P.2d 605 (Ct. App. 1982).

And where 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 County Valuation Protest Bd., 89 N.M. 784, 558 P.2d 53 (Ct. App. 1976).

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 County Assessor, 95 N.M. 723, 625 P.2d 1240 (Ct. App. 1980); Protest of Plaza Del Sol Ltd. Partnership v. Assessor for County of Bernalillo, 104 N.M. 154, 717 P.2d 1123 (Ct. App. 1986).

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, 105 N.M. 774, 737 P.2d 555 (Ct. App. 1987).

Where 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, 105 N.M. 774, 737 P.2d 555 (Ct. App. 1987).

Where taxpayer effectively rebutted presumption. - Where 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. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

When presumption unrebutted by lack of comparable sales evidence. - Where 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 7-36-15B NMSA 1978 and the statutory presumption of correctness still stands. New Mexico Baptist Found. v. Bernalillo County Assessor, 93 N.M. 363, 600 P.2d 309 (Ct. App. 1979).

Presumption of assessor's valuation not overcome. - Where 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 7-36-15 NMSA 1978, the presumption of the correctness of the assessor's valuation was not overcome. Peterson Properties v. Valencia County Valuation Protests Bd., 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

Law reviews. - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

For annual survey of New Mexico law relating to administrative law, see 13 N.M.L. Rev. 235 (1983).

For annual survey of New Mexico law relating to property, see 13 N.M.L. Rev. 435 (1983).

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.

History: 1953 Comp., § 72-31-7, enacted by Laws 1973, ch. 258, § 47.

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. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976); Bakel v. Bernalillo County Assessor, 95 N.M. 723, 625 P.2d 1240 (Ct. App. 1980).

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 County Assessor, 95 N.M. 697, 625 P.2d 1214 (Ct. App. 1980).

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 § 357.

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 regulations of the department. The report shall be in a form and contain the information required by regulations 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. 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 regulations 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 regulations 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 regulations of the department.

F. Reports required by this section shall be made by the declarant under oath, and the director, employees of the department, the assessor and his employees are empowered to administer oaths for this purpose.

G. Any person who intentionally refuses to make a report required of him 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. Any person who fails to make a report required of him 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 he failed to make the required report.

I. Any person who intentionally refuses to make a report required of him 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 of him 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 he refused or failed to make the required report.

J. Any 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 [Articles 35 to 38 of Chapter 7 NMSA 1978] 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) "improvements" 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.

Cross-references. - As to county assessors, see 4-39-1 NMSA 1978.

The 1991 amendment, effective January 1, 1992, substituted "department" for "division" throughout the section; added present 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., 98 N.M. 237, 647 P.2d 870 (1982).

Property owner is required to make declaration of all property subject to taxation annually. Bailey v. Barranca, 83 N.M. 90, 488 P.2d 725 (1971).

Property owner has affirmative duty to declare his property. State ex rel. Property Appraisal Dep't v. Sierra Life Ins. Co., 90 N.M. 268, 562 P.2d 829 (1977).

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 County, 86 N.M. 589, 526 P.2d 183 (1974).

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. Partnership v. Assessor for County of Bernalillo, 104 N.M. 154, 717 P.2d 1123 (Ct. App. 1986).

Statutes relating to undeclared property not applicable to that inadequately valued. - Where 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 County, 86 N.M. 589, 526 P.2d 183 (1974).

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.

Law reviews. - For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

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 must include requirements for comprehensive mapping, 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 [Articles 35 to 38 of Chapter 7 NMSA 1978] 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.

Adequate and proper description of real estate is essential to taxation. Otero v. Sandoval, 60 N.M. 444, 292 P.2d 319 (1956).

Insufficient description presents jurisdictional defect. - An erroneous description may be corrected, but a totally insufficient description presents a jurisdictional defect. Otero v. Sandoval, 60 N.M. 444, 292 P.2d 319 (1956).

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 County, 86 N.M. 589, 526 P.2d 183 (1974).

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, 65 N.M. 241, 335 P.2d 567 (1958).

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, 58 N.M. 429, 272 P.2d 330 (1954).

Aid of extrinsic evidence makes description sufficient. - Where 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, 60 N.M. 444, 292 P.2d 319 (1956).

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, 65 N.M. 241, 335 P.2d 567 (1958).

Phrase "160 acres" does not invalidate a description otherwise sufficient. McKay v. Espinosa, 65 N.M. 241, 335 P.2d 567 (1958).

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, 60 N.M. 444, 292 P.2d 319 (1956).

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 §§ 462 to 470.

7-38-10. Department may ensure 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 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.

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.

History: Laws 1973, ch. 258, § 52; 1953 Comp., § 72-31-12; Laws 1974, ch. 92, § 8; 1982, ch. 28, § 9.

Criminal Code. - For provisions of the Criminal Code, see 30-1-1 NMSA 1978 and notes thereto.

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.

The 1991 amendment, effective January 1, 1992, deleted "Statement of improvements to real property subject to local valuation" in the catchline; 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 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.

Construction Industries Licensing Act. - See 60-13-1 NMSA 1978 and notes thereto.

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 [Articles 35 to 38 of Chapter 7 NMSA 1978] 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.

Cross-references. - As to condemnation proceedings generally, see Chapter 42 NMSA 1978.

7-38-17. Claiming exemptions; requirements; penalties.

A. Subject to the requirements of Subsection F of this section, head-of-family exemptions claimed and allowed in the 1974 tax year or veteran exemptions claimed and allowed in the 1982 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 and veteran exemptions allowable under this subsection shall be applied automatically by county assessors in the subsequent tax years.

B. Subject to the requirements of Subsection F of this section, head-of-family exemptions not claimed and allowed in the 1974 tax year or veteran exemptions not claimed and allowed in the 1982 tax year must be claimed in a subsequent tax year in order to be allowed, but once an exemption is claimed and allowed in a subsequent tax year, it shall apply to all subsequent tax years without further claiming as long as there is no change in eligibility for the exemption and no change in the ownership of the property.

C. Beginning with the 1983 tax year, other exemptions of real property specified under Section 7-36-7 NMSA 1978 for nongovernmental entities must 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.

D. Any exemption required to be claimed under this section must be applied for no later than the last day of February of the tax year in which it is required to be claimed in order for it to be allowed for that tax year.

E. Any 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.

F. 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 division. Procedures for determining eligibility of claimants for any exemption shall be prescribed by regulation of the division, and these regulations shall include provisions for requiring the New Mexico veterans' service commission to issue certificates of eligibility for veteran exemptions in a form and with the information required by the division. 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.

G. The division shall consult and cooperate with the New Mexico veterans' service commission in the development and promulgation of regulations under Subsection F of this section. The commission shall comply with the promulgated regulations. The commission shall collect a fee of five dollars ($5.00) for the issuance of a duplicate certificate of eligibility to a veteran.

H. Any person who violates the provisions of this section by intentionally claiming and receiving the benefit of an exemption to which he is not entitled or who fails to comply with the provisions of Subsection E of this section is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000). Any county assessor or his employee who knowingly permits a claimant for an exemption to receive the benefit of an exemption to which he 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.

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.

Cross-references. - As to head of family exemption, see 7-37-4 NMSA.

As to veteran exemption, see 7-37-5 NMSA 1978.

For constitutional provision as to head of family and veteran exemptions, see N.M. Const., art. VIII, § 5.

Regulations of division to be followed to claim exemption. - Failure to comply with the procedures "prescribed by regulation of the division" under Subsection F can result in a denial of a claim for exemption. Cottonwood Gulch Found. v. Gutierrez, 102 N.M. 667, 699 P.2d 140 (Ct. App. 1985).

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.

Cross-references. - As to classification of residential and nonresidential property, see 7-36-2.1 NMSA 1978.

As to 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 requirements for reporting improvements to real property and to filing statements of decrease in value of property;

(4) Section 7-38-17 NMSA 1978 relating to requirements for claiming veteran, head-of-family and other exemptions; and

(5) Section 7-38-17.1 NMSA 1978 relating to the requirements for declaring residential property and changes in use of property.

B. The division 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.

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 [Articles 35 to 38 of Chapter 7 NMSA 1978], 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.

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.

7-38-20. County assessor and division to mail notices of valuation.

A. By April 1 of each year, the county assessor shall mail a notice to each property owner informing him of the net taxable value of his property that has been valued for property taxation purposes by the assessor.

B. By May 1 of each year, the division shall mail a notice to each property owner informing him of the net taxable value of his property that has been valued for property taxation purposes by the division.

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;

(7) the amount of any exemptions allowed and a statement of the net taxable value of the property after deducting the exemptions;

(8) the allocations of net taxable values to the governmental units; and

(9) briefly, the procedures for protesting the value determined for property taxation purposes, classification, allocation of values to governmental units for denial of a claim for an exemption.

History: 1953 Comp., § 72-31-20, enacted by Laws 1973, ch. 258, § 60; 1974, ch. 92, § 10; 1981, ch. 37, § 70.

Cross-references. - As to mailing of notices, see 7-38-84 NMSA 1978.

Notice not intended for relief or advantage of taxpayer. - The requirement that the county treasurer 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, 58 N.M. 429, 272 P.2d 330 (1954).

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 § 420.

7-38-21. Protests; election of remedies.

A. 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 or a denial of a claim for an exemption either by:

(1) filing a petition of protest with the director or the county assessor as provided in the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978]; or

(2) filing a claim for refund after paying his 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 under Paragraph (2) of Subsection A of this section.

C. A property owner may also protest the application to his property of any administrative fee adopted pursuant to Section 7-38-36.1 NMSA 1978 by filing a claim for refund after paying his 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.

Cross-references. - As to definition of "director," see 7-35-2B NMSA 1978.

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 his property for property taxation purposes or the division's allocation of value of his property to a particular governmental unit or the denial of a claim for an exemption by filing a petition with the director. Filing a petition in accordance with this section entitles a property owner to a hearing on his protest.

B. Petitions shall:

(1) be filed with the division 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, the allocation of value or denial of an exemption is incorrect and what he 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 division may by regulation require.

C. The division shall notify the property owner by certified mail of the date, time and place that he may appear before the director to support his 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.

Provision not applicable where refund sought for taxes erroneously paid on constitutionally exempt property, because such property is not subject to valuation for property tax purposes. Lovelace Center for Health Sciences v. Beach, 93 N.M. 793, 606 P.2d 203 (Ct. App. 1980).

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. New Mexico State Tax Comm'n, 79 N.M. 357, 443 P.2d 850 (1968).

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 protest hearings before the hearing officer, but the hearings 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 secretary 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 his authorized representative fails, without reasonable justification, to appear at the hearing.

D. The hearing officer's order shall be in the name of the secretary, 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.

7-38-24. Protesting values, classification, allocation of values and denial of exemption 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 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 no later than 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, the allocation of value or denial of a claim of an exemption 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 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.

Provision not applicable where refund sought for taxes erroneously paid on constitutionally exempt property, because such property is not subject to valuation for property tax purposes. Lovelace Center for Health Sciences v. Beach, 93 N.M. 793, 606 P.2d 203 (Ct. App. 1980).

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 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, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

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 County Valuation Protest Bd., 95 N.M. 136, 619 P.2d 581 (Ct. App. 1980).

Protest hearing should not be viewed as adversary proceeding with the board arrayed against the taxpayer. Black v. Bernalillo County Valuation Protest Bd., 95 N.M. 136, 619 P.2d 581 (Ct. App. 1980).

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 County Valuation Protest Bd., 95 N.M. 136, 619 P.2d 581 (Ct. App. 1980).

Law reviews. - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

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 appointed as follows:

(1) one member 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 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 shall be a property appraisal officer employed by the department, assigned by the director and shall be the chairman of the board.

B. No member of the board appointed under Paragraph (1) or (2) of Subsection A of this section shall hold any elective public office during the term of his appointment nor shall any such member 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 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 all other actual and direct expenses incurred in connection with protest hearings shall be paid by the division.

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.

Board must act in session with quorum. - Where 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. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

Quorum must be present before county valuation protests board can act officially and any act done with less than a quorum present is invalid. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

Acts of majority of quorum are binding on entire body. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

Quorum not present where not enough members on board. - Where 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 County Valuation Protest Bd., 89 N.M. 784, 558 P.2d 53 (Ct. App. 1976).

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. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

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 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. In re Miller, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

Law reviews. - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

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.

Procedural due process denied where 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, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

Including 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, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

And 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, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

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, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

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, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

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, 97 N.M. 318, 639 P.2d 605 (Ct. App. 1982).

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, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

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, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

Administrative Procedures Act (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, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

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, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

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 County Valuation Protest Bd., 89 N.M. 784, 558 P.2d 53 (Ct. App. 1976).

The rules relating to weight, applicability or materiality of evidence are not limited by the provisions of this section. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

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 County Valuation Protest Bd., 90 N.M. 110, 560 P.2d 174 (Ct. App. 1977).

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 Properties v. Valencia County Valuation Protests Bd., 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

Board must show good cause for delay in hearing. - Where 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. Partnership v. Assessor for County of Bernalillo, 104 N.M. 154, 717 P.2d 1123 (Ct. App. 1986).

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. Partnership v. Assessor for County of Bernalillo, 104 N.M. 154, 717 P.2d 1123 (Ct. App. 1986).

Orders invalid where board without quorum. - Where the protests board, consisting of three members, instead of the six required by the prior version of 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 County Valuation Protest Bd., 89 N.M. 784, 558 P.2d 53 (Ct. App. 1976).

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. Horn v. Bernalillo County Valuation Protests Bd., 95 N.M. 38, 618 P.2d 382 (Ct. App. 1980).

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 Properties v. Valencia County Valuation Protests Bd., 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

7-38-28. Appeals from orders of the director or county valuation protests boards.

A. A property owner may appeal an order made by the director or a county valuation protests board by filing with the court of appeals a notice of appeal within thirty days, or such other time prescribed by the Rules of Appellate Procedure, SCRA 1986, of the date the order was made. A copy of the notice of appeal shall be mailed to the director. The appeal shall be on the record made at the hearing or upon a stipulation submitted by both the valuation authority and the property owner and shall not be de novo. The procedure for perfecting an appeal under this section to the court of appeals shall be as provided by the Rules of Appellate Procedure, SCRA 1986.

B. Upon appeal, the court shall set aside a decision and order of the director or a county valuation protests board only if it is found to be:

(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.

C. The director shall notify the appropriate county assessor of the decision and order of the court of appeals 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.

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, SCRA 1986" 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 present Subsections B and C.

Applicability. - Laws 1990, ch. 22, § 13 makes the provisions of the act applicable to the 1990 and subsequent property tax years.

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. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

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, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

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 Properties v. Valencia County Valuation Protests Bd., 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

Decision arbitrary where 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, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

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, 97 N.M. 318, 639 P.2d 605 (Ct. App. 1982).

Where 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 County Valuation Protest Bd., 89 N.M. 784, 558 P.2d 53 (Ct. App. 1976).

Court has no duty to search for authority supporting argument. - Where 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 Properties v. Valencia County Valuation Protests Bd., 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

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, 105 N.M. 774, 737 P.2d 555 (Ct. App. 1987).

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, 105 N.M. 774, 737 P.2d 555 (Ct. App. 1987).

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, 106 N.M. 179, 740 P.2d 1163 (Ct. App. 1987).

Where taxpayer effectively rebutted presumption. - Where 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, 105 N.M. 774, 737 P.2d 555 (Ct. App. 1987).

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 [Articles 35 to 38 of Chapter 7 NMSA 1978] 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.

The 1989 amendment, effective June 16, 1989, added Subsection D.

Applicability. - Laws 1989, ch. 198, § 3, effective June 16, 1989, makes the provisions of the act applicable to the 1989 and subsequent property tax years.

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 and contain the information required by regulations of the division 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;

(10) 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.

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.

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 Section 7-38-38.2 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 for 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 he will receive for payment of both installments of the tax if no separate notice will be sent with respect to the second installment; and

G. the amount of any prepayment of the first installment made pursuant to Section 7-38-38.2 NMSA 1978.

History: 1953 Comp., § 72-31-37, enacted by Laws 1973, ch. 258, § 77; 1981, ch. 37, § 76; 1987, ch. 166, § 1.

7-38-38. Payment of property taxes; installment due dates; refund in cases of overpayments.

A. Unless otherwise provided in the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978], 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.

Payment of taxes by mortgagee. - Where 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., 84 N.M. 732, 507 P.2d 793 (Ct. App. 1973).

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, 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 bill the revenue recipient as an administrative charge an amount equal to:

(1) in class "A" counties, three-fourths of one percent of the revenue received, but not to exceed forty percent of the budget of the county assessor for the current fiscal year as approved by the department of finance and administration; and

(2) in all other counties, one percent of the revenue received, but not to exceed forty percent of the budget of the county assessor for the current fiscal year as approved by the department of finance and administration.

C. The "county property valuation fund" is created. 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.

D. Expenditures from the county property valuation fund may 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.

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.

Applicability. - Laws 1986, ch. 20, § 138B makes the provisions of § 116 of that act applicable to the 1987 and subsequent property tax years.

Laws 1988, ch. 68, § 3 provides that the provisions of Section 1 of the act apply to the 1988 and subsequent property tax years.

Laws 1990, ch. 125, § 18 provides that the provisions of the act are applicable to tax years and property tax years beginning on or after January 1, 1990.

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.

Compiler's note. - Laws 1990, ch. 22, § 12 repeals Laws 1988, ch. 68, § 2, which had been annotated following this section and which had specified administrative charges collectible by the county treasurer from "revenue recipients" as defined in this section.

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.

7-38-39. 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.

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 Center for Health Sciences v. Beach, 93 N.M. 793, 606 P.2d 203 (Ct. App. 1980).

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 County, 85 N.M. 313, 512 P.2d 73 (1973).

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 County, 85 N.M. 313, 512 P.2d 73 (1973).

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 where 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 County, 85 N.M. 313, 512 P.2d 73 (1973).

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 § 638.

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 division. Claims shall:

(1) be filed against the director as party defendant if the property was valued by the division or against the county 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 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 division shall change its valuation records accordingly.

E. Upon the final determination of the property owner's claim filed against the county, the treasurer shall send a copy of the final order to the county assessor and to the director. The county assessor and the division 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.

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 Center for Health Sciences v. Beach, 93 N.M. 793, 606 P.2d 203 (Ct. App. 1980).

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.

84 C.J.S. Taxation §§ 633, 639.

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.

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 Center for Health Sciences v. Beach, 93 N.M. 793, 606 P.2d 203 (Ct. App. 1980).

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 [Articles 35 to 38 of Chapter 7 NMSA 1978] 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 prior year's [years'] 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) 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

(3) 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: 1953 Comp., § 72-31-42, enacted by Laws 1973, ch. 258, § 82; 1979, ch. 343, § 1.

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, 101 N.M. 334, 681 P.2d 1111 (1984).

Law reviews. - For annual survey of New Mexico property law, see 16 N.M.L. Rev. 59 (1986).

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, 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.

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.

Applicability. - Laws 1990, ch. 22, § 13 makes the provisions of the act applicable to the 1990 and subsequent property tax years.

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.

7-38-45. 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 [Articles 35 to 38 of Chapter 7 NMSA 1978] 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.

Compiler's note. - 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.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation § 836.

84 C.J.S. Taxation § 643.

7-38-48. Property taxes are a lien against real property from January 1; priorities; continuance of taxing process.

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 becomes 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 [Articles 35 to 38 of Chapter 7 NMSA 1978] 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.

History: 1953 Comp., § 72-31-48, enacted by Laws 1973, ch. 258, § 88; 1974, ch. 92, § 18.

Cross-references. - As to property tax liens on mobile homes, see 7-38-52 and 66-3-204 NMSA 1978.

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, 105 N.M. 522, 734 P.2d 762 (Ct. App. 1986).

Lien not governed by recording act. - A tax lien is not within the class of written instruments governed by 14-9-3 NMSA 1978, relating to effect of unrecorded instruments. Cano v. Lovato, 105 N.M. 522, 734 P.2d 762 (Ct. App. 1986).

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.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 856, 858, 891 to 903.

Entireties, estate by: interest of spouse in estate by entireties as subject to tax lien in satisfaction of his or her individual debt, 75 A.L.R.2d 1194.

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.

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.

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.

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.

Cross-references. - As to 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.

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 time for giving notice of tax sale which must be given a certain number of days before a known future date, 98 A.L.R.2d 1422.

84 C.J.S. Taxation § 695.

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 division 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 will be transferred to the division 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.

Recompilations. - Laws 1982, ch. 28, § 22, recompiles former 7-38-60 NMSA 1978, relating to property taxes delinquent for more than two years, as 7-38-61 NMSA 1978.

7-38-61. 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 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 division regulations.

B. The county treasurer shall make a notation on the property tax schedule indicating that the account has been transferred to the division for collection at the time the tax delinquency list is mailed to the division.

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.

Recompilations. - Laws 1982, ch. 28, § 21, recompiles former 7-38-61 NMSA 1978, relating to notification to property owner of delinquent taxes, as 7-38-60 NMSA 1978.

7-38-62. Authority of department to collect delinquent property taxes after receipt of tax delinquency list; use of penalties, interest and costs.

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 [Articles 35 to 38 of Chapter 7 NMSA 1978] for proceeding against the property subject to the tax for collection of delinquent taxes. 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. Penalties, interest and costs due received by the department under 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.

The 1990 amendment, effective May 16, 1990, added "use of penalties, interest and costs" in the catchline and added the final sentence.

Applicability. - Laws 1990, ch. 22, § 13 makes the provisions of the act applicable to the 1990 and subsequent property tax years.

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, 101 N.M. 334, 681 P.2d 1111 (1984).

Law reviews. - For annual survey of New Mexico property law, see 16 N.M.L. Rev. 59 (1986).

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.

The 1990 amendment, effective May 16, 1990, substituted "department" for "division" in the catchline 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.

Applicability. - Laws 1990, ch. 22, § 13 makes the provisions of the act applicable to the 1990 and subsequent property tax years.

7-38-64. Authority of department to sell personal property for delinquent taxes.

The department may proceed to seize and sell personal property on which taxes are delinquent at any time after receiving the tax delinquency list. The procedures for seizing and selling personal property by the department shall be the same as those authorized for the county treasurer under Sections 7-38-53 through 7-38-59 NMSA 1978, and all authority given to the county treasurer under those provisions is vested in the director for the purposes of acting under this section. Service of demand warrants issued by the director shall be served [sic] by designated employees of the department or any county sheriff.

History: 1953 Comp., § 72-31-64, enacted by Laws 1973, ch. 258, § 104.

7-38-65. Collection of delinquent taxes on real property; sale of real property.

A. 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 [Articles 35 to 38 of Chapter 7 NMSA 1978]. 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 the date of the sale; or

(2) an installment agreement for payment of all delinquent taxes, penalties, interests and costs due is entered into with the department by 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 which does take place.

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.

Cross-references. - As to definition of "division," see 7-35-2A 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".

Applicability. - Laws 1990, ch. 22, § 13 makes the provisions of the act applicable to the 1990 and subsequent property tax years.

Validating clauses. - Laws 1985, ch. 226, § 2 declares that any sale of real property for delinquent taxes which would have been valid had this act been in effect at the time of the sale is validated, and the sale shall be deemed in compliance with 7-38-65 NMSA 1978.

Purpose of statutes on tax deeds is to give a measure of certainty and security to tax titles. First Nat'l Bank v. State, 77 N.M. 695, 427 P.2d 225 (1967).

Tax deeds prima facie valid. - Where 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, 77 N.M. 695, 427 P.2d 225 (1967).

Tax deed issued before period of redemption has expired is void. First Nat'l Bank v. State, 77 N.M. 695, 427 P.2d 225 (1967).

State is not an "owner" neither is it "person entitled to redeem." First Nat'l Bank v. State, 77 N.M. 695, 427 P.2d 225 (1967).

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, 77 N.M. 695, 427 P.2d 225 (1967).

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, 77 N.M. 695, 427 P.2d 225 (1967).

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, 58 N.M. 429, 272 P.2d 330 (1954).

Continuity of adverse possession interrupted where land forfeited for taxes. - Where, 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, 58 N.M. 429, 272 P.2d 330 (1954).

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 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 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; and

(4) 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 prior to the date of sale shall prevent or invalidate the sale.

F. Proof by the taxpayer that the taxpayer has entered into an installment agreement to pay all delinquent taxes, penalties, interest and costs prior to the date of sale 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.

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.

Cross-references. - As to definitions of "division," see 7-35-2A NMSA 1978.

The 1990 amendment, effective May 16, 1990, substituted "department" for "division" throughout the section; added present Subsection C; redesignated former Subsections C to E as present Subsections D to F; rewrote the provisions of present 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.

Applicability. - Laws 1990, ch. 22, § 13 makes the provisions of the act applicable to the 1990 and subsequent property tax years.

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, 112 N.M. 285, 814 P.2d 463 (Ct. App. 1991).

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, 106 N.M. 202, 740 P.2d 1186 (Ct. App. 1987).

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, 106 N.M. 202, 740 P.2d 1186 (Ct. App. 1987).

Where 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, 106 N.M. 202, 740 P.2d 1186 (Ct. App. 1987).

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, 101 N.M. 2, 677 P.2d 615 (1983).

Duty to seek correct address. - Subsection A requires the division to send notice to delinquent taxpayers via certified mail, return receipt requested. This requirement implicitly requires the division to send the notice to the correct address. The division 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, 112 N.M. 285, 814 P.2d 463 (Ct. App. 1991).

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, 100 N.M. 431, 671 P.2d 1142 (1983).

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, 100 N.M. 431, 671 P.2d 1142 (1983).

Delivery to be evidenced by verification. - The legislature not only contemplated the giving of notice under Subsection C [now see Subsection D], but, at the very least, actual delivery of such notice to the taxpayer or someone authorized to accept delivery, with such delivery being evidenced by a receipt verifying that some person signed for the letter and received it. This requirement is not met where the division receives the return receipt form marked "unclaimed". State ex rel. Klineline v. Blackhurst, 106 N.M. 732, 749 P.2d 1111 (1988).

Failure to notify rendering sale invalid. - Tax sale was invalid where 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, 106 N.M. 793, 750 P.2d 1119 (Ct. App. 1988).

Validity of sale not affected by failure to deliver notice. - Where 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 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, 83 N.M. 90, 488 P.2d 725 (1971).

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, 83 N.M. 90, 488 P.2d 725 (1971); Worman v. Echo Ridge Homes Coop., 98 N.M. 237, 647 P.2d 870 (1982).

And 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, 58 N.M. 292, 270 P.2d 706 (1954); Worman v. Echo Ridge Homes Coop., 98 N.M. 237, 647 P.2d 870 (1982).

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., 98 N.M. 237, 647 P.2d 870 (1982).

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 time for giving notice of tax sale which must be given a certain number of days before a known future date, 98 A.L.R.2d 1422.

85 C.J.S. Taxation §§ 744 to 797.

7-38-67. Real property sale requirements.

A. Real property may 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 must be published in a newspaper of general circulation within the county where the real property is located 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 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 division or an auctioneer hired by the division. The auction shall be held in the county where the real property is located at a time and place designated by the division.

D. If the real property can be divided so as to enable the division to sell only part of it and pay all delinquent taxes, penalties, interest and expenses of sale, the division may, with the consent of the owner, sell only a part of the real property.

E. Before the sale, the division shall determine a minimum sale price for the real property. In determining the minimum price, the division 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 expenses of the sale. The minimum price shall not be less than the total of all delinquent taxes, penalties, interest and expenses of sale. Real 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. 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 must be made in full by the close of the public auction before an offer may be deemed accepted by the division.

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.

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.

Cross-references. - As to definition of "division," see 7-35-2A NMSA 1978.

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. Associates Capital Servs. Corp., 105 N.M. 380, 733 P.2d 11 (Ct. App. 1987).

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 [Articles 35 to 38 of Chapter 7 NMSA 1978] 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.

Applicability. - Laws 1985, ch. 109, § 12 makes the provisions of the act applicable to the 1985 and subsequent property tax years.

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 and interest shall be retained by the department for use, subject to appropriation by the legislature, in the administration of the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978]. Amounts collected that represent costs shall be remitted to the state treasurer for deposit in the state general fund. 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 and interest 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.

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".

Applicability. - Laws 1985, ch. 109, § 12 makes the provisions of the act applicable to the 1985 and subsequent property tax years.

Laws 1990, ch. 22, § 13 makes the provisions of the act applicable to the 1990 and subsequent property tax years.

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 [Articles 35 to 38 of Chapter 7 NMSA 1978], 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.

Purpose of statutes on tax deeds is to give a measure of certainty and security to tax titles. First Nat'l Bank v. State, 77 N.M. 695, 427 P.2d 225 (1967).

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, 83 N.M. 90, 488 P.2d 725 (1971).

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, 83 N.M. 90, 488 P.2d 725 (1971).

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., 98 N.M. 237, 647 P.2d 870 (1982).

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, 112 N.M. 137, 812 P.2d 791 (1991).

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, 81 N.M. 202, 465 P.2d 85 (1970).

Mere possession of land is not such substantial right as would constitute "title" required by this section. Griego v. Roybal, 81 N.M. 202, 465 P.2d 85 (1970).

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, 105 N.M. 522, 734 P.2d 762 (Ct. App. 1986).

Tax deed subject to subsequent lien under "betterment" statute. - To subject a tax deed to operation of a subsequent lien under the "betterment" statute, 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, 105 N.M. 522, 734 P.2d 762 (Ct. App. 1986).

Applicability of recording act. - Section 14-9-3 NMSA 1978, relating to effect of unrecorded instruments applies to tax deeds. Cano v. Lovato, 105 N.M. 522, 734 P.2d 762 (Ct. App. 1986).

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, 90 N.M. 407, 564 P.2d 612 (1977).

Tax deed prima facie valid. - Where 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, 77 N.M. 695, 427 P.2d 225 (1967).

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, 77 N.M. 703, 427 P.2d 230 (1967).

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, 107 N.M. 597, 762 P.2d 259 (Ct. App. 1988).

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, 61 N.M. 235, 297 P.2d 1060 (1956); Gallegos v. Quinlan, 94 N.M. 405, 611 P.2d 1099 (1980).

Tax deed obtained by fraud may be attacked without regard to statute of limitations. Gallegos v. Quinlan, 94 N.M. 405, 611 P.2d 1099 (1980).

Tax deed issued before period of redemption has expired is void. First Nat'l Bank v. State, 77 N.M. 695, 427 P.2d 225 (1967).

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, 77 N.M. 703, 427 P.2d 230 (1967).

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, 77 N.M. 703, 427 P.2d 230 (1967).

Mortgagee cannot extinguish mortgage by tax deed. - When a tax deed grantee is the previous owner of the property, his mortgage is not extinguished. American Fed. Sav. & Loan Ass'n v. Bouma, 32 Bankr. 619 (Bankr. D.N.M. 1983).

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, 60 N.M. 29, 287 P.2d 229 (1955).

Power of treasurer to execute tax deed is not exhausted until a deed is made in compliance with law. Brown v. Gurley, 58 N.M. 153, 267 P.2d 134 (1954).

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, 61 N.M. 235, 297 P.2d 1060 (1956).

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, 77 N.M. 695, 427 P.2d 225 (1967).

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, 77 N.M. 695, 427 P.2d 225 (1967).

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, 58 N.M. 379, 271 P.2d 823 (1954).

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, 58 N.M. 153, 267 P.2d 134 (1954).

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, 64 N.M. 259, 327 P.2d 326 (1958).

Payment of taxes under erroneous assessment good defense to sale. - Where 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, 64 N.M. 259, 327 P.2d 326 (1958).

Sale not affected by error in survey number. - Where 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, 64 N.M. 259, 327 P.2d 326 (1958).

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, 61 N.M. 235, 297 P.2d 1060 (1956).

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, 58 N.M. 379, 271 P.2d 823 (1954).

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 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 [Articles 35 to 38 of Chapter 7 NMSA 1978];

(2) second, that portion equal to the penalties and interest due shall be retained by the department, and these amounts may be used, subject to appropriation by the legislature, by the department for use 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 8 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.

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".

Applicability. - Laws 1990, ch. 22, § 13 makes the provisions of the act applicable to the 1990 and subsequent property tax years.

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 [Articles 35 to 38 of Chapter 7 NMSA 1978] 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.

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 § 809.

7-38-75. Exception to property tax due date.

When, because of provisions of the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978], 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 [Articles 35 to 38 of Chapter 7 NMSA 1978], 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. 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.

7-38-77. Authority to make changes in property tax schedule after its delivery to the county treasurer.

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:

A. by the county treasurer to correct obvious clerical errors in:

(1) the name or address of the property owner or other persons shown on the schedule;

(2) the description of the property subject to property taxation; or

(3) the mathematical computation of taxes;

B. by the county treasurer to cancel multiple valuations for property taxation purposes of the same property in a single tax year, but only if:

(1) a taxpayer presents tax receipts showing the payment of taxes by him for any year in which multiple valuations for property taxation purposes are claimed to have been made;

(2) a taxpayer presents evidence of his 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

(3) there is no dispute concerning ownership of the property called to the attention of the treasurer, and he has no actual knowledge of any dispute concerning ownership of the property;

C. as a result of a protest, including a claim for refund, in accordance with the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978], of values, classification, allocations of values determined for property taxation purposes or a denial of a claim for an exemption;

D. by the division or the order of a court as a result of any proceeding by the division to collect delinquent property taxes under the Property Tax Code;

E. by a court order entered in an action commenced by a property owner under Section 7-38-78 NMSA 1978;

F. by the division as authorized under Section 7-38-79 NMSA 1978; or

G. as specifically otherwise authorized in the Property Tax Code.

History: 1953 Comp., § 72-31-77, enacted by Laws 1973, ch. 258, § 117; 1974, ch. 92, § 27; 1981, ch. 37, § 79.

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, 61 N.M. 235, 297 P.2d 1060 (1956).

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, 61 N.M. 235, 297 P.2d 1060 (1956).

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, 61 N.M. 235, 297 P.2d 1060 (1956).

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 or denial of any exemption claimed and must 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;

(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, and if the action is 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.

Authorized district court action limited to changes in property tax schedule and does not apply to refunds. Lovelace Center for Health Sciences v. Beach, 93 N.M. 793, 606 P.2d 203 (Ct. App. 1980).

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 Section 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."

History: Laws 1983, ch. 109, § 1.

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.

Failure to notify of tax sale. - Where 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, 107 N.M. 362, 758 P.2d 312 (Ct. App. 1988).

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.

Any notice that is required to be made to a property owner by the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] 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 the code require a different method of notification or mailing, in which case the notice is effective if given in accordance with the provisions of the code.

History: 1953 Comp., § 72-31-84, enacted by Laws 1973, ch. 258, § 124; 1974, ch. 92, § 29.

7-38-85. Extension of deadlines; general provision.

The director may extend any deadline in the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] 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 [Articles 35 to 38 of Chapter 7 NMSA 1978] 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 [14-3-4, 14-3-25, 14-4-1 to 14-4-9 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.

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 repeals 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 1990 Replacement Pamphlet.

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.

Cross-references. - As to definition of "division," see 7-35-2A NMSA 1978.

As to jurisdiction of court of appeals, see N.M. Const., art. VI, § 29.

As to special statutory proceedings, see Rule 12-601.

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. Administrative regulations, rulings, instructions and orders; presumption of correctness.

A. The secretary is empowered and directed to issue and file as required by law all regulations, rulings, instructions or orders necessary to implement and enforce any provision of the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] administered by the department, including all rules and regulations necessary by reason of any alteration of the Property Tax Code. In order to accomplish its purpose, this provision is to be liberally construed.

B. Directives issued by the secretary shall be in form substantially as follows:

(1) regulations are written statements of the secretary, of general application to taxpayers, interpreting and exemplifying the statutes to which they relate;

(2) rulings are written statements of the secretary, of limited application to one or a small number of taxpayers, interpreting the statutes to which they relate, ordinarily issued in response to a request for clarification of the tax consequences of a specified set of circumstances;

(3) orders are written statements of the secretary to implement his decision after a hearing or administrative procedure; and

(4) instructions are other written statements or directives of the secretary not dealing with the merits of any tax but otherwise in aid of the accomplishment of the duties of the secretary.

C. To be effective, any ruling or regulation issued by the secretary shall be reviewed by the attorney general or other legal counsel of the department prior to being filed as required by law, and the fact of his review shall be indicated thereon.

D. To be effective, a regulation shall first be issued as a proposed regulation and filed for public inspection in the office of the secretary. Distribution of the proposed regulation shall be made to all county assessors and to other interested persons, and their comments shall be invited. After the proposed regulation has been on file for not less than sixty days and a public hearing on the proposed action has been held by the secretary or a hearing officer designated by the secretary, the secretary may issue it as a final regulation by filing as required by law.

E. In addition to filing copies of regulations with the state records center as required by law, the secretary shall maintain in the secretary's office a duplicate official set of current and superseded regulations, a set of current and superseded rulings and additional sets of such regulations and rulings as appear necessary, which duplicate or additional sets shall be available for inspection by the public.

F. Any regulation, ruling, instruction or order issued by the director is presumed to be in proper implementation of the provisions of the laws administered by the department.

G. In issuing regulations, rulings or orders, the extent to which they have retroactive effect shall be stated. Without such a statement, the regulation, ruling or order will apply prospectively only.

H. The department shall maintain a file of all current and superseded regulations, rulings and other directives issued with respect to the Property Tax Code. The file shall be open for public inspection.

History: 1953 Comp., § 72-31-90, enacted by Laws 1973, ch. 258, § 130; 1982, ch. 28, § 30; 1983, ch. 215, § 8; 1991, ch. 166, § 12.

Cross-references. - As to definitions of "director" and "division," see 7-35-2 NMSA 1978.

The 1991 amendment, effective June 14, 1991, substituted "secretary" for "director" and "department" for "division" or "director" throughout the section; in Subsection A, substituted "the Property Tax Code" for "any law" and "Property Tax Code" for "law in respect to taxation within his purview" in the first sentence; added Subsections D and E; deleted former Subsection E which read "Orders and rulings shall be signed by the director"; redesignated former Subsection D as Subsection F and former Subsections F and G as Subsections G and H; rewrote the first sentence in Subsection G which read "In issuing regulations, rulings or orders, the director shall state the extent to which they have retroactive effect"; and rewrote the first sentence in Subsection H which read "The director shall maintain a file in his office of all current and superseded regulations, rulings and other directives issued."

7-38-91. Publication and distribution of regulations and rulings.

The department shall maintain a file of the names of persons interested in regulations and rulings of the department issued under the Property Tax Code. The department shall publish and distribute regulations and rulings to those persons at times convenient to the department. The department may charge a fee for this service to offset the cost of the physical preparation and mailing of the documents, and any amounts collected are appropriated to the department for its operation.

History: 1953 Comp., § 72-31-91, enacted by Laws 1973, ch. 258, § 131; 1991, ch. 166, § 13.

The 1991 amendment, effective June 14, 1991, substituted "department" for "director" in the first and third sentences; added "issued under the Property Tax Code" at the end of the first sentence; deleted the former third sentence which read "The director shall also maintain a supply of the published regulations and rulings for distribution to members of the public"; and made a related stylistic change.

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.

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 [Articles 35 to 38 of Chapter 7 NMSA 1978]

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.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 85 C.J.S. Taxation § 1056.

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.

Emergency clauses. - Laws 1990, ch. 125, § 20 makes the act effective immediately. Approved March 7, 1990.

Applicability. - Laws 1990, ch. 125, § 18 provides that the provisions of the act are applicable to tax years and property tax years beginning on or after January 1, 1990.

7-39-2. Definitions.

As used in the Copper Production Ad Valorem Tax Act [this article]:

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 [Articles 35 to 38 of Chapter 7 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.

Emergency clauses. - Laws 1990, ch. 125, § 20 makes the act effective immediately. Approved March 7, 1990.

Applicability. - Laws 1990, ch. 125, § 18 provides that the provisions of the act are applicable to tax years and property tax years beginning on or after January 1, 1990.

7-39-3. Application of act.

The provisions of the Copper Production Ad Valorem Tax Act [this article] apply to the valuation of all productive copper mineral property.

History: 1978 Comp., § 7-39-3, enacted by Laws 1990, ch. 125, § 10.

Emergency clauses. - Laws 1990, ch. 125, § 20 makes the act effective immediately. Approved March 7, 1990.

Applicability. - Laws 1990, ch. 125, § 18 provides that the provisions of the act are applicable to tax years and property tax years beginning on or after January 1, 1990.

7-39-4. Valuation of copper mineral property.

A. The valuation for purposes of the Copper Production Ad Valorem Tax Act [this article] 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 [Articles 35 to 38 of Chapter 7 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.

Emergency clauses. - Laws 1990, ch. 125, § 20 makes the act effective immediately. Approved March 7, 1990.

Applicability. - Laws 1990, ch. 125, § 18 provides that the provisions of the act are applicable to tax years and property tax years beginning on or after January 1, 1990.

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 [this article], 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.

Emergency clauses. - Laws 1990, ch. 125, § 20 makes the act effective immediately. Approved March 7, 1990.

Applicability. - Laws 1990, ch. 125, § 18 provides that the provisions of the act are applicable to tax years and property tax years beginning on or after January 1, 1990.

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 [this article].

History: 1978 Comp., § 7-39-6, enacted by Laws 1990, ch. 125, § 13.

Emergency clauses. - Laws 1990, ch. 125, § 20 makes the act effective immediately. Approved March 7, 1990.

Applicability. - Laws 1990, ch. 125, § 18 provides that the provisions of the act are applicable to tax years and property tax years beginning on or after January 1, 1990.

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 [this article] 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.

Emergency clauses. - Laws 1990, ch. 125, § 20 makes the act effective immediately. Approved March 7, 1990.

Applicability. - Laws 1990, ch. 125, § 18 provides that the provisions of the act are applicable to tax years and property tax years beginning on or after January 1, 1990.

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 [Articles 35 to 38 of Chapter 7 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.

Emergency clauses. - Laws 1990, ch. 125, § 20 makes the act effective immediately. Approved March 7, 1990.

Applicability. - Laws 1990, ch. 125, § 18 provides that the provisions of the act are applicable to tax years and property tax years beginning on or after January 1, 1990.

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 [this article] 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.

Emergency clauses. - Laws 1990, ch. 125, § 20 makes the act effective immediately. Approved March 7, 1990.

Applicability. - Laws 1990, ch. 125, § 18 provides that the provisions of the act are applicable to tax years and property tax years beginning on or after January 1, 1990.

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.

Emergency clauses. - Laws 1990, ch. 125, § 20 makes the act effective immediately. Approved March 7, 1990.

Applicability. - Laws 1990, ch. 125, § 18 provides that the provisions of the act are applicable to tax years and property tax years beginning on or after January 1, 1990.

Nonseverability. - Laws 1990, ch. 125, § 19 provides that the provisions of the Copper Production Ad Valorem Tax Act [this article] 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.