UNANNOTATED

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.

7-1-2. Applicability. (Repealed effective July 1, 2030.)

The Tax Administration Act applies to and governs:

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

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

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

(3) Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act [Chapter 7, Article 3A NMSA 1978];

(4) Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978], Interstate Telecommunications Gross Receipts Tax Act [Chapter 7, Article 9C NMSA 1978] and Leased Vehicle Gross Receipts Tax Act [Chapter 7, Article 14A NMSA 1978];

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

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

(7) any municipal local option gross receipts tax or municipal compensating tax;

(8) any county local option gross receipts tax or county compensating tax;

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

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

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

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

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

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

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

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

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

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

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

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

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

(22) the Insurance Premium Tax Act [7-40-1 to 7-40-10 NMSA 1978];

(23) the Health Care Quality Surcharge Act [7-41-1 to 7-41-8 NMSA 1978];

(24) the Cannabis Tax Act [7-42-1 to 7-42-5 NMSA 1978]; and

(25) the Health Care Delivery and Access Act [24A-8-1 to 24A-8-7 NMSA 1978];

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

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

(2) Severance Tax Act [7-26-1 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];

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: 1953 Comp., § 72-13-14, enacted by Laws 1965, ch. 248, § 2; 1966, ch. 54, § 1; 1969, ch. 156, § 1; 1971, ch. 276, § 3; 1973, ch. 346, § 1; 1974, ch. 13, § 1; 1975, ch. 301, § 1; 1978, ch. 182, § 22; 1979, ch. 144, § 2; 1982, ch. 18, § 1; 1983, ch. 211, § 3; 1985, ch. 65, § 1; 1986, ch. 20, § 2; 1987, ch. 45, § 20; 1987, ch. 268, § 1; 1988, ch. 71, § 1; 1988, ch. 73, § 1; 1989, ch. 263, § 1; 1989, ch. 325, § 1; 1989, ch. 326, § 10; 1989, ch. 327, § 1; 1990, ch. 86, § 1; 1990, ch. 88, § 1; 1990, ch. 99, § 45; 1990, ch. 124, § 12; 1990, ch. 125, § 1; 1992, ch. 55, § 1; 1993, ch. 5, § 1; 1994, ch. 51, § 1; 1996, ch. 15, § 1; 1997, ch. 190, § 64; 2000, ch. 28, § 1; 2001, ch. 56, § 1; 2004, ch. 4, § 3; 2006, ch. 25, § 1; 2007, ch. 164, § 1; 2016, ch. 77, § 1; 2019, ch. 47, § 1; 2019, ch. 53, § 10; 2019, ch. 270, § 1; 2021 (1st S.S.), ch. 4, § 48; 2024, ch. 41, § 8.

7-1-2.1. Repealed.

7-1-2.2. Repealed.

7-1-3. Definitions.

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

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

B. "business location" means the location where a taxpayer's gross receipts and deductions are required to be reported pursuant to Section 7-1-14 NMSA 1978;

C. "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;

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

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

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

(1) the chief hearing officer;

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

(3) a contractor of the administrative hearings office;

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

I. "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;

J. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon a taxpayer's gross receipts, as that term is defined in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978], and required to be collected by the department at the same time and in the same manner as the gross receipts tax;

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

L. "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;

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

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

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

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

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

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

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

T. "return" means any tax or information return, application or form, declaration of estimated tax or claim for refund, including any amendments or supplements to the return, required or permitted pursuant to a law subject to administration and enforcement pursuant to the Tax Administration Act and filed with the secretary or the secretary's delegate by or on behalf of any person;

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

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

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

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

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

Y. "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;

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

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

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

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

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

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

History: 1953 Comp., § 72-13-15, enacted by Laws 1965, ch. 248, § 3; 1977, ch. 249, § 41; 1979, ch. 144, § 3; 1982, ch. 18, § 2; 1985, ch. 65, § 3; 1986, ch. 20, § 3; 1987, ch. 169, § 1; 1992, ch. 55, § 2; 1993, ch. 5, § 2; 1994, ch. 51, § 2; 1997, ch. 67, § 1; 2000, ch. 28, § 2; 2001, ch. 16, § 2; 2001, ch. 56, § 2; 2003, ch. 398, § 4; 2009, ch. 243, § 1; 2013, ch. 87, § 2; 2015, ch. 73, § 10; 2017, ch. 63, § 4; 2019, ch. 270, § 2; 2019, ch. 274, § 10.

7-1-4. Investigative authority and powers.

A. For the purpose of establishing or determining the extent of the liability of any person for any tax, for the purpose of collecting any tax, for the purpose of enforcing any statute administered under the provisions of the Tax Administration Act or for the purpose of investigating possible criminal violations of the revenue laws of this state, including fraud or other crimes that may affect the taxes due to the state, the secretary or the secretary's delegate is authorized to examine equipment and to examine and require the production of any pertinent records, books, information or evidence, to require the presence of any person and to require that person to testify under oath concerning the subject matter of the inquiry and to make a permanent record of the proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The department shall develop a publication that states the rights of taxpayers in simple, nontechnical terms and shall disseminate the publication to taxpayers, at a minimum, with tax forms periodically issued by the department.

History: Laws 2003, ch. 398, § 3; 2021, ch. 65, § 1.

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

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

History: Laws 2005, ch. 138, § 1.

7-1-5. Repealed.

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

A. All money received by the department with respect to laws administered pursuant to the provisions of the Tax Administration Act shall be deposited with the state treasurer before the close of the next succeeding business day after receipt of the money, except that money received with respect to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] and the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] during the period starting with the fifth day prior to the due date for payment of the taxes 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 rule of the secretary of finance and administration.

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

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

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

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

G. All revenues collected or received by the department pursuant to the taxes or tax acts set forth in Subsection C of Section 7-1-2 NMSA 1978 may be credited to the tax administration suspense fund, unless otherwise directed by law to be credited to another fund or agency, and are appropriated for the purpose of making disbursements authorized in this section or otherwise authorized or required by law.

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

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

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

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

History: Laws 1965, ch. 248, § 12; 1953 Comp., § 72-13-24; Laws 1966, ch. 53, § 1; 1969, ch. 147, § 1; 1970, ch. 57, § 1; 1975, ch. 263, § 8; 1977, ch. 247, § 182; 1977, ch. 315, § 2; reenacted by Laws 1978, ch. 55, § 1; 1979, ch. 144, § 6; 1979, ch. 284, § 4; 1981, ch. 37, § 7; 1981, ch. 215, § 3; 1982, ch. 18, § 4; 1983, ch. 211, § 5; 1985, ch. 65, § 5; 1986, ch. 20, § 6; 1988, ch. 72, § 1; 1989, ch. 325, § 2; 1990, ch. 86, § 2; 1992, ch. 55, § 3; 2001, ch. 230, § 1; 2009, ch. 242, § 1; 2017, ch. 63, § 7; 2021, ch. 65, § 2.

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

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

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

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

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

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

7-1-6.3. Repealed.

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

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

(1) within that municipality;

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

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

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

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

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

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

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

D. As used in this section, "nonprofit hospital" means a hospital that has been granted exemption from federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code.

History: 1978 Comp., § 7-1-6.4, enacted by Laws 1983, ch. 211, § 9; 1991, ch. 9, § 9; 1992, ch. 42, § 1; 2006, ch. 75, § 30; 2019, ch. 270, § 3.

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.

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

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

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

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

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

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

C. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state aviation fund in an amount equal to forty-six thousandths percent of the net receipts attributable to the gross receipts tax distributable to the general fund.

D. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state aviation fund from the net receipts attributable to the gross receipts tax distributable to the general fund in an amount equal to five hundred thousand dollars ($500,000) monthly.

History: 1978 Comp., § 7-1-6.7, enacted by Laws 1994, ch. 5, § 2; 1995, ch. 6, § 1; 1995, ch. 36, § 1; 2001, ch. 198, § 1; 2003, ch. 214, § 1; 2004, ch. 58, § 1; 2007, ch. 297, § 1; 2007, ch. 298, § 1; 2013, ch. 19, § 1; 2016, ch. 87, § 1; 2020, ch. 30, § 1; 2023, ch. 52, § 1.

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

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

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

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

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

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

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

(2) ten percent of the amount shall be paid to the treasurers of the counties, including H class counties, in the proportion that the taxable motor fuel sales outside of

incorporated municipalities in each of the counties bears to the aggregate taxable motor fuel sales outside of incorporated municipalities in all of the counties.

C. Except as provided in Subsection D of this section, this distribution shall be paid into a separate road fund in the municipal treasury or county road fund for expenditure only for construction, reconstruction, resurfacing or other improvement or maintenance of public roads, streets, alleys or bridges, including right-of-way and materials acquisition. Money distributed pursuant to this section may be used by a municipality or county to provide matching funds for projects subject to cooperative agreements entered into with the department of transportation pursuant to Section 67-3-28 NMSA 1978. Any municipality or H class county that has created or that creates a "street improvement fund" to which gasoline tax revenues or distributions are irrevocably pledged under Sections 3-34-1 through 3-34-4 NMSA 1978 or that has pledged all or a portion of gasoline tax revenues or distributions to the payment of bonds shall receive its proportion of the distribution of revenues under this section impressed with and subject to these pledges.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7-1-6.11. Distributions of cigarette taxes.

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

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to seven and fifty-two hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax, shall be made on behalf of and for the benefit of the university of New Mexico health sciences center for its comprehensive cancer center, until payment of all principal, interest and other expenses or obligations related to the bonds authorized pursuant to Section 3 [6-21-6.15 NMSA 1978] of this 2021 act and the New Mexico finance authority certifies to the secretary of taxation and revenue that all obligations for the bonds have been fully discharged, to the credit enhancement account.

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

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

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

History: 1978 Comp., § 7-1-6.11, enacted by Laws 1983, ch. 211, § 16; 1985, ch. 25, § 3; 1986, ch. 13, § 1; 1993, ch. 358, § 1; 2003, ch. 341, § 1; 2005, ch. 320, § 6; 2006, ch. 89, § 2; 2010 (2nd S.S.), ch. 5, § 1; 2017, ch. 34, § 2; 2017, ch. 63, § 9; 2019, ch. 270, § 4; 2021, ch. 72, § 2.

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

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

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

C. A transfer pursuant to this section shall be adjusted for a distribution made to the Local Economic Development Act fund [5-10-14 NMSA 1978] pursuant to Section 7-1-6.67 NMSA 1978 and with respect to the amount dedicated by a municipality pursuant to Subsection B of Section 5-10-17 NMSA 1978.

D. A transfer pursuant to this section shall be adjusted for a distribution made to the metropolitan redevelopment fund pursuant to Section 11 [7-1-6.71 NMSA 1978] of this

2023 act and with respect to the amount dedicated by a municipality pursuant to Section 3-60A-23 NMSA 1978.

History: 1978 Comp., § 7-1-6.12, enacted by Laws 1983, ch. 211, § 17; 1986, ch. 20, § 8; 1990, ch. 99, § 46; 1991, ch. 9, § 12; 1993, ch. 30, § 1; 1997, ch. 125, § 2; 2006, ch. 75, § 31; 2019, ch. 270, § 5; 2021 (1st S.S.), ch. 2, § 3; 2023, ch. 112, § 12.

7-1-6.12. Transfer; revenues from municipal local option gross receipts and compensating taxes. (Effective July 1, 2025.)

A. A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality for which the department is collecting a local option gross receipts tax and municipal compensating tax imposed by that municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net receipts attributable to the local option gross receipts tax and municipal compensating tax imposed by that municipality, less the administrative fee that may be withheld prior to July 1, 2028 pursuant to Section 7-1-6.41 NMSA 1978.

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

C. A transfer pursuant to this section shall be adjusted for a distribution made to the Local Economic Development Act [Chapter 5, Article 10 NMSA 1978] fund pursuant to Section 7-1-6.67 NMSA 1978 and with respect to the amount dedicated by a municipality pursuant to Subsection B of Section 5-10-17 NMSA 1978.

D. A transfer pursuant to this section shall be adjusted for a distribution made to the metropolitan redevelopment fund pursuant to Section 7-1-6.71 NMSA 1978 and with respect to the amount dedicated by a municipality pursuant to Section 3-60A-23 NMSA 1978.

***History:** 1978 Comp., § 7-1-6.12, enacted by Laws 1983, ch. 211, § 17; 1986, ch. 20, § 8; 1990, ch. 99, § 46; 1991, ch. 9, § 12; 1993, ch. 30, § 1; 1997, ch. 125, § 2; 2006, ch. 75, § 31; 2019, ch. 270, § 5; 2021 (1st S.S.), ch. 2, § 3; 2023, ch. 112, § 12; 2024, ch. 59, § 1.*

7-1-6.13. Transfer; revenues from county local option gross receipts and compensating 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 local option gross receipts tax and county compensating tax imposed by that county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net receipts attributable to the local option gross receipts tax and county compensating tax imposed by that county, less any deduction for administrative cost determined and made by the department pursuant to the provisions of the act authorizing imposition by that county of the local option gross receipts tax and county compensating tax and any additional administrative fee withheld pursuant to Section 7-1-6.41 NMSA 1978.

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

C. A transfer pursuant to this section shall be adjusted for a distribution made to the Local Economic Development Act fund [5-10-14 NMSA 1978] pursuant to Section 7-1-6.67 NMSA 1978 and with respect to the amount dedicated by a county pursuant to Subsection B of Section 5-10-17 NMSA 1978.

D. A transfer pursuant to this section shall be adjusted for a distribution made to the metropolitan redevelopment fund pursuant to Section 11 [7-1-6.71 NMSA 1978] of this 2023 act and with respect to the amount dedicated by a county pursuant to Section 3-60A-23 NMSA 1978.

History: 1978 Comp., § 7-1-6.13, enacted by Laws 1983, ch. 211, § 18; 1986, ch. 20, § 9; 1987, ch. 45, § 9; 1989, ch. 326, § 11; 1990, ch. 99, § 47; 1991, ch. 176, § 16; 1993, ch. 30, § 2; 1997, ch. 125, § 3; 2003, ch. 205, § 1; 2005, ch. 338, § 1; 2006, ch. 75, § 32; 2008, ch. 51, § 1; 2014, ch. 79, § 1; 2019, ch. 270, § 6; 2021 (1st S.S.), ch. 2, § 4; 2023, ch. 112, § 13.

7-1-6.13. Transfer; revenues from county local option gross receipts and compensating taxes. (Effective July 1, 2025.)

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 local option gross receipts tax and county compensating tax imposed by that county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net receipts attributable to the local option gross receipts tax and county compensating tax imposed by that county, less the administrative fee that may be withheld prior to July 1, 2028 pursuant to Section 7-1-6.41 NMSA 1978.

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

C. A transfer pursuant to this section shall be adjusted for a distribution made to the Local Economic Development Act [Chapter 5, Article 10 NMSA 1978] fund pursuant to

Section 7-1-6.67 NMSA 1978 and with respect to the amount dedicated by a county pursuant to Subsection B of Section 5-10-17 NMSA 1978.

D. A transfer pursuant to this section shall be adjusted for a distribution made to the metropolitan redevelopment fund pursuant to Section 7-1-6.71 NMSA 1978 and with respect to the amount dedicated by a county pursuant to Section 3-60A-23 NMSA 1978.

History: *1978 Comp., § 7-1-6.13, enacted by Laws 1983, ch. 211, § 18; 1986, ch. 20, § 9; 1987, ch. 45, § 9; 1989, ch. 326, § 11; 1990, ch. 99, § 47; 1991, ch. 176, § 16; 1993, ch. 30, § 2; 1997, ch. 125, § 3; 2003, ch. 205, § 1; 2005, ch. 338, § 1; 2006, ch. 75, § 32; 2008, ch. 51, § 1; 2014, ch. 79, § 1; 2019, ch. 270, § 6; 2021 (1st S.S.), ch. 2, § 4; 2023, ch. 112, § 13; 2024, ch. 59, § 2.*

7-1-6.14. Repealed.

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

A. The provisions of this section apply to:

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

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

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

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

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

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

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

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

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

(10) any distribution to a municipality or a county of cannabis excise taxes pursuant to the Cannabis Tax Act.

B. Before making a distribution or transfer specified in Subsection A of this section to a municipality or county for the month, amounts comprising the net receipts shall be segregated into two mutually exclusive categories. One category shall be for amounts relating to the current month, and the other category shall be for amounts relating to prior periods. The total of each category for a municipality or county shall be reported each month to that municipality or county. If the total of the amounts relating to prior periods is less than zero and its absolute value exceeds the greater of one hundred dollars ($100) or an amount equal to twenty percent of the average distribution or transfer amount for that municipality or county, then the following procedures shall be carried out:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. Upon the direction of the secretary of finance and administration pursuant to Section 9-6-5.2 NMSA 1978, the secretary shall temporarily withhold the balance of a distribution to a municipality or county, net of any decrease or redirected amount pursuant to Subsection H of this section and any recoverable amount pursuant to Paragraph (2) of Subsection B of this section, that has failed to submit an audit report required by the Audit Act [12-6-1 to 12-6-15 NMSA 1978] or a financial report required by Subsection F of Section 6-6-2 NMSA 1978. The amount to be withheld, the source of the withheld distribution and the number of months that the distribution is to be withheld shall be as directed by the secretary of finance and administration. A distribution withheld pursuant to this subsection shall remain in the tax administration suspense fund until distributed to the municipality or county and shall not be distributed to the general fund. An amount withheld pursuant to this subsection shall be distributed to the municipality or county upon direction of the secretary of finance and administration.

J. As used in this section:

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

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

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

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

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

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

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

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

History: 1978 Comp., § 7-1-6.15, enacted by Laws 1983, ch. 211, § 20; 1986, ch. 20, § 10; 1987, ch. 169, § 2; 1988, ch. 72, § 5; 1989, ch. 326, § 12; 1990, ch. 99, § 48; 1991, ch. 9, § 13; 1991, ch. 176, § 17; 1992, ch. 105, § 4; 1993, ch. 30, § 3; 1994, ch. 54, § 1; 1996, ch. 28, § 3; 1999, ch. 189, § 1; 2007, ch. 331, § 1; 2011, ch. 106, § 3; 2015, ch. 89, § 1; 2015, ch. 100, § 1; 2021 (1st S.S.), ch. 4, § 49.

7-1-6.16. County equalization distribution.

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

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

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

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

C. As used in this section:

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

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

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

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

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

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

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

7-1-6.17. Repealed.

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

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

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

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

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

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

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

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

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

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

History: 1978 Comp., § 7-1-6.20, enacted by Laws 1985, ch. 65, § 6; 2001, ch. 230, § 2; 2017 (1st S.S.), ch. 3, § 2; 2020, ch. 3, § 5.

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

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

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

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

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.

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7-1-6.27. Distribution; municipal roads.

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

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

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

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

(3) for expenses of purchasing, maintaining and operating transit operations and facilities, for the operation of a transit authority established by the municipal transit law and for the operation of a vehicle emission inspection program. A municipality may

engage in the business of the transportation of passengers and property within the political subdivision by whatever means the municipality may decide and may acquire cars, trucks, motor buses and other equipment necessary for operating the business. A municipality may acquire land, erect buildings and equip the buildings with all the necessary machinery and facilities for the operation, maintenance, modification, repair and storage of the cars, trucks, motor buses and other equipment needed. A municipality may do all things necessary for the acquisition and the conduct of the business of public transportation.

C. For the purposes of this section:

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

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

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

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

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

(1) the floor amount; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 NMSA 1978] less any administrative fee withheld pursuant to Section 7-1-6.41 NMSA 1978.

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

7-1-6.32. Distribution; solid waste assessment fee. (Effective July 1, 2025.)

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

History: *Laws 1990, ch. 99, § 44; 1997, ch. 125, § 4; 2017, ch. 63, § 12; 2024, ch. 59, § 3.*

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

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

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

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

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

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

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

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

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

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

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

A. within that municipality;

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

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

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

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

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

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

7-1-6.37. Repealed.

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

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made in amounts equal to the following percentages of the net receipts attributable to the governmental gross receipts tax, less the net receipts attributable to a hospital licensed by the department of health:

(1) seventy-five percent to the public project revolving fund administered by the New Mexico finance authority;

(2) twenty-four percent to the energy, minerals and natural resources department; provided that forty-one and two-thirds percent of the distribution is appropriated to the energy, minerals and natural resources department to implement the provisions of the New Mexico Youth Conservation Corps Act [9-5B-1 to 9-5B-11 NMSA 1978] and fifty-eight and one-third percent of the distribution is appropriated to the energy, minerals and natural resources department for state park and recreation area capital improvements, including the costs of planning, engineering, design, construction, renovation, repair, equipment and furnishings; and

(3) one percent to the cultural affairs department for capital improvements at state museums and monuments administered by the cultural affairs department.

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

History: Laws 1994, ch. 145, § 1; 1995, ch. 141, § 21; 2003, ch. 430, § 1; 2019, ch. 270, § 8.

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

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

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

7-1-6.40. Distribution of liquor excise tax; local DWI grant fund; certain municipalities; drug court fund.

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

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

C. Beginning July 1, 2019, a distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to five percent of the net receipts attributable to the liquor excise tax shall be made to the drug court fund.

History: Laws 1997, ch. 182, § 1; 2000, ch. 83, § 1; 2001, ch. 112, § 1; 2007, ch. 138, § 1; 2008, ch. 93, § 1; 2014, ch. 54, § 1; 2014, ch. 80, § 7; 2015, ch. 8, § 1; 2018, ch. 48, § 1.

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

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

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

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

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

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

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

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

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

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

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

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

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

History: Laws 1997, ch. 125, § 1.

7-1-6.41. Administrative fee imposed. (Effective July 1, 2025. Repealed effective July 1, 2028.)

The administrative fee to be withheld by the department pursuant to Sections 7-1-6.12 and 7-1-6.13 NMSA 1978 shall be set at the following percentages of the net amount to be distributed pursuant to the provisions of those sections, and the money from the fee shall be remitted to the state treasurer for deposit in the general fund each month:

A. prior to July 1, 2026, three percent;

B. beginning July 1, 2026 and prior to July 1, 2027, two percent; and

C. beginning July 1, 2027 and prior to July 1, 2028, one percent.

***History:** Laws 1997, ch. 125, § 1; 2024, ch. 59, § 4.*

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

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

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

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

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

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

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

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

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

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

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

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

7-1-6.43. Distribution; oil and gas proceeds and pass-through entity withholding tax; magistrate retirement fund; judicial retirement fund; legislative retirement fund.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 from the net receipts attributable to the amount of tax deducted pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act [Chapter 7, Article 3A NMSA 1978] shall be made as follows:

(1) to the magistrate retirement fund in the amount of one hundred thousand dollars ($100,000);

(2) to the judicial retirement fund in the amount of one hundred thousand dollars ($100,000); and

(3) on and after July 1, 2025, to the legislative retirement fund in the amount of seventy-five thousand dollars ($75,000) or, if larger, in an amount equal to one-twelfth of the amount necessary to pay out the retirement benefits due under state legislator member coverage plan 2 and Paragraph (2) of Subsection C of Section 10-11-41 NMSA 1978 for the succeeding calendar year.

B. In regard to the distributions to the magistrate retirement fund and the judicial retirement fund, in December 2024 and in each December thereafter, the public employees retirement association, with the assistance of the administrative office of the courts, shall determine the funded ratio of each fund as of the end of the preceding fiscal year. If the funded ratio of the magistrate retirement fund for the preceding fiscal year is equal to or greater than one hundred percent, the association shall notify the department, and no further distributions pursuant to Paragraph (1) of Subsection A of this section shall be made. If the funded ratio of the judicial retirement fund for the preceding fiscal year is equal to or greater than one hundred percent, the association shall notify the department, and no further distributions pursuant to Paragraph (2) of Subsection A of this section shall be made.

C. In regard to the distribution to the legislative retirement fund, in December 2024 and in each December thereafter, the public employees retirement association, with the assistance of the legislative council service, shall determine the amount of retirement benefits for the succeeding calendar year. If the monthly average exceeds seventy-five thousand dollars ($75,000), the association shall immediately notify the department of the average amount.

History: Laws 2003, ch. 86, § 1; 2016 (2nd S.S.), ch. 3, § 1; 2017 (1st S.S.), ch. 3, § 6; 2020, ch. 38, § 1.

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

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made by the department to each qualified tribe in an amount equal to forty percent of the net receipts attributable to the gasoline tax paid to the department on two million five hundred thousand gallons of gasoline each month. The distribution to each qualified tribe shall be made pursuant to a gasoline tax sharing agreement entered into by the department of transportation and the qualified tribe according to the provisions of Section 67-3-8.1 NMSA 1978.

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

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

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

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

7-1-6.45. Repealed.

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

A. For a municipality that did not have in effect on June 30, 2019 a municipal hold harmless gross receipts tax through an ordinance and that has a population of less than ten thousand according to the most recent federal decennial census, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the applicable maximum distribution for the municipality.

B. For a municipality that did not have in effect on June 30, 2019 a municipal hold harmless gross receipts tax through an ordinance and has a population of at least ten thousand according to the most recent federal decennial census, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the following percentages of the applicable maximum distribution for the municipality:

(1) for a municipality that has a municipal poverty level two percentage points or more above the state poverty level, eighty percent;

(2) for a municipality that has a poverty level of less than two percentage points above or below the state poverty level, fifty percent; and

(3) for a municipality that has a poverty level two percentage points or more below the state poverty level:

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

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

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

(d) on or after July 1, 2025, thirty percent.

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

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

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

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

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

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

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

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

(8) on and after July 1, 2029, zero percent.

D. A distribution pursuant to this section is in lieu of revenue that would have been received by the municipality but for the deductions provided by Sections 7-9-92 and 7-9-93 NMSA 1978. The distribution shall be considered gross receipts tax revenue and shall be used by the municipality in the same manner as gross receipts tax revenue, including payment of gross receipts tax revenue bonds.

E. If the changes made by this 2022 act to the distributions made pursuant to this section impair the ability of a municipality to meet its principal or interest payment obligations for revenue bonds that are outstanding prior to July 1, 2022 and that are secured by the pledge of all or part of the municipality's revenue from the distribution made pursuant to this section, then the amount distributed pursuant to this section to that municipality shall be increased by an amount sufficient to meet the required payment; provided that the total amount distributed to that municipality pursuant to this section does not exceed the amount that would have been due that municipality pursuant to this section as it was in effect on June 30, 2022.

F. For the purposes of this section:

(1) "business locations attributable to the municipality" means business locations:

(a) within the municipality;

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

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

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

(2) "maximum distribution" means:

(a) for a municipality that did not have in effect on June 30, 2019 a municipal hold harmless gross receipts tax, the total deductions claimed pursuant to Sections 7-9-92 and 7-9-93 NMSA 1978 for the month by taxpayers from business locations attributable to the municipality multiplied by the sum of the combined rate of all municipal local option gross receipts taxes in effect in the municipality for the month plus one and two hundred twenty-five thousandths percent; and

(b) for a municipality not described in Subparagraph (a) of this paragraph, the total deductions claimed pursuant to Sections 7-9-92 and 7-9-93 NMSA 1978 for the month by taxpayers from business locations attributable to the municipality multiplied by the sum of the combined rate of all municipal local option gross receipts taxes in effect in the municipality on January 1, 2007 plus one and two hundred twenty-five thousandths percent; and

(3) "poverty level" means the percentage of persons in poverty, according to the most recent five-year American community survey, as published by the United States census bureau. For the purposes of determining the poverty level of a municipality, "poverty level" means the percentage of persons in poverty in a municipality, according to the most recent five-year American community survey, as published by the United States census bureau, that includes adequate data to make a determination as to the poverty level of the municipality.

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

History: Laws 2004, ch. 116, § 1; 2006, ch. 75, § 33; 2007, ch. 331, § 2; 2013, ch. 160, § 1; 2022, ch. 47, § 1.

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

A. For a county that did not have in effect on June 30, 2019 a county hold harmless gross receipts tax through an ordinance and that has a population of less than forty-eight thousand according to the most recent federal decennial census, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the applicable maximum distribution for the county.

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

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

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

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

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

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

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

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

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

(9) on and after July 1, 2029, zero percent.

C. A distribution pursuant to this section is in lieu of revenue that would have been received by the county but for the deductions provided by Sections 7-9-92 and 7-9-93 NMSA 1978. The distribution shall be considered gross receipts tax revenue and shall be used by the county in the same manner as gross receipts tax revenue, including payment of gross receipts tax revenue bonds.

D. If the changes made by this 2022 act to the distributions made pursuant to this section impair the ability of a county to meet its principal or interest payment obligations for revenue bonds that are outstanding prior to July 1, 2022 and that are secured by the pledge of all or part of the county's revenue from the distribution made pursuant to this section, then the amount distributed pursuant to this section to that county shall be increased by an amount sufficient to meet the required payment; provided that the total amount distributed to that county pursuant to this section does not exceed the amount that would have been due that county pursuant to this section as it was in effect on June 30, 2022.

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

F. For the purposes of this section, "maximum distribution" means:

(1) for a county that did not have in effect on June 30, 2019 a county hold harmless gross receipts tax and that has a population of less than forty-eight thousand according to the most recent federal decennial census, the sum of:

(a) the total deductions claimed pursuant to Sections 7-9-92 and 7-9-93 NMSA 1978 for the month by taxpayers from business locations within a municipality in the county multiplied by the combined rate of all county local option gross receipts taxes in effect for the month that are imposed throughout the county; and

(b) the total deductions claimed pursuant to Sections 7-9-92 and 7-9-93 NMSA 1978 for the month by taxpayers from business locations in the county but not within a municipality multiplied by the combined rate of all county local option gross receipts taxes in effect for the month that are imposed in the county area not within a municipality; and

(2) for a county not described in Paragraph (1) of this subsection, the sum of:

(a) the total deductions claimed pursuant to Sections 7-9-92 and 7-9-93 NMSA 1978 for the month by taxpayers from business locations within a municipality in the county multiplied by the combined rate of all county local option gross receipts taxes in effect on January 1, 2007 that are imposed throughout the county; and

(b) the total deductions claimed pursuant to Sections 7-9-92 and 7-9-93 NMSA 1978 for the month by taxpayers from business locations in the county but not within a municipality multiplied by the combined rate of all county local option gross receipts taxes in effect on January 1, 2007 that are imposed in the county area not within a municipality.

History: Laws 2004, ch. 116, § 2; 2006, ch. 75, § 34; 2007, ch. 331, § 3; 2013, ch. 160, § 2; 2022, ch. 47, § 2.

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

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

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

7-1-6.49. Distribution; contributions to the state parks division.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the energy, minerals and natural resources department in an amount equal to the money designated pursuant to Section 7-2-30.2 NMSA 1978 as contributions to the state parks division of the energy, minerals and natural resources department for the kids in parks education program. The energy, minerals and natural resources department shall remit the amount designated for the state parks division to the state parks division for expenditure for the kids in parks education program.

History: Laws 2005, ch. 87, § 1; 2017, ch. 63, § 15.

7-1-6.50. Distribution; contributions for national guard member and family assistance.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the department of military affairs in an amount equal to the money designated pursuant to Section 7-2-30.3 NMSA 1978 as contributions for assistance to members of the New Mexico national guard and to their families. The department of military affairs shall deposit the money in a temporary suspense account for distribution to members of the New Mexico national guard and to their families.

History: Laws 2005, ch. 220, § 1; 2008, ch. 13, § 1; 2015, ch. 150, § 1; 2017, ch. 63, § 16; 2018, ch. 4, § 1.

7-1-6.51. Distribution; municipal event center surcharge.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the public project revolving fund administered by the New Mexico finance authority in an amount equal to seventy-five percent of the amount of event center surcharge proceeds transferred to the tax administration suspense fund pursuant to the Municipal Event Center Funding Act [3-66-1 to 3-66-11 NMSA 1978].

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the energy, minerals and natural resources department in an amount equal to twenty-four percent of the amount of event center surcharge proceeds transferred to the tax administration suspense fund pursuant to the Municipal Event Center Funding Act.

C. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the cultural affairs department in an amount equal to one percent of the amount of event center surcharge proceeds transferred to the tax administration suspense fund pursuant to the Municipal Event Center Funding Act.

History: Laws 2005, ch. 351, § 1.

7-1-6.52. Distribution adjustment; tax administration suspense fund; credit for certain sales of services for resale.

Distributions from the tax administration suspense fund to the general fund of revenue attributable to the gross receipts tax or to the governmental gross receipts tax shall be adjusted for credits issued pursuant to the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] for receipts from the sale of services for resale.

History: Laws 2005, ch. 104, § 1.

7-1-6.53. Distribution; energy efficiency and renewable energy bonding fund; gross receipts tax.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the energy efficiency and renewable energy bonding fund from the net receipts attributable to the gross receipts tax imposed by the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] in an amount necessary to make the required bond debt service payments pursuant to the Energy Efficiency and Renewable Energy Bonding Act [Chapter 6, Article 21D NMSA 1978] as determined by the New Mexico finance authority. The distribution shall be made:

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

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

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

History: Laws 2005, ch. 176, § 11.

7-1-6.54. Distributions; tax increment development districts.

A distribution for a tax increment development district shall be made by the department to a special fund of the district, in accordance with a notice that is filed pursuant to Section 5-15-27 NMSA 1978 with respect to a dedication of a gross receipts tax increment, to a special fund of the tax increment development district.

History: Laws 2006, ch. 75, § 29; 2019, ch. 275, § 9.

7-1-6.54. Distributions; tax increment development districts; administrative fee. (Effective July 1, 2025.)

A. A distribution for a tax increment development district shall be made by the department to a special fund of the district, in accordance with a notice that is filed pursuant to Section 5-15-27 NMSA 1978 with respect to a dedication of a gross receipts tax increment, to a special fund of the tax increment development district.

B. The department shall withhold an administrative fee of three percent of the net amount to be distributed pursuant to Subsection A of this section, and the money from the fee shall be remitted to the state treasurer for deposit in the general fund each month.

History: *Laws 2006, ch. 75, § 29; 2019, ch. 275, § 9; 2024, ch. 59, § 5.*

7-1-6.55. Repealed.

History: Laws 2007, ch. 331, § 4; repealed by Laws 2019, ch. 270, § 57.

7-1-6.56. Repealed.

History: Laws 2007, ch. 168, § 1; 2009, ch. 287, § 1; 2009, ch. 288, § 1; repealed by Laws 2016 (2nd S.S.), ch. 1, § 3.

7-1-6.57. Repealed.

History: Laws 2007, ch. 361, § 1; repealed by Laws 2019, ch. 270, § 56.

7-1-6.58. Distribution; public election fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the public election fund from the amount deposited pursuant to the provisions of Section 7-8A-13 NMSA 1978 in the amount of one hundred thousand dollars ($100,000) per month during fiscal year 2008 and subsequent fiscal years.

History: Laws 2007 (1st S.S.), ch. 2, § 8.

7-1-6.59. Distribution; Vietnam veterans memorial operation, maintenance and improvement.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the veterans' services department in an amount equal to the money designated pursuant to Section 7-2-30.4 NMSA 1978 as contributions to the veterans' services department for the operation, maintenance and improvement of the Vietnam veterans memorial near Angel Fire, New Mexico.

History: Laws 2009, ch. 175, § 1; 2017, ch. 63, § 17; 2017, ch. 115, § 1.

7-1-6.60. Distribution; county business retention gross receipts tax.

Beginning September 1, 2011, an annual distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to a county that has imposed and the electors have approved a county business retention gross receipts tax. The distribution shall be in an amount equal to the balance of the net receipts attributable to that tax collected in the prior fiscal year, exclusive of penalties and interest, after the state has deducted an amount for deposit to the general fund equal to the reduction in gaming tax revenue from the gaming operator licensees that are racetracks located in that county resulting from county gaming tax credits allowed in the immediately prior fiscal year for gaming operator licensees located in that county. The total receipts from any county transferred to the general fund in any fiscal year shall not exceed seven hundred fifty thousand dollars ($750,000) or the total amount of the decrease in gaming tax revenue calculated for the county pursuant to this section, whichever is less.

History: Laws 2010, ch. 31, § 2.

7-1-6.61. Distribution; oil and gas emergency school tax; excess extraction taxes suspense fund.

A. A distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the excess extraction taxes suspense fund in an amount as calculated pursuant to Subsection B of this section.

B. If the year-to-date amount plus the current net receipts exceeds the threshold amount, the excess shall be distributed by the taxation and revenue department to the excess extraction taxes suspense fund. Each month the department of finance and administration shall make the calculation to determine the excess amount to be distributed. If there is not an excess amount, no distribution shall be made.

C. As used in this section:

(1) "threshold amount" means the total net receipts attributable to the tax imposed pursuant to Section 7-31-4 NMSA 1978 and distributed to the general fund in fiscal year 2024; and

(2) "year-to-date amount" means the cumulative year-to-date net receipts attributable to the tax imposed pursuant to Section 7-31-4 NMSA 1978 and distributed to the general fund in the prior months of the current fiscal year.

History: Laws 2017 (1st S.S.), ch. 3, § 3; 2020, ch. 3, § 6; 2023, ch. 22, § 2.

7-1-6.62. Distribution; premium tax.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the law enforcement protection fund in an amount equal to ten percent of the net receipts attributable to the premium tax from life, health, general casualty and title insurance business.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the fire protection fund of the net receipts attributable to the premium tax derived from property and vehicle insurance business.

History: Laws 2019, ch. 47, § 2; 2023, ch. 182, § 1.

7-1-6.62. Distribution; premium tax. (Effective July 1, 2025.)

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the law enforcement protection fund in an amount equal to ten percent of the net receipts attributable to the premium tax from life, health, general casualty and title insurance business.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the fire protection fund of the net receipts attributable to the premium tax derived from property and vehicle insurance business.

C. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the emergency medical services fund in an amount equal to five percent of the net receipts attributable to the premium tax from health insurance business.

History: *Laws 2019, ch. 47, § 2; 2023, ch. 182, § 1; 2024, ch. 27, § 1.*

7-1-6.63. Distribution; health care quality surcharge; health care facility fund; disability health care facility fund.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the health care facility fund in an amount equal to the net receipts attributable to the health care quality surcharge imposed on skilled nursing facilities and intermediate care facilities pursuant to the Health Care Quality Surcharge Act [7-41-1 to 7-41-8 NMSA 1978].

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the disability health care facility fund in an amount equal to the net receipts attributable to the health care quality surcharge imposed on intermediate care facilities for individuals with intellectual disabilities pursuant to the Health Care Quality Surcharge Act.

History: Laws 2019, ch. 53, § 9.

7-1-6.64. Repealed.

History: Laws 2019, ch. 270, § 9; 2020 (1st S.S.), ch. 4, § 1; repealed by Laws 2019, ch. 270, § 57.

7-1-6.65. Repealed.

History: Laws 2020, ch. 22, § 2; repealed by Laws 2022, ch. 45, § 3.

7-1-6.66. Distribution; offset for food and beverage establishments deduction.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to a municipality in an amount, subject to any increase or decrease made pursuant to

Section 7-1-6.15 NMSA 1978, equal to the sum of the deductions claimed pursuant to Section 3 [7-9-118 NMSA 1978] of this 2021 act for the month by taxpayers from business locations attributable to the municipality multiplied by the sum of the combined rate of all municipal local option gross receipts taxes in effect in the municipality on January 1, 2021 plus one and two hundred twenty-five thousandths percent.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to a county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the sum of the total deductions claimed pursuant to Section 3 of this 2021 act for the month by taxpayers from business locations:

(1) within a municipality in the county multiplied by the combined rate of all county local option gross receipts taxes in effect on January 1, 2021 that are imposed in the county; and

(2) in the county but not within a municipality multiplied by the combined rate of all county local option gross receipts taxes in effect on January 1, 2021 that are imposed in the county area not within a municipality.

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

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

(1) within the municipality;

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

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

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

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

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

History: Laws 2021, ch. 4, § 1.

7-1-6.67. Distribution; Local Economic Development Act Fund.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the Local Economic Development Act [Chapter 5, Article 10 NMSA 1978] fund equal to the following amounts of the following taxes imposed and paid on the expenses related to the construction of the qualifying entity's economic development project, as determined pursuant to Section 2 [5-10-17 NMSA 1978] of this 2021 act:

(1) fifty percent of the net receipts attributable to state gross receipts tax and the state compensating tax; and

(2) fifty percent of the net receipts attributable to the local option gross receipts tax and county compensating tax imposed by a county and local option gross receipts tax and municipal compensating tax imposed by a municipality.

B. As used in this section:

(1) "economic development project" means "economic development project" as used in the Local Economic Development Act; and

(2) "qualifying entity" means "qualifying entity" as used in the Local Economic Development Act.

History: Laws 2021 (1st S.S.), ch. 2, § 5.

7-1-6.67. Distribution; Local Economic Development Act Fund; administrative fee. (Effective July 1, 2025.)

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the Local Economic Development Act fund equal to the following amounts of the following taxes imposed and paid on the expenses related to the construction of the qualifying entity's economic development project, as determined pursuant to Section 5-10-17 NMSA 1978:

(1) fifty percent of the net receipts attributable to state gross receipts tax and the state compensating tax; and

(2) fifty percent of the net receipts attributable to the local option gross receipts tax and county compensating tax imposed by a county and local option gross receipts tax and municipal compensating tax imposed by a municipality.

B. The department shall withhold an administrative fee of three percent of the net amount to be distributed pursuant to Subsection A of this section, and the money from *the fee shall be remitted to the state treasurer for deposit in the general fund each month.*

C. As used in this section:

(1) "economic development project" means "economic development project" as used in the Local Economic Development Act [Chapter 5, Article 10 NMSA 1978]; and

(2) "qualifying entity" means "qualifying entity" as used in the Local Economic Development Act.

History: *Laws 2021 (1st S.S.), ch. 2, § 5; 2024, ch. 59, § 6.*

7-1-6.68. Distribution; cannabis excise tax; municipalities and counties.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, in an amount equal to thirty-three and thirty-three hundredths percent of the net receipts attributable to the cannabis excise tax from business locations within the municipality as reported pursuant to Section 7-42-4 NMSA 1978.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each county in an amount equal to thirty-three and thirty-three hundredths percent of the net receipts attributable to the cannabis excise tax from business locations within the county area of the county as reported pursuant to Section 7-42-4 NMSA 1978.

C. The department may deduct an amount not to exceed three percent of the distributions made pursuant to this section for the reasonable costs for administering the distributions.

D. As used in this section, "county area" means that portion of a county located outside the boundaries of any municipality.

History: Laws 2021 (1st S.S.), ch. 4, § 50; 2023, ch. 85, § 2.

7-1-6.69. Distribution; health insurance premium surtax; health care affordability fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the health care affordability fund in an amount equal to the following amounts of the net receipts attributable to the health insurance premium surtax; provided that if the rate of the health insurance premium surtax is reduced pursuant to Subsection F of Section 7-40-3 NMSA 1978, no distribution pursuant to this section shall be made:

A. prior to July 1, 2024, fifty-five percent;

B. beginning July 1, 2024 and prior to September 1, 2025, thirty percent; and

C. beginning September 1, 2025, fifty-five percent.

History: Laws 2021, ch. 136, § 1; 2024, ch. 32, § 1.

7-1-6.70. Distribution; land grant-merced assistance fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the land grant-merced assistance fund in an amount equal to five-hundredths percent of the net receipts attributable to the gross receipts tax after distributions have been made pursuant to Sections 7-1-6.46 and 7-1-6.47 NMSA 1978.

History: Laws 2022, ch. 32, § 1.

7-1-6.71. Distribution; metropolitan redevelopment fund.

A distribution for a metropolitan redevelopment project pursuant to the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978] shall be made to the metropolitan redevelopment fund in accordance with the provisions of Subparagraph (b) of Paragraph (4) of Subsection B of Section 3-60A-21 NMSA 1978 with respect to a dedication of a gross receipts tax increment.

History: Laws 2023, ch. 112, § 11; 2024, ch. 59, § 7; 2024, ch. 62, § 2.

7-1-6.71. Distribution; metropolitan redevelopment fund; administrative fee. (Effective July 1, 2025.)

A. A distribution for a metropolitan redevelopment project pursuant to the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978] shall be made to the metropolitan redevelopment fund in accordance with the provisions of Subparagraph (b) of Paragraph (4) of Subsection B of Section 3-60A-21 NMSA 1978 with respect to a dedication of a gross receipts tax increment.

B. The department shall withhold an administrative fee of three percent of the net amount to be distributed pursuant to Subsection A of this section, and the money from the fee shall be remitted to the state treasurer for deposit in the general fund each month.

History: *Laws 2023, ch. 112, § 11; 2024, ch. 59, § 7; 2024, ch. 62, § 2.*

7-1-6.72. Distribution; health care delivery and access fund. (Repealed effective July 1, 2030.)

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the health care delivery and access fund in an amount equal to the net receipts attributable to the health care delivery and access assessment imposed on hospitals pursuant to the Health Care Delivery and Access Act [24A-8-1 to 24A-8-7 NMSA 1978] and any associated interest or penalties collected from eligible hospitals.

History: Laws 2024, ch. 41, § 9.

7-1-7. Repealed.

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

A. It is unlawful for any person other than the taxpayer to reveal to any other person the taxpayer's return or return information, except as provided in Sections 7-1-8.1 through 7-1-8.11 NMSA 1978.

B. A return or return information revealed under Sections 7-1-8.1 through 7-1-8.11 NMSA 1978:

(1) may only be revealed to a person specifically authorized to receive the return or return information and the employees, directors, officers and agents of such person whose official duties or duties in the course of their employment require the return or return information and to an employee of the department;

(2) may only be revealed for the authorized purpose and only to the extent necessary to perform that authorized purpose;

(3) shall at all times be protected from being revealed to an unauthorized person by physical, electronic or any other safeguards specified by directive by the secretary; and

(4) shall be returned to the secretary or the secretary's delegate or destroyed as soon as it is no longer required for the authorized purpose.

C. If any provision of Sections 7-1-8.1 through 7-1-8.11 NMSA 1978 requires that a return or return information will only be revealed pursuant to a written agreement between a person and the department, the written agreement shall:

(1) list the name and position of any official or employee of the person to whom a return or return information is authorized to be revealed under the provision;

(2) describe the specific purpose for which the return or return information is to be used;

(3) describe the procedures and safeguards the person has in place to ensure that the requirements of Subsection B of this section are met; and

(4) provide for reimbursement to the department for all costs incurred by the department in supplying the returns or return information to, and administering the agreement with, the person.

D. A return or return information that is lawfully made public by an employee of the department or any other person, or that is made public by the taxpayer, is not subject to the provisions of this section once it is made public.

History: 1953 Comp., § 72-13-25, enacted by Laws 1965, ch. 248, § 13; 1969, ch. 8, § 1; 1970, ch. 16, § 1; 1971, ch. 276, § 5; 1975, ch. 136, § 1; 1977, ch. 249, § 42; 1979, ch. 144, § 7; 1981, ch. 37, § 8; 1982, ch. 18, § 8; 1983, ch. 211, § 21; 1985, ch. 65, § 10; 1986, ch. 20, § 12; 1987, ch. 169, § 3; 1988, ch. 73, § 6; 1991, ch. 19, § 1; 1993, ch. 5, § 3; 1993, ch. 261, § 1; 1996, ch. 15, § 3; 2000, ch. 28, § 3; 2001, ch. 56, § 3; 2003, ch. 398, § 5; 2003, ch. 439, § 1; 2005, ch. 107, § 1; 2005, ch. 108, § 2; 2005, ch. 109, § 2; 2007, ch. 164, § 2; 2009, ch. 241, § 1; 2009, ch. 242, § 2; 2009, ch. 243, § 2; 2017, ch. 63, § 18.

7-1-8.1. Information that may be revealed to an employee of the department, a taxpayer or the taxpayer's representative.

An employee of the department may reveal a return or return information:

A. to another employee of the department whose official duties require the return or return information; and

B. to the taxpayer or to the taxpayer's authorized representative; provided, however, that nothing in this section shall be construed to require an employee to testify in a judicial proceeding except as provided in Subsection A of Section 7-1-8.4 NMSA 1978.

History: 1978 Comp., § 7-1-8.1, as enacted by Laws 2009, ch. 243, § 3.

7-1-8.2. Information required to be revealed.

A. The department shall:

(1) furnish returns and return information required by a provision of the Tax Administration Act to be made available to the public by the department;

(2) answer all inquiries concerning whether a person is or is not a registered taxpayer for tax programs that require registration, but nothing in this subsection shall be construed to allow the department to answer inquiries concerning whether a person has filed a tax return;

(3) furnish, upon request for inspection by a member of the public pursuant to:

(a) Section 7-1-28 or Section 7-1-29 NMSA 1978, the taxpayer name, abatement, refund or credit amount, tax program or business tax credit and the date the abatement, refund or credit was issued; and

(b) Section 7-1-21 NMSA 1978, the installment agreement; and

(4) with respect to the taxes on gasoline and special fuel imposed by the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978] and the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978], make available for public inspection at monthly intervals a report covering the number of gallons of gasoline, ethanol blended fuels and special fuel received and deducted and the amount of tax paid by each person required to file a gasoline tax return or special fuel tax return or pay gasoline tax or special fuel excise tax in the state of New Mexico.

B. Nothing in this section shall be construed to require the release of information that would violate an agreement between the state and the federal internal revenue service for sharing of information or any provision or rule of the federal Internal Revenue Code to which a state is subject.

History: 1978 Comp., § 7-1-8.2, as enacted by Laws 2009, ch. 243, § 4; 2023, ch. 85, § 3.

7-1-8.3. Information that may be revealed to public.

An employee of the department may reveal:

A. information obtained through the administration of a law not subject to administration and enforcement under the provisions of the Tax Administration Act to the extent that revealing that information is not otherwise prohibited by law;

B. return information with respect to the taxes or tax acts administered pursuant to Subsection B of Section 7-1-2 NMSA 1978, except that:

(1) return information for or relating to a period prior to July 1, 1985 with respect to the Resources Excise Tax Act [Chapter 7, Article 25 NMSA 1978] and the Severance Tax Act [7-26-1 to 7-26-8 NMSA 1978] may be revealed only to a committee of the legislature for a valid legislative purpose;

(2) except as provided in Paragraph (3) of this subsection, contracts and other agreements between the taxpayer and other parties and the proprietary information contained in those contracts and agreements shall not be revealed without the consent of all parties to the contract or agreement; and

(3) audit workpapers and the proprietary information contained in the workpapers shall not be revealed except to:

(a) the bureau of safety and environmental enforcement of the United States department of the interior, if production occurred on federal land;

(b) a person having a legal interest in the property that is subject to the audit;

(c) a purchaser of products severed from a property subject to the audit; or

(d) the authorized representative of any of the persons in Subparagraphs (a) through (c) of this paragraph. This paragraph does not prohibit the revelation of proprietary information contained in the workpapers that is also available from returns or from other sources not subject to the provisions of Section 7-1-8 NMSA 1978;

C. return information with respect to the taxes, surtaxes, advance payments or tax acts administered pursuant to Subsection C of Section 7-1-2 NMSA 1978;

D. a decision and order made by a hearing officer pursuant to the provisions of the Administrative Hearings Office Act [7-1B-1 to 7-1B-9 NMSA 1978] with respect to a protest filed with the secretary on or after July 1, 1993;

E. any written ruling on questions of evidence or procedure made by a hearing officer pursuant to the provisions of the Administrative Hearings Office Act; provided that the name and identification number of the taxpayer requesting the ruling shall not be revealed; and

F. return information included in a notice of lien or release or extinguishment of lien.

History: 1978 Comp., § 7-1-8.3, as enacted by Laws 2009, ch. 243, § 5; 2015, ch. 73, § 12.

7-1-8.4. Information that may be revealed to judicial bodies or with respect to judicial proceedings or investigations and to administrative hearings office.

An employee of the department may reveal to:

A. a district court, an appellate court or a federal court, a return or return information:

(1) in response to an order thereof in an action relating to taxes or an action for tax fraud or any other crime that may involve taxes due to the state and in which the information sought is about a taxpayer that is party to the action and is material to the inquiry, in which case only that information may be required to be produced in court and admitted in evidence subject to court order protecting the confidentiality of the information and no more;

(2) in an action in which the department is attempting to enforce an act with which the department is charged or to collect a tax; or

(3) in any matter in which the department is a party and the taxpayer has put the taxpayer's own liability for taxes at issue, in which case only that information regarding the taxpayer that is party to the action may be produced, but this shall not prevent revelation of department policy or interpretation of law arising from circumstances of a taxpayer that is not a party;

B. the Bernalillo county metropolitan court, upon that court's request, the last known address and the date of that address for every person the court certifies to the department as a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

C. a magistrate court, upon the magistrate court's request, the last known address and the date of that address for every person the court certifies to the department as a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

D. a district attorney, a state district court grand jury or federal grand jury, information for an investigation of or proceeding related to an alleged criminal violation of the tax laws;

E. a third party subject to a subpoena or levy issued pursuant to the provisions of the Tax Administration Act, the identity of the taxpayer involved, the taxes or tax acts involved and the nature of the proceeding; and

F. the administrative hearings office, information in relation to a protest or other hearing, in which case only that information regarding the taxpayer that is a party to the action may be produced, but this shall not prevent revelation of department policy or interpretation of law arising from circumstances of a taxpayer that is not a party. The office shall maintain confidentiality regarding taxpayer information as required by the provisions of Section 7-1-8 NMSA 1978.

History: 1978 Comp., § 7-1-8.4, as enacted by Laws 2009, ch. 243, § 6; 2015, ch. 73, § 13.

7-1-8.5. Information that may be revealed to national governments or their agencies.

An employee of the department may reveal return information to:

A. a representative of the secretary of the treasury or the secretary's delegate pursuant to the terms of a reciprocal agreement entered into with the federal government for exchange of the information; and

B. the national tax administration agencies of Mexico and Canada; provided the agency receiving the information has entered into a written agreement with the department to use the information for tax purposes only and is subject to a confidentiality statute and penalty similar to Sections 7-1-8 and 7-1-76 NMSA 1978.

History: 1978 Comp., § 7-1-8.5, as enacted by Laws 2009, ch. 243, § 7.

7-1-8.6. Information that may be revealed to certain tribal governments.

An employee of the department may reveal return information to authorized representatives of an Indian nation, tribe or pueblo, the territory of which is located wholly or partially within New Mexico, pursuant to the terms of a written reciprocal agreement entered into by the department with the Indian nation, tribe or pueblo for the exchange of that information for tax purposes only; provided that the Indian nation, tribe or pueblo has enacted a confidentiality statute and penalty similar to Sections 7-1-8 and 7-1-76 NMSA 1978.

History: 1978 Comp., § 7-1-8.6, as enacted by Laws 2009, ch. 243, § 8.

7-1-8.7. Information that may be revealed to other states or multistate administrative bodies.

An employee of the department may reveal return information to:

A. an authorized representative of another state or an authorized representative of a local government of another state who is charged under the laws of that state with the responsibility for administration of that state's tax laws; provided that the receiving state or local government has entered into a written agreement with the department to use the return information for tax purposes only and that the receiving state has enacted a confidentiality statute and penalty similar to Sections 7-1-8 and 7-1-76 NMSA 1978 to which the representative is subject;

B. the multistate tax commission, the federation of tax administrators or their authorized representatives; provided that the return information is used for tax purposes only and is revealed by the multistate tax commission or the federation of tax administrators only to states that have met the requirements of Subsection A of this section; and

C. another jurisdiction pursuant to an international fuel tax agreement; provided that the return information is used for tax purposes only.

History: 1978 Comp., § 7-1-8.7, as enacted by Laws 2009, ch. 243, § 9; 2015 (1st S.S.), ch. 2, § 1.

7-1-8.8. Information that may be revealed to other state and legislative agencies. (Repealed effective July 1, 2030.)

An employee of the department may reveal confidential return information to the following agencies; provided that a person who receives the information on behalf of the agency shall be subject to the penalties in Section 7-1-76 NMSA 1978 if the person fails to maintain the confidentiality required:

A. a committee of the legislature for a valid legislative purpose, return information concerning any tax or fee imposed pursuant to the Cigarette Tax Act [Chapter 7, Article 12 NMSA 1978];

B. the attorney general, return information acquired pursuant to the Cigarette Tax Act for purposes of Section 6-4-13 NMSA 1978 and the master settlement agreement defined in Section 6-4-12 NMSA 1978;

C. the commissioner of public lands, return information for use in auditing that pertains to rentals, royalties, fees and other payments due the state under land sale, land lease or other land use contracts;

D. the secretary of health care authority or the secretary's delegate under a written agreement with the department:

(1) the last known address with date of all names certified to the department as being absent parents of children receiving public financial assistance, but only for the purpose of enforcing the support liability of the absent parents by the child support enforcement division or any successor organizational unit;

(2) return information needed for reports required to be made to the federal government concerning the use of federal funds for low-income working families;

(3) return information of low-income taxpayers for the limited purpose of outreach to those taxpayers; provided that the health care authority department shall pay the department for expenses incurred by the department to derive the information requested by the health care authority department if the information requested is not readily available in reports for which the department's information systems are programmed;

(4) return information required to administer the Health Care Quality Surcharge Act [7-41-1 to 7-41-8 NMSA 1978] and the Health Care Delivery and Access Act [24A-8-1 to 24A-8-7 NMSA 1978]; and

(5) return information in accordance with the provisions of the Easy Enrollment Act [Chapter 59A, Article 23H NMSA 1978];

E. the department of information technology, by electronic media, a database updated quarterly that contains the names, addresses, county of address and taxpayer identification numbers of New Mexico personal income tax filers, but only for the purpose of producing the random jury list for the selection of petit or grand jurors for the state courts pursuant to Section 38-5-3 NMSA 1978;

F. the state courts, the random jury lists produced by the department of information technology under Subsection E of this section;

G. the director of the New Mexico department of agriculture or the director's authorized representative, upon request of the director or representative, the names and addresses of all gasoline or special fuel distributors, wholesalers and retailers;

H. the public regulation commission, return information with respect to the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] required to enable the commission to carry out its duties;

I. the state racing commission, return information with respect to the state, municipal and county gross receipts taxes paid by racetracks;

J. the gaming control board, tax returns of license applicants and their affiliates as provided in Subsection E of Section 60-2E-14 NMSA 1978;

K. the director of the workers' compensation administration or to the director's representatives authorized for this purpose, return information to facilitate the identification of taxpayers that are delinquent or noncompliant in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA 1978;

L. the secretary of workforce solutions or the secretary's delegate, return information for use in enforcement of unemployment insurance collections pursuant to the terms of a written reciprocal agreement entered into by the department with the secretary of workforce solutions for exchange of information;

M. the New Mexico finance authority, information with respect to the amount of municipal and county gross receipts taxes collected by municipalities and counties pursuant to any local option municipal or county gross receipts taxes imposed, and information with respect to the amount of governmental gross receipts taxes paid by every agency, institution, instrumentality or political subdivision of the state pursuant to Section 7-9-4.3 NMSA 1978;

N. the superintendent of insurance, return information with respect to the premium tax and the health insurance premium surtax;

O. the secretary of finance and administration or the secretary's designee, return information concerning a credit pursuant to the Film Production Tax Credit Act [Chapter 7, Article 2F NMSA 1978];

P. the secretary of economic development or the secretary's designee, return information concerning a credit pursuant to the Film Production Tax Credit Act;

Q. the secretary of public safety or the secretary's designee, return information concerning the Weight Distance Tax Act [Chapter 7, Article 15A NMSA 1978];

R. the secretary of transportation or the secretary's designee, return information concerning the Weight Distance Tax Act;

S. the secretary of energy, minerals and natural resources or the secretary's designee, return information concerning tax credits or deductions for which eligibility is certified or otherwise determined by the secretary or the secretary's designee;

T. the secretary of environment or the secretary's designee, return information concerning tax credits for which eligibility is certified or otherwise determined by the secretary or the secretary's designee; and

U. the secretary of state or the secretary's designee, taxpayer information required to maintain voter registration records and as otherwise provided in the Election Code [Chapter 1 NMSA 1978].

History: 1978 Comp., § 7-1-8.8, as enacted by Laws 2009, ch. 243, § 10; 2015, ch. 30, § 1; 2017, ch. 63, § 19; 2018, ch. 57, § 11; 2019, ch. 87, § 1; repealed and reenacted by Laws 2019, ch. 87, § 2; 2020, ch. 43, § 1; 2022, ch. 33, § 7; 2023, ch. 39, § 90; 2024, ch. 41, § 10.

7-1-8.9. Information that may be revealed to local governments and their agencies.

A. An employee of the department may reveal to:

(1) the officials or employees of a municipality of this state authorized in a written request by the municipality for a period specified in the request within the twelve months preceding the request; provided that the municipality receiving the information has entered into a written agreement with the department that the information shall be used for tax purposes only and specifying that the municipality is subject to the confidentiality provisions of Section 7-1-8 NMSA 1978 and the penalty provisions of Section 7-1-76 NMSA 1978:

(a) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts for that municipality under the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] or a local option gross receipts tax imposed by that municipality. The department may also reveal the information described in this subparagraph quarterly or upon such other periodic basis as the secretary and the municipality may agree in writing;

(b) a range of taxable gross receipts of registered gross receipts paid by taxpayers from business locations attributable to that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality; provided that authorization from the federal internal revenue service to reveal such information has been received. The department may also reveal the information described in this subparagraph quarterly or upon such other periodic basis as the secretary and the municipality may agree in writing; and

(c) information indicating whether persons shown on a list of businesses located within that municipality furnished by the municipality have reported gross receipts to the department but have not reported gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality;

(2) the officials or employees of a county of this state authorized in a written request by the county for a period specified in the request within the twelve months preceding the request; provided that the county receiving the information has entered into a written agreement with the department that the information shall be used for tax purposes only and specifying that the county is subject to the confidentiality provisions of Section 7-1-8 NMSA 1978 and the penalty provisions of Section 7-1-76 NMSA 1978:

(a) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts either for that county in the case of a local option gross receipts tax imposed on a countywide basis or only for the areas of that county outside of any incorporated municipalities within that county in the case of a county local option gross receipts tax imposed only in areas of the county outside of any incorporated municipalities. The department may also reveal the information described in this subparagraph quarterly or upon such other periodic basis as the secretary and the county may agree in writing;

(b) a range of taxable gross receipts of registered gross receipts paid by taxpayers from business locations attributable either to that county in the case of a local option gross receipts tax imposed on a countywide basis or only to the areas of that county outside of any incorporated municipalities within that county in the case of a county local option gross receipts tax imposed only in areas of the county outside of any incorporated municipalities; provided that authorization from the federal internal revenue service to reveal such information has been received. The department may also reveal the information described in this subparagraph quarterly or upon such other periodic basis as the secretary and the county may agree in writing;

(c) in the case of a local option gross receipts tax imposed by a county on a countywide basis, information indicating whether persons shown on a list of businesses located within the county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that county on a countywide basis; and

(d) in the case of a local option gross receipts tax imposed by a county only on persons engaging in business in that area of the county outside of incorporated municipalities, information indicating whether persons on a list of businesses located in that county outside of the incorporated municipalities but within that county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county outside of the incorporated municipalities within that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by the county only on persons engaging in business in that county outside of the incorporated municipalities; and

(3) officials or employees of a municipality or county of this state, authorized in a written request of the municipality or county, for purposes of inspection, the records of the department pertaining to an increase or decrease to a distribution or transfer made pursuant to Section 7-1-6.15 NMSA 1978 for the purpose of reviewing the basis for the increase or decrease; provided that the municipality or county receiving the information has entered into a written agreement with the department that the information shall be used for tax purposes only and specifying that the municipality or county is subject to the confidentiality provisions of Section 7-1-8 NMSA 1978 and the penalty provisions of Section 7-1-76 NMSA 1978. The authorized officials or employees may only reveal the information provided in this paragraph to another authorized official or employee, to an employee of the department, or a district court, an appellate court or a federal court in a proceeding relating to a disputed distribution and in which both the state and the municipality or county are parties.

B. The department may require that a municipal or county official or employee satisfactorily complete appropriate training on protecting confidential information prior to receiving the information pursuant to Subsection A of this section.

History: 1978 Comp., § 7-1-8.9, as enacted by Laws 2009, ch. 243, § 11; 2015, ch. 89, § 2; 2015, ch. 100, § 2.

7-1-8.10. Information that may be revealed to private persons other than the taxpayer.

An employee of the department may reveal to:

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

B. a purchaser of a business as provided in Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis of an unpaid assessment of tax for which the purchaser's seller is liable;

C. a rack operator, importer, blender, distributor or supplier, the identity of a rack operator, importer, blender, supplier or distributor and the number of gallons reported on returns required under the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978], Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978] or Alternative Fuel Tax Act [Chapter 7, Article 16B NMSA 1978], but only when it is necessary to enable the department to carry out its duties under the Gasoline Tax Act, the Special Fuels Supplier Tax Act or the Alternative Fuel Tax Act;

D. a corporation authorized to be formed under the Educational Assistance Act [Chapter 21, Article 21A NMSA 1978], upon its written request, the last known address and the date of that address of every person certified to the department as an absent obligor of an educational debt due and owed to the corporation or that the corporation has lawfully contracted to collect; this information may only be used by the corporation and its officers and employees to enforce the educational debt obligation of the absent obligors; and

E. the executive director of the New Mexico health insurance exchange:

(1) insurance-relevant information for which the taxpayer consents to disclosure in accordance with the provisions of the Easy Enrollment Act [Chapter 59A, Article 23H NMSA 1978]; and

(2) information on consent that a taxpayer provides on a state income tax return in accordance with the provisions of the Easy Enrollment Act.

History: 1978 Comp., § 7-1-8.10, as enacted by Laws 2009, ch. 243, § 12; 2022, ch. 33, § 8.

7-1-8.11. Information that may be revealed to a water and sanitation district.

A. An employee of the department may reveal to the officials and employees of a water and sanitation district of this state that has in effect a water and sanitation gross receipts tax imposed by the water and sanitation district upon its request for a period specified by that water and sanitation district within the twelve months preceding the request for the information by those officials and employees:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts for that water and sanitation district; the department may also release the information described in this paragraph quarterly or upon any other periodic basis to which the secretary and the district agree; and

(2) information indicating whether the persons shown on a list of businesses within the water and sanitation district have reported gross receipts to the department but have not reported gross receipts for that water and sanitation district.

B. The officials and employees of water and sanitation districts receiving information as provided in this section shall be subject to the confidentiality provisions of Section 7-1-8 NMSA 1978 and the penalty provisions of Section 7-1-76 NMSA 1978.

History: 1978 Comp., § 7-1-8.11, enacted by Laws 2017, ch. 63, § 20.

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

A. Any notice required or authorized by the Tax Administration Act to be given by mail is effective if mailed or served by the secretary or the secretary's delegate to the taxpayer or person at the last address shown on his registration certificate or other record of the department. Any notice, return, application or payment required or authorized to be delivered to the secretary or the department by mail shall be addressed to the secretary of taxation and revenue, taxation and revenue department, Santa Fe, New Mexico or in any other manner which the secretary by regulation or instruction may direct.

B. Except as provided otherwise in Section 7-1-13.1 NMSA 1978, all notices, returns, applications or payments authorized or required to be made or given by mail are timely if mailed on or before the date on which they are required. The secretary by regulation may provide that delivery to a private delivery or courier service on or before the date on which mailing is required constitutes timely mailing and may specify standards under which the service's time stamps or other indication of date of delivery to the service are adequate to determine actual time of delivery to the service.

History: 1953 Comp., § 72-13-26, enacted by Laws 1965, ch. 248, § 14; 1979, ch. 144, § 8; 1985, ch. 65, § 11; 1986, ch. 20, § 13; 1988, ch. 99, § 1; 1997, ch. 67, § 2.

7-1-10. Records required by statute; taxpayer records; accounting methods; reporting methods; information returns.

A. Every person required by the provisions of any statute administered by the department to keep records and documents and every taxpayer shall maintain books of account or other records in a manner that will permit the accurate computation of state taxes or provide information required by the statute under which the person is required to keep records.

B. Methods of accounting shall be consistent for the same business. A taxpayer engaged in more than one business may use a different method of accounting for each business.

C. Prior to changing the method of accounting in keeping books and records for tax purposes, a taxpayer shall first secure the consent of the secretary or the secretary's delegate. If consent is not secured, the department upon audit may require the taxpayer to compute the amount of tax due on the basis of the accounting method earlier used.

D. Prior to changing the method of reporting taxes, other than for changes required by law, a taxpayer shall first secure the consent of the secretary or the secretary's delegate. Consent shall be granted or withheld pursuant to the provisions of Section 7-4-19 NMSA 1978. If consent is not secured, the secretary or the secretary's delegate upon audit may require the taxpayer to compute the amount of tax due on the basis of the reporting method earlier used.

E. Upon the written application of a taxpayer and at the sole discretion of the secretary or the secretary's delegate, the secretary or the secretary's delegate may enter into an agreement with a taxpayer allowing the taxpayer to report values, gross receipts, deductions or the value of property on an estimated basis for gross receipts and compensating tax, oil and gas severance tax, oil and gas conservation tax, oil and gas emergency school tax and oil and gas ad valorem production tax purposes for a limited period of time not to exceed four years. As used in this section, "estimated basis" means a methodology that is reasonably expected to approximate the tax that will be due over the period of the agreement using summary rather than detail data or alternate valuation applications or methods, provided that:

(1) nothing in this section shall be construed to require the secretary or the secretary's delegate to enter into such an agreement; and

(2) the agreement must:

(a) specify the receipts, deductions or values to be reported on an estimated basis and the methodology to be followed by the taxpayer in making the estimates;

(b) state the term of the agreement and the procedures for terminating the agreement prior to its expiration;

(c) be signed by the taxpayer or the taxpayer's representative and the secretary or the secretary's delegate; and

(d) contain a declaration by the taxpayer or the taxpayer's representative that all statements of fact made by the taxpayer or the taxpayer's representative in the taxpayer's application and the agreement are true and correct as to every material matter.

F. The secretary may, by regulation, require any person doing business in the state to submit to the department information reports that are considered reasonable and necessary for the administration of any provision of law to which the Tax Administration Act applies.

History: 1953 Comp., § 72-13-27, enacted by Laws 1965, ch. 248, § 15; 1971, ch. 276, § 6; 1979, ch. 144, § 9; 1982, ch. 18, § 9; 1983, ch. 211, § 22; 1993, ch. 30, § 5; 2001, ch. 16, § 3; 2007, ch. 275, § 1.

7-1-11. Inspection of books of taxpayers; exception for marketplace providers and marketplace sellers; credentials.

A. To determine the correct amount of tax due, the department shall cause the records and books of account of taxpayers to be inspected or audited at such times as the department deems necessary for the effective execution of the department's responsibilities.

B. The department shall audit a marketplace provider, but not a marketplace seller, with respect to gross receipts from transactions facilitated by a marketplace provider and for which the marketplace seller may claim a deduction pursuant to Section 36 of this 2019 act, unless an audit of the marketplace seller is necessary to determine the correct amount of tax due, including examining the marketplace seller:

(1) to determine compliance with Section 36 [7-9-117 NMSA 1978] of this 2019 act;

(2) to determine if the marketplace provider should be relieved of liability pursuant to Subsection C of Section 7-9-5 NMSA 1978; or

(3) to enforce any other provision of the Tax Administration Act.

C. Auditors and other officials of the department designated by the secretary are authorized to request and require the production for examination of the records and books of account of a taxpayer. Auditors and officials of the department designated by the secretary shall be furnished with credentials identifying them as such, which they shall display to any taxpayer whose books are sought to be examined.

D. Taxpayers shall upon request make their records and books of account available for inspection at reasonable hours to the secretary or the secretary's delegate who presents proper identification to the taxpayer.

E. If the taxpayer's records and books of account do not exist or are insufficient to determine the taxpayer's tax liability, if any, the department may use any reasonable method of estimating the tax liability, including using information about similar persons, businesses or industries to estimate the taxpayer's liability.

F. The secretary or the secretary's delegate shall develop and maintain written audit policies and procedures for all audit programs in which the department routinely conducts field audits of taxpayers, including policies and procedures concerning audit notification, scheduling, records that may be examined, analysis that may be done, sampling procedures, gathering information or evidence from third parties, policies concerning the rights of taxpayers under audit and related matters. Department audit policies and procedures shall be made available to a person who requests them, at a reasonable charge to defray the cost of preparing and distributing those policies and procedures.

G. Nothing in this section shall be construed to require the department to provide the following:

(1) information that is confidential pursuant to Section 7-1-8 NMSA 1978; or

(2) methods, techniques and analysis used to select taxpayers for audit, including the use of:

(a) data analytics;

(b) data mining;

(c) a scoring model;

(d) internal controls; and

(e) metadata used to detect fraud and noncompliance.

H. For purposes of this section:

(1) "data analytics" means the science of examining data with the purpose of drawing conclusions about the information;

(2) "data mining" means the process of analyzing data from different perspectives and summarizing it into useful information by collecting data into data sets for the purpose of discovering patterns;

(3) "scoring model" means a predictive model that can predict the chance of occurring of a fact and its occurrence;

(4) "methods, techniques and analysis" means a systematic way to accomplish a tactic, qualitative or quantitative component of research and the use of a specific method;

(5) "internal controls" means a process of assuring achievement of an organization's objectives in operational effectiveness and efficiency, reliable financial reporting and compliance with laws, regulations and policies;

(6) "marketplace provider" means a "marketplace provider", as that term is used in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978];

(7) "marketplace seller" means a "marketplace seller", as that term is used in the Gross Receipts and Compensating Tax Act; and

(8) "metadata" means data that provides information about other data.

History: 1953 Comp., § 72-13-28, enacted by Laws 1965, ch. 248, § 16; 1979, ch. 144, § 10; 1993, ch. 30, § 6; 2001, ch. 16, § 4; 2001, ch. 56, § 4; 2007, ch. 262, § 1; 2017, ch. 63, § 21; 2019, ch. 270, § 10.

7-1-11.1. Managed audits.

A. A managed audit may be limited in scope to certain periods, activities, lines of business, geographic areas or transactions, including tax on:

(1) the receipts from certain sales;

(2) the value of certain assets;

(3) the value of certain expense items or services used; and

(4) any other category specified in an agreement authorized by this section.

B. Upon the application of the taxpayer, the secretary or the secretary's delegate may enter into a written agreement with a taxpayer for a managed audit. To be effective the written agreement must:

(1) be signed by the taxpayer or the taxpayer's authorized representative and by the secretary or the secretary's delegate;

(2) contain a declaration by the taxpayer or the taxpayer's authorized representative that all statements of fact made by the taxpayer or the taxpayer's representative in the taxpayer's application and the agreement are true and correct as to every material matter;

(3) specify the reporting period or periods, the type of receipts or transactions and tax to be audited, the procedures to be followed in performing the managed audit, the records to be used, the date of commencement of the audit for purposes of Section 7-9-43 NMSA 1978 and the date for the taxpayer's presentation of the results of the managed audit to the department; and

(4) include a waiver by the taxpayer of the limitations on assessments for the reporting period or periods to be audited.

C. The agreement for a managed audit may be modified in writing, provided that the modification meets the requirements of Subsection B of this section.

D. In determining whether to enter into an agreement for a managed audit the secretary or the secretary's delegate may consider, in addition to other relevant factors:

(1) the taxpayer's history of tax compliance;

(2) the amount of time and resources the taxpayer has available to dedicate to the audit;

(3) the extent and availability of the taxpayer's records; and

(4) the taxpayer's ability to pay any expected liability.

E. The decision whether to enter into an agreement for a managed audit rests solely with the secretary or the secretary's delegate.

F. The results of the managed audit shall be presented to the department by the taxpayer on or before any date set for presentation of the results in the managed audit agreement. The department shall assess the tax liability found to be due as the result of a managed audit performed in accordance with a managed audit agreement. The department may review records, documents, schedules or other information to determine if the managed audit substantially conforms to the managed audit agreement.

History: Laws 2001, ch. 16, § 1; 2003, ch. 398, § 6.

7-1-11.2. Required audit notices.

A. Except as provided in Subsection G of this section, prior to or coincident with requesting records and books of account from a taxpayer pursuant to Section 7-1-11 NMSA 1978, as part of an office or field audit, the department shall provide the taxpayer with written dated notice of the commencement of an audit. The notice shall, at a minimum, state the tax programs and reporting periods to be covered and the date on which the audit is commenced.

B. To any taxpayer to whom the department is required to provide a written notice of the commencement of an audit, the department shall also provide a written notice of the outstanding records or books of account that have been requested but not received. If the taxpayer has provided all records and books of account requested, the notice shall so state. The notice of outstanding records or books of account shall be given no sooner than sixty days, unless the taxpayer provides a written request for early completion of the audit, and no later than one hundred eighty days after the date of the commencement of the audit. The notice of outstanding records or books of account shall be dated and shall provide reasonable descriptions of any records or books of account needed or the information expected to be contained in them and shall give the taxpayer ninety days to comply with Section 7-1-11 NMSA 1978. The notice shall state that if the taxpayer does not properly comply within ninety days of the date of the notice, the department will proceed to issue any assessment of tax due on the basis of information available.

C. A taxpayer may request additional time to comply with the notice of outstanding records and books of account. Such request shall be in writing and shall state the amount of time needed.

D. If the department does not issue an assessment within one hundred eighty days after giving a notice of outstanding records or books of account or within ninety days after the expiration of the additional time requested by the taxpayer to comply, if such request was granted, interest shall be computed in accordance with Paragraph (6) of Subsection A of Section 7-1-67 NMSA 1978.

E. Any taxpayer who was not provided a proper notice of outstanding records or books of account is entitled to computation of interest in accordance with Paragraph (7) of Subsection A of Section 7-1-67 NMSA 1978.

F. Nothing in this section shall prevent the department from requesting from the taxpayer a waiver of the statute of limitations for assessment of tax owed. Nothing in this section shall prevent the department from issuing an assessment of tax owed on the basis of the information available.

G. This section does not apply to investigations of fraud.

History: 1978 Comp., § 7-1-11.2, enacted by Laws 2003, ch. 398, § 7; 2007, ch. 262, § 2.

7-1-12. Identification of taxpayers.

A. The secretary by regulation shall establish a system for the registration and identification of taxpayers and shall require taxpayers to comply therewith.

B. The registration system shall be devised so as to facilitate the exchange of information with other states and the United States and to aid in statistical computations.

C. The secretary by regulation also shall provide for a system for the registration and identification of purchasers or lessees who, by reason of their status or the nature of their use of property or service purchased or leased, are ordinarily entitled to make nontaxable purchases or leases of some kinds of property or service and may require such purchasers or lessees to comply therewith.

D. Any document, issued by the department under authority of this section, which is required to be posted on the business premises of the taxpayer shall contain a brief reference to the requirements of Section 7-1-61 NMSA 1978.

History: 1953 Comp., § 72-13-29, enacted by Laws 1965, ch. 248, § 17; 1966, ch. 52, § 1; 1979, ch. 144, § 11; 2000, ch. 28, § 4.

7-1-12.1. Department to designate production unit; index; identification by number or symbol.

A. The department shall have the power to designate the property that shall constitute a production unit; provided, a production unit shall be a unit of property from which products of common ownership are severed.

B. The department shall compile and keep current an index of all production units by description sufficient to properly identify such production units.

C. The department shall assign to each production unit a number or symbol, and the number or symbol shall serve as a means of identification for the purpose of reporting, tax payment and tax collection of the taxes administered by the department.

History: 1978 Comp., § 7-1-12.1, enacted by Laws 1985, ch. 65, § 12; 1993, ch. 30, § 7.

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

The department shall inform each operator of a production unit as to the identification number or symbol assigned to such production unit. Such number or symbol may be changed or revised and information regarding such change or revision shall likewise be given the operator. In the creation of a new production unit or in the event of a change of ownership or revision in a production unit, the operator may request the department to assign a new identification number or symbol, and the department shall notify the operator of the identification number or symbol to be used.

History: 1978 Comp., § 7-1-12.2, enacted by Laws 1985, ch. 65, § 13; 1993, ch. 30, § 8; 2017, ch. 63, § 22.

7-1-13. Taxpayer returns; payment of taxes; extension of time.

A. Taxpayers are liable for tax at the time of and after the transaction or incident giving rise to tax until payment is made. Taxes are due on and after the date on which their payment is required until payment is made.

B. Every taxpayer shall, on or before the date on which payment of any tax is due, complete and file a tax return in a form prescribed and according to the regulations issued by the secretary. Except as provided in Section 7-1-13.1 NMSA 1978 or by regulation, ruling, order or instruction of the secretary, the payment of any tax or the filing of any return may be accomplished by mail. When the filing of a tax return or payment of a tax is accomplished by mail, the date of the postmark shall be considered the date of submission of the return or payment.

C. Payment of the total amount of all taxes that are due from the taxpayer shall precede or accompany the return. Delivery to the department of a check that is not paid upon presentment does not constitute payment.

D. The secretary or the secretary's delegate may, for good cause, extend in favor of a taxpayer or a class of taxpayers, for no more than a total of twelve months, the date on which payment of any tax is required or on which any return required by provision of the Tax Administration Act shall be filed, but no extension shall prevent the accrual of interest as otherwise provided by law. When an extension of time for income tax has been granted a taxpayer pursuant to the Internal Revenue Code, the extension shall serve to extend the time for filing New Mexico income tax; provided that a copy of the approved federal extension of time is attached to the taxpayer's New Mexico income tax return. The secretary by regulation may also provide for the automatic extension for no more than six months of the date upon which payment of any New Mexico income tax or the filing of any New Mexico income tax return is required. If the secretary or the secretary's delegate believes it necessary to ensure the collection of the tax, the secretary or the secretary's delegate may require, as a condition of granting any extension, that the taxpayer furnish security in accordance with the provisions of Section 7-1-54 NMSA 1978.

E. Except as provided in Subsection F of this section, no later than one hundred eighty days after the final determination date, a taxpayer shall file a federal adjustments report with the department and pay any state tax due with respect to final net-positive federal adjustments arising from:

(1) an audit or other action by the internal revenue service; or

(2) a timely filed amended federal income tax return, including a return or other similar information filed pursuant to Section 6225(c)(2) of the Internal Revenue Code.

F. Except for federal adjustments that are required to be reported pursuant to Subsection E of this section, partnerships and partners shall report final net-positive federal adjustments arising from a partnership level audit or an administrative adjustment request and make payments as follows:

(1) except for where the partnership or tiered partner makes an election pursuant to Subsection G of this section, the partnership or tiered partner shall:

(a) file: 1) a completed federal adjustments report and notify each of its direct partners of their distributive share of the final federal adjustments, including information necessary for reporting state tax due as required by the department; and 2) an amended withholding return for the reviewed year if such return was filed, or would have been required pursuant to the Withholding Tax Act;

(b) in the case of an audited partnership, file the returns required by this paragraph no later than ninety days after the final determination date; and

(c) in the case of a tiered partner of an audited partnership, file the returns required by this paragraph no later than ninety days after the time for the audited partnership's filing and furnishing statements to tiered partnerships and their partners as established pursuant to Section 6226 of the Internal Revenue Code and the regulations thereunder; and

(2) a partner of a partnership or a tiered partner subject to tax pursuant to Section 7-2-3 or 7-2A-3 NMSA 1978 on adjustments to which Paragraph (1) of this subsection applies shall file a federal adjustments report reporting the partner's distributive share of the adjustments and shall pay the additional amount of state tax due, plus any penalty and interest due and less any credit for related amounts paid or withheld and remitted on behalf of the partner pursuant to Paragraph (1) of this subsection as follows:

(a) for taxable direct partners of the audited partnership, no later than one hundred eighty days after the final determination date; or

(b) for taxable indirect partners of the audited partnership, no later than one hundred eighty days after the time for the audited partnership's filing and furnishing statements to tiered partnerships and their partners as established pursuant to Section 6226 of the Internal Revenue Code and the regulations thereunder.

G. The election provided by this subsection applies only to federal adjustments other than the distributive share of federal adjustments that must be included in the unitary business income of any direct or indirect corporate partner; provided that this can be reasonably determined, or federal adjustments resulting from an administrative adjustment request. A partnership making an election pursuant to this subsection shall:

(1) file a completed federal adjustments report and notify the department that it is making the election pursuant to this subsection; and

(2) pay an amount, determined as follows, in lieu of taxes owed by its direct and indirect taxable partners:

(a) exclude from the total final federal adjustments the distributive share reported to a direct partner that is an exempt partner unless the adjustment represents unrelated business taxable income;

(b) include only the portion of the total federal adjustment to distributive shares of partners taken into account pursuant to Section 6225(b)(2) of the Internal Revenue Code;

(c) apportion and allocate the adjustments as provided by the Uniform Division of Income for Tax Purposes Act as applied at the partnership level following any department regulations adopted for this purpose;

(d) multiply the resulting amount by the highest tax rate provided by Section 7-2A-5 NMSA 1978; and

(e) add to the amount calculated pursuant to Subparagraph (d) of this paragraph an amount of penalty and interest computed pursuant to the Tax Administration Act.

H. In any action required or allowed to be taken pursuant to the Tax Administration Act with respect to the reporting of federal adjustments by a partnership, the state partnership representative for the reviewed year shall have the sole authority to act on behalf of the partnership, and the partnership's direct partners and indirect partners shall be bound by those actions. The state partnership representative is the partnership's federal partnership representative for the reviewed year, unless the partnership designates in writing another person as its state partnership representative; provided that the person meets any qualifications established by the department.

I. Pursuant to procedures that may be adopted by the department, an audited partnership or tiered partner of that partnership may enter into an agreement with the department to utilize an alternative reporting and payment method, including applicable time requirements or any other provision pursuant to Subsections E through H of this section, if the audited partnership or tiered partner demonstrates that the requested method will reasonably provide for the reporting and payment of taxes, penalties and interest due pursuant to Subsections E through H of this section. Application for approval of an alternative reporting and payment method must be made by the audited partnership or tiered partner within the time for election as provided in Subsection G of this section, as appropriate.

J. An election made pursuant to Subsection G or I of this section is irrevocable, unless the department, in its discretion, determines otherwise. If properly reported and paid by the audited partnership or tiered partner, the amount determined in Paragraph (2) of Subsection G of this section, or similarly under an optional election pursuant to Subsection I of this section, will be treated as paid in lieu of taxes owed by its direct and indirect partners on the same final federal adjustments. The direct or indirect partners of the partnership that pays this in lieu of amount may not claim any deduction, credit or refund with respect to that amount.

K. A taxpayer may make estimated payments of state tax expected to result from a pending audit by the internal revenue service prior to the final determination date, following the process prescribed by the department, and such payments will limit the accrual of further statutory interest on that amount.

L. A taxpayer may claim an amount of state tax resulting from final net-negative federal adjustments as provided in Section 7-1-26 NMSA 1978.

M. Nothing in Subsections E through L of this section shall prevent the department from assessing direct partners or indirect partners for taxes they owe, using the best information available, in the event that a partnership or tiered partner fails to timely make any report or payment required for any reason.

N. As used in this section:

(1) "administrative adjustment request" means an administrative adjustment request filed by a partnership pursuant to Section 6227 of the Internal Revenue Code;

(2) "audited partnership" means a partnership subject to a partnership level audit resulting in a federal adjustment;

(3) "corporate partner" means a partner, direct or indirect, that is subject to tax pursuant to the Corporate Income and Franchise Tax Act;

(4) "direct partner" means any partner that holds an interest directly in a partnership or pass-through entity;

(5) "exempt partner" means a partner, direct or indirect, that is exempt from New Mexico income tax except on unrelated business taxable income;

(6) "federal adjustment" means a change to an item or amount determined pursuant to the Internal Revenue Code that is used by a taxpayer to compute an amount of state tax owed, whether that change results from action by the internal revenue service, including a partnership level audit, or the filing of an amended federal return, federal refund claim or an administrative adjustment request by a partnership;

(7) "federal adjustments report" includes the methods or forms required by the department for use by a taxpayer to report final federal adjustments, including an amended tax return, information return or a uniform multistate report;

(8) "final determination date" means:

(a) except as provided in Subparagraphs (b), (c) and (d) of this paragraph, if a federal adjustment arises from an audit or other action by the internal revenue service, the final determination date is the first day on which no federal adjustments arising from that audit or other action remain to be finally determined, whether by a decision of the internal revenue service with respect to which all rights of appeal have been waived or exhausted, by agreement, or, if appealed or contested, by a final decision with respect to which all rights of appeal have been waived or exhausted. For agreements required to be signed by the internal revenue service and the taxpayer, the final determination date is the date on which the last party signed the agreement;

(b) for federal adjustments arising from an internal revenue service audit or other action by the internal revenue service, if the taxpayer filed as a member of a filing group pursuant to the Corporate Income and Franchise Tax Act, the final determination date means the first day on which no related federal adjustments arising from that audit remain to be finally determined, as described in Subparagraph (a) of this paragraph, for the entire group;

(c) except as provided in Subparagraph (d) of this paragraph, if the federal adjustment results from filing an amended federal return, a federal refund claim or an administrative adjustment request, or if it is a federal adjustment reported on an amended federal return or other similar report filed pursuant to Section 6225(c) of the Internal Revenue Code, the final determination date means the day on which the amended return, refund claim, administrative adjustment request or other similar report was filed; and

(d) for adjustments resulting from a partnership level audit or an administrative adjustment request for which the final determination date pursuant to Subparagraph (a) or (c) of this paragraph is determined to be a date occurring prior to the effective date of this 2021 act, the final determination date shall be July 1, 2021;

(9) "final federal adjustments" means adjustments for which the final determination date has passed, including final net-positive federal adjustments and final net-negative federal adjustments;

(10) "indirect partner" means a partner in a partnership or pass-through entity in which the partner holds an interest directly, or through another indirect partner, in a partnership or pass-through entity;

(11) "net-negative federal adjustments" means federal adjustments relating to the same tax period, whether made by the taxpayer or the internal revenue service, the net effect of which is to decrease state tax due as compared to tax originally reported for that period;

(12) "net-positive federal adjustments" means federal adjustments relating to the same tax period, whether made by the taxpayer or the internal revenue service, the net effect of which is to increase state tax due as compared to tax originally reported for that period;

(13) "partner" means a person that holds an interest directly or indirectly in a partnership or other pass-through entity;

(14) "partnership" means an entity subject to taxation pursuant to Subchapter K of the Internal Revenue Code;

(15) "partnership level audit" means an examination by the internal revenue service at the partnership level pursuant to Subchapter C or Subtitle F, Chapter 63 of the Internal Revenue Code which results in federal adjustments;

(16) "pass-through entity" means an entity, other than a partnership, that is not subject to tax pursuant to the Corporate Income and Franchise Tax Act;

(17) "reviewed year" means the taxable year of a partnership that is subject to a partnership level audit from which federal adjustments arise;

(18) "taxpayer" means a taxpayer, including a partnership subject to a partnership level audit or a partnership that has made an administrative adjustment request, as well as a tiered partner of that partnership, unless the context indicates otherwise;

(19) "tiered partner" means any partner that is a partnership or pass-through entity; and

(20) "unrelated business taxable income" means "unrelated business taxable income" as used in Section 512 of the Internal Revenue Code.

History: 1953 Comp., § 72-13-30, enacted by Laws 1965, ch. 248, § 18; 1971, ch. 276, § 7; 1978, ch. 90, § 1; 1979, ch. 144, § 12; 1983, ch. 211, § 23; 1988, ch. 99, § 2; 1989, ch. 325, § 4; 1993, ch. 5, § 4; 1994, ch. 51, § 3; 2007, ch. 127, § 1; 2013, ch. 27, § 1; 2021, ch. 83, § 1.

7-1-13.1. Method of payment of certain taxes due.

A. Payment of the taxes, including any applicable penalties and interest, described in Paragraph (1), (2), (3) or (4) of this subsection shall be made on or before the date due in accordance with Subsection B of this section if the taxpayer's average tax payment for the group of taxes during the preceding calendar year equaled or exceeded twenty-five thousand dollars ($25,000):

(1) Group 1: all taxes due under the Withholding Tax Act [Chapter 7, Article 3 NMSA 1978], the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978], local option gross receipts tax acts, the Interstate Telecommunications Gross Receipts Tax Act [Chapter 7, Article 9C NMSA 1978] and the Leased Vehicle Gross Receipts Tax Act [Chapter 7, Article 14A NMSA 1978];

(2) Group 2: all taxes due under the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978], the Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978], the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA

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

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

(4) Group 4: all taxes and fees due under the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978], the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978] and the Petroleum Products Loading Fee Act [Chapter 7, Article 13A NMSA 1978].

For taxpayers who have more than one identification number issued by the department, the average tax payment shall be computed by combining the amounts paid under the several identification numbers.

B. Taxpayers who are required to make payment in accordance with the provisions of this section shall make payment by one or more of the following means on or before the due date so that funds are immediately available to the state on or before the due date:

(1) electronic payment; provided that a result of the payment is that funds are immediately available to the state of New Mexico on or before the due date;

(2) currency of the United States;

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

(4) check drawn on and payable at any domestic non-New Mexico financial institution provided that the check is received by the department at the time and place required by the department at least two banking days prior to the due date.

C. If the taxes required to be paid under this section are not paid in accordance with Subsection B of this section, the payment is not timely and is subject to the provisions of Sections 7-1-67 and 7-1-69 NMSA 1978.

D. For the purposes of this section, "average tax payment" means the total amount of taxes paid with respect to a group of taxes listed under Subsection A of this section during a calendar year divided by the number of months in that calendar year containing a due date on which the taxpayer was required to pay one or more taxes in the group.

History: 1978 Comp., § 7-1-13.1, enacted by Laws 1988, ch. 99, § 3; 1989, ch. 76, § 1; 1990, ch. 86, § 6; 1992, ch. 55, § 8; 1993, ch. 5, § 5; 2000, ch. 28, § 5; 2005, ch. 109, § 3.

7-1-13.2. Repealed.

7-1-13.3. Repealed.

7-1-13.4. Electronic payments; reversals.

A. The department is authorized to accept payment by automated clearinghouse transaction, federal reserve system wire transfer and such other means of electronic payment as the department, with the concurrence of the state board of finance, may choose.

B. With respect to automated clearinghouse transactions, federal reserve system wire transfers and electronic payments by means the department has chosen, neither the department nor the fiscal agent of New Mexico shall refuse to accept the funds or to reverse the transaction when funds have been received by the fiscal agent designating the department as the payee together with sufficient information to identify the name of the taxpayer. The department or the fiscal agent of New Mexico may refuse to accept such a payment or to cause the reversal of the transaction only when the transaction is not successful in making the funds to be transferred available or in identifying the taxpayer. The department and the fiscal agent of New Mexico may refuse to accept electronic payments tendered by means other than automated clearinghouse deposit, federal reserve system wire transfer or those other means the department has chosen.

C. When an electronic payment transaction is reversed through the taxpayer's action or a check is dishonored by the taxpayer's financial institution, neither the department nor the fiscal agent of New Mexico is obligated to resubmit the transaction or check for payment. If the reversal or dishonoring causes the final payment of taxes to be not timely, then the provisions of Sections 7-1-67 and 7-1-69 NMSA 1978 apply.

History: 1978 Comp., § 7-1-13.4, enacted by Laws 2000, ch. 28, § 6.

7-1-14. Reporting location instructions for purposes of reporting gross receipts and use; location; code database and location-rate database.

A. For purposes of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978], Interstate Telecommunications Gross Receipts Tax Act [Chapter 7, Article 9C NMSA 1978], Leased Vehicle Gross Receipts Tax Act [Chapter 7, Article 14A NMSA 1978] and any act authorizing the imposition of a local option gross receipts or compensating tax, a taxpayer that has gross receipts and a taxpayer using property or services in New Mexico in a taxable manner shall report the gross receipts and use to the proper reporting location as provided in this section.

B. The reporting location for gross receipts from the sale, lease or granting of a license to use real property located in New Mexico, and any related deductions, shall be the location of the property.

C. The reporting location for gross receipts from the sale or license of property, other than real property, and any related deductions, shall be at the following locations:

(1) if the property is received by the purchaser at the New Mexico location of the seller, the location of the seller;

(2) if the property is not received by the purchaser at the location of the seller, the location indicated by instructions for delivery to the purchaser, or the purchaser's donee, when known to the seller;

(3) if Paragraphs (1) and (2) of this subsection do not apply, the location indicated by an address for the purchaser available from the business records of the seller that are maintained in the ordinary course of business; provided that use of the address does not constitute bad faith;

(4) if Paragraphs (1) through (3) of this subsection do not apply, the location for the purchaser obtained during consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available; provided that use of this address does not constitute bad faith; or

(5) if Paragraphs (1) through (4) of this subsection do not apply, including a circumstance in which the seller is without sufficient information to apply those standards, the location from which the property was shipped or transmitted.

D. The reporting location for gross receipts from the lease of tangible personal property, including vehicles, other transportation equipment and other mobile tangible personal property, and any related deductions, shall be the location of primary use of the property, as indicated by the address for the property provided by the lessee that is available to the lessor from the lessor's records maintained in the ordinary course of business; provided that use of this address does not constitute bad faith. The location of primary use shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

E. The reporting location for gross receipts from the sale, lease or license of franchises, and any related deductions, shall be where the franchise is used.

F. The reporting location for gross receipts from the performance or sale of the following services, and any related deductions, shall be at the following locations:

(1) for professional services performed in New Mexico, other than construction-related services, or performed outside New Mexico when the product of the

service is initially used in New Mexico, the location of the performer of the service or seller of the product of the service, as appropriate;

(2) for construction services and construction-related services performed for a construction project in New Mexico, the location of the construction site;

(3) for services with respect to the selling of real estate located in New Mexico, the location of the real estate;

(4) for transportation of persons or property in, into or from New Mexico, the location where the person or property enters the vehicle; and

(5) for services other than those described in Paragraphs (1) through (4) of this subsection, the location where the product of the service is delivered.

G. Except as provided in Subsection H of this section, the reporting location for uses of property or services subject to the compensating tax shall be the location at which gross receipts would have been required to be reported had the transaction been subject to the gross receipts tax.

H. If a taxpayer subject to the compensating tax can demonstrate that the first use upon which compensating tax is imposed occurred at a time and place different from the time and place of the purchase, then the reporting location for the compensating tax shall be the location of the first use.

I. The secretary shall develop a location-code database that provides the reporting location codes designated by the secretary. The secretary shall also develop and provide to taxpayers a location-rate database that sets out the tax rates applicable to reporting locations within the state, by address, and sellers who properly rely on this database shall not be liable for any additional tax due to the use of an incorrect rate.

J. As used in this section:

(1) "gross receipts" means, as applicable, "gross receipts" as used in the Gross Receipts and Compensating Tax Act and the Leased Vehicle Gross Receipts Tax Act and "interstate telecommunications gross receipts" in the Interstate Telecommunications Gross Receipts Tax Act [Chapter 7, Article 9C NMSA 1978];

(2) "in-person service" means a service physically provided in person by the service provider, where the customer or the customer's real or tangible personal property upon which the service is performed is in the same location as the service provider at the time the service is performed; and

(3) "professional service" means a service, other than an in-person service, that requires either an advanced degree from an accredited post-secondary educational institution or a license from the state to perform.

History: 1953 Comp., § 72-13-30.1, enacted by Laws 1969, ch. 145, § 1; 1970, ch. 57, § 2; 1977, ch. 315, § 3; 1979, ch. 144, § 13; 1983, ch. 211, § 24; 1992, ch. 55, § 10; 1995, ch. 100, § 1; 2019, ch. 270, § 11; repealed and reenacted by Laws 2020, ch. 80, § 1; 2023, ch. 85, § 4.

7-1-15. Secretary may set tax reporting and payment intervals.

The secretary may, pursuant to regulation, allow taxpayers with an anticipated tax liability of less than two hundred dollars ($200) a month to report and pay taxes at intervals which the secretary may specify. However, unless specifically permitted by law, an interval shall not exceed six months. The secretary may also allow direct marketers who have entered into an agreement with the department to collect and remit compensating tax to report and pay on a quarterly or semi-annual basis.

History: 1953 Comp., § 72-13-30.1, enacted by Laws 1969, ch. 31, § 1; 1979, ch. 144, § 14; 1983, ch. 211, § 25; 1988, ch. 73, § 7; 1991, ch. 138, § 1; 1998, ch. 105, § 2.

7-1-15.1. Secretary may permit or require rounding.

By regulation or instruction, the secretary may permit or require rounding to the nearest whole dollar of tax due provided that, for any tax or tax act the revenues from which are required by the provisions of the Tax Administration Act to be distributed or transferred partly to local governments and partly to state funds, the gain or loss due to rounding shall be attributed to the state funds.

History: 1978 Comp., § 7-1-15.1, enacted by Laws 1987, ch. 169, § 4.

7-1-15.2. Agreements; collection of compensating tax.

The department may enter into agreements with direct marketers for purposes of enforcing collection of the compensating tax.

History: Laws 1998, ch. 105, § 1.

7-1-16. Delinquent taxpayer.

A. Except as provided in Subsection D of this section, any taxpayer to whom taxes have been assessed as provided in Section 7-1-17 NMSA 1978 or upon whom demand for payment has been made as provided in Section 7-1-63 NMSA 1978 who does not within ninety days after the date of assessment or demand for payment make payment of the undisputed amount, protest the assessment or demand for payment as provided by Section 7-1-24 NMSA 1978 or furnish security for payment as provided by Section 7-1-54 NMSA 1978 becomes a delinquent taxpayer and remains such until:

(1) payment of the total amount of all such taxes is made;

(2) security is furnished for payment; or

(3) no part of the assessment remains unabated.

B. Any taxpayer who fails to provide security as required by Subsection D of Section 7-1-54 NMSA 1978 shall be deemed to be a delinquent taxpayer.

C. If a taxpayer files a protest as provided in Section 7-1-24 NMSA 1978, the taxpayer nevertheless becomes a delinquent taxpayer upon failure of the taxpayer to appear, in person or by authorized representative, at the hearing set or upon failure to perfect an appeal from any decision or part thereof adverse to the taxpayer to the next higher appellate level, as provided in that section, unless the taxpayer makes payment of the total amount of all taxes assessed and remaining unabated or furnishes security for payment.

D. A taxpayer does not become a delinquent taxpayer if the taxpayer has been issued an assessment as a result of a managed audit but is still within the allowed time period to pay the tax due as specified in Paragraph (4) of Subsection A of Section 7-1-67 NMSA 1978.

History: 1953 Comp., § 72-13-31, enacted by Laws 1965, ch. 248, § 19; 1979, ch. 144, § 15; 1985, ch. 65, § 14; 1989, ch. 325, § 5; 1993, ch. 5, § 6; 1999, ch. 84, § 1; 2007, ch. 262, § 3; 2013, ch. 27, § 2; 2019, ch. 157, § 1.

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

A. If the secretary or the secretary's delegate determines that a taxpayer is liable for taxes in excess of fifty dollars ($50.00) that are due and that have not been previously assessed to the taxpayer, the secretary or the secretary's delegate shall promptly assess the amount thereof to the taxpayer.

B. Assessments of tax are effective:

(1) when a return of a taxpayer is received by the department showing a liability for taxes;

(2) when a document denominated "notice of assessment of taxes", issued in the name of the secretary, is mailed or delivered in person to the taxpayer against whom the liability for tax is asserted, stating the nature and amount of the taxes assertedly owed by the taxpayer to the state, demanding of the taxpayer the immediate payment of the taxes and briefly informing the taxpayer of the remedies available to the taxpayer; or

(3) when an effective jeopardy assessment is made as provided in the Tax Administration Act.

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

D. When taxes have been assessed to any taxpayer and remain unpaid, the secretary or the secretary's delegate may demand payment at any time except as provided otherwise by Section 7-1-19 NMSA 1978.

History: 1953 Comp., § 72-13-32, enacted by Laws 1965, ch. 248, § 20; 1969, ch. 32, § 1; 1978 Comp., § 7-1-17; 1979, ch. 144, § 16; 1992, ch. 55, § 11; 2007, ch. 45, § 1; 2023, ch. 36, § 1.

7-1-17.1. Tax liability; spouse or former spouse.

A. If the secretary or the secretary's delegate determines that, taking into account the facts and circumstances in Subsections F and G of this section, it is inequitable to hold a spouse liable for payment of all or part of any unpaid tax, assessment or other deficiency for a tax, the secretary may decline to bring an action or proceeding to collect such taxes from the spouse, including collection from the spouse's interest in community property.

B. The secretary or the secretary's delegate may grant innocent spouse relief to a spouse who files a joint tax return and all or part of the spouse's portion of any overpayment was, or is expected to be, applied to the tax liability for which the spouse is not liable because the liability is determined to be separate debt, as defined in Subsection A of Section 40-3-9 NMSA 1978.

C. If on review it is determined that the information relied on to make the innocent spouse relief determination was incorrect or fraudulent, the department may rescind the innocent spouse relief and proceed to collect the affected taxes from the spouse.

D. Innocent spouse relief does not authorize the abatement of taxes or enforcement of any provisions of the Tax Administration Act against the taxpayer.

E. A lien or levy imposed on a spouse or property of a spouse who qualifies for innocent spouse relief may be released as to taxes deemed inequitable to collect pursuant to this section.

F. If the federal internal revenue service granted the spouse relief pursuant to 26 U.S.C. Section 6015, the spouse may request similar relief from the department on a form prescribed by the department, regardless of whether the spouse is a joint or separate filer for New Mexico income tax. The spouse shall provide a copy of the federal internal revenue service's determination with the request that the secretary or the secretary's delegate cease collection activity against the spouse to the extent relief was allowed by the federal internal revenue service. The department shall grant innocent spouse relief for the same tax periods and tax programs granted relief by the federal internal revenue service; provided that the request for relief is submitted on the form prescribed by the department. The secretary or the secretary's delegate may decline to pursue collection activity against a spouse while an application for relief is pending before the federal internal revenue service, but the failure to seek or obtain relief shall not preclude the secretary or secretary's delegate from declining to collect tax from a spouse when collection would be inequitable. An item giving rise to a deficiency on a joint return shall be allocated to an individual filing the return in the same manner as it would have been allocated if the individual had filed separate returns for the taxable year.

G. The secretary or the secretary's delegate shall consider at least the following facts and circumstances when determining whether to grant innocent spouse relief if the federal internal revenue service has not granted the spouse personal income tax relief pursuant to 26 U.S.C. Section 6015:

(1) whether the spouse had knowledge of the tax liability at the time the liability arose;

(2) whether the spouse had a meaningful opportunity to contest the assessment of tax at the time the assessment was made;

(3) whether the spouse cooperated with the department in collection and compliance efforts, to the extent the spouse had knowledge of collection and compliance efforts;

(4) whether the state can protect its interests without pursuing active collection efforts against the spouse, including collection efforts against the taxpayer;

(5) whether the spouse benefited from the transfer of income, receipts or significant amounts of property from the taxpayer;

(6) whether the spouse participated in the business and financial decisions of the household during the periods when the tax liability arose;

(7) whether the spouse participated in operating a business with the taxpayer;

(8) whether the spouse had responsibility for the finances of a business for which the spouse participated;

(9) whether the spouse had responsibility for payment of taxes for a business for which the spouse participated; and

(10) whether the spouse knew that the taxpayer engaged in business.

H. No one factor contemplated to Subsection G of this section shall be considered determinative in considering whether tax collection from a spouse would be inequitable. Each factor may be given different relative weight, depending on the facts and circumstances presented; therefore, the presence of a majority of factors considered tending to support innocent spouse relief in a particular case may not necessarily indicate that the spouse in question qualifies for innocent spouse relief for New Mexico tax purposes.

I. The secretary shall adopt and promulgate regulations as necessary for making the determinations pursuant to this section.

J. As used in this section:

(1) "innocent spouse relief" means the relief from collection of tax liabilities pursuant to this section;

(2) "spouse" means a current or former spouse of a taxpayer; and

(3) "taxpayer" means a taxpayer who is or was married to a spouse who is seeking innocent spouse relief pursuant to this section.

History: Laws 2003, ch. 398, § 15; 2021, ch. 65, § 3.

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

A. Except as otherwise provided in this section, no assessment of tax may be made by the department after three years from the end of the calendar year in which payment of the tax was due, and no proceeding in court for the collection of such tax without the prior assessment thereof shall be begun after the expiration of such period.

B. In case of a false or fraudulent return made by a taxpayer with intent to evade tax, the amount thereof may be assessed at any time within ten years from the end of the calendar year in which the tax was due, and no proceeding in court for the collection of such tax without the prior assessment thereof shall be begun after the expiration of such period.

C. In case of the failure by a taxpayer to complete and file any required return, the tax relating to the period for which the return was required may be assessed at any time within seven years from the end of the calendar year in which the tax was due, and no proceeding in court for the collection of such tax without the prior assessment thereof shall be begun after the expiration of such period.

D. If a taxpayer in a return understates by more than twenty-five percent the amount of liability for any tax for the period to which the return relates, appropriate assessments may be made by the department at any time within six years from the end of the calendar year in which payment of the tax was due.

E. If any adjustment in the basis for computation of any federal tax is made as a result of an audit by the internal revenue service or the filing of an amended federal return or administrative adjustment request changing a prior election or making any other change for which federal approval is required by the Internal Revenue Code that results in liability for any tax, the amount thereof may be assessed at any time, but not after three years from the end of the calendar year in which filing of a federal adjustments report is required by Subsections E through J of Section 7-1-13 NMSA 1978.

F. If the taxpayer has signed a waiver of the limitations on assessment imposed by this section, an assessment of tax may be made or a proceeding in court begun without regard to the time at which payment of the tax was due.

G. As used in this section:

(1) "administrative adjustment request" means "administrative adjustment request" as used in Section 7-1-13 NMSA 1978; and

(2) "federal adjustments report" means "federal adjustments report" as used in Section 7-1-13 NMSA 1978.

History: 1953 Comp., § 72-13-33, enacted by Laws 1965, ch. 248, § 21; 1970, ch. 18, § 1; 1979, ch. 144, § 17; 1983, ch. 211, § 26; 1993, ch. 5, § 7; 1994, ch. 51, § 4; 2013, ch. 27, § 3; 2021, ch. 83, § 2.

7-1-19. Limitation of actions.

No action or proceeding shall be brought to collect taxes administered under the provisions of the Tax Administration Act and due under an assessment or notice of the assessment of taxes after the later of either ten years from the date of such assessment or notice or, with respect to undischarged amounts in a bankruptcy proceeding, one year after the later of the issuance of the final order or the date of the last scheduled payment.

History: 1953 Comp., § 72-7-35.1, enacted by Laws 1971, ch. 21, § 1; 1972, ch. 73, § 2; recompiled as 1953 Comp., § 72-13-33.1, by Laws 1973, ch. 258, § 154; 1979, ch. 144, § 18; 1986, ch. 20, § 14; 2000, ch. 28, § 7; 2013, ch. 27, § 4.

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

A. At any time after the assessment of any tax, if the secretary in good faith is in doubt of the liability for the payment thereof, the secretary may, with the written approval of the attorney general, compromise the asserted liability for taxes by entering with the taxpayer into a written agreement that adequately protects the interests of the state.

B. The agreement provided for in this section is to be known as a "closing agreement". If entered into after any court acquires jurisdiction of the matter, the agreement shall be part of a stipulated order or judgment disposing of the case.

C. As a condition for entering into a closing agreement, the secretary may require the taxpayer to furnish security for payment of any taxes due according to the terms of the agreement.

D. A closing agreement is conclusive as to liability or nonliability for payment of assessed taxes relating to the periods referred to in the agreement, and except upon a showing of fraud or malfeasance, or misrepresentation or concealment of a material fact:

(1) the agreement shall not be modified by any officer, employee or agent of the state; and

(2) in any suit, action or proceeding, the agreement or any determination, assessment, collection, payment, abatement, refund or credit made in accordance therewith shall not be annulled, modified, set aside or disregarded.

History: 1953 Comp., § 72-13-34, enacted by Laws 1965, ch. 248, § 22; 1979, ch. 144, § 19; 1995, ch. 70, § 1.

7-1-21. Installment payments of taxes; installment agreements.

A. Whenever justified by the circumstances, the secretary or the secretary's delegate may enter into a written agreement with a taxpayer in which the taxpayer admits conclusive liability for the entire amount of taxes due and agrees to make monthly installment payments according to the terms of the agreement, but not for a period longer than seventy-two months. No installment agreement shall prevent the accrual of interest otherwise provided by law.

B. The agreement provided for in this section is to be known as an "installment agreement". If entered into after a court acquires jurisdiction over the matter, the agreement shall be part of a stipulated order or judgment disposing of the case.

C. At the time of entering into an installment agreement, the secretary shall require the affected taxpayer or person to furnish security for payment of the taxes admitted to be due according to the terms of the agreement, but if the taxpayer does not provide security, the secretary shall cause a notice of lien to be filed in accordance with the provisions of Section 7-1-38 NMSA 1978, and when so filed it shall constitute a lien upon all the property or rights to property of the taxpayer in that county in the same manner as in the case of the lien provided for in Section 7-1-37 NMSA 1978.

D. An installment agreement is conclusive as to liability for payment of the amount of taxes specified therein but does not preclude the assessment of any additional tax.

E. After entering into the agreement, except in unusual circumstances as require the secretary in the secretary's discretion to take further action to protect the interests of the state, no further attempts to enforce payment of the tax by levy or injunction shall be made; however, if installment payments are not made on or before the times specified in the agreement, if any other condition contained in the agreement is not met or if the taxpayer does not make payment of all other taxes for which the taxpayer becomes liable as they are due, the secretary may proceed to enforce collection of the tax as if the agreement had not been made or may proceed, as provided in Section 7-1-54 NMSA 1978, against the security furnished.

F. Records of installment agreements in excess of one thousand dollars ($1,000) shall be available for inspection by the public. The department shall keep the records for a minimum of three years from the date of the installment agreement.

History: 1953 Comp., § 72-13-35, enacted by Laws 1965, ch. 248, § 23; 1979, ch. 144, § 20; 1987, ch. 169, § 5; 2003, ch. 439, § 2; 2017, ch. 63, § 23.

7-1-21.1. Special agreements; alternative gross receipts taxpayer.

A. To allow the payment of gross receipts tax by a person who is not the liable taxpayer, the secretary may approve a request by a person to assume the liability for gross receipts tax or governmental gross receipts tax owed by another provided that the person requesting approval agrees to assume the rights and responsibilities as taxpayer pursuant to the Tax Administration Act for:

(1) an agreement to collect and pay over taxes for persons in a business relationship, which is an agreement that may be entered into by persons who wish to remit gross receipts tax on behalf of another person with whom the taxpayer has a business relationship;

(2) an agreement to collect and pay over taxes for a direct sales company:

(a) which agreement may be entered into by a direct sales company that has distributors of tangible personal property in New Mexico; and

(b) in which the direct sales company agrees to pay the gross receipts tax liability of the distributor at the same time the company remits its own gross receipts tax; and

(3) a manufacturer's agreement to pay gross receipts tax or governmental gross receipts tax on behalf of a utility company, which agreement:

(a) allows a person engaged in manufacturing in New Mexico to pay gross receipts tax or governmental gross receipts tax on behalf of a utility company on receipts from sales of utilities that are: 1) not consumed in the manufacturing process; or 2) not otherwise deductible; and

(b) is only applicable to transactions between a manufacturer and a utility company that are associated with the gross receipts tax deduction pursuant to Subsection B of Section 7-9-46 NMSA 1978.

B. To enter into the agreements authorized in this section, a person shall complete a form prescribed by the secretary and provide any additional information or documentation required by department rules or instructions that will assist in the approval of agreements listed in Subsection A of this section.

C. Once approved, an agreement shall be effective only for the period of time specified in each agreement. Any person entering into an agreement to pay tax on behalf of another person shall fulfill all of the requirements set out in the agreement. Failure to fulfill all of the requirements set out in the agreement may result in the revocation of the agreement by the department. An approved agreement may only be revoked prior to expiration by written notification to all persons who are party to the agreement and shall be applied beginning on the first day of a month that occurs at least one month following the date on which the agreement is revoked.

D. A person approved by the secretary to pay the gross receipts tax or governmental gross receipts tax pursuant to Subsection A of this section shall be deemed to be the taxpayer with respect to that tax pursuant to the Tax Administration Act with respect to all rights and responsibilities related to that tax, except that:

(1) the person shall not be entitled to take any credit against the tax for which the person has assumed liability pursuant to this section; and

(2) the person shall not claim a refund of tax on the basis that the person is not statutorily liable to pay the tax.

E. The department shall relieve from liability and hold harmless from the payment of a tax assumed by another person pursuant to an agreement approved pursuant to this section a taxpayer that would otherwise be liable for that tax.

History: Laws 2013, ch. 87, § 1.

7-1-22. Exhaustion of administrative remedies.

No court of this state has jurisdiction to entertain any proceeding by a taxpayer in which the taxpayer calls into question the taxpayer's liability for any tax or the application to the taxpayer of any provision of the Tax Administration Act, except as a consequence of the appeal by the taxpayer to the court of appeals from the order of a hearing officer, or except as a consequence of a claim for refund as specified in Section 7-1-26 NMSA 1978.

History: 1953 Comp., § 72-13-36, enacted by Laws 1965, ch. 248, § 24; 1966, ch. 30, § 1; 1979, ch. 144, § 21; 1995, ch. 70, § 2; 2015, ch. 73, § 14.

7-1-23. Disputing liabilities; election of remedies.

A taxpayer may dispute the taxpayer's liability for taxes only by protesting the assessment of taxes as provided in Section 7-1-24 NMSA 1978 without making payment or by claiming a refund as provided in Section 7-1-26 NMSA 1978 after making payment of the taxes the department asserts are owed. The pursuit of one of the two remedies constitutes an unconditional waiver of the right to pursue the other.

History: 1953 Comp., § 72-13-37, enacted by Laws 1965, ch. 248, § 25; 1979, ch. 144, § 22; 2013, ch. 27, § 5; 2017, ch. 63, § 24; 2019, ch. 157, § 2.

7-1-24. Disputing liabilities; administrative protest.

A. A taxpayer may dispute:

(1) the assessment to the taxpayer of any amount of tax over fifty dollars ($50.00);

(2) the application to the taxpayer of any provision of the Tax Administration Act except the issuance of a subpoena or summons; or

(3) the denial of or failure either to allow or to deny a:

(a) credit or rebate; or

(b) claim for refund made in accordance with Section 7-1-26 NMSA 1978.

B. The taxpayer may dispute a matter described in Subsection A of this section by filing with the secretary a written protest that:

(1) identifies the taxpayer and the tax credit, rebate, property or provision of the Tax Administration Act involved;

(2) states the grounds on which the protest is based and summarizes evidence supporting each ground asserted; and

(3) states the affirmative relief requested.

C. A taxpayer may amend a statement made by the taxpayer in accordance with Paragraphs (2) and (3) of Subsection B of this section at any time prior to ten days before the hearing conducted on the protest in accordance with the Administrative Hearings Office Act [Chapter 7, Article 1B NMSA 1978] or, if a scheduling order has been issued, in accordance with the scheduling order. The secretary may, in appropriate cases, provide for an informal conference before a hearing of the protest is set by the administrative hearings office or before acting on a claim for refund.

D. A taxpayer may file a protest, in the case of an assessment of tax by the department, without making payment of the amount assessed; provided that, if only a portion of the assessment is in dispute, any unprotested amounts of tax, interest or penalty shall be paid, or, if applicable, an installment agreement pursuant to Section 7-1-21 NMSA 1978 shall be entered into for the unprotested amounts, on or before the due date for the protest.

E. A protest by a taxpayer shall be filed within ninety days after:

(1) the date of the mailing to the taxpayer by the department of the notice of assessment and demand for payment as provided in Subsection A or D of Section 7-1-17 NMSA 1978;

(2) the mailing of the other peremptory notice or demand;

(3) the date of the application to the taxpayer of the applicable provision of the Tax Administration Act; or

(4) the date of denial of a claim pursuant to Section 7-1-26 NMSA 1978 or the last date upon which the department was required to take action on the claim but failed to take action.

F. If a taxpayer fails to timely protest an assessment of tax, penalty or interest:

(1) the undisputed amount of tax assessed and not protested becomes final;

(2) the taxpayer is deemed to have waived the right to protest the assessment, unless the taxpayer pays the tax and claims a refund of the tax pursuant to Section 7-1-26 NMSA 1978; and

(3) the secretary may proceed to enforce collection of the tax if the taxpayer is delinquent as defined by Section 7-1-16 NMSA 1978.

G. The fact that the department did not mail the assessment or other peremptory notice or demand by certified or registered mail or otherwise demand and receive acknowledgment of receipt by the taxpayer shall not be deemed to demonstrate the taxpayer's inability to protest within the required time.

H. A proceeding other than one to enforce collection of an amount assessed as tax and to protect the interest of the state by injunction, as provided by 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, is not stayed by timely filing of a protest in accordance with this section.

I. Nothing in this section shall be construed to authorize a criminal proceeding or to authorize an administrative protest of the issuance of a subpoena or summons.

History: 1953 Comp., § 72-13-38, enacted by Laws 1965, ch. 248, § 26; 1966, ch. 30, § 2; 1971, ch. 276, § 8; 1978 Comp., § 7-1-24; 1979, ch. 144, § 23; 1982, ch. 18, § 10; 1986, ch. 20, § 15; 1989, ch. 325, § 6; 1993, ch. 5, § 8; 2000, ch. 28, § 8; 2003, ch. 398, § 8; 2013, ch. 27, § 6; 2015, ch. 73, § 15; 2017, ch. 63, § 25; 2019, ch. 157, § 3; 2023, ch. 36, § 2.

7-1-24.1. Repealed.

History: 1978 Comp., § 7-1-24.1, enacted by Laws 2013, ch. 27, § 7; repealed by Laws 2015, ch. 73, § 37.

7-1-25. Appeals from hearing officer's decision and order.

A. If the protestant or secretary is dissatisfied with the decision and order of the hearing officer, the party may appeal to the court of appeals for further relief, but only to the same extent and upon the same theory as was asserted in the hearing before the hearing officer. All such appeals shall be upon the record made at the hearing and shall not be de novo. All such appeals to the court of appeals shall be taken within thirty days of the date of mailing or delivery of the written decision and order of the hearing officer to the protestant, and, if not so taken, the decision and order are conclusive.

B. The procedure for perfecting an appeal under this section to the court of appeals shall be as provided by the Rules of Appellate Procedure.

C. Upon appeal, the court shall set aside a decision and order of the hearing officer only if found to be:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the record; or

(3) otherwise not in accordance with the law.

D. If the secretary appeals a decision of the hearing officer and the court's decision, from which either no appeal is taken or no appeal may be taken, upholds the decision of the hearing officer, the court shall award reasonable attorney fees to the protestant. If the decision upholds the hearing officer's decision only in part, the award shall be limited to reasonable attorney fees associated with the portion upheld.

History: 1953 Comp., § 72-13-39, enacted by Laws 1965, ch. 248, § 27; 1966, ch. 30, § 3; 1973, ch. 167, § 1; 1979, ch. 144, § 24; 1985, ch. 65, § 15; 1986, ch. 20, § 16; 1989, ch. 325, § 7; 2015, ch. 73, § 16.

7-1-26. Disputing liabilities; claim for credit, rebate or refund.

A. A person who believes that an amount of tax has been paid by or withheld from that person in excess of that for which the person was liable, who has been denied a credit or rebate claimed or who claims a prior right to property in the possession of the department pursuant to a levy made pursuant to the authority of Sections 7-1-31 through 7-1-34 NMSA 1978 may claim a refund by directing to the secretary, within the time limitations provided by Subsections F and G of this section, a written claim for refund that, except as provided in Subsection K of this section, includes:

(1) the taxpayer's name, address and identification number;

(2) the type of tax for which a refund is being claimed, the credit or rebate denied or the property levied upon;

(3) the sum of money or other property being claimed;

(4) with respect to a refund, the period for which overpayment was made;

(5) a brief statement of the facts and the law on which the claim is based, which may be referred to as the "basis for the refund", which may include documentation that substantiates the written claim and supports the taxpayer's basis for the refund; and

(6) if applicable, a copy of an amended return for each tax period for which the refund is claimed.

B. A claim for refund that meets the requirements of Subsection A of this section and that is filed within the time limitations provided by Subsections F and G of this section is deemed to be properly before the department for consideration, regardless of whether the department requests additional documentation after receipt of the claim for refund.

C. If the department requests additional relevant documentation from a taxpayer who has submitted a claim for refund, the claim for refund shall not be considered incomplete provided the taxpayer submits sufficient information for the department to make a determination.

D. The secretary or the secretary's delegate may allow the claim in whole or in part or may deny the claim. If the:

(1) claim is denied in whole or in part in writing, the person shall not refile the denied claim, but the person, within ninety days after either the mailing or delivery of the denial of all or any part of the claim, may elect to pursue only one of the remedies provided in Subsection E of this section; and

(2) department has neither granted nor denied any portion of a complete claim for refund within one hundred eighty days after the claim was mailed or otherwise

delivered to the department, the person may elect to treat the claim as denied and elect to pursue only one of the remedies provided in Subsection E of this section.

E. A person may elect to pursue only one of the remedies provided in this subsection. A person who timely pursues more than one remedy is deemed to have elected the first. The person may:

(1) direct to the secretary, pursuant to the provisions of Section 7-1-24 NMSA 1978, a written protest that sets forth:

(a) the circumstances of: 1) an alleged overpayment; 2) a denied credit; 3) a denied rebate; or 4) a denial of a prior right to property levied upon by the department;

(b) an allegation that, because of that overpayment or denial, the state is indebted to the taxpayer for a specified amount, including any allowed interest, or for the property;

(c) a demand for the refund to the taxpayer of that amount or that property; and

(d) a recitation of the facts of the claim for refund; or

(2) commence a civil action in the district court for Santa Fe county by filing a complaint setting forth the circumstance of the claimed overpayment, denied credit or rebate or denial of a prior right to property levied upon by the department alleging that on account thereof the state is indebted to the plaintiff in the amount or property stated, together with any interest allowable, demanding the refund to the plaintiff of that amount or property and reciting the facts of the claim for refund. The plaintiff or the secretary may appeal from any final decision or order of the district court to the court of appeals.

F. Except as otherwise provided in Subsection G of this section, a credit or refund of any amount of overpaid tax, penalty or interest may be allowed or made to a person if a claim is properly filed:

(1) only within three years after the end of the calendar year in which the applicable event occurs:

(a) in the case of tax paid with an original or amended state return, the date the related tax was originally due;

(b) in the case of tax paid in response to an assessment by the department pursuant to Section 7-1-17 NMSA 1978, the date the tax was paid;

(c) in the case of tax with respect to which a net-negative federal adjustment, as that term is used in Section 7-1-13 NMSA 1978, relates, the final determination date of that federal adjustment, as provided in Section 7-1-13 NMSA 1978;

(d) the final determination of value occurs with respect to any overpayment that resulted from a disapproval by any agency of the United States or the state of New Mexico or any court of increase in value of a product subject to taxation pursuant 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] or the Natural Gas Processors Tax Act [Chapter 7, Article 33 NMSA 1978]; or

(e) in the case of a claim related to property taken by levy, the date the property was levied upon as provided in the Tax Administration Act;

(2) in the case of a denial of a claim for credit pursuant to the Investment Credit Act [Chapter 7, Article 9A NMSA 1978], Laboratory Partnership with Small Business Tax Credit Act [Chapter 7, Article 9E NMSA 1978] or Technology Jobs and Research and Development Tax Credit Act [Chapter 7, Article 9F NMSA 1978] or for the rural job tax credit provided by Section 7-2E-1.1 NMSA 1978 or similar credit, only within one year after the date of the denial;

(3) in the case of a taxpayer under audit by the department who has signed a waiver of the limitation on assessments on or after July 1, 1993 pursuant to Subsection F of Section 7-1-18 NMSA 1978, only for a refund of the same tax paid for the same period for which the waiver was given, and only until a date one year after the later of the date of the mailing of an assessment issued pursuant to the audit, the date of the mailing of final audit findings to the taxpayer or the date a proceeding is begun in court by the department with respect to the same tax and the same period;

(4) in the case of a payment of an amount of tax not made within three years of the end of the calendar year in which the original due date of the tax or date of the assessment of the department occurred, only for a claim for refund of that amount of tax and only within one year of the date on which the tax was paid; or

(5) in the case of a taxpayer who has been assessed a tax on or after July 1, 1993 pursuant to Subsection B, C or D of Section 7-1-18 NMSA 1978 and an assessment that applies to a period ending at least three years prior to the beginning of the year in which the assessment was made, only for a refund for the same tax for the period of the assessment or for any period following that period within one year of the date of the assessment unless a longer period for claiming a refund is provided in this section.

G. No credit or refund shall be allowed or made to a person claiming a refund of gasoline tax pursuant to Section 7-13-11 NMSA 1978 unless notice of the destruction of the gasoline was given to the department within thirty days of the actual destruction and the claim for refund is made within six months of the date of destruction. No credit or refund shall be allowed or made to a person claiming a refund of gasoline tax pursuant to Section 7-13-17 NMSA 1978 unless the refund is claimed within six months of the date of purchase of the gasoline and the gasoline has been used at the time the claim for refund is made.

H. If, as a result of an audit by the department or a managed audit covering multiple periods, an overpayment of tax is found in any period under the audit and if the taxpayer files a claim for refund for the overpayments identified in the audit, that overpayment may be credited against an underpayment of the same tax found in another period under audit pursuant to Section 7-1-29 NMSA 1978.

I. A refund of tax paid under any tax or tax act administered pursuant to Subsection B of Section 7-1-2 NMSA 1978 may be made, at the discretion of the department, in the form of credit against future tax payments if future tax liabilities in an amount at least equal to the credit amount reasonably may be expected to become due.

J. For the purposes of this section, "oil and gas tax return" means a return reporting tax due with respect to oil, natural gas, liquid hydrocarbons, carbon dioxide, helium or nonhydrocarbon gas pursuant to the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978].

K. The filing of a fully completed original income tax return, corporate income tax return, corporate income and franchise tax return, estate tax return, special fuel excise tax return or annual insurance premium tax return that shows a balance due the taxpayer or a fully completed amended income tax return, an amended corporate income tax return, an amended corporate income and franchise tax return, an amended estate tax return, an amended special fuel excise tax return, an amended oil and gas tax return or an amended insurance premium tax return that shows a lesser tax liability than the original return constitutes the filing of a claim for refund for the difference in tax due shown on the original and amended returns.

L. In no case may a credit or refund be claimed if the related federal adjustment is taken into account by a partnership in the partnership's tax return for the adjustment year and allocated to the partners in a manner similar to other partnership tax items.

History: 1953 Comp., § 72-13-40, enacted by Laws 1965, ch. 248, § 28; 1966, ch. 30, § 4; 1971, ch. 276, § 9; 1974, ch. 32, § 1; 1975, ch. 213, § 2; 1979, ch. 144, § 25; 1982, ch. 18, § 11; 1983, ch. 211, § 27; 1985, ch. 65, § 16; 1986, ch. 20, § 17; 1989, ch. 325, § 8; 1990, ch. 86, § 7; 1993, ch. 5, § 9; 1994, ch. 51, § 5; 1996, ch. 15, § 4; 1997, ch. 67, § 3; 1999, ch. 84, § 2; 2000, ch. 28, § 9; 2001, ch. 16, § 5; 2003, ch. 398, § 9; 2007, ch. 275, § 2; 2013, ch. 27, § 8; 2015, ch. 73, § 17; 2017, ch. 63, § 26; 2019, ch. 157, § 4; 2021, ch. 83, § 3; 2023, ch. 85, § 5.

7-1-26.1. Repealed.

7-1-27. Conclusiveness of court order on liability for payment of tax.

Whenever the jurisdiction of the district court of Santa Fe county or the court of appeals is invoked according to the provisions of Section 7-1-25, 7-1-26 or 7-1-59 NMSA 1978, or whenever the jurisdiction of any federal court is invoked or whenever the jurisdiction of any district court of this state is invoked according to the provisions of Section 7-1-58 NMSA 1978, a final decision of that court or of any higher court which reviews the matter and from which decision no appeal or review is successfully taken is conclusive as regards the liability or nonliability of any person for payment of any tax.

History: 1953 Comp., § 72-13-41, enacted by Laws 1965, ch. 248, § 29; 1966, ch. 30, § 5; 1999, ch. 84, § 3.

7-1-28. Authority for abatements of assessments of tax.

A. In response to a written protest against an assessment, submitted in accordance with the provisions of Section 7-1-24 NMSA 1978, but before any court acquires jurisdiction of the matter, or when a "notice of assessment of taxes" is incorrect, the secretary or the secretary's delegate may abate any part of an assessment determined by the secretary or the secretary's delegate to have been incorrectly, erroneously or illegally made. An abatement in the amount of twenty thousand dollars ($20,000) or more shall be made with the prior approval of the attorney general; except that the secretary or the secretary's delegate may make abatements with respect to the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978], the Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978], the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978], the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978], the Natural Gas Processors Tax Act [Chapter 7, Article 33 NMSA 1978] or the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978], abatements of gasoline tax made under Section 7-13-17 NMSA 1978 and abatements of cigarette tax made under the Cigarette Tax Act [Chapter 7, Article 12 NMSA 1978] without the prior approval of the attorney general regardless of the amount.

B. Pursuant to the final order of the district court, the court of appeals, the supreme court of New Mexico or any federal court, from which order, appeal or review is not successfully taken by the department, adjudging that any person is not required to pay any portion of tax assessed to that person, the secretary or the secretary's delegate shall cause that amount of the assessment to be abated.

C. Pursuant to a compromise of taxes agreed to by the secretary and according to the terms of the closing agreement formalizing the compromise, the secretary or the secretary's delegate shall cause the abatement of the appropriate amount of any assessment of tax.

D. The secretary or the secretary's delegate shall cause the abatement of the amount of an assessment of tax that is equal to the amount of fee paid to or retained by an out-of-state attorney or collection agency from a judgment or the amount collected by the attorney or collection agency pursuant to Section 7-1-58 NMSA 1978.

E. Records of abatements made in excess of ten thousand dollars ($10,000) shall be available for inspection by the public. The department shall keep such records for a minimum of three years from the date of the abatement.

F. In response to a timely protest pursuant to Section 7-1-24 NMSA 1978 of an assessment by the department and notwithstanding any other provision of the Tax Administration Act, the secretary or the secretary's delegate may abate that portion of an assessment of tax, including applicable penalties and interest, representing the amount of tax previously paid by another person on behalf of the taxpayer on the same transaction; provided that the requirements of equitable recoupment are met. For purposes of this subsection, the protest pursuant to Section 7-1-24 NMSA 1978 of the department's assessment may be made by the taxpayer to whom the assessment was issued or by the other person who claims to have previously paid the tax on behalf of the taxpayer.

History: 1953 Comp., § 72-13-42, enacted by Laws 1965, ch. 248, § 30; 1966, ch. 30, § 6; 1971, ch. 32, § 1; 1975, ch. 116, § 2; 1977, ch. 297, § 1; 1979, ch. 144, § 26; 1986, ch. 20, § 18; 1996, ch. 15, § 5; 2000, ch. 28, § 10; 2003, ch. 439, § 3; 2013, ch. 27, § 9.

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

A. In response to a claim for refund, credit or rebate made as provided in Section 7-1-26 NMSA 1978, but before a court acquires jurisdiction of the matter, the secretary or the secretary's delegate may authorize payment to a person in the amount of the credit or rebate claimed or refund an overpayment of tax determined by the secretary or the secretary's delegate to have been erroneously made by the person, together with allowable interest. A payment of a credit rebate claimed or a refund of tax and interest erroneously paid amounting to twenty thousand dollars ($20,000) or more shall be made with the prior approval of the attorney general, except that the secretary or the secretary's delegate may make refunds with respect to the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978], the Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978], the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978], the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978], the Natural Gas Processors Tax Act [Chapter 7, Article 33 NMSA 1978] or the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978], Section 7-13-17 NMSA 1978 and the Cigarette Tax Act [Chapter 7, Article 12 NMSA 1978] without the prior approval of the attorney general regardless of the amount.

B. Pursuant to the final order of the district court, the court of appeals, the supreme court of New Mexico or a federal court, from which order, appeal or review is not successfully taken, adjudging that a person has properly claimed a credit, rebate or a refund of overpaid tax, the secretary shall authorize the payment to the person of the amount thereof. After a court acquires jurisdiction but before it issues a final order, the secretary may authorize payment of a credit, rebate or refund pursuant to a closing agreement pursuant to Section 7-1-20 NMSA 1978.

C. In the discretion of the secretary, any amount of credit or rebate to be paid or tax to be refunded may be offset against any amount of tax for which the person due to receive the credit, rebate payment or refund is liable. The secretary or the secretary's delegate shall give notice to the taxpayer that the credit, rebate payment or refund will be made in this manner, and the taxpayer shall be entitled to interest pursuant to Section 7-1-68 NMSA 1978 until the tax liability is credited with the credit, rebate or refund amount.

D. In an audit by the department or a managed audit covering multiple reporting periods in which both underpayments and overpayments of a tax have been made in different reporting periods, the department shall credit the tax overpayments against the underpayments; provided that the taxpayer files a claim for refund of the overpayments. An overpayment shall be applied as a credit first to the earliest underpayment and then to succeeding underpayments. An underpayment of tax to which an overpayment is credited pursuant to this section shall be deemed paid in the period in which the overpayment was made or the period to which the overpayment was credited against an underpayment, whichever is later. If the overpayments credited pursuant to this section exceed the underpayments of a tax, the amount of the net overpayment for the periods covered in the audit shall be refunded to the taxpayer.

E. When a taxpayer makes a payment identified to a particular return or assessment, and the department determines that the payment exceeds the amount due pursuant to that return or assessment, the secretary may apply the excess to the taxpayer's other liabilities pursuant to the tax acts to which the return or assessment applies, without requiring the taxpayer to file a claim for a refund. The liability to which an overpayment is applied pursuant to this section shall be deemed paid in the period in which the overpayment was made or the period to which the overpayment was applied, whichever is later.

F. If the department determines, upon review of an original or amended income tax return, corporate income and franchise tax return, estate tax return, special fuels excise tax return or oil and gas tax return, that there has been an overpayment of tax for the taxable period to which the return or amended return relates in excess of the amount due to be refunded to the taxpayer pursuant to the provisions of Subsection K of Section 7-1-26 NMSA 1978, the department may refund that excess amount to the taxpayer without requiring the taxpayer to file a refund claim.

G. Records of refunds and credits made in excess of ten thousand dollars ($10,000) shall be available for inspection by the public. The department shall keep such records for a minimum of three years from the date of the refund or credit.

H. In response to a timely refund claim pursuant to Section 7-1-26 NMSA 1978 and notwithstanding any other provision of the Tax Administration Act, the secretary or the secretary's delegate may refund or credit a portion of an assessment of tax paid, including applicable penalties and interest representing the amount of tax previously paid by another person on behalf of the taxpayer on the same transaction; provided that the requirements of equitable recoupment are met. For purposes of this subsection, the refund claim may be filed by the taxpayer to whom the assessment was issued or by another person who claims to have previously paid the tax on behalf of the taxpayer. Prior to granting the refund or credit, the secretary may require a waiver of all rights to claim a refund or credit of the tax previously paid by another person paying a tax on behalf of the taxpayer.

I. If, as a result of an audit by the department or a managed audit, a person is determined to owe gross receipts tax on receipts from the sale of property or services, the department may credit against the amount owed an amount of compensating tax paid by the purchaser if the person can demonstrate that the purchaser timely paid the compensating tax on the same property or services. The credit provided by this subsection shall not be denied solely because the purchaser cannot timely file for a refund of the compensating tax paid and, if the credit is to be granted, the department shall require, for the purpose of granting the credit, that the purchaser give up any right to claim a refund of that tax.

History: 1953 Comp., § 72-13-43, enacted by Laws 1965, ch. 248, § 31; 1966, ch. 30, § 7; 1970, ch. 17, § 1; 1975, ch. 116, § 3; 1977, ch. 297, § 2; 1979, ch. 144, § 27; 1982, ch. 18, § 12; 1989, ch. 325, § 9; 1992, ch. 55, § 12; 2001, ch. 16, § 6; 2002, ch. 11, § 1; 2003, ch. 398, § 11; 2003, ch. 439, § 4; 2006, ch. 38, § 1; 2013, ch. 27, § 10; 2017, ch. 63, § 27; 2020, ch. 80, § 2; 2021, ch. 83, § 4.

7-1-29.1. Awarding of costs and fees.

A. In an administrative proceeding or court proceeding brought by or against a taxpayer and conducted in connection with the determination, collection or refund of a tax or the interest or penalty for a tax governed by the Tax Administration Act, the taxpayer shall be awarded a judgment or a settlement for reasonable administrative costs and reasonable litigation costs and attorney fees incurred in connection with the proceeding if the taxpayer is the prevailing party.

B. As used in this section:

(1) "administrative proceeding" means any procedure or other action before the department or the administrative hearings office;

(2) "court proceeding" means any civil action brought in state district court;

(3) "reasonable administrative costs" means:

(a) any administrative fees or similar charges imposed by the department or the administrative hearings office; and

(b) actual charges for: 1) filing fees, court reporter fees, service of process fees and similar expenses; 2) the services of expert witnesses; 3) any study, analysis, report, test or project reasonably necessary for the preparation of the party's case; and 4) fees and costs paid or incurred for the services in connection with the proceeding of attorneys, certified public accountants, employees of a New Mexico licensed certified public accounting firm or enrolled agents who are authorized to practice in the context of an administrative proceeding; and

(4) "reasonable litigation costs and attorney fees" means:

(a) reasonable court costs; and

(b) actual charges for: 1) filing fees, court reporter fees, service of process fees and similar expenses; 2) the services of expert witnesses; 3) any study, analysis, report, test or project reasonably necessary for the preparation of the party's case; and 4) fees and costs paid or incurred for the services of attorneys in connection with the proceeding.

C. For purposes of this section:

(1) the taxpayer is the prevailing party if the taxpayer has:

(a) substantially prevailed with respect to the amount in controversy; or

(b) substantially prevailed with respect to most of the issues involved in the case or the most significant issue or set of issues involved in the case;

(2) the taxpayer is not the prevailing party if the administrative hearings office finds that the position of the department in the proceeding was based upon a reasonable application of the law to the facts of the case. For purposes of this paragraph, the position of the department shall be presumed not to be based upon a reasonable application of the law to the facts of the case if:

(a) the department did not follow applicable published guidance in the proceeding; or

(b) the assessment giving rise to the proceeding is not supported by substantial evidence determined at the time of the issuance of the assessment;

(3) as used in Subparagraph (a) of Paragraph (2) of this subsection, "applicable published guidance" means:

(a) department or administrative hearings office regulations, information releases, instructions, notices, technical advice memoranda and announcements; and

(b) private letter rulings and letters issued by the department to the taxpayer; and

(4) the determination of whether the taxpayer is the prevailing party and the amount of reasonable litigation costs or reasonable administrative costs shall be made by agreement of the parties or:

(a) in the case of an administrative proceeding, by the hearing officer; or

(b) in the case of a court proceeding, by the court.

D. An order granting or denying in whole or in part an award for:

(1) reasonable litigation costs and attorney fees pursuant to Subsection A of this section in a court proceeding may be incorporated as a part of the court's decision or judgment and are subject to appeal in the same manner as the decision or judgment; and

(2) reasonable administrative costs pursuant to Subsection A of this section in an administrative proceeding are reviewable in the same manner as a decision of the administrative hearings office.

E. An agreement for or award of reasonable administrative costs or reasonable litigation costs in any administrative proceeding or court proceeding pursuant to Subsection A of this section shall not exceed the lesser of twenty percent of the amount of the settlement or judgment or seventy-five thousand dollars ($75,000).

F. The department shall annually report to the legislative finance committee and the revenue stabilization and tax policy committee on the costs it incurs pursuant to this section.

History: 1978 Comp., § 7-1-29.1, enacted by Laws 2003, ch. 398, § 12; 2015, ch. 73, § 18; 2019, ch. 157, § 5.

7-1-29.2. Credit claims.

A. A taxpayer who submits a complete application for a tax credit is deemed to have received approval of the application if the application has not been granted or denied within one hundred twenty days of the date it was filed. Nothing in this section shall be construed to prevent the department from auditing taxes paid or from assessing taxes owed, including any tax resulting from tax credits found not to be valid.

B. A taxpayer who believes that the taxpayer is eligible to receive a tax credit may apply for approval of the credit by directing to the secretary a complete application on the form and in the manner prescribed by the department.

C. An application for a tax credit that has all fields completed, includes all attachments required by the application instructions and is submitted in accordance with the application instructions is deemed to be properly before the department for consideration, regardless of whether the department requests additional documentation after receipt of the application for credit.

D. If the department requests additional relevant documentation from a taxpayer who has submitted an incomplete application for a tax credit, the application shall be considered complete on the date that the taxpayer mails or delivers sufficient information for the department to consider the application.

E. The secretary or the secretary's delegate may approve or deny an application for a tax credit in whole or in part. An approval or denial by the secretary or the secretary's delegate shall be in writing. If the application is denied in whole or in part, the taxpayer shall not refile the denied application, but the taxpayer, within one hundred twenty days after the mailing or delivery of the denial of all or any part of the application, may elect to pursue only one of the remedies provided in this subsection. A taxpayer who timely pursues more than one remedy is deemed to have elected the first remedy requested. The taxpayer may:

(1) direct to the secretary, pursuant to the provisions of Section 7-1-24 NMSA 1978, a written protest that sets forth:

(a) the circumstances of the denied application for a tax credit;

(b) an allegation that, because of the denial, the state is indebted to the taxpayer for a specified amount, including any allowed interest;

(c) a demand for the approval of the application for the tax credit of the specified amount; and

(d) a recitation of the facts supporting the application for the tax credit; or

(2) commence a civil action in the district court for Santa Fe county by filing a complaint setting forth the circumstance of the denied application for the tax credit; alleging that on account of the denial, the state is indebted to the taxpayer for a specified amount, together with any interest allowable; demanding approval of the application for the tax credit of that amount; and reciting the facts of the application for the tax credit. The taxpayer or the secretary may appeal from any final decision or order of the district court to the court of appeals.

History: Laws 2003, ch. 398, § 10; 2023, ch. 36, § 3.

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.

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

A. The secretary or secretary's delegate may proceed to collect tax from a delinquent taxpayer by levy upon all property or rights to property of the delinquent taxpayer and convert the property or rights to property to money by appropriate means.

B. A levy is made by taking possession of property pursuant to authority contained in a warrant of levy or by the service, by the secretary or secretary's delegate or any sheriff or certified law enforcement employee of the department of public safety, of the warrant upon the taxpayer or other person in possession of property or rights to property of the taxpayer, upon the taxpayer's employer or upon any person or depositary owing or who will owe money to or holding funds of the taxpayer, ordering the taxpayer or other person to reveal the extent thereof and surrender it to the secretary or secretary's delegate forthwith or agree to surrender it or the proceeds therefrom in the future, but in any case on the terms and conditions stated in the warrant.

C. Upon agreement between the department and a financial institution, the department may serve a warrant of levy on the financial institution in electronic format pursuant to the Electronic Authentication of Documents Act [14-15-1 to 14-15-6 NMSA 1978] and the Uniform Electronic Transactions Act [Chapter 14, Article 16 NMSA 1978].

History: 1953 Comp., § 72-13-45, enacted by Laws 1965, ch. 248, § 33; 1979, ch. 144, § 28; 1993, ch. 242, § 1; 2015, ch. 15, § 1.

7-1-32. Contents of warrant of levy.

A warrant of levy shall:

A. bear on its face a statement of the authority for its service and compelling compliance with its terms, shall be attested by the secretary by electronic signature, if necessary, unless the warrant is served in electronic format upon a financial institution pursuant to the Electronic Authentication of Documents Act [14-15-1 to 14-15-6 NMSA 1978] and the Uniform Electronic Transactions Act [Chapter 14, Article 16 NMSA 1978] and shall bear the seal of the department;

B. identify the taxpayer whose liability for taxes is sought to be enforced, the amount thereof and the date or approximate date on which the tax became due;

C. order the person on whom it is served to reveal the amount of property or rights to property in the person's possession that belong to the taxpayer and the extent of the person's interest therein and to reveal the amount and kind of property or rights to property of the taxpayer that are, to the best of the person's knowledge, in the possession of others;

D. order the person on whom it is served to surrender the property forthwith but may allow the person to agree in writing to surrender the property or the proceeds therefrom on a certain date in the future when the taxpayer's right to it would otherwise mature;

E. order the employer of the taxpayer to surrender wages or salary of the taxpayer in excess of the amount exempt under Section 7-1-36 NMSA 1978 owed by the employer to the taxpayer at the time of service of the levy and that may become owed by the employer to the taxpayer subsequent to the service of the levy until the full amount of the liability stated on the levy is satisfied or until notified by the secretary or the secretary's delegate;

F. state on its face the penalties for willful failure by any person upon whom it is served to comply with its terms; and

G. state that the state of New Mexico claims a lien for the entire amount of tax asserted to be due, including applicable interest and penalties.

History: 1953 Comp., § 72-13-46, enacted by Laws 1965 , ch. 248, § 34; 1979, ch. 144, § 29; 1986, ch. 20, § 19; 1993, ch. 242, § 2; 2015, ch. 15, § 2.

7-1-33. Successive seizures.

Whenever any property or right to property upon which levy has been made by virtue of Section 7-1-31 NMSA 1978 is not sufficient to satisfy the claim for which levy is made, the secretary or secretary's delegate may thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property or rights to property subject to levy of the person against whom the claim exists, until the amount due from him is fully paid. Successive levies are not necessary in the case of a levy served on an employer of the taxpayer with respect to wages or salary of the taxpayer.

History: 1953 Comp., § 72-13-47, enacted by Laws 1965, ch. 248, § 35; 1979, ch. 144, § 30; 1993, ch. 242, § 3.

7-1-34. Surrender of property subject to levy; penalty.

A. Any person in possession of or obligated with respect to property or rights to property subject to levy upon which a levy has been made shall surrender the property or rights, or discharge such obligation, to the secretary or the secretary's delegate, except that part of the property or right as is, at the time of such demand, the subject of a bona fide attachment, execution, levy or other similar process, unless the person is entitled to and does redeem it according to the provisions of Section 7-1-47 NMSA 1978.

B. Upon demand of the secretary or the secretary's delegate, any employer owing a taxpayer wages or salary subject to levy upon which a levy has been made shall surrender to the secretary or the secretary's delegate each subsequent pay period that portion of the taxpayer's wages or salary not exempted under Section 7-1-36 NMSA 1978 and not subject to a prior bona fide attachment, execution, levy, garnishment or similar process, until the amount of the levy is satisfied in full or until notified by the secretary or the secretary's delegate. The secretary or secretary's delegate shall notify the employer promptly when the levy has been satisfied.

C. Any person who wrongfully fails or refuses to surrender or redeem, as required by this section, any property or rights to property levied upon, upon demand by the secretary or the secretary's delegate, is liable for a civil penalty in an amount equal to the lesser of the value of the property or rights not so surrendered or the amount of the taxes for the collection of which such levy has been made.

D. Notwithstanding any other provision of law, the surrender by a person in possession of or obligated with respect to property, rights to property or proceeds from the sale or other disposition of property subject to levy upon which a levy has been made by the secretary or the secretary's delegate of such property or rights to property, discharges such obligation to the department. A surrender by a person shall be a defense against the assertion of any obligation or liability to the delinquent taxpayer or any other person with respect to such property or rights to property arising from a surrender or payment.

E. The term "person", as used in this section, includes an officer or employee of a corporation or a member or employee of a partnership, who, as such officer, employee or member, is under a duty to surrender the property or rights to property or to discharge the obligation.

History: 1953 Comp., § 72-13-48, enacted by Laws 1965, ch. 248, § 36; 1979, ch. 144, § 31; 1986, ch. 20, § 20; 1993, ch. 242, § 4.

7-1-35. Stay of levy.

Levy shall not be made on the property or rights to property of any taxpayer who furnishes security in accordance with the provisions of Section 7-1-54 NMSA 1978. A levy made under authority of Section 7-1-31 NMSA 1978 shall be released as otherwise provided in the Tax Administration Act upon compliance by a taxpayer with the pertinent provisions of Section 7-1-54 NMSA 1978.

History: 1953 Comp., § 72-13-49, enacted by Laws 1965, ch. 248, § 37; 1969, ch. 9, § 1.

7-1-36. Property exempt from levy.

A. There shall be exempt from levy the money or property of a delinquent taxpayer in a total amount or value not in excess of one thousand dollars ($1,000).

B. In addition to the property exempt under Subsection A of this section, there shall also be exempt from levy on an employer of the taxpayer the greater of the following portions of the taxpayer's disposable earnings:

(1) seventy-five percent of the taxpayer's disposable earnings for any pay period; or

(2) an amount each week equal to forty times the minimum wage rate pursuant to Subsection A of Section 50-4-22 NMSA 1978. The superintendent of regulation and licensing shall provide a table giving equivalent exemptions for pay periods of other than one week.

C. As used in this section, "disposable earnings" means that part of a taxpayer's wages or salary remaining after deducting the amounts that are required by law to be withheld.

History: 1953 Comp., § 72-13-50, enacted by Laws 1965, ch. 248, § 38; 1993, ch. 242, § 5; 2021, ch. 65, § 4.

7-1-37. Assessment as lien.

A. If any person liable for any tax neglects or refuses to pay the tax after assessment and demand for payment as provided in Section 7-1-17 NMSA 1978 or if any person liable for tax pursuant to Section 7-1-63 NMSA 1978 neglects or refuses to pay after demand has been made, unless and only so long as such a person is entitled to the protection afforded by a valid order of a United States court entered pursuant to Section 362 or 1301 of Title 11 of the United States Code, as amended or renumbered, the amount of the tax shall be a lien in favor of the state upon all property and rights to property of the person.

B. The lien imposed by Subsection A of this section shall arise at the time both assessment and demand, as provided in Section 7-1-17 NMSA 1978, have been made or at the time demand has been made pursuant to Section 7-1-63 NMSA 1978 and shall continue until the liability for payment of the amount demanded is satisfied or extinguished.

C. As against any mortgagee, pledgee, purchaser, judgment creditor, person claiming a lien under Sections 48-2-1 through 48-11-9 NMSA 1978, lienor for value or other encumbrancer for value, the lien imposed by Subsection A of this section shall not be considered to have arisen or have any effect whatever until notice of the lien has been filed as provided in Section 7-1-38 NMSA 1978.

History: 1953 Comp., § 72-13-51, enacted by Laws 1965, ch. 248, § 39; 1979, ch. 144, § 32; 1982, ch. 18, § 13; 1993, ch. 242, § 6.

7-1-38. Notice of lien.

A notice of the lien provided for in Section 7-1-37 NMSA 1978 may be recorded in any county in the state in the tax lien index established by Sections 48-1-1 through 48-1-7 NMSA 1978 and a copy thereof shall be sent to the taxpayer affected. Any county clerk to whom the notices are presented shall record them as requested without charge. The notice of lien shall identify the taxpayer whose liability for taxes is sought to be enforced and the date or approximate date on which the tax became due and shall state that New Mexico claims a lien for the entire amount of tax asserted to be due, including applicable interest and penalties. Recording of the notice of lien shall be effective as to all property and rights to property of the taxpayer.

History: 1953 Comp., § 72-13-52, enacted by Laws 1965, ch. 248, § 40; 1979, ch. 144, § 33; 1996, ch. 15, § 6.

7-1-39. Release or extinguishment of lien; limitation on actions to enforce lien.

A. When any substantial part of the amount of tax due from a taxpayer is paid, the department shall immediately file, in the same county in which a notice of lien was filed, and in the same records, a document completely or partially releasing the lien. The county clerk to whom such a document is presented shall record it without charge.

B. The department may file, in the same county as the notice of lien was filed, a document releasing or partially releasing any lien filed in accordance with Section 7-1-38 NMSA 1978 when the filing of the lien was premature or did not follow requirements of law or when release or partial release would facilitate collection of taxes due. The county clerk to whom the document is presented shall record it without charge.

C. In all cases when a notice of lien for taxes, penalties and interest has been filed under Section 7-1-38 NMSA 1978 and a period of ten years has passed from the date the lien was filed, as shown on the notice of lien, the taxes, penalties and interest for which the lien is claimed shall be conclusively presumed to have been paid and the lien is thereby extinguished. No action shall be brought to enforce any lien extinguished in accordance with this subsection.

History: 1953 Comp., § 72-13-53, enacted by Laws 1965, ch. 248, § 41; 1972, ch. 73, § 1; 1979, ch. 144, § 34; 1985, ch. 58, § 1; 1986, ch. 20, § 21; 1997, ch. 67, § 4; 2013, ch. 214, § 1.

7-1-40. Foreclosure of lien.

The liens provided for in the Tax Administration Act may be foreclosed or satisfied by seizure and sale of property or rights to property as provided in the Tax Administration Act, except the lien provided for in Section 7-1-47 NMSA 1978.

History: 1953 Comp., § 72-13-54, enacted by Laws 1965, ch. 248, § 42; 1979, ch. 144, § 35.

7-1-41. Notice of seizure.

As soon as practicable after the levy, the secretary or the secretary's delegate shall notify the owner thereof of the amount and kind of property seized and of the total amount demanded in payment of tax.

History: 1953 Comp., § 72-13-55, enacted by Laws 1965, ch. 248, § 43; 1979, ch. 144, § 36; 2001, ch. 56, § 5.

7-1-42. Notice of sale.

As soon as practicable after the levy, the secretary or the secretary's delegate shall decide on a time and place for the sale of the property, shall make a diligent inquiry as to the identity and whereabouts of the owner of the property and persons having an interest therein and shall notify the owner and persons having an interest therein of the time and place for the sale. The fact that any person entitled thereto does not receive the notice provided for in this section does not affect the validity of the sale.

History: 1953 Comp., § 72-13-56, enacted by Laws 1965, ch. 248, § 44; 1979, ch. 144, § 37; 2001, ch. 56, § 6.

7-1-43. Sale of indivisible property.

If any property of the taxpayer subject to levy is not divisible so as to enable the secretary or the secretary's delegate by sale of a part thereof to raise the whole amount of the tax and expenses, the whole of the taxpayer's interest in the property shall be sold but is always subject to redemption before sale according to the provisions of Section 7-1-47 NMSA 1978.

History: 1953 Comp., § 72-13-57, enacted by Laws 1965, ch. 248, § 45; 1979, ch. 144, § 38; 2001, ch. 56, § 7.

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.

7-1-45. Manner of sale or conversion to money.

All property levied upon, not consisting of money, shall be sold at public auction at one o'clock in the afternoon on the steps or in front of the courthouse of the county in which the property was located when levied upon or may be consigned to an auctioneer for sale. Payment may be accepted only in full and immediately after the acceptance of a bid for the property. Stocks, bonds, securities and similar property may be negotiated or surrendered for money in accordance with uniform regulations issued by the secretary, notwithstanding the above.

History: 1953 Comp., § 72-13-59, enacted by Laws 1965, ch. 248, § 47; 1979, ch. 144, § 40; 2001, ch. 56, § 8.

7-1-46. Minimum prices.

Before the sale, the secretary or the secretary's delegate shall determine a minimum price for which the property shall be sold, and if no person offers for the property at the sale the amount of the minimum price, the property shall not be sold but the sale shall be readvertised and held at a later time. In determining the minimum price, the secretary or the secretary's delegate shall take into account and determine the expense of making the levy and sale.

History: 1953 Comp., § 72-13-60, enacted by Laws 1965, ch. 248, § 48; 1979, ch. 144, § 41; 2001, ch. 56, § 9.

7-1-47. Redemption before sale.

Any person whose property has been levied upon shall have the right to pay the amount due, together with the expenses of the proceeding, or furnish acceptable security for the payment thereof according to the provisions of Section 7-1-54 NMSA 1978 to the department at any time prior to the sale thereof, and upon payment or furnishing of security, the secretary or the secretary's delegate shall restore the property to that person, and all further proceedings in connection with the levy on the property shall cease from the time of the payment. Any person who has a sufficient interest in property or rights to property levied upon to entitle the person to redeem it from sale, according to the provisions of this section, who does pay the amount due and accomplishes the redemption shall have a lien against the property in the amount paid and may file a notice thereof in the records of any county in the state in which the property is located and may foreclose the lien as provided by law.

History: 1953 Comp., § 72-13-61, enacted by Laws 1965, ch. 248, § 49; 1979, ch. 144, § 42; 2001, ch. 56, § 10.

7-1-48. Documents of title.

In case property is sold as above provided, the department, after payment for the property is received, shall prepare and deliver to the purchaser thereof a certificate of sale, in the case of personalty, or, in the case of realty, a deed, in a form as the secretary shall by regulation prescribe. Such documents of title shall recite the authority for the transaction, the date of the sale, the interest in the property that is conveyed and the price paid therefor.

History: 1953 Comp., § 72-13-62, enacted by Laws 1965, ch. 248, § 50; 1979, ch. 144, § 43; 2001, ch. 56, § 11.

7-1-49. Legal effect of certificate of sale.

In all cases of sale of property other than real property, the certificate of sale provided for in Section 7-1-48 NMSA 1978 shall:

A. be prima facie evidence of the right of the department to make the sale and conclusive evidence of the regularity of the proceedings in making the sale;

B. transfer to the purchaser all right, title and interest of the delinquent taxpayer in and to the property sold, subject to all outstanding prior interests and encumbrances of record and free of any subsequent encumbrance;

C. if such property consists of stock certificates, be notice, when received, to any corporation, company or association of such transfer and be authority to such corporation, company or association to record the transfer on its books and records in the same manner as if the stock certificates were transferred or assigned by the record owner;

D. if the subject of sale is securities or other evidences of debt, be a good and valid receipt to the person holding the same, as against any person holding or claiming to hold possession of the securities or other evidences of debt; and

E. if such property consists of a motor vehicle as represented by its title, be notice, when received, to any public official charged with the registration of title to motor vehicles of the transfer and be authority to that official to record the transfer on the official's books and records in the same manner as if the certificate of title to the motor vehicle were transferred or assigned by the record owner.

History: 1953 Comp., § 72-13-63, enacted by Laws 1965, ch. 248, § 51; 1979, ch. 144, § 44; 2001, ch. 56, § 12.

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.

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

A. Money realized by levy or sale under provision of the Tax Administration Act shall be first applied against the expenses of the proceedings;

B. The amount, if any, remaining shall then be applied to the liability for tax in respect of which the levy was made; and

C. The balance, if any, remaining shall be returned to a person legally entitled thereto.

History: 1953 Comp., § 72-13-65, enacted by Laws 1965, ch. 248, § 53.

7-1-52. Release of levy.

It shall be lawful for the secretary or the secretary's delegate, under regulations prescribed by the secretary, to release the levy upon all or part of the property or rights to property levied upon if the secretary or the secretary's delegate determines that such action will facilitate the collection of the liability, but the release shall not operate to prevent any subsequent levy.

History: 1953 Comp., § 72-13-66, enacted by Laws 1965, ch. 248, § 54; 1979, ch. 144, § 46; 2001, ch. 56, § 13.

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

A. To ensure or to compel payment of taxes and to aid in the enforcement of the provisions of the Tax Administration Act, the secretary may apply to a district court of this state to have any delinquent taxpayer or person who may be or may become liable for payment of any tax enjoined from engaging in business until the delinquent taxpayer ceases to be a delinquent taxpayer or until the delinquent taxpayer or person complies with other requirements, reasonably necessary to protect the revenues of the state, placed on the delinquent taxpayer or person by the secretary.

B. Upon application to a court for an injunction against a delinquent taxpayer, the court may forthwith issue an order temporarily restraining the delinquent taxpayer from doing business. The court shall hear the matter within fifteen days. Upon written request of the taxpayer, the hearing may be held earlier. Upon a showing by a preponderance of the evidence that the taxpayer is delinquent and has been given notice of the hearing as required by law, the court may enjoin the taxpayer from engaging in business in New Mexico until the taxpayer ceases to be a delinquent taxpayer. Upon issuing an injunction, the court may also order the business premises of the taxpayer sealed by the sheriff and may allow the taxpayer access thereto only upon approval of the court.

C. Upon application to a court for an injunction against a person other than a delinquent taxpayer, the court:

(1) may issue an order temporarily restraining the person other than the delinquent taxpayer from engaging in business;

(2) shall hear the matter within fifteen days, except that the hearing may be held earlier if requested in writing by the person who is the subject of the temporary restraining order; and

(3) may without delay issue an injunction to the taxpayer in terms commanding the person who is the subject of the temporary restraining order to refrain from engaging in business until that person complies in full with the demand of the department to furnish security, if there is a showing that:

(a) the person who is the subject of the temporary restraining order has been given notice of the hearing for the injunction as required by law;

(b) a demand by the department has been made upon the taxpayer to furnish security;

(c) the taxpayer has not furnished security; and

(d) the secretary considers the collection from the person primarily responsible for the total amount of tax due or reasonably expected to become due to be in jeopardy.

D. A temporary restraining order or injunction shall not issue by provision of this section against any person who has furnished security in accordance with the provisions of Section 7-1-54 NMSA 1978. Upon a showing to the court by any person against whom a temporary restraining order or writ of injunction has issued by provision of this section that that person has furnished security in accordance with the provisions of Section 7-1-54 NMSA 1978, the court shall dissolve or set aside the temporary restraining order or injunction.

History: 1953 Comp., § 72-13-67, enacted by Laws 1965, ch. 248, § 55; 1979, ch. 144, § 47; 2001, ch. 56, § 14; 2003, ch. 439, § 5.

7-1-54. Security for payment of tax.

A. Whenever it is necessary to ensure payment of any tax due or reasonably expected to become due, the department is authorized to require or allow any person subject to the provisions of the Tax Administration Act to furnish an acceptable surety bond in an appropriate amount, payable to the state and conditioned upon the payment to the state of the taxes therein identified on a date no later than that on which his liability for the payment thereof becomes conclusive, or to furnish other acceptable security in an appropriate amount and to require any person to furnish additional security as becomes necessary.

B. If, after notice of a requirement that he furnish security, any person neglects or refuses to comply, the department may demand of him by certified mail or in person that he furnish security in a stated amount. Upon the failure of any person to comply within ten days of the date of the making of such demand upon him for the furnishing of security, the secretary may institute a proceeding to enjoin him from doing business as provided in Section 7-1-53 NMSA 1978.

C. When a serious and immediate risk exists that an amount of tax due or reasonably expected to become due will not be paid, the secretary may require any person liable or prospectively liable for tax to furnish security as otherwise provided in the Tax Administration Act, and, upon a refusal by the person immediately to comply with the requirement, the secretary may without further notice of any kind apply to any district court of the state for an injunction as provided in Section 7-1-53 NMSA 1978.

D. The secretary may require taxpayers who protest, in accordance with Section 7-1-24 NMSA 1978, an assessment or the payment of any tax administered by the department under Subsection B of Section 7-1-2 NMSA 1978 to furnish security pursuant to this section with respect to amounts in excess of two hundred thousand dollars ($200,000) whenever the total amount protested, whether by a single protest or a series of protests by a single taxpayer with respect to one or more tax acts administered by the department under Subsection B of Section 7-1-2 NMSA 1978, exceeds two hundred thousand dollars ($200,000). If the taxpayer fails to provide security as required by this subsection, the department may take all appropriate actions authorized by the Tax Administration Act to collect the amount assessed, provided that any proceeds collected shall be held as the security required by this subsection until the protest is resolved.

History: 1953 Comp., § 72-13-68, enacted by Laws 1965, ch. 248, § 56; 1971, ch. 276, § 11; 1979, ch. 144, § 48; 1985, ch. 65, § 17; 1986, ch. 20, § 23.

7-1-55. Contractor's bond for gross receipts; tax; penalty.

A. A person engaged in the construction business who does not have a principal place of business in New Mexico and who enters into a prime construction contract to be performed in this state shall, at the time such contract is entered into, furnish the secretary or the secretary's delegate with a surety bond, or other acceptable security, in a sum equivalent to the gross receipts to be paid under the contract multiplied by the sum of the applicable rate of the gross receipts tax imposed by Section 7-9-4 NMSA 1978 plus the applicable rate or rates of tax imposed pursuant to local option gross receipts taxes to secure payment of the tax imposed on the gross receipts from the contract and shall obtain a certificate from the secretary or the secretary's delegate that the requirements of this subsection have been met.

B. If the total sum to be paid under the contract is changed by ten percent or more subsequent to the date the surety bond or other acceptable security is furnished to the secretary or the secretary's delegate, such person shall increase or decrease, as the case may be, the amount of the bond or security within fourteen days after the change.

C. If a person fails to comply with Subsection A or B of this section, the secretary or the secretary's delegate:

(1) may demand of the person by certified mail or in person that the person comply. Upon the failure of the person to comply within ten days of the date of the mailing of such demand, the secretary may institute a proceeding to enjoin the person from doing business as provided in Section 7-1-53 NMSA 1978; or

(2) may, when a serious and immediate risk exists that an amount of tax due or reasonably expected to become due from the person on gross receipts from a prime construction contract will not be paid, request the person to comply with Subsections A and B of this section, and, upon failure immediately to comply, the secretary may, without further notice of any kind, apply to any district court of the state for an injunction as provided in Section 7-1-53 NMSA 1978.

D. Subsections A, B and C of this section shall not apply if the total gross receipts to be paid under the construction contract, including any change in such amount, are less than fifty thousand dollars ($50,000).

E. As used in this section, "construction" shall have the meaning set forth in Section 7-9-3.4 NMSA 1978 and "engaging in business" shall have the meaning set forth in Section 7-9-3.3 NMSA 1978.

F. A municipality or other political subdivision of the state or any agency of the state shall not issue a building or other construction permit to any person subject to the requirements of Subsection A of this section without first having been furnished by the construction contractor with the certificate from the secretary or the secretary's delegate specified in Subsection A of this section. Any person who issues any such permit before receiving the certificate shall be deemed guilty of a misdemeanor and, upon conviction, be fined not less than fifty dollars ($50.00) nor more than one hundred dollars ($100) for each offense.

History: 1953 Comp., § 72-13-68.1, enacted by Laws 1975, ch. 251, § 3; 1979, ch. 144, § 49; 1986, ch. 20, § 24; 1992, ch. 55, § 13; 2003, ch. 272, § 1.

7-1-56. Sale of or proceedings against security.

If liability for any tax for the payment of which security has been furnished becomes conclusive, the department may:

A. redeem for cash or, as specified in the Tax Administration Act for sale of property levied upon, sell such security; or

B. compel the surety directly to discharge the liability for payment of the principal debtor by serving demand upon him therefor.

History: 1953 Comp., § 72-13-69, enacted by Laws 1965, ch. 248, § 57; 1979, ch. 144, § 50; 2001, ch. 56, § 15.

7-1-57. Surety bonds.

Surety bonds accepted by the secretary as security in compliance with the provisions of Sections 7-1-54 and 7-1-55 NMSA 1978 shall be payable to the state of New Mexico upon demand by the secretary or the secretary's delegate and a showing to the surety that the principal debtor is a delinquent taxpayer.

History: 1953 Comp., § 72-13-70, enacted by Laws 1965, ch. 248, § 58; 1970, ch. 15, § 1; 1975, ch. 251, § 4; 1979, ch. 144, § 51; 2001, ch. 56, § 16.

7-1-58. Permanence of tax debt; civil actions to collect tax.

The total amount of all taxes due and assessed is a personal debt of the taxpayer to the state of New Mexico until paid and may be collected by civil action to that end commenced subject to the limitations in Section 7-1-19 NMSA 1978 by the secretary or attorney general in district court or in federal courts. Final judgments for taxes may be enforced in appropriate courts of other states by the secretary or the attorney general pursuant to agreement between the other state and this state or by attorneys or other agents in that state retained by the department or the attorney general. This remedy is in addition to any other remedy provided by law.

History: 1953 Comp., § 72-13-71, enacted by Laws 1965, ch. 248, § 59; 1971, ch. 32, § 2; 1979, ch. 144, § 52; 1992, ch. 55, § 14.

7-1-59. Jeopardy assessments.

A. If the secretary at any time reasonably believes that the collection of any tax for which a taxpayer is liable will be jeopardized by delay, the secretary may immediately make a jeopardy assessment of the amount of tax the payment of which to the state the secretary believes to be in jeopardy.

B. A jeopardy assessment is effective upon the delivery, in person or by certified mail, to the taxpayer against whom the liability for tax is asserted, of a document entitled "notice of jeopardy assessment of taxes", issued in the name of the secretary, stating the nature and amount of the taxes assertedly owed by the taxpayer to the state, demanding of the taxpayer the immediate payment of that amount of tax and briefly informing the taxpayer of the steps that may be taken against the taxpayer as well as of the remedies available to the taxpayer.

C. Notwithstanding any other provision of the Tax Administration Act, if any taxpayer against whom a jeopardy assessment has been made neglects or refuses either to pay the amount of tax demanded of the taxpayer or furnish satisfactory security therefor within five days of the service upon the taxpayer of the notice of jeopardy assessment, the secretary may immediately proceed to collect the tax by levy, as provided in Section 7-1-31 NMSA 1978, on sufficient property of the taxpayer to satisfy the deficiency, protect the interests of the state by, as provided in Section 7-1-53 NMSA 1978, enjoining the taxpayer from doing business in New Mexico or both.

D. A taxpayer to whom a jeopardy assessment has been made may cause the procedure of levy or injunction as set forth in Subsection C of this section to be stayed by filing with the department acceptable security in an amount equal to the amount of taxes assessed, as provided in Section 7-1-54 NMSA 1978. A taxpayer to whom a jeopardy assessment has been made may dispute the jeopardy assessment either by furnishing security and otherwise following the procedures set forth in Section 7-1-24 NMSA 1978 or by paying the tax and claiming a refund as provided by Section 7-1-26 NMSA 1978.

History: 1953 Comp., § 72-13-72, enacted by Laws 1965, ch. 248, § 60; 1979, ch. 144, § 53; 1993, ch. 30, § 9.

7-1-60. Estoppel against state.

In any proceeding pursuant to the provisions of the Tax Administration Act, the department shall be estopped from obtaining or withholding the relief requested if it is shown by the party adverse to the department that the party's action or inaction complained of was in accordance with any regulation effective during the time the asserted liability for tax arose or in accordance with any ruling addressed to the party personally and in writing by the secretary, unless the ruling had been rendered invalid or had been superseded by regulation or by another ruling similarly addressed at the time the asserted liability for tax arose.

History: 1953 Comp., § 72-13-73, enacted by Laws 1965, ch. 248, § 61; 1979, ch. 144, § 54; 1993, ch. 30, § 10.

7-1-61. Duty of successor in business.

A. As used in Sections 7-1-61 through 7-1-63 NMSA 1978, "tax" means the amount of tax due, including penalties and interest, imposed by provisions of the taxes or tax acts set forth in Subsections A and B of Section 7-1-2 NMSA 1978, except the Income Tax Act.

B. The tangible and intangible property used in any business remains subject to liability for payment of the tax due on account of that business to the extent stated herein, even though the business changes hands.

C. If any person liable for any amount of tax from operating a business transfers that business to a successor, the successor shall place in a trust account sufficient money from the purchase price or other source to cover such amount of tax until the secretary or secretary's delegate issues a certificate stating that no amount is due, or the successor shall pay over the amount due to the department upon proper demand for, or assessment of, that amount due by the secretary.

History: 1953 Comp., § 72-13-74, enacted by Laws 1965, ch. 248, § 62; 1966, ch. 56, § 1; 1968, ch. 52, § 1; 1975, ch. 116, § 4; 1979, ch. 144, § 55; 1983, ch. 211, § 28; 1989, ch. 325, § 10; 1997, ch. 67, § 5; 2017, ch. 63, § 28.

7-1-62. Duty of secretary; release of successor.

A. Within thirty days after receiving from the successor a written request for a certificate, or within thirty days from the date the former owner's records are made available for audit, whichever period expires the later, but in any event not later than sixty days after receiving the request, the secretary or secretary's delegate shall either issue the certificate or mail a notice to the successor of the amount of tax due from operating the business for which the former owner is liable and which must be paid as a condition of issuing the certificate.

B. Failure of the department to mail or deliver the notice of tax due within the required time releases the successor from any obligation as a successor under Section 7-1-61 NMSA 1978.

History: 1953 Comp., § 72-13-75, enacted by Laws 1965, ch. 248, § 63; 1979, ch. 144, § 56; 1997, ch. 67, § 6.

7-1-63. Assessment of tax due; application of payment.

A. If, after any business is transferred to a successor, any tax from operating the business for which the former owner is liable remains due, the successor shall pay the amount due within thirty days. If the successor fails to pay within thirty days of the date notice provided for in Section 7-1-62 NMSA 1978 was mailed or if a certificate was not requested, the department shall assess the successor the amount due.

B. Upon the payment of the amount due from the amount placed in a trust account as provided by Subsection C of Section 7-1-61 NMSA 1978, the balance, if any, remaining may be released to the former owner or otherwise lawfully disposed of. The former owner shall be credited with the payment of tax.

C. A successor may discharge an assessment made pursuant to this section by paying to the department the full value of the transferred tangible and intangible property. The successor shall remain liable for the amount assessed, however, until the amount is paid if:

(1) the business has been transferred to evade or defeat any tax;

(2) the transfer of the business amounts to a de facto merger, consolidation or mere continuation of the transferor's business; or

(3) the successor has assumed the liability.

History: 1953 Comp., § 72-13-76, enacted by Laws 1965, ch. 248, § 64; 1979, ch. 144, § 57; 1997, ch. 67, § 7.

7-1-64. Repealed.

7-1-65. Reciprocal enforcement of tax judgments.

A. The courts of the state shall recognize and enforce the tax judgments of other jurisdictions to the same extent to which the courts of the other jurisdictions would recognize and enforce similar tax judgments of this state or its political subdivisions, agencies or instrumentalities, except as provided in Subsection C of this section.

B. The secretary, with the permission of the attorney general, or the attorney general may employ on a contingency fee basis only members of the bars of other jurisdictions to recover taxes due this state.

C. All property in this state of a judgment debtor is exempt from execution issuing from a tax judgment of another jurisdiction that is in favor of any state for failure to pay that state's income tax on benefits received from a pension or other retirement plan.

History: 1953 Comp., § 72-13-78, enacted by Laws 1965, ch. 248, § 66; 1992, ch. 55, § 15; 1994, ch. 48, § 1.

7-1-66. Immunity of property of Indian nations, tribes or pueblos and of the United States.

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

History: 1953 Comp., § 72-13-79, enacted by Laws 1965, ch. 248, § 67; 1995, ch. 70, § 3.

7-1-67. Interest on deficiencies.

A. If a tax imposed is not paid on or before the day on which it becomes due, interest shall be paid to the state on that amount from the first day following the day on which the tax becomes due, without regard to any extension of time or installment agreement, until it is paid, except that:

(1) for income tax imposed on a member of the armed services of the United States serving in a combat zone under orders of the president of the United States, interest shall accrue only for the period beginning the day after any applicable extended due date if the tax is not paid;

(2) if the amount of interest due at the time payment is made is less than one dollar ($1.00), then no interest shall be due;

(3) if demand is made for payment of a tax, including accrued interest, and if the tax is paid within ten days after the date of the demand, no interest on the amount paid shall be imposed for the period after the date of the demand;

(4) if a managed audit is completed by the taxpayer on or before the date required, as provided in the agreement for the managed audit, and payment of any tax found to be due is made in full within one hundred eighty days of the date the secretary has mailed or delivered an assessment for the tax to the taxpayer, no interest shall be due on the assessed tax;

(5) when, as the result of an audit or a managed audit, an overpayment of a tax is credited against an underpayment of tax pursuant to Section 7-1-29 NMSA 1978, interest shall accrue from the date the tax was due until the tax is deemed paid;

(6) if the department does not issue an assessment for the tax program and period within the time provided in Subsection D of Section 7-1-11.2 NMSA 1978, interest shall be paid from the first day following the day on which the tax becomes due until the tax is paid, excluding the period between either:

(a) the one hundred eightieth day after giving a notice of outstanding records or books of account and the date of the assessment of the tax; or

(b) the ninetieth day after the expiration of the additional time requested by the taxpayer to comply pursuant to Section 7-1-11.2 NMSA 1978, if such request was granted, and the date of the assessment of the tax; and

(7) if the taxpayer was not provided with proper notices as required in Section 7-1-11.2 NMSA 1978, interest shall be paid from the first day following the day on which the tax becomes due until the tax is paid, excluding the period between one hundred eighty days prior to the date of assessment and the date of assessment.

B. Interest due to the state under Subsection A or D of this section shall be at the underpayment rate established for individuals pursuant to Section 6621 of the Internal Revenue Code computed on a daily basis; provided that if a different rate is specified by a compact or other interstate agreement to which New Mexico is a party, that rate shall be applied to amounts due under the compact or other agreement.

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

D. If any tax required to be paid in accordance with Section 7-1-13.1 NMSA 1978 is not paid in the manner required by that section, interest shall be paid to the state on the amount required to be paid in accordance with Section 7-1-13.1 NMSA 1978. If interest is due under this subsection and is also due under Subsection A of this section, interest shall be due and collected only pursuant to Subsection A of this section.

History: 1953 Comp., § 72-13-80, enacted by Laws 1965, ch. 248, § 68; 1982, ch. 18, § 14; 1990, ch. 86, § 8; 1991, ch. 97, § 1; 1993, ch. 5, § 10; 1996, ch. 15, § 7; 2000, ch. 28, § 11; 2001, ch. 16, § 7; 2003, ch. 398, § 13; 2007, ch. 45, § 2; 2007, ch. 262, § 4; 2013, ch. 27, § 11.

7-1-67.1. Repealed.

7-1-68. Interest on overpayments.

A. As provided in this section, interest shall be allowed and paid on the amount of tax overpaid by a person that is subsequently refunded or credited to that person.

B. Interest on overpayments of tax shall accrue and be paid at the underpayment rate established pursuant to Section 6621 of the Internal Revenue Code, computed on a daily basis; provided that if a different rate is specified by a compact or other interstate agreement to which New Mexico is a party, that rate shall apply to amounts due under the compact or other agreement.

C. Unless otherwise provided by this section, interest on an overpayment not arising from an assessment by the department shall be paid from the date of the claim for refund until a date preceding by not more than thirty days the date of the credit or refund to any person; and interest on an overpayment arising from an assessment by the department shall be paid from the date of overpayment until a date preceding by not more than thirty days the date of the credit or refund to any person.

D. No interest shall be allowed or paid with respect to an amount credited or refunded if:

(1) the amount of interest due is less than one dollar ($1.00);

(2) the credit or refund is made within:

(a) fifty-five days of the date of the complete claim for refund of income tax, pursuant to either the Income Tax Act [Chapter 7, Article 2 NMSA 1978] or the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] for the tax year immediately preceding the tax year in which the claim is made;

(b) sixty days of the date of the complete claim for refund of any tax not provided for in this paragraph;

(c) seventy-five days of the date of the complete claim for refund of gasoline tax to users of gasoline off the highways;

(d) one hundred twenty days of the date of the complete claim for refund of tax imposed pursuant to the Resources Excise Tax Act [Chapter 7, Article 25 NMSA 1978], the Severance Tax Act [7-26-1 to 7-26-8 NMSA 1978], the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978], the Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978], the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978], the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978], the Natural Gas Processors Tax Act [Chapter 7, Article 33 NMSA 1978] or the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978]; or

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

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

(4) the credit results from overpayments found in an audit of multiple reporting periods and applied to underpayments found in that audit or refunded as a net overpayment to the taxpayer pursuant to Section 7-1-29 NMSA 1978;

(5) the department applies the credit or refund to an intercept program, to the taxpayer's estimated payment prior to the due date for the estimated payment or to offset prior liabilities of the taxpayer pursuant to Subsection E of Section 7-1-29 NMSA 1978;

(6) the credit or refund results from overpayments the department finds pursuant to Subsection F of Section 7-1-29 NMSA 1978 that exceed the refund claimed by the taxpayer on the return; or

(7) the refund results from a tax credit pursuant to the Investment Credit Act [Chapter 7, Article 9A NMSA 1978], Laboratory Partnership with Small Business Tax Credit Act [Chapter 7, Article 9E NMSA 1978], Technology Jobs and Research and Development Tax Credit Act [Chapter 7, Article 9F NMSA 1978], Film Production Tax Credit Act [Chapter 7, Article 2F NMSA 1978], Affordable Housing Tax Credit Act [Chapter 7, Article 9I NMSA 1978] or a rural job tax credit or high-wage jobs tax credit.

E. Nothing in this section shall be construed to require the payment of interest upon interest.

History: 1953 Comp., § 72-13-81, enacted by Laws 1965, ch. 248, § 69; 1971, ch. 266, § 1; 1979, ch. 144, § 59; 1982, ch. 18, § 15; 1989, ch. 325, § 11; 1994, ch. 44, § 1; 1996, ch. 15, § 8; 2000, ch. 28, § 12; 2001, ch. 16, § 8; 2002, ch. 13, § 1; 2003, ch. 2, § 1; 2003, ch. 439, § 6; 2007, ch. 45, § 3; 2011, ch. 177, § 1; 2013, ch. 27, § 12; 2016 (2nd S.S.), ch. 3, § 2; 2017, ch. 63, § 29.

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

A. Except as provided in Subsection C of this section, in the case of failure due to negligence or disregard of department rules and regulations, but without intent to evade or defeat a tax, to pay when due the amount of tax required to be paid, to pay in accordance with the provisions of Section 7-1-13.1 NMSA 1978 when required to do so or to file by the date required a return regardless of whether a tax is due, there shall be added to the amount assessed a penalty in an amount equal to the greater of:

(1) two percent per month or any fraction of a month from the date the tax was due multiplied by the amount of tax due but not paid, not to exceed twenty percent of the tax due but not paid;

(2) two percent per month or any fraction of a month from the date the return was required to be filed multiplied by the tax liability established in the late return, not to exceed twenty percent of the tax liability established in the late return; or

(3) a minimum of five dollars ($5.00), but the five-dollar ($5.00) minimum penalty shall not apply to taxes levied under the Income Tax Act, Corporate Income and Franchise Tax Act or taxes administered by the department pursuant to Subsection B of Section 7-1-2 NMSA 1978.

B. No penalty shall be assessed against a taxpayer if the failure to pay an amount of tax when due results from a mistake of law made in good faith and on reasonable grounds.

C. If a different penalty is specified in a compact or other interstate agreement to which New Mexico is a party, the penalty provided in the compact or other interstate agreement shall be applied to amounts due under the compact or other interstate agreement at the rate and in the manner prescribed by the compact or other interstate agreement.

D. In the case of failure, with willful intent to evade or defeat a tax, to pay when due the amount of tax required to be paid, there shall be added to the amount fifty percent of the tax or a minimum of twenty-five dollars ($25.00), whichever is greater, as penalty.

E. If demand is made for payment of a tax, including penalty imposed pursuant to this section, and if the tax is paid within ten days after the date of such demand, no penalty shall be imposed for the period after the date of the demand with respect to the amount paid.

F. If a taxpayer makes electronic payment of a tax but the payment does not include all of the information required by the department pursuant to the provisions of Section 7-1-13.1 NMSA 1978 and if the department does not receive the required information within five business days from the later of the date a request by the department for that information is received by the taxpayer or the due date, the taxpayer shall be subject to a penalty of two percent per month or any fraction of a month from the fifth day following the date the request is received. If a penalty is imposed under Subsection A of this section with respect to the same transaction for the same period, no penalty shall be imposed under this subsection.

G. No penalty shall be imposed on:

(1) tax due in excess of tax paid in accordance with an approved estimated basis pursuant to Section 7-1-10 NMSA 1978;

(2) tax due as the result of a managed audit; or

(3) tax that is deemed paid by crediting overpayments found in an audit or managed audit of multiple periods pursuant to Section 7-1-29 NMSA 1978.

History: 1953 Comp., § 72-13-82, enacted by Laws 1965, ch. 248, § 70; 1970, ch. 20, § 1; 1973, ch. 146, § 1; 1982, ch. 18, § 16; 1985, ch. 65, § 18; 1986, ch. 20, § 25; 1987, ch. 169, § 6; 1988, ch. 99, § 4; 1990, ch. 86, § 9; 1992, ch. 55, § 16; 1996, ch. 15, § 9; 1997, ch. 67, § 8; 2000, ch. 28, § 13; 2001, ch. 16, § 9; 2003, ch. 398, § 14; 2007, ch. 45, § 4; 2021, ch. 65, § 5.

7-1-69.1. Civil penalty for failure to file an information return.

A taxpayer, wholesaler, retailer or rack operator who fails to file an information return on time pursuant to the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978] or the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978] shall pay a penalty of fifty dollars ($50.00) for each late report. This penalty shall be in addition to other applicable penalties.

History: Laws 2005, ch. 109, § 1; 2007, ch. 45, § 5.

7-1-69.2. Civil penalty for failure to correctly file certain deductions.

In the case of a taxpayer that deducts gross receipts pursuant to Section 7-9-92 or 7-9-93 NMSA 1978 instead of deducting or exempting gross receipts pursuant to another applicable provision of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] as required by those sections, there shall be assessed a penalty on the taxpayer in an amount equal to twenty percent of the value of the hold harmless distribution resulting from the incorrect deduction.

History: Laws 2016 (2nd S.S.), ch. 3, § 3.

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

If any payment required to be made by provision of the Tax Administration Act is attempted to be made by check that is not paid upon presentment, such dishonor is presumptive of negligence. The penalty shall never be less than ten dollars ($10.00). This penalty is in addition to any other penalty imposed by law.

History: 1953 Comp., § 72-13-83, enacted by Laws 1965, ch. 248, § 71; 1996, ch. 15, § 10.

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.

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

A. The secretary may require by regulation any tax return preparer with respect to any return of income tax or claim for refund with respect to income tax to sign such return or claim for refund.

B. The secretary may require by regulation any tax return preparer with respect to any return of income tax or claim for refund with respect to income tax to furnish the tax return preparer's identification number on such return or claim for refund.

C. Any tax return preparer with respect to any return of income tax or claim for refund with respect to income tax who is required by regulations promulgated by the secretary to sign a return or claim for refund or to furnish an identification number on such return or claim for refund and who fails to sign such return or claim for refund or to furnish an identification number on such return or claim for refund shall pay a penalty of twenty-five dollars ($25.00) for such failure unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

D. Any tax return preparer who endorses or otherwise negotiates, either directly or through an agent, any warrant in respect of the Income Tax Act [Chapter 7, Article 2 NMSA 1978] issued to a taxpayer, other than the tax return preparer, shall pay a penalty of five hundred dollars ($500) with respect to each such warrant; provided that the provisions of this subsection shall not apply with respect to the deposit by a bank, savings and loan association, credit union or other financial corporation of the full amount of the warrant in the taxpayer's account for the benefit of the taxpayer.

E. For the purposes of this section, any penalty determined to be due shall be considered to be tax due.

History: 1978 Comp., § 7-1-71.1, enacted by Laws 1985, ch. 65, § 19; 2001, ch. 56, § 17.

7-1-71.2. Repealed.

History: Laws 2004, ch. 116, § 3; 2007, ch. 45, § 14.

7-1-71.3. Willful failure to collect and pay over taxes.

A. A person who is required to collect, account for and pay over a tax imposed by the state and who willfully, with the intent to defraud, fails to collect or truthfully account for and pay over the tax due to the state is guilty of a felony, and upon conviction thereof, shall be fined not more than five thousand dollars ($5,000) or imprisoned for a period of not less than six months and not more than three years, or both, together with the costs of prosecution.

B. As used in this section:

(1) "tax" does not include civil penalties or interest; and

(2) "willfully" means intentionally, deliberately or purposely, but not necessarily maliciously.

History: Laws 2005, ch. 108, § 4.

7-1-71.4. Tax return preparer; electronic filing requirement; penalty.

A. In taxable years beginning on or after January 1, 2008, a tax return preparer who prepares over twenty-five personal income tax returns for a taxable year shall ensure that each return is submitted to the department by a department-approved electronic media, unless a person for whom the preparer files a return requests, in a form prescribed by the department, that the return be filed by other means in accordance with department rule.

B. A tax return preparer shall pay to the department a penalty not to exceed five dollars ($5.00) for each tax return filed in violation of this section.

History: Laws 2007, ch. 127, § 2.

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.

7-1-72.1. Civil penalty; willful attempt to cause evasion of another's tax.

Any person other than the taxpayer who willfully causes or attempts to cause the evasion of a taxpayer's obligation to report and pay tax may be assessed a civil penalty in an amount equal to the amount of the tax, penalty and interest attempted to be evaded.

History: Laws 1997, ch. 67, § 9.

7-1-73. Tax fraud.

A. A person is guilty of tax fraud if the person:

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

(2) willfully assists in, willfully procures, willfully advises or willfully provides counsel regarding the preparation or presentation of a return, affidavit, claim or other document pursuant to or in connection with any matter arising under the Tax Administration Act or a tax administered by the department, knowing that it is fraudulent or knowing that it is false as to a material matter, whether or not that fraud or falsity is with knowledge or consent of:

(a) the taxpayer or other person liable for taxes owed on the return; or

(b) a person who signs a document stating that the return, affidavit, claim or other document is true, correct and complete to the best of that person's knowledge;

(3) files any return electronically, knowing the information in the return is not true and correct as to every material matter;

(4) with intent to evade or defeat the payment or collection of any tax, or, knowing that the probable consequences of the person's act will be to evade or defeat the payment or collection of any tax, removes, conceals or releases any property on which levy is authorized or that is liable for payment of tax under the provisions of Section 7-1-61 NMSA 1978, or aids in accomplishing or causes the accomplishment of any of the foregoing;

(5) with intent to evade or defeat the payment or collection of any tax, or, knowing that the probable consequences of the person's act will be to evade or defeat the payment or collection of any tax, purchases, installs or uses any sales suppression software; or

(6) with the intent to evade or defeat the payment or collection of any tax, or, knowing that the probable consequences of the person's act will be to evade or defeat the payment or collection of any tax, sells, licenses, purchases, installs, transfers, sells as a service, manufactures, develops or possesses any sales suppression software with the purpose to defeat or evade the payment or collection of any tax.

B. Whoever commits tax fraud when the amount of the tax owed is two hundred fifty dollars ($250) or less is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

C. Whoever commits tax fraud when the amount of the tax owed is over two hundred fifty dollars ($250) but not more than five hundred dollars ($500) is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

D. Whoever commits tax fraud when the amount of the tax owed is over five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500) is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. Whoever commits tax fraud when the amount of the tax owed is over two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

F. Whoever commits tax fraud when the amount of the tax owed is over twenty thousand dollars ($20,000) is guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

G. In addition to the fines imposed pursuant to this section, a person who commits tax fraud shall pay the costs of the prosecution of the person's case.

H. As used in this section:

(1) "sales suppression software" means hidden or concealed computer software, also known as phantomware, for a point-of-sale system that can create a second set of records or eliminate or manipulate transaction records that may or may not be preserved in digital formats in order to misrepresent the existence or the true record of a transaction in the point-of-sale system. "Sales suppression software" includes an electronic device that carries or contains sales suppression software;

(2) "tax" does not include civil penalties or interest; and

(3) "willfully" means intentionally, deliberately or purposely, but not necessarily maliciously.

History: 1953 Comp., § 72-13-86, enacted by Laws 1965, ch. 248, § 74; 1978 Comp., § 7-1-73; 1979, ch. 144, § 60; 1989, ch. 325, § 12; 1992, ch. 55, § 17; 2005, ch. 108, § 3; 2006, ch. 29, § 1; 2023, ch. 36, § 4.

7-1-74. Interference or attempts corruptly, forcibly or by threat to interfere with administration of revenue laws.

Whoever forcibly, or by bribe, threat or other corrupt practice obstructs or impedes or attempts to obstruct or impede the due administration of the provisions of the Tax Administration Act shall, upon conviction thereof, be fined not less than two hundred fifty dollars ($250) nor more than ten thousand dollars ($10,000) or imprisoned for not less than three months nor more than one year, or both, together with costs of prosecution.

History: 1953 Comp., § 72-13-87, enacted by Laws 1965, ch. 248, § 75.

7-1-75. Assault and battery of a department employee.

Whoever assaults and batters or attempts to assault and batter an employee of the department acting within the scope of his employment shall, upon conviction thereof, be fined not less than one hundred dollars ($100) nor more than five hundred dollars

($500) or be imprisoned for not less than three days nor more than six months, or both, together with costs of prosecution. Jurisdiction over actions brought under this section is hereby granted to magistrate courts.

History: 1953 Comp., § 72-13-87.1, enacted by Laws 1971, ch. 276, § 12; 1979, ch. 144, § 61.

7-1-76. Revealing information concerning taxpayers.

A person who reveals to another person any return or return information that is prohibited from being revealed pursuant to Section 7-1-8 NMSA 1978 or who uses a return or return information for any purpose that is not authorized by Sections 7-1-8 through 7-1-8.11 NMSA 1978 is guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than one thousand dollars ($1,000) or imprisoned up to one year, or both, together with costs of prosecution, and shall not be employed by the state for a period of five years after the date of the conviction.

History: 1953 Comp., § 72-13-88, enacted by Laws 1965, ch. 248, § 76; 1979, ch. 144, § 62; 2009, ch. 243, § 13; 2017, ch. 63, § 30.

7-1-77. Timeliness when last day for performance falls on Saturday, Sunday or legal holiday.

When by any provision of the Tax Administration Act the last day for performing any act falls on Saturday, Sunday or a legal state or national holiday, the performance of the act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal state or national holiday.

History: 1953 Comp., § 72-13-89, enacted by Laws 1965, ch. 248, § 80.

7-1-78. Burden of proof in fraud cases.

In any proceeding involving the issue of whether any person has been guilty of fraud or corruption, the burden of proof in respect of such issue shall be upon the secretary or the state.

History: 1953 Comp., § 72-13-90, enacted by Laws 1965, ch. 248, § 81; 1979, ch. 144, § 63; 2001, ch. 56, § 18.

7-1-79. Enforcement officials.

Every individual to whom the director delegates the function of enforcing any of the provisions of the Tax Administration Act:

A. shall be furnished with credentials identifying him; and

B. may request the assistance of any sheriff or deputy sheriff or of the state police in order to perform his duties, which assistance shall be afforded in appropriate circumstances.

History: 1953 Comp., § 72-13-91, enacted by Laws 1965, ch. 248, § 82; 1979, ch. 144, § 64.

7-1-80. Dissolution or withdrawal of corporation.

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

A. the taxpayer files with the secretary of state a certificate signed by the secretary of taxation and revenue or the secretary of taxation and revenue's delegate stating that as of a certain date the taxpayer is not liable for any tax and containing a statement verified by a responsible official of the corporation to the effect that the taxpayer has not engaged in business after the date above specified. If the taxpayer has so engaged in business, any certificate of dissolution or withdrawal shall be of no effect and all liabilities of the corporation shall continue as if no certificate had been granted;

B. a successor, acceptable to the secretary of taxation and revenue or the secretary's delegate, to any corporation requesting dissolution or withdrawal enters into a binding agreement by provision of which the successor assumes full liability for payment of all taxes due or expected to become due from the corporation and certification thereof is given by the secretary of taxation and revenue or the secretary's delegate; or

C. satisfactory security for payment of the taxes due or expected to become due from the corporation is furnished in accordance with the provisions of Section 7-1-54 NMSA 1978 and certification thereof is given by the secretary of taxation and revenue or the secretary's delegate.

History: 1953 Comp., § 72-13-92, enacted by Laws 1965, ch. 248, § 83; 1979, ch. 144, § 65; 1985, ch. 65, § 20; 1993, ch. 30, § 11; 2013, ch. 75, § 8.

7-1-81. Repealed.

7-1-82. Transfer, assignment, sale, lease or renewal of liquor license.

A. The director of the alcoholic beverage control division of the regulation and licensing department shall not allow the transfer, assignment, lease or sale of any liquor license pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] until the director receives written notification from the secretary or secretary's delegate that:

(1) the licensee or any person authorized to use the license is not a delinquent taxpayer as provided in Section 7-1-16 NMSA 1978 only with respect to the liquor excise tax or the gross receipts tax; or

(2) the transferee, assignee, buyer or lessee has entered into a written agreement with the secretary or secretary's delegate in which the transferee, assignee, buyer or lessee has assumed full liability for payment of all taxes due or that may become due from the licensee with respect to the liquor excise tax or the gross receipts tax.

B. The director of the alcoholic beverage control division of the regulation and licensing department shall not allow the renewal of any liquor license pursuant to the provisions of the Liquor Control Act until the director receives notification from the secretary or secretary's delegate that on a certain date:

(1) the licensee is not a delinquent taxpayer as provided in Section 7-1-16 NMSA 1978 only with respect to the liquor excise tax or the gross receipts tax; and

(2) there are no unfiled tax returns due from the licensee with respect to the liquor excise tax or the gross receipts tax.

History: 1953 Comp., § 72-13-94, enacted by Laws 1973, ch. 179, § 1; 1975, ch. 116, § 5; 1979, ch. 144, § 66; 1995, ch. 70, § 4; 2023, ch. 85, § 6.

7-1-83. Business and employee status during disaster response period.

A. An out-of-state business that conducts operations within the state for purposes of performing disaster- or emergency-related work in response to a declared state disaster or emergency during the disaster response period shall not be considered to have established a level of presence that would require that business to register, file or remit state or local taxes or fees, including gross receipts taxes or property tax on equipment brought into the state temporarily for use during the disaster response period and subsequently removed from the state. For purposes of any state or local tax on or measured by, in whole or in part, net or gross income or receipts, all activity of the out-of-state business that is conducted in this state pursuant to this section shall be disregarded with respect to any filing requirements for such tax, including the filing required for a unitary or combined group of which the out-of-state business may be a part. For the purpose of apportioning income, revenue or receipts, the performance by an out-of-state business of any work in accordance with this section shall not be sourced to or otherwise impact or increase the amount of income, revenue or receipts apportioned to this state.

B. An out-of-state employee shall not be considered to have established residency or a presence in the state that would require that person or that person's employer to file and pay income taxes or to be subjected to tax withholdings or to file and pay any other state or local tax or fee during the disaster response period. This includes any related state or local employer withholding and remittance obligations but does not include any transaction taxes or fees pursuant to Subsection C of this section.

C. Out-of-state businesses and out-of-state employees shall be required to pay transaction taxes and fees, including fuel taxes or gross receipts taxes on materials or services consumed or used in the state subject to gross receipts tax, hotel taxes, car rental taxes or fees that the out-of-state affiliated business or out-of-state employee purchases for use or consumption in the state during the disaster response period, unless such taxes are otherwise exempted during a disaster response period.

D. An out-of-state business or out-of-state employee that remains in the state after the disaster response period will become subject to the state's normal standards for establishing residency or presence or doing business in the state and will therefore become responsible for any business or employee tax requirements that ensue.

E. As used in this section:

(1) "critical infrastructure" means property, equipment and related support facilities that service multiple customers or residents, including real and personal property such as buildings, offices, lines, poles, pipes, structures and equipment that is owned or used by:

(a) communications networks;

(b) electric generation, transmission and distribution systems;

(c) natural gas and natural gas liquids gathering, processing, storage, transmission and distribution systems;

(d) crude oil and refined product pipelines; and

(e) water pipelines;

(2) "declared state disaster or emergency" means a disaster or emergency event for which:

(a) a governor's state of emergency proclamation has been issued;

(b) a presidential declaration of a federal major disaster or emergency has been issued; or

(c) another authorized official of the state receives notification from a registered business of a disaster or emergency and that official designates the event as a declared state disaster or emergency, thereby invoking the provisions of this section;

(3) "disaster- or emergency-related work" means repairing, renovating, installing, building, rendering services or conducting other business activities that relate to critical infrastructure that has been damaged, impaired or destroyed by a declared state disaster or emergency;

(4) "disaster response period" means a period that begins ten days prior to the first day of the governor's proclamation, the president's declaration or the designation by another authorized official of the state of a declared state disaster or emergency and that extends sixty calendar days after the declared state disaster or emergency;

(5) "out-of-state business" means a business entity that, except for disaster- or emergency-related work, has no presence in the state and that conducts no business in the state and whose services are requested by a registered business or by a state or local government for purposes of performing disaster- or emergency-related work in the state. "Out-of-state business" includes a business entity that is affiliated with a registered business in the state solely through common ownership and that has no registrations or tax filings or nexus in the state other than disaster- or emergency-related work during the tax year immediately preceding the declared state disaster or emergency;

(6) "out-of-state employee" means an employee who does not work in the state, except for disaster- or emergency-related work during the disaster response period; and

(7) "registered business in the state" means a business entity that is currently registered to do business in the state prior to the declared state disaster or emergency.

History: Laws 2016, ch. 59, § 2.

7-1-84. Tax expenditure budget.

A. No later than November 15 of each year, the secretary shall compile and present a tax expenditure budget to the governor, the revenue stabilization and tax policy committee and the legislative finance committee and post the tax expenditure budget to the department's website.

B. A tax expenditure budget shall include the following information for each tax expenditure of a tax administered by the department:

(1) the statutory basis;

(2) the year of enactment, amendment or repeal, if any;

(3) a brief description;

(4) the intended purpose, if specified in the law providing for the tax expenditure;

(5) an estimate of the amount of foregone revenue by fiscal year for the three fiscal years preceding the current fiscal year, including the general fund, other state funds and local government revenues;

(6) the number of taxpayers that claimed a tax expenditure for each fiscal year reported, unless reporting of such data is in a form that can be associated with or otherwise identify, directly or indirectly, a particular taxpayer;

(7) the data source used for the estimate;

(8) a description of the reliability of the estimate;

(9) an evaluation of the tax expenditure, if required in statute for the specific expenditure; and

(10) a description of the tax expenditure's effect on tax administration, if any.

C. The department may request from an executive agency or a local government agency or official the information necessary to complete a tax expenditure budget required by this section. The agency or official shall comply with a request made pursuant to this section by the department as permitted by law.

D. As used in this section, "tax expenditure" means a provision of law administered by the department to reflect state tax policy, as determined by the secretary, including promoting the general welfare of citizens, giving preferential tax treatment to a specific industry or reflecting a specific purpose, including incentivizing consumer behavior, economic development or job creation. A tax expenditure does not include provisions of laws enacted to prevent violation of state or federal law, prevent federal preemption, ensure comity between governments, avoid multiple taxation or define a tax base.

History: Laws 2023, ch. 85, § 1.

ARTICLE 1A
Project Mainstream Employment Tax Credit (Repealed.)

7-1A-1. Repealed.

7-1A-2. Repealed.

7-1A-3. Repealed.

7-1A-4. Repealed.

7-1A-5. Repealed.

ARTICLE 1B
Administrative Hearings Office

7-1B-1. Short title.

Chapter 7, Article 1B NMSA 1978 may be cited as the "Administrative Hearings Office Act".

History: Laws 2015, ch. 73, § 1; 2019, ch. 157, § 6.

7-1B-2. Administrative hearings office; created.

The "administrative hearings office" is created and is administratively attached pursuant to the provisions of Section 9-1-7 NMSA 1978 to the department of finance and administration.

History: Laws 2015, ch. 73, § 2.

7-1B-3. Chief hearing officer; appointment.

The head of the administrative hearings office is the "chief hearing officer", who shall be appointed for a term of six years, except that the initial term shall begin on July 1, 2015 and shall end on December 31, 2015. The chief hearing officer may be reappointed to successive terms. An appointed chief hearing officer shall serve and have all the duties, responsibilities and authority of that office during the period of time prior to appointment of a new chief hearing officer. The initial chief hearing officer shall be the person who is the chief of the hearings bureau [administrative hearings office] of the taxation and revenue department on July 1, 2015. The chief hearing officer shall be removed only for malfeasance, misfeasance or abuse of office.

History: Laws 2015, ch. 73, § 3.

7-1B-4. Chief hearing officer selection committee; duties.

A. The "chief hearing officer selection committee" is created and consists of nine members, including:

(1) four members who are selected by the New Mexico legislative council, no more than two of whom are from the same political party;

(2) four members who are selected by the governor, no more than two of whom are from the same political party; and

(3) a committee chair, whom a majority of the other eight members select and who is:

(a) not a candidate for the position of chief hearing officer; and

(b) either a former chief of the hearings bureau [administrative hearings office] of the taxation and revenue department, a former chief hearing officer or another person with extensive knowledge of the tax law.

B. The chief hearing officer selection committee shall meet exclusively for the purpose of nominating persons to fill a current or impending vacancy in the position of chief hearing officer of the administrative hearings office. The committee shall actively solicit, accept and evaluate applications for the position of chief hearing officer and may require applicants to submit any information that the committee deems relevant to the consideration of applications. Within ninety days before the date on which the term of a chief hearing officer ends or no later than thirty days after the occurrence of a vacancy in the chief hearing officer position, the chief hearing officer selection committee shall convene and, within thirty days after convening, submit to the governor the names of persons who:

(1) are attorneys licensed to practice law in New Mexico or another state;

(2) have knowledge of the tax law and substantial experience making the record in an administrative hearing suitable for judicial review; and

(3) are recommended for appointment to the position by a majority of the committee.

C. Immediately after receiving nominations for chief hearing officer, the governor may make one request of the committee for submission of additional names. The committee shall promptly submit those additional names if a majority of the committee finds that additional persons would be qualified and recommends those persons for appointment as chief hearing officer. The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in the office of chief hearing officer within thirty days after receiving final nominations from the committee by appointing one of the persons nominated by the committee.

D. The chief hearing officer selection committee is administratively attached pursuant to the provisions of Section 9-1-7 NMSA 1978 to the department of finance and administration.

History: Laws 2015, ch. 73, § 4.

7-1B-5. Chief hearing officer; powers and duties; employees of the office.

A. The chief hearing officer may:

(1) adopt and promulgate rules pertaining to administrative hearings; and

(2) subject to appropriations, hire and contract for such professional, technical and support staff as needed to carry out the functions of the administrative hearings office; provided that such hiring and contracting be without regard to party affiliation and solely on the grounds of competence and fitness to perform the duties of the position. Employees of the administrative hearings office, except the chief hearing officer, are subject to the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978].

B. The chief hearing officer shall:

(1) oversee the administrative hearings office; and

(2) considering the knowledge and experience of particular hearing officers, efficiency in the hearing process and potential conflicts of interest, assign and distribute the work of the office.

History: Laws 2015, ch. 73, § 5.

7-1B-6. Hearing officer code of conduct; independence.

A. The chief hearing officer shall:

(1) adopt and promulgate a hearing officer code of conduct; and

(2) annually, evaluate each hearing officer's performance for competency, efficiency and professional demeanor in accord with relevant legal standards and the hearing officer code of conduct, including through the use of a survey of practitioners who appear before the hearing officer.

B. The chief hearing officer shall ensure that each hearing officer has decisional independence; however, the chief hearing officer may:

(1) consult with a hearing officer about a genuine question of law; and

(2) review with a hearing officer any issue on appeal addressed by a court of this state.

C. The administrative hearings office shall:

(1) hear all tax protests pursuant to the provisions of the Tax Administration Act;

(2) hear property tax protests pursuant to the provisions of the Property Tax Code;

(3) hear all certificate-denial protests pursuant to the provisions of Section 13-1-22 NMSA 1978;

(4) conduct all adjudicatory hearings pursuant to the Motor Vehicle Code;

(5) conduct all driver's license revocation hearings pursuant to the provisions of the Implied Consent Act;

(6) make and preserve a complete record of all proceedings; and

(7) maintain confidentiality regarding taxpayer information as required by Section 7-1-8 NMSA 1978.

D. In hearings conducted in accordance with the Tax Administration Act, Section 13-1-22 NMSA 1978 and the Motor Vehicle Code:

(1) the Rules of Evidence do not apply. The hearing officer may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt, to rule on the admissibility of evidence. A taxpayer or the taxation and revenue department may request a written ruling on a contested question of evidence in a matter in which the taxpayer has filed a written protest and for which that protest is pending. The administrative hearings office shall issue a copy of its written ruling to the department at the time the ruling is issued to the taxpayer;

(2) the Rules of Civil Procedure for the District Courts do not apply. The hearing officer shall conduct a hearing to allow the ample and fair presentation of complaints and defenses. The hearing officer shall hear arguments, permit discovery, entertain and dispose of motions, require written expositions of the case as the circumstances justify and render a decision in accordance with the law and the evidence presented and admitted. A taxpayer or the taxation and revenue department may request a written ruling on a contested question of procedure in a matter in which the taxpayer has filed a written protest and for which that protest is pending. The administrative hearings office shall issue a copy of its written ruling to the department at the time the ruling is issued to the taxpayer; and

(3) the hearing officer may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books and papers, and for hearings conducted for a license suspension pursuant to Section 66-5-30 NMSA 1978, the hearing officer may require a reexamination of the licensee.

History: Laws 2015, ch. 73, § 6; 2019, ch. 157, § 7.

7-1B-7. Certain actions prohibited.

A hearing officer shall not:

A. engage or participate in any way in the enforcement or formulation of general tax policy other than to conduct hearings. A taxpayer or the taxation and revenue department may request that the chief hearing officer determine whether a hearing officer has engaged or participated in the enforcement or formulation of general tax policy and whether that engagement or participation affects the hearing officer's impartiality in a particular matter. To avoid actual or apparent prejudice, the chief hearing officer may designate another hearing officer for the matter; and

B. engage in ex-parte communications concerning the substantive issues of any matter that has been protested while that matter is pending. If the chief hearing officer determines that a hearing officer has engaged in prohibited ex-parte communications, the chief hearing officer shall designate another hearing officer for that matter.

History: Laws 2015, ch. 73, § 7.

7-1B-8. Tax protests; procedures.

A. Upon timely receipt of a tax protest filed in accordance with the provisions of Section 7-1-24 NMSA 1978, the taxation and revenue department shall promptly acknowledge the protest by letter to the protesting taxpayer or the taxpayer's representative. If the department determines that the protest has not been filed in accordance with that section, the department shall, within twenty-one days of receipt of the protest, inform the taxpayer of the deficiency and provide the taxpayer, within twenty-one days of the taxpayer being informed, one opportunity to correct it. If the taxpayer corrects the deficiency, the protest shall be considered timely if the initial protest was filed within ninety days in accordance with Subsection D of Section 7-1-24 NMSA 1978. A determination by the department that a protest has not been filed in accordance with that section may be protested by the taxpayer.

B. Within one hundred eighty days, but no earlier than sixty days after the date of the protest, the taxation and revenue department shall request a hearing with the administrative hearings office. A taxpayer may request in writing an informal conference with the department within sixty days after the date of the protest, and the department shall conduct the requested informal conference within thirty days of the receipt of the request. Whether or not a taxpayer requests an informal conference with the department, a taxpayer may request a hearing with the administrative hearings office no earlier than sixty days from the date of the protest.

C. The taxation and revenue department shall include with its request for a hearing an answer to the protest describing the legal and factual bases supporting the department's position beyond an assertion of the presumption of correctness and articulating the remaining protested issues.

D. In the event the taxpayer first requests a hearing with the administrative hearings office, the taxation and revenue department shall, within thirty days of service of the taxpayer's request for a hearing, file its answer to the protest describing the legal and factual bases supporting the department's position beyond an assertion of the presumption of correctness. The department may amend its answer to the protest up until ten days before the scheduled hearing or other deadline specified in a controlling scheduling order; provided that if the administrative hearings office determines that the department's amended answer unfairly prejudices the taxpayer, the administrative hearings office may disallow the amended answer. The hearing shall be limited to the grounds provided in the taxpayer's protest letter and in the department's answer to the protest.

E. If the hearing officer finds that the taxation and revenue department failed to comply with the deadlines set forth in Subsections A and B of this section, the hearing officer may order that no further interest may accrue on the protested liability.

F. If the taxpayer files the request for a hearing, the chief hearing officer shall set a hearing to take place within ninety days of the taxation and revenue department's answer to the protest, but in no case later than one hundred twenty days after the taxpayer's request for a hearing. If the department files the request for hearing with the answer to the protest, the chief hearing officer shall set a hearing to take place within ninety days of that request. Absent a conflict of interest requiring the assigned hearing officer to recuse from the case pursuant to the administrative hearings office code of conduct or an unforeseen emergency circumstance such as an accident, unexpected medical condition or illness, or vacancy of the position of the assigned hearing officer, the chief hearing officer shall not reassign a hearing officer to a case without giving the department and the taxpayer notice of that reassignment at least fourteen days before the hearing. Either party may, within ten days of notice of hearing assigning a hearing officer or notice of reassignment of a hearing officer, exercise one time the peremptory right to excuse the hearing officer designated to conduct the hearing; provided that the party has not moved for a discretionary ruling from the assigned hearing officer, nor previously exercised its right of peremptory excusal. Once a hearing officer has been peremptorily excused, that hearing officer shall not be assigned to the case again.

G. The administrative hearings office shall rule on a dispositive motion, including a motion for summary judgment, a motion for partial summary judgment or a motion to dismiss, filed by the taxation and revenue department or the taxpayer at least thirty days before the hearing unless the parties consent to a different deadline in a scheduling order.

H. A taxpayer may appear at the hearing on the taxpayer's own behalf, may appear through a bona fide employee or may be represented by an attorney, a certified public accountant, an employee of a New Mexico licensed certified public accounting firm whose authorization by the firm and by the taxpayer to appear is evidenced in writing or an enrolled agent. An attorney, a certified public accountant, an employee of a New Mexico licensed certified public accounting firm or an enrolled agent shall abide by their respective controlling professional or ethical standards of conduct at all stages of the administrative proceeding before the administrative hearings office. If the taxation and revenue department and the taxpayer agree, the hearing may be conducted via videoconference. At the beginning of the hearing, the hearing officer shall inform the taxpayer of the taxpayer's right to representation. A hearing shall be closed to the public except upon request of the taxpayer. A hearing officer may postpone or continue a hearing at the hearing officer's discretion. As used in this subsection, "enrolled agent" means a federally licensed tax practitioner with unlimited rights to represent taxpayers before the internal revenue service.

I. Within thirty days after the hearing, the hearing officer shall inform the taxation and revenue department and the taxpayer in writing of the decision and, in accordance with Section 7-1-25 NMSA 1978, of the aggrieved party's right to, and the requirements for perfection of, an appeal from the decision to the court of appeals and of the consequences of a failure to appeal. The written decision shall embody:

(1) an order granting or denying the relief requested or granting or denying a part of the relief requested, as appropriate; and

(2) findings of fact and law and a thorough discussion of the reasoning used to support the order with citations to the record and applicable law.

J. A taxpayer with two or more protests containing related issues may request that the protests be combined and heard jointly. The hearing officer shall grant the request to combine protests unless it would create an unreasonable burden on the administrative hearings office or the taxation and revenue department.

K. Nothing in this section shall be construed to authorize a criminal proceeding or to authorize an administrative protest of the issuance of a subpoena or summons.

History: Laws 2015, ch. 73, § 8; 2019, ch. 157, § 8.

7-1B-9. Motor vehicle administrative hearings; procedures.

A. A person may dispute the denial of or failure to either allow or deny a license, permit, placard or registration provided for in the Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978]. Upon timely receipt of a protest, the chief hearing officer shall promptly designate a hearing officer to conduct a hearing and shall set a date for the hearing. On that date, the hearing officer shall hear the protest.

B. A person may appear at a hearing set pursuant to the provisions of Subsection A of this section for the person's self or be represented by a bona fide employee or an attorney. A hearing shall not be open to the public except if held pursuant to the provisions of the Implied Consent Act [66-8-105 to 66-8-112 NMSA 1978] or upon request of the person. A hearing officer may postpone or continue a hearing.

C. At the beginning of the hearing, the hearing officer shall inform the person of the person's right to representation. Within thirty days after the hearing, the hearing officer shall inform the protestant in writing of the decision and of the protestant's right to, and the requirements for perfection of, an appeal from the decision to the district court and of the consequences of a failure to appeal. The written decision shall embody an order granting or denying the relief requested or granting such part of the relief requested, as appropriate.

D. If the protestant or the secretary of taxation and revenue is dissatisfied with the decision and order of the hearing officer, the party may appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

E. No court of this state has jurisdiction to entertain a proceeding by any person in which the person calls into question the application to that person of any provision of the Motor Vehicle Code, except as a consequence of the appeal by that person to the district court from the action and order of the hearing officer as provided for in this section.

F. Nothing in this section shall be construed to authorize a criminal proceeding or to authorize an administrative protest of the issuance of a subpoena or summons.

History: Laws 2015, ch. 73, § 9.

7-1B-10. Appointment of hearing officer for expedited adjudicatory proceedings under the Medicaid Provider and Managed Care Act.

The chief hearing officer shall select a hearing officer for expedited adjudicatory proceedings as provided by the Medicaid Provider and Managed Care Act.

History: Laws 2019, ch. 215, § 17.

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.

7-2-2. Definitions.

For the purpose of the Income Tax Act and unless the context requires otherwise:

A. "adjusted gross income" means adjusted gross income as defined in Section 62 of the Internal Revenue Code, as that section may be amended or renumbered;

B. "base income":

(1) means, for estates and trusts, that part of the estate's or trust's income defined as taxable income and upon which the federal income tax is calculated in the Internal Revenue Code for income tax purposes plus:

(a) 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

(b) for taxable years beginning on or after January 1, 2023, an amount equal to the amount of credit claimed and allowed for that year pursuant to Section 7-3A-10 NMSA 1978 with respect to the distributed net income of a pass-through entity;

(2) means, for taxpayers other than estates or trusts, that part of the taxpayer's income defined as adjusted gross income plus:

(a) 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

(b) for taxable years beginning on or after January 1, 2023, an amount equal to the amount of credit claimed and allowed for that year pursuant to Section 7-3A-10 NMSA 1978 with respect to the distributed net income of a pass-through entity;

(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;

(4) includes, for all taxpayers, an amount deducted pursuant to Section 7-2-32 NMSA 1978 in a prior taxable year if:

(a) such amount is transferred to another qualified tuition program, as defined in Section 529 of the Internal Revenue Code, not authorized in the Education Trust Act; or

(b) a distribution or refund is made for any reason other than: 1) to pay for federally allowable qualified higher education expenses, set out in Section 529 of the Internal Revenue Code, including other expenses allowed pursuant to that section as qualified expenses; or 2) upon the beneficiary's death, disability or receipt of a scholarship; and

(5) excludes, for a taxpayer who conducts a lawful business pursuant to the laws of the state, an amount equal to any expenditure that is eligible to be claimed as a federal income tax deduction but is disallowed by Section 280E of the Internal Revenue Code, as that section may be amended or renumbered;

C. "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services;

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

E. "fiduciary" means a guardian, trustee, executor, administrator, committee, conservator, receiver, individual or corporation acting in any fiduciary capacity;

F. "filing status" means "married filing joint returns", "married filing separate returns", "head of household", "surviving spouse" and "single", as those terms are generally defined for federal tax purposes;

G. "fiscal year" means any accounting period of twelve months ending on the last day of any month other than December;

H. "head of household" means "head of household" as generally defined for federal income tax purposes;

I. "individual" means a natural person, an estate, a trust or a fiduciary acting for a natural person, trust or estate;

J. "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended;

K. "lump-sum amount" means, for the purpose of determining liability for federal income tax, an amount that was not included in adjusted gross income but upon which the five-year-averaging or the ten-year-averaging method of tax computation provided in Section 402 of the Internal Revenue Code, as that section may be amended or renumbered, was applied;

L. "modified gross income" means all income of the taxpayer and, if any, the taxpayer's spouse and dependents, undiminished by losses and from whatever source, including:

(1) compensation;

(2) net profit from business;

(3) gains from dealings in property;

(4) interest;

(5) net rents;

(6) royalties;

(7) dividends;

(8) alimony and separate maintenance payments;

(9) annuities;

(10) income from life insurance and endowment contracts;

(11) pensions;

(12) discharge of indebtedness;

(13) distributive share of partnership income;

(14) income in respect of a decedent;

(15) income from an interest in an estate or a trust;

(16) social security benefits;

(17) unemployment compensation benefits;

(18) workers' compensation benefits;

(19) public assistance and welfare benefits;

(20) cost-of-living allowances; and

(21) gifts;

M. "modified gross income" excludes:

(1) payments for hospital, dental, medical or drug expenses to or on behalf of the taxpayer;

(2) the value of room and board provided by federal, state or local governments or by private individuals or agencies based upon financial need and not as a form of compensation;

(3) payments pursuant to a federal, state or local government program directly or indirectly to a third party on behalf of the taxpayer when identified to a particular use or invoice by the payer; or

(4) payments for credits and rebates pursuant to the Income Tax Act and made for a credit pursuant to Section 7-3-9 NMSA 1978;

N. "net income" means, for estates and trusts, base income adjusted to exclude amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States and means, for taxpayers other than estates or trusts, base income adjusted to exclude:

(1) an amount equal to the standard deduction allowed the taxpayer for the taxpayer's taxable year by Section 63 of the Internal Revenue Code, as that section may be amended or renumbered;

(2) an amount equal to the itemized deductions defined in Section 63 of the Internal Revenue Code, as that section may be amended or renumbered, allowed the taxpayer for the taxpayer's taxable year less the amount excluded pursuant to Paragraph (1) of this subsection and less the amount of state and local income and sales taxes included in the taxpayer's itemized deductions;

(3) an amount equal to the product of the exemption amount allowed for the taxpayer's taxable year by Section 151 of the Internal Revenue Code, as that section may be amended or renumbered, multiplied by the number of personal exemptions allowed for federal income tax purposes;

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

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

(6) for taxable years beginning on or after January 1, 2013, an amount equal to the sum of any net operating loss carryover deductions to that year claimed and allowed; provided that the amount of any net operating loss carryover may be excluded only as follows:

(a) in the case of a timely filed return, in the taxable year immediately following the taxable year for which the return is filed; or

(b) in the case of amended returns or original returns not timely filed, in the first taxable year beginning after the date on which the return or amended return establishing the net operating loss is filed; and

(c) in either case, if the net operating loss carryover exceeds the amount of net income exclusive of the net operating loss carryover for the taxable year to which the exclusion first applies, in the next nineteen succeeding taxable years in turn until the net operating loss carryover is exhausted for any net operating loss carryover from a taxable year beginning on or after January 1, 2013; in no event shall a net operating loss carryover from a taxable year beginning: 1) prior to January 1, 2013 be excluded in any taxable year after the fourth taxable year beginning after the taxable year to which the exclusion first applies; and 2) on or after January 1, 2013 be excluded in any taxable year after the nineteenth taxable year beginning after the taxable year to which the exclusion first applies; and

(7) for taxable years beginning on or after January 1, 2011, an amount equal to the amount included in adjusted gross income that represents a refund of state and local income and sales taxes that were deducted for federal tax purposes in taxable years beginning on or after January 1, 2010;

O. "net operating loss" means any net operating loss, as defined by Section 172(c) of the Internal Revenue Code, as that section may be amended or renumbered, for a taxable year as further increased by the income, if any, from obligations of the United States for that year less related expenses;

P. "net operating loss carryover" means the amount, or any portion of the amount, of a net operating loss for any taxable year that, pursuant to Paragraph (6) of Subsection N of this section, may be excluded from base income;

Q. "nonresident" means every individual not a resident of this state;

R. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, joint venture, syndicate or other association; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or agency, department or instrumentality thereof;

S. "resident" means an individual who is domiciled in this state during any part of the taxable year or an individual who is physically present in this state for one hundred eighty-five days or more during the taxable year; but any individual, other than someone who was physically present in the state for one hundred eighty-five days or more during the taxable year, who, on or before the last day of the taxable year, changed the individual's place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently without this state is not a resident for the purposes of the Income Tax Act for periods after that change of abode;

T. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

U. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of the United States or any political subdivision of a foreign country;

V. "state or local bond" means a bond issued by a state other than New Mexico or by a local government other than one of New Mexico's political subdivisions, the interest from which is excluded from income for federal income tax purposes under Section 103 of the Internal Revenue Code, as that section may be amended or renumbered;

W. "surviving spouse" means "surviving spouse" as generally defined for federal income tax purposes;

X. "taxable income" means net income less any lump-sum amount;

Y. "taxable year" means the calendar year or fiscal year upon the basis of which the net income is computed under the Income Tax Act and includes, in the case of the return made for a fractional part of a year under the provisions of the Income Tax Act, the period for which the return is made; and

Z. "taxpayer" means any individual subject to the tax imposed by the Income Tax Act.

History: 1978 Comp., § 7-2-2, enacted by Laws 1986, ch. 20, § 26; 1987, ch. 277, § 1; 1988, ch. 41, § 1; 1990, ch. 49, § 1; 1991, ch. 9, § 24; 1993, ch. 307, § 1; 2003, ch. 13, § 1; 2003, ch. 275, § 1; 2007, ch. 45, § 7; 2010 (2nd S.S.), ch. 7, § 7; 2014, ch. 53, § 1; 2021 (1st S.S.), ch. 4, § 51; 2023, ch. 17, § 1; 2023, ch. 159, § 1.

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

A tax is imposed at the rates specified in the Income Tax Act upon the net income of every resident individual and upon the net income of every nonresident individual employed or engaged in the transaction of business in, into or from this state, or deriving any income from any property or employment within this state.

History: 1953 Comp., § 72-15A-3, enacted by Laws 1965, ch. 202, § 3; 1979, ch. 92, § 2; 1981, ch. 37, § 14.

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.

7-2-5. Repealed.

7-2-5.1. Repealed.

7-2-5.2. Exemption; income of persons sixty-five and older or blind.

Any individual sixty-five years of age or older or who, for federal income tax purposes, is blind may claim an exemption in an amount specified in Subsections A through C of this section not to exceed eight thousand dollars ($8,000) of income includable except for this exemption in net income. Individuals having income both within and without this state shall apportion this exemption in accordance with regulations of the secretary:

A. for married individuals filing separate returns, for any taxable year beginning on or after January 1, 1987:

If adjusted gross income is:	The maximum amount of exemption allowable under this section shall be:
Not over $15,000	$8,000
Over $15,000 but not over $16,500	$7,000
Over $16,500 but not over $18,000	$6,000
Over $18,000 but not over $19,500	$5,000
Over $19,500 but not over $21,000	$4,000
Over $21,000 but not over $22,500	$3,000
Over $22,500 but not over $24,000	$2,000
Over $24,000 but not over $25,500	$1,000
Over $25,500	0.

B. for heads of household, surviving spouses and married individuals filing joint returns, for any taxable year beginning on or after January 1, 1987:

If adjusted gross income is:	The maximum amount of exemption allowable under this section shall be:
Not over $30,000	$8,000
Over $30,000 but not over $33,000	$7,000
Over $33,000 but not over $36,000	$6,000
Over $36,000 but not over $39,000	$5,000
Over $39,000 but not over $42,000	$4,000
Over $42,000 but not over $45,000	$3,000
Over $45,000 but not over $48,000	$2,000
Over $48,000 but not over $51,000	$1,000
Over $51,000	0.

C. for single individuals, for any taxable year beginning on or after January 1, 1987:

If adjusted 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.

7-2-5.3. Repealed.

7-2-5.4. Repealed.

History: 1978 Comp., § 7-2-5.4, enacted by Laws 1988, ch. 59, § 1; 1995, ch. 11, § 1; 2007, ch. 45, § 14.

7-2-5.5. Exemption; earnings by Indians, their Indian spouses and Indian dependents on Indian lands.

Income earned by a member of a New Mexico federally recognized Indian nation, tribe, band or pueblo, the member's spouse or dependent, who is a member of a New Mexico federally recognized Indian nation, tribe, band or pueblo, is exempt from state income tax if the income is earned from work performed within and the member, spouse or dependent is domiciled within the boundaries of the Indian member's or the spouse's reservation or pueblo grant or within the boundaries of land defined as "Indian country" pursuant to 18 U.S.C. Section 1151, as that section may be amended or renumbered, for that nation, tribe, band or pueblo.

History: Laws 1995, ch. 42, § 1; 2023, ch. 85, § 7.

7-2-5.6. Exemption; medical care savings accounts.

Except as provided in Section 6 [59A-23D-6 NMSA 1978] of this act, employer and employee contributions to medical care savings accounts established pursuant to the Medical Care Savings Account Act [Chapter 59A, Article 23D NMSA 1978], the interest earned on those accounts and money reimbursed to an employee for eligible medical expenses from those accounts or money advanced to the employee by the employer for eligible medical expenses pursuant to that act are exempt from taxation.

History: Laws 1995, ch. 93, § 8.

7-2-5.7. Exemption; income of individuals one hundred years of age or older.

The income of an individual who is a natural person, who is one hundred years of age or older and who is not a dependent of another individual is exempt from state income tax.

History: Laws 2002, ch. 58, § 1.

7-2-5.8. Exemption for low- and middle-income taxpayers.

A. An individual may claim an exemption in an amount specified in Subsections B through D of this section not to exceed an amount equal to the number of federal exemptions multiplied by two thousand five hundred dollars ($2,500) of income includable, except for this exemption, in net income.

B. For a married individual filing a separate return with adjusted gross income up to twenty-seven thousand five hundred dollars ($27,500):

(1) if the adjusted gross income is not over fifteen thousand dollars ($15,000), the amount of the exemption pursuant to this section shall be two thousand five hundred dollars ($2,500) for each federal exemption; and

(2) if the adjusted gross income is over fifteen thousand dollars ($15,000) but not over twenty-seven thousand five hundred dollars ($27,500), the amount of the exemption pursuant to this section for each federal exemption shall be calculated as follows:

(a) two thousand five hundred dollars ($2,500); less

(b) twenty percent of the amount obtained by subtracting fifteen thousand dollars ($15,000) from the adjusted gross income.

C. For single individuals with adjusted gross income up to thirty-six thousand six hundred sixty-seven dollars ($36,667):

(1) if the adjusted gross income is not over twenty thousand dollars ($20,000), the amount of the exemption pursuant to this section shall be two thousand five hundred dollars ($2,500) for each federal exemption; and

(2) if the adjusted gross income is over twenty thousand dollars ($20,000) but not over thirty-six thousand six hundred sixty-seven dollars ($36,667), the amount of the exemption pursuant to this section for each federal exemption shall be calculated as follows:

(a) two thousand five hundred dollars ($2,500); less

(b) fifteen percent of the amount obtained by subtracting twenty thousand dollars ($20,000) from the adjusted gross income.

D. For married individuals filing joint returns, surviving spouses or for heads of households with adjusted gross income up to fifty-five thousand dollars ($55,000):

(1) if the adjusted gross income is not over thirty thousand dollars ($30,000), the amount of the exemption pursuant to this section shall be two thousand five hundred dollars ($2,500) for each federal exemption; and

(2) if the adjusted gross income is over thirty thousand dollars ($30,000) but not over fifty-five thousand dollars ($55,000), the amount of the exemption pursuant to this section for each federal exemption shall be calculated as follows:

(a) two thousand five hundred dollars ($2,500); less

(b) ten percent of the amount obtained by subtracting thirty thousand dollars ($30,000) from the adjusted gross income.

History: Laws 2005, ch. 104, § 5; 2007, ch. 45, § 8.

7-2-5.9. Exemption; unreimbursed or uncompensated medical care expenses of individuals sixty-five years of age or older.

A. Any individual sixty-five years of age or older may claim an additional exemption from income includable, except for this exemption, in net income in an amount equal to three thousand dollars ($3,000) for medical care expenses paid by the individual for that individual or for the individual's spouse or dependent during the taxable year if those medical care expenses exceed twenty-eight thousand dollars ($28,000) and if the medical care expenses are not reimbursed or compensated for by insurance or otherwise.

B. As used in this section:

(1) "dependent" means "dependent" as defined in Section 152 of the Internal Revenue Code;

(2) "health care facility" means a hospital, outpatient facility, diagnostic and treatment center, rehabilitation center, freestanding hospice or other similar facility at which medical care is provided;

(3) "medical care" means the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body;

(4) "medical care expenses" means amounts paid for:

(a) the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body if provided by a physician or in a health care facility;

(b) prescribed drugs or insulin;

(c) qualified long-term care services as defined in Section 7702B(c) of the Internal Revenue Code;

(d) insurance covering medical care, including amounts paid as premiums under Part B of Title 18 of the Social Security Act or for a qualified long-term care insurance contract defined in Section 7702B(b) of the Internal Revenue Code, if the insurance or other amount is paid from income included in the taxpayer's adjusted gross income for the taxable year;

(e) specialized treatment or the use of special therapeutic devices if the treatment or device is prescribed by a physician and the patient can show that the expense was incurred primarily for the prevention or alleviation of a physical or mental defect or illness; and

(f) care in an institution other than a hospital, such as a sanitarium or rest home, if the principal reason for the presence of the person in the institution is to receive the medical care available; provided that if the meals and lodging are furnished as a necessary part of such care, the cost of the meals and lodging are "medical care expenses";

(5) "physician" means a medical doctor, osteopathic physician, dentist, podiatrist, chiropractic physician or psychologist licensed or certified to practice in New Mexico; and

(6) "prescribed drug" means a drug or biological that requires a prescription of a physician for its use by an individual.

History: Laws 2005, ch. 104, § 6.

7-2-5.10. Exemption; New Mexico national guard member premiums paid for group life insurance.

An individual who receives reimbursement from the service members' life insurance reimbursement fund may claim an exemption in the amount of that reimbursement, from income includable, except for this exemption, in net income.

History: Laws 2006, ch. 50, § 1.

7-2-5.11. Exemption; armed forces salaries.

A salary paid by the United States to a taxpayer for active duty service in the armed forces of the United States is exempt from state income taxation.

History: Laws 2007, ch. 45, § 11.

7-2-5.12. Repealed.

History: Laws 2022, ch. 46, § 1; repealed by Laws 2023, ch. 159, § 4.

7-2-5.13. Exemption; armed forces retirement pay.

A. An individual who is an armed forces retiree or the surviving spouse of an armed forces retiree may claim an exemption in an amount equal to thirty thousand dollars ($30,000) of armed forces retirement pay includable, except for this exemption, in net income.

B. As used in this section, "armed forces retiree" means a former member of the armed forces of the United States who has qualified by years of service or disability to separate from military service with lifetime benefits.

History: Laws 2022, ch. 47, § 6; 2024, ch. 67, § 32.

7-2-5.14. Exemption; social security income.

An individual may claim an exemption in an amount equal to the amount included in adjusted gross income pursuant to Section 86 of the Internal Revenue Code, as that section may be amended or renumbered, of income includable except for this exemption in net income; provided that the individual's adjusted gross income shall not exceed:

A. seventy-five thousand dollars ($75,000) for married individuals filing separate returns;

B. one hundred fifty thousand dollars ($150,000) for heads of household, surviving spouses and married individuals filing joint returns; and

C. one hundred thousand dollars ($100,000) for single individuals.

History: Laws 2022, ch. 47, § 7.

7-2-6. Repealed.

7-2-7. Individual income tax rates.

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, 2025:

A. For married individuals filing joint returns, heads of household and surviving spouses:

For taxable income:	The tax shall be:
Not over $8,000	1.5% of taxable income
Over $8,000 but not over $25,000	$120 plus 3.2% of excess over $8,000
Over $25,000 but not over $50,000	$664 plus 4.3% of excess over $25,000

Over $50,000 but not over $100,000	$1,739 plus 4.7% of excess over $50,000
Over $100,000 but not over $315,000	$4,089 plus 4.9% of excess over $100,000
Over $315,000	$14,624 plus 5.9% of excess over $315,000.

B. For single individuals and for estates and trusts:

For taxable income:	The tax shall be:
Not over $5,500	1.5% of taxable income
Over $5,500 but not over $16,500	$82.50 plus 3.2% of excess over $5,500
Over $16,500 but not over $33,500	$434.50 plus 4.3% of excess over $16,500
Over $33,500 but not over $66,500	$1,165.50 plus 4.7% of excess over $33,500
Over $66,500 but not over $210,000	$2,716.50 plus 4.9% of excess over $66,500
Over $210,000	$9,748 plus 5.9% of excess over $210,000.

C. For married individuals filing separate returns:

For taxable income:	The tax shall be:
Not over $4,000	1.5% of taxable income
Over $4,000 but not over $12,500	$60.00 plus 3.2% of excess over $4,000
Over $12,500 but not over $25,000	$332 plus 4.3% of excess over $12,500
Over $25,000 but not over $50,000	$869.50 plus 4.7% of excess over $25,000

Over $50,000 but not over $157,500	$2,044.50 plus 4.9% of excess over $50,000
Over $157,500	$7,312 plus 5.9% of excess over $157,500.

D. The tax on the sum of any lump-sum amounts included in net income is an amount equal to five multiplied by the difference between:

(1) the amount of tax due on the taxpayer's taxable income; and

(2) the amount of tax that would be due on an amount equal to the taxpayer's taxable income and twenty percent of the taxpayer's lump-sum amounts included in net income.

History: Laws 2005, ch. 104, § 4; 2019, ch. 270, § 12; 2024, ch. 67, § 5.

7-2-7.1. Tax tables.

In lieu of the tax rate computations required in Section 7-2-7 NMSA 1978, the secretary may adopt regulations requiring taxpayers to pay taxes in accordance with tax rate tables. The tax tables may be established either by regulation or by instruction but shall be computed substantially on the basis of the rates prescribed in Section 7-2-7 NMSA 1978. The secretary may by regulation or instruction exclude from the application of this section taxpayers having net incomes in excess of an amount to be determined by the secretary and may exclude taxpayers in any net-income class having more exemptions than the number of exemptions specified by the secretary for that category.

History: 1978 Comp., § 7-2-7.1, enacted by Laws 1980, ch. 102, § 1; 1981, ch. 37, § 18; 1990, ch. 49, § 3; 1995, ch. 11, § 2.

7-2-7.2. Tax rebate; 2005 taxable year. (Effective for 2005 tax year.)

A. Except as otherwise provided in this section, any resident who files an individual New Mexico income tax return and who is not a dependent of another individual is entitled to a tax rebate during the 2005 taxable year for a portion of state and local taxes to which the person has been subject during the 2005 taxable year, even if the resident has no income taxable pursuant to the Income Tax Act.

B. For the purposes of this section, the total number of exemptions for which a tax rebate may be claimed or allowed is determined by adding the number of federal exemptions allowable for federal income tax purposes for each individual; provided that, in the case of a husband and wife who have filed a joint return where only one individual is a New Mexico resident, the number of exemptions shall be reduced by one.

C. Except as otherwise provided in Subsection D of this section, the tax rebate provided for in this section is allowed for the amount shown in the following table:

Adjusted Gross Income is:		And the total number of exemptions is:					
Over	But Not Over	1	2	3	4	5	6 or more
$0	$10,000	$139	$179	$214	$244	$269	$289
10,000	20,000	124	164	189	214	234	249
20,000	35,000	109	139	164	184	199	209
35,000	45,000	94	119	139	154	164	169
45,000	60,000	79	104	124	139	149	154
60,000		64	84	99	109	114	119.

D. If a resident's adjusted gross income is less than or equal to zero, the resident is entitled to a rebate in the amount shown in the first row of the table appropriate for the resident's number of exemptions.

E. Except as otherwise provided in this section, the secretary shall make an advance payment of the tax rebate provided for in this section not later than November 15, 2005 to each resident who filed a 2004 New Mexico personal income tax return. Advance payment amounts shall be based on the number of federal exemptions allowable for federal income tax purposes on the 2004 New Mexico personal income tax return of the resident for whom a rebate is allowed pursuant to this section and on the federal adjusted gross income reported by that resident on the same return. A resident who does not receive an advance payment may claim the tax rebate provided for in this section on that resident's 2005 New Mexico personal income tax return based on the federal adjusted gross income and on the number of federal exemptions allowable for federal income tax purposes reported on that return.

F. The department shall not make an advance payment of the tax rebate provided for in this section to a person who:

(1) was an inmate of a public institution for more than six months during the 2004 taxable year; or

(2) was not a resident of New Mexico on the last day of the 2004 taxable year.

G. The department shall not allow a tax rebate provided in this section to a person who claims the rebate on that person's 2005 personal income tax return, but:

(1) was an inmate of a public institution for more than six months during the 2005 taxable year; or

(2) was not a resident of New Mexico on the last day of the 2005 taxable year.

H. The secretary may adopt regulations necessary to administer the provisions of this section.

I. For purposes of this section, "dependent" means "dependent" as defined by Section 152 of the Internal Revenue Code, but also includes any minor child or stepchild of the resident who would be a dependent for federal income tax purposes if the public assistance contributing to the support of the child or stepchild was considered to have been contributed by the resident.

History: Laws 2005 (1st S.S.), ch. 3, § 3.

7-2-7.3. Exemption; 2005 taxable year rebate. (Effective for 2005 tax year.)

The tax rebate made for the 2005 taxable year pursuant to this 2005 act is exempt from state income tax.

History: Laws 2005 (1st S.S.), ch. 3, § 4.

7-2-7.4. 2020 income tax rebate.

A. A resident who is not a dependent of another individual and has received a working families tax credit for which the taxpayer was eligible to claim against the resident's income tax liability for taxable year 2020 may be eligible for a tax rebate of six hundred dollars ($600); provided that the resident had the following adjusted gross income for taxable year 2020:

(1) for single individuals, an adjusted gross income of thirty-one thousand two hundred dollars ($31,200) or less; and

(2) for heads of household, surviving spouses and married individuals filing joint returns, an adjusted gross income of thirty-nine thousand dollars ($39,000) or less.

B. The rebate provided by this section may be deducted from the taxpayer's New Mexico income tax liability.

C. If the amount of rebate exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

D. The department may require a taxpayer to claim the rebate provided by this section on forms and in a manner required by the department.

E. The rebate provided by this section shall not be allowed after June 30, 2022.

History: Laws 2021, ch. 4, § 2.

7-2-7.5. Supplemental 2021 income tax rebates.

A. A resident who files an individual New Mexico income tax return for taxable year 2021 by May 31, 2023 and who is not a dependent of another individual is eligible for two tax rebates pursuant to this section; provided that the resident did not receive a relief payment pursuant to Section 2 of this 2022 act.

B. For a resident who files an income tax return by May 31, 2022:

(1) the first tax rebate shall be made as soon as possible, but no later than June 30, 2022, in the following amounts:

(a) five hundred dollars ($500) for heads of household, surviving spouses and married individuals filing joint returns; and

(b) two hundred fifty dollars ($250) for single individuals and married individuals filing separate returns; and

(2) the second tax rebate shall be made between August 1 and August 30, 2022 in the following amounts:

(a) five hundred dollars ($500) for heads of household, surviving spouses and married individuals filing joint returns; and

(b) two hundred fifty dollars ($250) for single individuals and married individuals filing separate returns.

C. For a resident who files an income tax return for taxable year 2021 after May 31, 2022, rebates shall be made in the amounts and as provided in Subsection B of this section as soon as possible after the return is received; provided that a rebate shall not be allowed for a return filed after May 31, 2023.

D. The rebates provided by this section may be deducted from the taxpayer's New Mexico income tax liability for taxable year 2021. If the amount of rebate exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

E. The department may require a taxpayer to claim a rebate provided by this section on forms and in a manner required by the department.

History: Laws 2022 (3rd S.S.), ch. 2, § 1.

7-2-7.6. 2021 income tax rebate.

A. A resident who is not a dependent of another individual is eligible for a tax rebate of:

(1) five hundred dollars ($500) for heads of household, surviving spouses and married individuals filing joint returns with adjusted gross income of less than one hundred fifty thousand dollars ($150,000); and

(2) two hundred fifty dollars ($250) for single individuals and married individuals filing separate returns with adjusted gross income of less than seventy-five thousand dollars ($75,000).

B. The rebate provided by this section may be deducted from the taxpayer's New Mexico income tax liability for taxable year 2021.

C. If the amount of rebate exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

D. The department may require a taxpayer to claim the rebate provided by this section on forms and in a manner required by the department.

E. The rebate provided by this section shall not be allowed after June 30, 2023.

History: Laws 2022, ch. 47, § 4.

7-2-7.7. Additional 2021 income tax rebates.

A. A resident who files an individual New Mexico income tax return for taxable year 2021 and who is not a dependent of another individual is eligible for a tax rebate pursuant to this section in the following amounts:

(1) one thousand dollars ($1,000) for heads of household, surviving spouses and married individuals filing joint returns; and

(2) five hundred dollars ($500) for single individuals and married individuals filing separate returns.

B. The rebates shall be made as soon as practicable after a return is received; provided that a rebate shall not be allowed for a return filed after May 31, 2024.

C. The rebates provided by this section may be deducted from the taxpayer's New Mexico income tax liability for taxable year 2021. If the amount of rebate exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

D. The department may require a taxpayer to claim a rebate provided by this section on forms and in a manner required by the department.

History: Laws 2023, ch. 211, § 11.

7-2-8. Repealed.

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.

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.

7-2-11. Tax credit; income allocation and apportionment.

A. Net income of any individual having income that is taxable both within and without this state shall be apportioned and allocated as follows:

(1) during the first taxable year in which an individual incurs tax liability as a resident, only income earned on or after the date the individual became a resident and, in addition, income earned in New Mexico while a nonresident of New Mexico shall be allocated to New Mexico;

(2) except as provided otherwise in Paragraph (1) of this subsection, income other than compensation or gambling winnings shall be allocated and apportioned as provided in the Uniform Division of Income for Tax Purposes Act [Chapter 7, Article 4 NMSA 1978], but if the income is not allocated or apportioned by that act, then it may be allocated or apportioned in accordance with instructions, rulings or regulations of the secretary;

(3) except as provided otherwise in Paragraph (1) of this subsection, compensation and gambling winnings of a resident taxpayer shall be allocated to this state;

(4) compensation of a nonresident taxpayer shall be allocated to this state to the extent that such compensation is for activities, labor or personal services within this state; provided that the compensation may be allocated to the taxpayer's state of residence:

(a) if the activities, labor or services are performed in this state for fifteen or fewer days during the taxpayer's taxable year;

(b) if the compensation is for activities, labor or services performed for a business in the manufacturing industry in New Mexico that is located within twenty miles of an international border, that has a minimum of five full-time employees who are New Mexico residents, that is not receiving development training funds under Section 21-19-7 NMSA 1978 and that meets the qualifications of one of Items 1) through 4) of this subparagraph: 1) the business had no payroll in New Mexico during the previous calendar year; 2) the business had a payroll in New Mexico for less than the entire previous calendar year, and the first payroll of the new calendar year includes payments to New Mexico residents exceeding the highest monthly payroll for such residents in the previous calendar year; 3) the business had a payroll in New Mexico for the entire previous calendar year, and the first payroll of the new calendar year includes payments to New Mexico residents exceeding by at least ten percent both the payroll for all employees in January 2001 and the payroll for New Mexico residents twelve months prior to the commencement of the new calendar year; or 4) the business had a payroll in New Mexico for the entire previous calendar year, but had no payroll in New Mexico within one year prior to January 1, 2001, and the first payroll of the new calendar year includes payments to New Mexico residents exceeding by at least ten percent the payroll for such residents twelve months earlier; or

(c) if the activities, labor or services are performed in this state for disaster- or emergency-related critical infrastructure work in response to a declared state disaster or emergency during a disaster response period, as defined in the Tax Administration Act [Chapter 7, Article 1 NMSA 1978];

(5) gambling winnings of a nonresident shall be allocated to this state if the gambling winnings arose from a source within this state; and

(6) other deductions and exemptions allowable in computing net income and not specifically allocated in the Uniform Division of Income for Tax Purposes Act shall be equitably allocated or apportioned in accordance with instructions, rulings or regulations of the secretary.

B. For the purposes of this section, "non-New Mexico percentage" means the percentage determined by dividing the difference between the taxpayer's net income and the sum of the amounts allocated or apportioned to New Mexico by that net income.

C. A taxpayer may claim a credit in an amount equal to the amount of tax determined to be due under Section 7-2-7 or 7-2-7.1 NMSA 1978 multiplied by the non-New Mexico percentage.

History: 1953 Comp., § 72-15A-9, enacted by Laws 1965, ch. 202, § 9; 1969, ch. 152, § 5; 1974, ch. 56, § 1; 1981, ch. 37, § 21; 1986, ch. 20, § 28; 1990, ch. 49, § 5; 1995, ch. 11, § 3; 1996, ch. 16, § 1; 2001, ch. 329, § 1; 2016, ch. 59, § 1.

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

A. Every resident of this state and every individual deriving income from any business transaction, property or employment within this state and not exempt from tax under the Income Tax Act who is required by the laws of the United States to file a federal income tax return shall file a complete tax return with the department in form and content as prescribed by the secretary. Except as provided in Subsection B of this section, a resident or any individual who is required by the provisions of the Income Tax Act to file a return or pay a tax shall, on or before the due date of the resident's or individual's federal income tax return for the taxable year, file the return and pay the tax imposed for that year.

B. When the department approves electronic media for use by a taxpayer whose taxable year is a calendar year, the taxpayer who uses electronic media for both filing and payment must submit the required return and the tax imposed on residents and individuals under the Income Tax Act on or before the last day of the month in which the resident's or individual's federal income tax return is originally due for the taxable year. The due date provided in this subsection does not apply to residents or individuals who have received a filing extension from New Mexico or an automatic extension from the federal internal revenue service for the same taxable year.

History: 1953 Comp., § 72-15A-10, enacted by Laws 1965, ch. 202, § 10; 1971, ch. 20, § 3; 1981, ch. 37, § 22; 1990, ch. 49, § 6; 2003, ch. 275, § 2; 2016, ch. 15, § 1.

7-2-12.1. Limitation on claiming of credits and tax rebates.

A. Except as provided otherwise in this section, a credit or tax rebate provided in the Income Tax Act that is claimed shall be disallowed if the claim for the credit or tax rebate was first made after the end of the third calendar year following the calendar year in which the return upon which the credit or tax rebate was first claimable was initially due.

B. Subsection A of this section does not apply to:

(1) the credit authorized by Section 7-2-13 NMSA 1978 for income taxes paid another state; or

(2) the credit authorized by Section 7-2-19 NMSA 1978 [repealed] for income taxes paid another state.

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

7-2-12.2. Estimated tax due; payment of estimated tax; penalty.

A. Except as otherwise provided in this section, an individual who is required to file an income tax return under the Income Tax Act shall pay the required annual payment in installments through either withholding or estimated tax payments.

B. For the purposes of this section:

(1) "required annual payment" means the lesser of:

(a) ninety percent of the tax shown on the return of the taxable year or, if no return is filed, ninety percent of the tax for the taxable year; or

(b) one hundred percent of the tax shown on the return for the preceding taxable year if the preceding taxable year was a taxable year of twelve months and the taxpayer filed a New Mexico tax return for that preceding taxable year; and

(2) "tax" means the tax imposed under Section 7-2-3 NMSA 1978 less any amount allowed for applicable credits and rebates provided by the Income Tax Act.

C. There shall be four required installments for each taxable year. If a taxpayer is not liable for estimated tax payments on March 31, but becomes liable for estimated tax at some point after March 31, the taxpayer must make estimated tax payments as follows:

(1) if the taxpayer becomes required to pay estimated tax after March 31 and before June 1, fifty percent of the required annual payment must be paid on or before June 15, twenty-five percent on September 15 and twenty-five percent on or before January 15 of the following taxable year;

(2) if the taxpayer becomes required to pay estimated tax after May 31, but before September 1, the taxpayer must pay seventy-five percent of the required annual payment on or before September 15 and twenty-five percent on or before January 15 of the following taxable year; and

(3) if the taxpayer becomes required to pay estimated tax after August 31, the taxpayer must pay one hundred percent of the required annual payment on or before January 15 of the following taxable year.

D. Except as otherwise provided in this section, for taxpayers reporting on a calendar year basis, estimated payments of the required annual payment are due on or before April 15, June 15 and September 15 of the taxable year and January 15 of the following taxable year. For taxpayers reporting on a fiscal year other than a calendar year, the due dates for the installments are the fifteenth day of the fourth, sixth and ninth months of the fiscal year and the fifteenth day of the first month following the fiscal year.

E. A rancher or farmer who expects to receive at least two-thirds of the rancher's or farmer's gross income for the taxable year from ranching or farming, or who has received at least two-thirds of the rancher's or farmer's gross income for the previous taxable year from ranching or farming, may:

(1) pay the required annual payment for the taxable year in one installment on or before January 15 of the following taxable year; or

(2) on or before March 1 of the following taxable year, file a return for the taxable year and pay in full the amount computed on the return as payable.

A penalty under Subsection G of this section shall not be imposed unless the rancher or farmer underpays the tax by more than one-third. If a joint return is filed, a rancher or farmer must consider the rancher's or farmer's spouse's gross income in determining whether at least two-thirds of gross income is from ranching or farming.

F. For the purposes of this section, the amount of tax deducted and withheld with respect to a taxpayer under the Withholding Tax Act [Chapter 7, Article 3 NMSA 1978] or the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act [Chapter 7, Article 3A NMSA 1978] shall be deemed a payment of estimated tax. An equal part of the amount of withheld tax shall be deemed paid on each due date for the applicable taxable year unless the taxpayer establishes the dates on which all amounts were actually withheld. In that case, the amounts withheld shall be deemed payments of estimated tax on the dates on which the amounts were actually withheld. The taxpayer may apply the provisions of this subsection separately to wage withholding and any other amounts withheld under the Withholding Tax Act or the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. Amounts of tax paid by taxpayers pursuant to Section 7-3A-3 NMSA 1978 shall not be deemed a payment of estimated tax.

G. Except as otherwise provided in this section, in the case of an underpayment of the required annual payment by a taxpayer, there shall be added to the tax a penalty determined by applying the rate specified in Subsection B of Section 7-1-67 NMSA 1978 to the amount of the underpayment for the period of the underpayment, provided:

(1) the amount of the underpayment shall be the excess of the amount of the required annual payment over the amount, if any, paid on or before the due date for the installment;

(2) the period of the underpayment runs from the due date for the installment to whichever of the following dates is earlier:

(a) the fifteenth day of the fourth month following the close of the taxable year; or

(b) with respect to any portion of the underpayment, the date on which the portion was paid; and

(3) a payment of estimated tax shall be credited against unpaid or underpaid installments in the order in which the installments are required to be paid.

H. No penalty shall be imposed under Subsection G of this section for any taxable year if:

(1) the difference between the following is less than one thousand dollars ($1,000):

(a) the tax shown on the return for the taxable year or, when no return is filed, the tax for the taxable year; and

(b) any amount withheld under the provisions of the Withholding Tax Act or the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act for that taxpayer for that taxable year;

(2) the taxpayer's preceding taxable year was a taxable year of twelve months, the taxpayer did not have a tax liability for the preceding taxable year and the taxpayer was a resident of New Mexico for the entire taxable year;

(3) through either withholding or estimated tax payments, the taxpayer paid the required annual payment as defined in Subsection B of this section; or

(4) the secretary determines that the underpayment was not due to fraud, negligence or disregard of rules and regulations.

I. If on or before January 31 of the following taxable year the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, then a penalty under Subsection G of this section shall not be imposed on an underpayment of the fourth required installment for the taxable year.

J. This section applies to taxable years of less than twelve months and to taxpayers reporting on a fiscal year other than a calendar year in the manner determined by regulation or instruction of the secretary.

K. Except as otherwise provided in Subsection L of this section, this section applies to any estate or trust.

L. This section does not apply to any trust that is subject to the tax imposed by Section 511 of the Internal Revenue Code or that is a private foundation. For a taxable year that ends before the date two years after the date of the decedent's death, this section does not apply to:

(1) the estate of the decedent; or

(2) any trust all of which was treated under Subpart E of Part I of Subchapter J of Chapter 1 of the Internal Revenue Code as owned by the decedent and to which the residue of the decedent's estate will pass under the decedent's will or, if no will is admitted to probate, that is the trust primarily responsible for paying debts, taxes and expenses of administration.

M. The provisions of this section do not apply to first-year residents.

History: Laws 1996, ch. 17, § 1; 1997, ch. 63, § 1; 1999, ch. 47, § 2; 2003, ch. 275, § 3; 2010, ch. 53, § 1; 2011, ch. 116, § 1.

7-2-13. Credit for taxes paid other states by resident individuals.

A. When a resident individual is liable to another state for tax upon income derived from sources outside this state but also included in net income under the Income Tax Act as income allocated or apportioned to New Mexico pursuant to Section 7-2-11 NMSA 1978, the individual, upon filing with the secretary satisfactory evidence of the payment of the tax to the other state, shall receive a credit against the tax due this state in the amount of the tax paid the other state with respect to income that is required to be either allocated or apportioned to New Mexico. However, in no case shall the credit exceed the amount of the taxpayer's New Mexico income tax liability on that portion of income that is required to be either allocated or apportioned to New Mexico on which the tax payable to the other state was determined. The credit provided by this section does not apply to or include income taxes paid to any municipality, county or other political subdivision of a state.

B. The credit allowed pursuant to Subsection A of this section shall be calculated without regard to the credit allowed pursuant to Section 7-3A-10 NMSA 1978.

History: 1953 Comp., § 72-15A-11, enacted by Laws 1965, ch. 202, § 11; 1970, ch. 34, § 1; 1973, ch. 133, § 1; 1974, ch. 56, § 2; 1981, ch. 37, § 23; 1990, ch. 49, § 7; 1992, ch. 78, § 1; 2013, ch. 179, § 1; 2023, ch. 159, § 2.

7-2-14. Low-income comprehensive tax rebate.

A. Except as otherwise provided in Subsection B of this section, any resident who files an individual New Mexico income tax return and who is not a dependent of another individual may claim a tax rebate for a portion of state and local taxes to which the resident has been subject during the taxable year for which the return is filed. The tax rebate may be claimed even though the resident has no income taxable under the Income Tax Act. Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the 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. Except as provided in Subsection F of this section, 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:					
	But Not						6 or
Over	Over	1	2	3	4	5	More
$ 0	$ 1,000	$ 195	$ 260	$ 325	$ 390	$ 455	$ 520
1,000	1,500	220	315	405	505	570	675
1,500	2,500	220	315	405	505	570	705
2,500	7,500	220	315	405	505	570	730
7,500	8,000	205	310	390	495	575	730
8,000	9,000	185	285	375	480	575	700
9,000	10,000	170	250	340	425	510	665
10,000	11,500	145	210	275	360	445	600
11,500	13,000	130	185	235	295	365	480

13,000	14,500	115	170	220	275	315	390
14,500	16,500	105	155	185	235	285	335
16,500	18,000	100	130	165	210	250	300
18,000	19,500	90	115	145	180	220	260
19,500	21,000	80	105	140	165	185	230
21,000	23,000	80	105	140	165	185	230
23,000	24,500	75	100	120	145	170	195
24,500	26,000	65	90	115	140	155	180
26,000	27,500	55	80	105	130	140	170
27,500	29,500	50	75	100	115	130	155
29,500	31,000	40	55	80	100	115	130
31,000	32,500	35	50	65	80	100	105
32,500	34,000	25	40	50	65	80	90
34,000	36,000	15	35	40	55	65	75.

E. If a taxpayer's modified gross income is zero, the taxpayer may claim a credit in the amount shown in the first row of the table appropriate for the taxpayer's number of exemptions as adjusted by the provisions of Subsection F of this section.

F. For the 2022 taxable year and each subsequent taxable year, the amount of rebate shown in the table in Subsection D of this section shall be adjusted to account for inflation. The department shall make the adjustment by multiplying each amount of rebate by a fraction, the numerator of which is the consumer price index ending during the prior taxable year and the denominator of which is the consumer price index ending in tax year 2021. The result of the multiplication shall be rounded down to the nearest one dollar ($1.00), except that if the result would be an amount less than the corresponding amount for the preceding taxable year, then no adjustment shall be made.

G. 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.

H. For purposes of this section:

(1) "consumer price index" means the consumer price index for all urban consumers published by the United States department of labor for the month ending September 30; and

(2) "dependent" means "dependent" as defined by Section 152 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, but also includes any minor child or stepchild of the resident who would be a dependent for federal income tax purposes if the public assistance contributing to the support of the child or stepchild was considered to have been contributed by the resident.

History: 1953 Comp., § 72-15A-11.1, enacted by Laws 1972, ch. 20, § 2; 1973, ch. 336, § 1; 1974, ch. 17, § 1; 1975, ch. 213, § 1; 1977, ch. 197, § 1; 1978, ch. 145, § 1; 1981, ch. 37, § 24; 1986, ch. 20, § 29; 1986 (3d S.S.), ch. 1, § 1; 1987, ch. 264, § 7; 1990, ch. 49, § 8; 1992, ch. 78, § 2; 1994, ch. 5, § 21; 1998, ch. 99, § 2; 2021, ch. 116, § 1.

7-2-14.1. Repealed.

7-2-14.2. Repealed.

7-2-14.3. Tax rebate of part of property tax due from low-income taxpayer; local option; refund.

A. The tax rebate provided by this section may be claimed for the taxable year for which the return is filed by an individual who:

(1) has his principal place of residence in a county that has adopted an ordinance pursuant to Subsection G of this section;

(2) is not a dependent of another individual;

(3) files a return; and

(4) incurred a property tax liability on his principal place of residence in the taxable year.

B. The tax rebate provided by this section shall be allowed for any individual eligible to claim the refund pursuant to Subsection A of this section and who:

(1) was not an inmate of a public institution for more than six months during the taxable year;

(2) was physically present in New Mexico for at least six months during the taxable year for which the rebate is claimed; and

(3) is eligible for the rebate as a low-income property taxpayer in accordance with the provisions of Subsection D of this section.

C. A husband and wife who file separate returns for the taxable year in which they could have filed a joint return may each claim only one-half of the tax rebate that would have been allowed on the joint return.

D. As used in the table in this subsection, "property tax liability" means the amount of property tax resulting from the imposition of the county and municipal property tax operating impositions on the net taxable value of the taxpayer's principal place of residence calculated for the year for which the rebate is claimed. The tax rebate provided in this section is as specified in the following table:

LOW-INCOME TAXPAYER'S PROPERTY TAX REBATE TABLE

Taxpayer's Modified Gross Income		Property Tax Rebate
Over	But Not Over	
$0	$8,000	75% of property tax liability
8,000	10,000	70% of property tax liability
10,000	12,000	65% of property tax liability
12,000	14,000	60% of property tax liability
14,000	16,000	55% of property tax liability
16,000	18,000	50% of property tax liability
18,000	20,000	45% of property tax liability
20,000	22,000	40% of property tax liability
22,000	24,000	35% of property tax liability.

E. If a taxpayer's modified gross income is zero, the taxpayer may claim a tax rebate in the amount shown in the first row of the table. The tax rebate provided for in this section shall not exceed three hundred fifty dollars ($350) per return and, if a return is filed separately that could have been filed jointly, the tax rebate shall not exceed one hundred seventy-five dollars ($175). No tax rebate shall be allowed any taxpayer whose modified gross income exceeds twenty-four thousand dollars ($24,000).

F. The tax rebate provided for in this section may be deducted from the taxpayer's New Mexico income tax liability for the taxable year. If the tax rebate exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

G. In January of every odd-numbered year in which a county does not have in effect an ordinance adopted pursuant to this subsection, the board of county commissioners of the county shall conduct a public hearing on the question of whether the property tax rebate provided in this section benefiting low-income property taxpayers in the county should be made available through adoption of a county ordinance. Notice of the public hearing shall be published once at least two weeks prior to the hearing date in at least one newspaper of general circulation in the county and broadcast at some time within the week before the hearing on at least one radio station with substantial broadcasting coverage in the county. At the public hearing, the board shall take action on the question and if a majority of the members elected votes to adopt an ordinance, it shall be adopted no later than thirty days after the public hearing.

H. An ordinance adopted pursuant to Subsection G of this section shall specify the taxable years to which it is applicable. The board of county commissioners adopting an ordinance shall notify the department of the adoption of the ordinance and furnish a copy of the ordinance to the department no later than September 1 of the first taxable year to which the ordinance applies.

I. No later than December 31 of the year immediately following the first year in which the low-income taxpayer property tax rebate provided in the Income Tax Act is in effect for a county, and no later than December 31 of each year thereafter in which the tax rebate is in effect, the department shall certify to the county the amount of the loss of income tax revenue to the state for the previous taxable year attributable to the allowance of property tax rebates to taxpayers of that county. The county shall promptly pay the amount certified to the department. If a county fails to pay the amount certified within thirty days of the date of certification, the department may enforce collection of the amount by action against the county and may withhold from any revenue distribution to the county, not dedicated or pledged, amounts up to the amount certified.

J. As used in this section, "principal place of residence" means the dwelling owned and occupied by the taxpayer and so much of the land surrounding it, not to exceed five acres, as is reasonably necessary for use of the dwelling as a home and may consist of a part of a multidwelling or a multipurpose building and a part of the land upon which it is built.

History: Laws 1994, ch. 111, § 1; 1997, ch. 196, § 1; 2003, ch. 275, § 4.

7-2-14.4. Authorization to fund property tax rebate for low-income taxpayers; tax imposition; election.

A. The board of county commissioners of any county may adopt a resolution to submit to the qualified electors of the county the question of whether a property tax at a rate not to exceed one dollar ($1.00) per thousand dollars ($1,000) of taxable value of property should be imposed for the purpose of providing the necessary funding for the property tax rebate for low-income taxpayers provided in the Income Tax Act if the county has adopted an ordinance providing the property tax rebate.

B. The resolution shall:

(1) specify the rate of the proposed tax, which shall not exceed one dollar ($1.00) per thousand dollars ($1,000) of taxable value of property;

(2) specify the date an election will be held to submit the question of imposition of the tax to the qualified electors of the county;

(3) impose the tax for one, two, three, four or five property tax years and limit the imposition of the proposed tax to no more than five property tax years; and

(4) pledge the revenue from the tax solely for the payment of the income tax revenue reduction resulting from the implementation of the property tax rebate for low-income taxpayers.

C. The resolution authorized in Subsection A of this section shall be adopted no later than May 15 in the year prior to the year in which the tax is proposed to be imposed. By adoption of an appropriate resolution, the board of county commissioners may submit the question of imposing the tax for successive periods of one, two, three, four or five years to the qualified electors of the county. The procedures for the election and for the imposition of the tax for subsequent periods shall be the same as those applying to the initial imposition of the tax. The election shall be scheduled so that the imposition of the tax for successive periods results in continuity of the tax.

D. An election on the question of imposing the tax authorized pursuant to this section may be held in conjunction with a general election or may be conducted as or held in conjunction with a special election, but the election shall be held by the date necessary to assure that the results of the election on the question of imposing the tax may be certified no later than July 1 of the first property tax year in which the tax is proposed to be imposed. Conduct of the election shall be as provided by the Election Code [Chapter 1 NMSA 1978].

E. As used in this section, "taxable value of property" means the combined total of net taxable value of property allocated to the county under the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978]; the assessed value of products severed and sold in the county for the calendar year preceding the year for which a determination is made as determined under the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978]; the assessed value of equipment in the county as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978]; and the taxable value of copper mineral property in the county pursuant to Section 7-39-7 NMSA 1978.

History: Laws 1994, ch. 111, § 2; 2000, ch. 33, § 1.

7-2-14.5. Imposition of tax; limitations.

A. If, as a result of an election held on the question of imposing a property tax to fund the property tax rebate for low-income taxpayers provided in the Income Tax Act, a majority of the qualified electors voting on the question votes in favor of the imposition of the tax, the tax rate shall be certified by the department of finance and administration for any year in which the tax is imposed. The rate certified shall be the rate specified in the authorizing resolution or any lower rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978. The tax shall be imposed at the rate certified unless the board of county commissioners determines that the tax imposition be decreased or not made pursuant to Subsection B of this section. The revenue produced by the tax shall be placed in a separate fund in the county treasury and is pledged solely for the payment of the income tax revenue reduction resulting from the implementation of the property tax rebate for low-income taxpayers.

B. A tax imposed pursuant to Subsection A of this section shall be imposed for one, two, three, four or five years commencing with the property tax year in which the tax rate is first imposed. The board of county commissioners may direct that the rate of imposition of the tax be decreased for any year if, in its judgment, imposition of the total rate is not necessary for such year. The board of county commissioners shall direct that the imposition not be made for any property tax year for which the property tax rebate for low-income taxpayers is not provided or for any year in which the county has imposed a property transfer tax pursuant to the Transfer Tax Act.

History: Laws 1994, ch. 111, § 3.

7-2-15. Repealed.

7-2-16. Repealed.

7-2-16.1. Repealed.

7-2-17. Repealed.

7-2-17.1. Repealed.

7-2-18. Tax rebate of property tax due that exceeds the elderly taxpayer's maximum property tax liability; refund.

A. Any resident who has attained the age of sixty-five and files an individual New Mexico income tax return and is not a dependent of another individual may claim a tax rebate for the taxable year for which the return is filed. The tax rebate shall be the amount of property tax due on the resident's principal place of residence for the taxable year that exceeds the property tax liability indicated by the table in Subsection F or G, as appropriate, of this section, based upon the taxpayer's modified gross income.

B. Any resident otherwise qualified under this section who rents a principal place of residence from another person may calculate the amount of property tax due by multiplying the gross rent for the taxable year by six percent. The tax rebate shall be the amount of property tax due on the taxpayer's principal place of residence for the taxable year that exceeds the property tax liability indicated by the table in Subsection F or G, as appropriate, of this section, based upon the taxpayer's modified gross income.

C. As used in this section, "principal place of residence" means the resident's dwelling, whether owned or rented, and so much of the land surrounding it, not to exceed five acres, as is reasonably necessary for use of the dwelling as a home and may consist of a part of a multidwelling or a multipurpose building and a part of the land upon which it is built.

D. No claim for the tax rebate provided in this section shall be allowed a resident who was an inmate of a public institution for more than six months during the taxable year or who was not physically present in New Mexico for at least six months during the taxable year for which the tax rebate could be claimed.

E. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax rebate that would have been allowed on a joint return.

F. For taxpayers whose principal place of residence is in a county that does not have in effect for the taxable year a resolution in accordance with Subsection J of this section, the tax rebate provided for in this section may be claimed in the amount of the property tax due each taxable year that exceeds the amount shown as property tax liability in the following table:

ELDERLY HOMEOWNERS' MAXIMUM PROPERTY TAX LIABILITY TABLE

Taxpayers' Modified Gross Income		Property Tax Liability
Over	But Not Over	
$ 0	$ 1,000	$ 20
1,000	2,000	25
2,000	3,000	30
3,000	4,000	35
4,000	5,000	40
5,000	6,000	45
6,000	7,000	50
7,000	8,000	55

8,000	9,000	60
9,000	10,000	75
10,000	11,000	90
11,000	12,000	105
12,000	13,000	120
13,000	14,000	135
14,000	15,000	150
15,000	16,000	180.

G. For taxpayers whose principal place of residence is in a county that has in effect for the taxable year a resolution in accordance with Subsection J of this section, the tax rebate provided for in this section may be claimed in the amount of the property tax due each taxable year that exceeds the amount shown as property tax liability in the following table:

ELDERLY HOMEOWNERS' MAXIMUM PROPERTY TAX LIABILITY TABLE

Taxpayers' Modified Gross Income		Property Tax Liability
Over	But Not Over	
$ 0	$ 1,000	$ 20
1,000	2,000	25
2,000	3,000	30
3,000	4,000	35
4,000	5,000	40
5,000	6,000	45
6,000	7,000	50
7,000	8,000	55
8,000	9,000	60
9,000	10,000	75
10,000	11,000	90
11,000	12,000	105
12,000	13,000	120
13,000	14,000	135
14,000	15,000	150
15,000	16,000	165
16,000	17,000	180
17,000	18,000	195
18,000	19,000	210

19,000	20,000	225
20,000	21,000	240
21,000	22,000	255
22,000	23,000	270
23,000	24,000	285
24,000	25,000	300.

H. If a taxpayer's modified gross income is zero, the taxpayer may claim a tax rebate based upon the amount shown in the first row of the appropriate table. The tax rebate provided for in this section shall not exceed two hundred fifty dollars ($250) per return, and, if a return is filed separately that could have been filed jointly, the tax rebate shall not exceed one hundred twenty-five dollars ($125). No tax rebate shall be allowed any taxpayer whose modified gross income exceeds sixteen thousand dollars ($16,000) for taxpayers whose principal place of residence is in a county that does not have in effect for the taxable year a resolution in accordance with Subsection J of this section and twenty-five thousand dollars ($25,000) for all other taxpayers.

I. The tax rebate provided for in this section may be deducted from the taxpayer's New Mexico income tax liability for the taxable year. If the tax rebate exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

J. The board of county commissioners may adopt a resolution authorizing otherwise qualified taxpayers whose principal place of residence is in the county to claim the rebate provided by this section in the amounts set forth in Subsection G of this section. The resolution must also provide that the county will reimburse the state for the additional amount of tax rebates paid to such taxpayers over the amount that would have been paid to such taxpayers under Subsection F of this section. The resolution may apply to one or more taxable years and shall specify the period of time for which the rebate provided by this section may be claimed by qualified taxpayers. The county must adopt the resolution and notify the department of the adoption by no later than September 1 of the taxable year to which the resolution first applies. The department shall determine the additional amounts paid to taxpayers of the county for each taxable year and shall bill the county for the amount at the time and in the manner determined by the department. If the county fails to pay any bill within thirty days, the department may deduct the amount due from any amount to be transferred or distributed to the county by the state, other than debt interceptions.

History: 1953 Comp., § 72-15A-11.4, enacted by Laws 1977, ch. 196, § 1; 1981, ch. 37, § 28; 1993, ch. 307, § 2; 1997, ch. 117, § 1; 1999, ch. 47, § 3; 2003, ch. 275, § 5.

7-2-18.1. Credit for expenses for dependent child day care necessary to enable gainful employment to prevent indigency.

A. As used in this section:

(1) "caregiver" means a corporation or an individual eighteen years of age or over who receives compensation from a resident for providing direct care, supervision and guidance to a qualifying dependent of the resident for less than twenty-four hours daily and includes related individuals of the resident but does not include a dependent of the resident;

(2) "cost of maintaining a household" means the expenses incurred for the mutual benefit of the occupants thereof by reason of its operation as the principal place of abode of such occupants, including property taxes, mortgage interest, rent, utility charges, upkeep and repairs, property insurance and food consumed on the premises. "Cost of maintaining a household" shall not include expenses otherwise incurred, including cost of clothing, education, medical treatment, vacations, life insurance, transportation and mortgages;

(3) "dependent" means "dependent" as defined by Section 152 of the Internal Revenue Code, as that section may be amended or renumbered, but also includes any minor child or stepchild of the resident who would be a dependent for federal income tax purposes if the public assistance contributing to the support of the child or stepchild was considered to have been contributed by the resident;

(4) "disabled person" means a person who has a medically determinable physical or mental impairment, as certified by a licensed physician or an advanced practice registered nurse, certified nurse-midwife or physician assistant working within that person's scope of practice, that renders such person unable to engage in gainful employment;

(5) "gainfully employed" means working for remuneration for others, either full time or part time, or self-employment in a business or partnership; and

(6) "qualifying dependent" means a dependent under the age of fifteen at the end of the taxable year who receives the services of a caregiver.

B. Any resident who files an individual New Mexico income tax return and who is not a dependent of another taxpayer may claim a credit for child day care expenses incurred and paid to a caregiver in New Mexico during the taxable year by such resident if the resident:

(1) singly or together with a spouse furnishes over half the cost of maintaining the household for one or more qualifying dependents for any period in the taxable year for which the credit is claimed;

(2) is gainfully employed for any period for which the credit is claimed or, if a joint return is filed, both spouses are gainfully employed or one is disabled for any period for which the credit is claimed;

(3) compensates a caregiver for child day care for a qualifying dependent to enable such resident together with the resident's spouse, if any and if not disabled, to be gainfully employed;

(4) is not a recipient of public assistance under a program of aid to families with dependent children, a program under the New Mexico Works Act [Chapter 27, Article 2B NMSA 1978] or any successor program during any period for which the credit provided by this section is claimed; and

(5) has a modified gross income, including child support payments, if any, of not more than the annual income that would be derived from earnings at double the federal minimum wage.

C. The credit provided for in this section shall be forty percent of the actual compensation paid to a caregiver by the resident for a qualifying dependent not to exceed four hundred eighty dollars ($480) for each qualifying dependent or a total of one thousand two hundred dollars ($1,200) for all qualifying dependents for a taxable year. For the purposes of computing the credit, actual compensation shall not exceed eight dollars ($8.00) per day for each qualifying dependent.

D. The caregiver shall furnish the resident with a signed statement of compensation paid by the resident to the caregiver for day care services. Such statements shall specify the dates and the total number of days for which payment has been made.

E. If the resident taxpayer has a federal tax liability, the taxpayer shall claim from the state not more than the difference between the amount of the state child care credit for which the taxpayer is eligible and the federal credit for child and dependent care expenses the taxpayer is able to deduct from federal tax liability for the same taxable year; provided, for first year residents only, the amount of the federal credit for child and dependent care expenses may be reduced to an amount equal to the amount of federal credit for child and dependent care expenses the resident is able to deduct from federal tax liability multiplied by the ratio of the number of days of residence in New Mexico during the resident's taxable year to the total number of days in the resident's taxable year.

F. The credit provided for in this section may be deducted from the taxpayer's New Mexico income tax liability for the taxable year. If the credit exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

G. A husband and wife maintaining a household for one or more qualifying dependents and filing separate returns for a taxable year for which they could have filed a joint return:

(1) may each claim only one-half of the credit that would have been claimed on a joint return; and

(2) are eligible for the credit provided in this section only if their joint modified gross income, including child support payments, if any, is not more than the annual income that would be derived from earnings at double the federal minimum wage.

History: Laws 1981, ch. 170, § 1; 1990, ch. 49, § 10; 1995, ch. 11, § 4; 1999, ch. 47, § 4; 2015, ch. 116, § 1.

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

A. Tax credits for the preservation of cultural property may be claimed as follows:

(1) to encourage the restoration, rehabilitation and preservation of cultural properties, a taxpayer who files an individual New Mexico income tax return and who is not a dependent of another individual and who is the owner of a cultural property listed on the official New Mexico register of cultural properties, with the taxpayer's consent, may claim a credit not to exceed a maximum aggregate of twenty-five thousand dollars ($25,000) in an amount equal to one-half of the cost of restoration, rehabilitation or preservation of a cultural property listed on the official New Mexico register; or

(2) if a cultural property, whose owner may otherwise claim the credit set forth in Paragraph (1) of this subsection is also located within an arts and cultural district certified by the state or a municipality pursuant to the Arts and Cultural District Act [15-5A-1 to 15-5A-7 NMSA 1978], the owner of that cultural property may claim a credit not to exceed fifty thousand dollars ($50,000), including any credit claimed pursuant to Paragraph (1) of this subsection, in an amount equal to one-half of the cost of restoration, rehabilitation or preservation of the cultural property.

B. The taxpayer may claim the credit if:

(1) the taxpayer submitted a plan and specifications for restoration, rehabilitation or preservation to the committee and received approval from the committee for the plan and specifications prior to commencement of the restoration, rehabilitation or preservation;

(2) the taxpayer received certification from the committee after completing the restoration, rehabilitation or preservation, or committee-approved phase, that it conformed to the plan and specifications and preserved and maintained those qualities of the property that made it eligible for inclusion in the official register; and

(3) the project is completed within twenty-four months of the date the project is approved by the committee in accordance with Paragraph (1) of this subsection.

C. A taxpayer may claim the credit provided in this section for each taxable year in which restoration, rehabilitation or preservation is carried out. Except as provided in Subsection F of this section, claims for the credit provided in this section shall be limited to three consecutive years, and the maximum aggregate credit allowable shall not exceed twenty-five thousand dollars ($25,000) if governed by Paragraph (1) of Subsection A of this section, or fifty thousand dollars ($50,000) if governed by Paragraph (2) of Subsection A of this section, for any single restoration, rehabilitation or preservation project for any cultural property listed on the official New Mexico register certified by the committee.

D. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

E. A taxpayer who otherwise qualifies and claims a credit on a restoration, rehabilitation or preservation project on property owned by a partnership of which the taxpayer is a member may claim a credit only in proportion to the taxpayer's interest in the partnership. The total credit claimed by all members of the partnership shall not exceed twenty-five thousand dollars ($25,000) in the aggregate if governed by Paragraph (1) of Subsection A of this section, or fifty thousand dollars ($50,000) in the aggregate if governed by Paragraph (2) of Subsection A of this section, for any single restoration, rehabilitation or preservation project for any cultural property listed on the official New Mexico register certified by the committee.

F. The credit provided in this section may only be deducted from the taxpayer's income tax liability. Any portion of the maximum tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for four consecutive years; provided, however, the total tax credits claimed under this section shall not exceed twenty-five thousand dollars ($25,000) if governed by Paragraph (1) of Subsection A of this section, or fifty thousand dollars ($50,000) if governed by Paragraph (2) of Subsection A of this section, for any single restoration, preservation or rehabilitation project for any cultural property listed on the official New Mexico register.

G. The historic preservation division shall promulgate regulations for the implementation of Subsection B of this section.

H. As used in this section:

(1) "committee" means the cultural properties review committee created in Section 18-6-4 NMSA 1978; and

(2) "historic preservation division" means the historic preservation division of the cultural affairs department created in Section 18-6-8 NMSA 1978.

History: 1978 Comp., § 7-2-18.2, enacted by Laws 1984, ch. 34, § 1; 2007, ch. 160, § 14.

7-2-18.3. Repealed.

7-2-18.4. Repealed.

History: Laws 1994, ch. 115, § 1; repealed by Laws 2023, ch. 85, § 28.

7-2-18.5. Repealed.

History: Laws 1998, ch. 97, § 2; repealed by Laws 2023, ch. 85, § 28.

7-2-18.6. Repealed.

7-2-18.7. Tax rebate of property tax paid on property eligible for disabled veteran exemption; refund; limitation.

A. Any resident who files an individual New Mexico income tax return and paid property tax for the 1999 property tax year on property eligible for the property tax exemption authorized by Article 8, Section 15 of the constitution of New Mexico may claim a tax rebate for the amount of property tax paid.

B. The tax rebate provided for in this section may be deducted from the taxpayer's New Mexico income tax liability for taxable year 2000. If the tax rebate exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

C. The rebate provided for in this section may be claimed only on a return filed for taxable year 2000.

D. A husband and wife who file separate returns for taxable year 2000 and could have filed a joint return for taxable year 2000 may each claim only one-half of the tax rebate that would have been allowed on the joint return.

History: Laws 2000, ch. 64, § 1 and Laws 2000, ch. 78, § 1.

7-2-18.8. Repealed.

History: Laws 2001, ch. 73, § 1; repealed by Laws 2023, ch. 85, § 28.

7-2-18.9. Repealed.

History: Laws 2002, ch. 91, § 1.

7-2-18.10. Tax credit; certain conveyances of real property.

A. There shall be allowed as a credit against the tax liability imposed by the Income Tax Act, an amount equal to fifty percent of the fair market value of land or interest in land that is conveyed for the purpose of open space, natural resource or biodiversity conservation, agricultural preservation or watershed or historic preservation as an unconditional donation in perpetuity by the landowner or taxpayer to a public or private conservation agency eligible to hold the land and interests therein for conservation or preservation purposes. The fair market value of qualified donations made pursuant to this section shall be substantiated by a "qualified appraisal" prepared by a "qualified appraiser", as those terms are defined under applicable federal laws and regulations governing charitable contributions.

B. The amount of the credit that may be claimed by a taxpayer shall not exceed one hundred thousand dollars ($100,000) for a conveyance made prior to January 1, 2008 and shall not exceed two hundred fifty thousand dollars ($250,000) for a conveyance made on or after that date. In addition, in a taxable year the credit used may not exceed the amount of individual income tax otherwise due. A portion of the credit that is unused in a taxable year may be carried over for a maximum of twenty consecutive taxable years following the taxable year in which the credit originated until fully expended. A taxpayer may claim only one tax credit per taxable year.

C. Qualified donations shall include the conveyance in perpetuity of a fee interest in real property or a less-than-fee interest in real property, such as a conservation restriction, preservation restriction, agricultural preservation restriction or watershed preservation restriction, pursuant to the Land Use Easement Act [47-12-1 to 47-12-6 NMSA 1978] and provided that the less-than-fee interest qualifies as a charitable contribution deduction under Section 170(h) of the Internal Revenue Code. Dedications of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits shall not be considered as qualified donations pursuant to the Land Conservation Incentives Act [75-9-1 to 75-9-6 NMSA 1978].

D. Qualified donations shall be eligible for the tax credit if the donations are made to the state of New Mexico, a political subdivision thereof or a charitable organization described in Section 501(c)(3) of the Internal Revenue Code and that meets the requirements of Section 170(h)(3) of that code.

E. To be eligible for treatment as qualified donations under this section, land or interests in lands must be certified by the secretary of energy, minerals and natural resources as fulfilling the purposes as set forth in Section 75-9-2 NMSA 1978. The use and protection of the lands, or interests therein, for open space, natural area protection, biodiversity habitat conservation, land preservation, agricultural preservation, historic preservation or similar use or purpose of the property shall be assured in perpetuity.

F. A taxpayer may apply for certification of eligibility for the tax credit provided by this section from the energy, minerals and natural resources department. If the energy, minerals and natural resources department determines that the application meets the requirements of this section and that the property conveyed will not adversely affect the property rights of contiguous landowners, it shall issue a certificate of eligibility to the taxpayer, which shall include a calculation of the maximum amount of tax credit for which the taxpayer would be eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection.

G. To receive a credit pursuant to this section, a person shall apply to the taxation and revenue department on forms and in the manner prescribed by the department. The application shall include a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to Subsection F of this section. If all of the requirements of this section have been complied with, the taxation and revenue department shall issue to the applicant a document granting the tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed for the qualified donation made pursuant to this section.

H. The tax credit represented by a document issued pursuant to Subsection G of this section for a conveyance made on or after January 1, 2008, or an increment of that tax credit, may be sold, exchanged or otherwise transferred, and may be carried forward for a period of twenty taxable years following the taxable year in which the credit originated until fully expended. A tax credit or increment of a tax credit may only be transferred once. The credit may be transferred to any taxpayer. A taxpayer to whom a credit has been transferred may use the credit for the taxable year in which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but in no event may the transferred credit be used more than twenty years after it was originally issued.

I. A tax credit issued pursuant to this section shall be transferred through a qualified intermediary. The qualified intermediary shall, by means of a sworn notarized statement, notify the taxation and revenue department of the transfer and of the date of the transfer within ten days of the transfer. Credits shall only be transferred in increments of ten thousand dollars ($10,000) or more. The qualified intermediary shall keep an account of the credits and have the authority to issue sub-numbers registered with the taxation and revenue department and traceable to the original credit.

J. If a charitable deduction is claimed on the taxpayer's federal income tax for any contribution for which the credit provided by this section is claimed, the taxpayer's itemized deductions for New Mexico income tax shall be reduced by the amount of the deduction for the contribution in order to determine the New Mexico taxable income of the taxpayer.

K. For the purposes of this section:

(1) "qualified intermediary" does not include a person who has been previously convicted of a felony, who has had a professional license revoked, who is engaged in the practice defined in Section 61-28B-3 NMSA 1978 and who is identified in Section 61-29-2 NMSA 1978, and does not include any entity owned wholly or in part or employing any of the foregoing persons; and

(2) "taxpayer" means a citizen or resident of the United States, a domestic partnership, a limited liability company, a domestic corporation, an estate, including a foreign estate, or a trust.

History: 1978 Comp., § 7-2-18.10, enacted by Laws 2003, ch. 331, § 7; 2007, ch. 335, § 1.

7-2-18.11. Job mentorship tax credit.

A. To encourage New Mexico businesses to hire youth participating in career preparation education programs, a taxpayer who files an individual New Mexico income tax return, who is not a dependent of another individual and who is an owner of a New Mexico business may claim a credit in an amount equal to fifty percent of gross wages paid to qualified students who are employed by the business during the taxable year for which the return is filed. The tax credit provided by this section may be referred to as the "job mentorship tax credit".

B. A taxpayer who is an owner of a New Mexico business may claim the job mentorship tax credit for each taxable year in which the business employs one or more qualified students. The maximum aggregate credit allowable shall not exceed fifty percent of the gross wages paid to not more than ten qualified students employed by the business for up to three hundred twenty hours of employment of each qualified student in each taxable year for a maximum of three taxable years for each qualified student. In no event shall a taxpayer claim a credit in excess of twelve thousand dollars ($12,000) in any taxable year. The taxpayer shall certify that hiring the qualified student does not displace or replace a current employee.

C. The department shall issue job mentorship tax credit certificates upon request to any accredited New Mexico secondary school that has a school-sanctioned career preparation education program. The maximum number of certificates that may be issued in a school year to any one school is equal to the number of qualified students in the school-sanctioned career preparation education program on October 15 of that school year, as certified by the school principal.

D. A job mentorship tax credit certificate may be executed by a school principal with respect to a qualified student, and the executed certificate may be transferred to a New Mexico business that employs that student. By executing the certificate with respect to a student, the school principal certifies that the school has a school-sanctioned career preparation education program and the student is a qualified student.

E. To claim the job mentorship tax credit, the taxpayer must submit with respect to each employee for whom the credit is claimed:

(1) a properly executed job mentorship tax credit certificate;

(2) information required by the secretary with respect to the employee's employment by the business during the taxable year for which the credit is claimed; and

(3) information required by the secretary that the employee was not also employed in the same taxable year by another New Mexico business qualifying for and claiming a job mentorship tax credit for that employee pursuant to this section or the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978].

F. The job mentorship tax credit may only be deducted from the taxpayer's New Mexico income tax liability for the taxable year. Any portion of the maximum credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for three consecutive taxable years; provided the total credits claimed under this section shall not exceed the maximum allowable pursuant to Subsection B of this section.

G. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

H. A taxpayer who otherwise qualifies for and claims a job mentorship tax credit for employment of qualified students by a partnership, limited partnership, limited liability company, S corporation or other business association of which the taxpayer is a member may claim a credit only in proportion to his interest in the partnership, limited partnership, limited liability company, S corporation or association. The total credit claimed by all members of the business shall not exceed the maximum credit allowable pursuant to Subsection B of this section.

I. As used in this section:

(1) "career preparation education program" means a work-based learning or school-to-career program designed for secondary school students to create academic and career goals and objectives and find employment in a job meeting those goals and objectives;

(2) "New Mexico business" means a partnership, limited partnership, limited liability company treated as a partnership for federal income tax purposes, S corporation or sole proprietorship that carries on a trade or business in New Mexico and that employs in New Mexico fewer than three hundred full-time employees at any one time during the taxable year; and

(3) "qualified student" means an individual who is at least fourteen years of age but not more than twenty-one years of age who is attending full time an accredited New Mexico secondary school and who is a participant in a career preparation education program sanctioned by the secondary school.

History: Laws 2003, ch. 400, § 1.

7-2-18.12. Repealed.

History: Laws 2004, ch. 99, § 1; repealed by Laws 2005, ch. 91, § 2.

7-2-18.13. Credit; unreimbursed or uncompensated medical care expenses of individuals sixty-five years of age or older.

A. A taxpayer who files an individual New Mexico income tax return, who is sixty-five years of age or older and who is not a dependent of another taxpayer may claim a credit in an amount equal to two thousand eight hundred dollars ($2,800) for medical care expenses paid by the taxpayer for that taxpayer or for the taxpayer's spouse or dependent if those expenses equal twenty-eight thousand dollars ($28,000) or more within a taxable year and if those expenses are not reimbursed or compensated for by insurance or otherwise.

B. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

C. The credit provided in this section may be deducted from the taxpayer's income tax liability. If the credit exceeds the income tax liability for the taxable year, the excess shall be refunded to the taxpayer.

D. As used in this section:

(1) "dependent" means "dependent" as defined in Section 152 of the Internal Revenue Code;

(2) "health care facility" means a hospital, outpatient facility, diagnostic and treatment center, rehabilitation center, freestanding hospice or other similar facility at which medical care is provided;

(3) "medical care" means the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body;

(4) "medical care expenses" means the amounts paid for:

(a) the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body, if provided by a physician or in a health care facility;

(b) prescribed drugs or insulin;

(c) qualified long-term care services as defined in Section 7702B(c) of the Internal Revenue Code;

(d) insurance covering medical care, including amounts paid as premiums under Part B of Title 18 of the Social Security Act or for a qualified long-term care insurance contract defined in Section 7702B(b) of the Internal Revenue Code, if the insurance or other amount is paid from income included in the taxpayer's adjusted gross income for the taxable year;

(e) specialized treatment or the use of special therapeutic devices if the treatment or device is prescribed by a physician and the patient can show that the expense was incurred primarily for the prevention or alleviation of a physical or mental defect or illness; and

(f) care in an institution other than a hospital, such as a sanitarium or rest home, if the principal reason for the presence of the person in the institution is to receive the medical care available; provided that if the meals and lodging are furnished as a necessary part of such care, the cost of meals and lodging are "medical care expenses";

(5) "physician" means a medical doctor, osteopathic physician, dentist, podiatrist, chiropractic physician or psychologist licensed or certified to practice in New Mexico; and

(6) "prescribed drug" means a drug or biological that requires a prescription of a physician for its use by an individual.

History: Laws 2005, ch. 267, § 1.

7-2-18.14. Solar market development tax credit; residential and small business solar thermal and photovoltaic market development tax credit.

A. Except as provided in Subsection C of this section, a taxpayer who files an individual New Mexico income tax return for a taxable year beginning on or after January 1, 2006 and who purchases and installs after January 1, 2006 but before December 31, 2016 a solar thermal system or a photovoltaic system in a residence, business or agricultural enterprise in New Mexico owned by that taxpayer may apply for, and the department may allow, a solar market development tax credit of up to ten percent of the purchase and installation costs of the system.

B. The total solar market development tax credit allowed for either a photovoltaic system or a solar thermal system shall not exceed nine thousand dollars ($9,000). The department shall allow solar market development tax credits only for solar thermal systems and photovoltaic systems certified by the energy, minerals and natural resources department.

C. Solar market development tax credits may not be claimed or allowed for:

(1) a heating system for a swimming pool or a hot tub; or

(2) a commercial or industrial photovoltaic system other than an agricultural photovoltaic system on a farm or ranch that is not connected to an electric utility transmission or distribution system.

D. The department may allow a maximum annual aggregate of:

(1) two million dollars ($2,000,000) in solar market development tax credits for solar thermal systems; and

(2) three million dollars ($3,000,000) in solar market development tax credits for photovoltaic systems.

E. A portion of the solar market development tax credit that remains unused in a taxable year may be carried forward for a maximum of ten consecutive taxable years following the taxable year in which the credit originates until fully expended.

F. Prior to July 1, 2006, the energy, minerals and natural resources department shall adopt rules establishing procedures to provide certification of solar thermal systems and photovoltaic systems for purposes of obtaining a solar market development tax credit. The rules shall address technical specifications and requirements relating to safety, code and standards compliance, solar collector orientation and sun exposure, minimum system sizes, system applications and lists of eligible components. The energy, minerals and natural resources department may modify the specifications and requirements as necessary to maintain a high level of system quality and performance.

G. As used in this section:

(1) "photovoltaic system" means an energy system that collects or absorbs sunlight for conversion into electricity; and

(2) "solar thermal system" means an energy system that collects or absorbs solar energy for conversion into heat for the purposes of space heating, space cooling or water heating.

History: Laws 2006, ch. 93, § 1; 2009, ch. 280, § 1.

7-2-18.15. Working families tax credit.

A. A taxpayer who is a resident and who files an individual New Mexico income tax return may claim a credit in an amount equal to twenty percent for taxable years beginning on or after January 1, 2021, and twenty-five percent for taxable years beginning on or after January 1, 2023, of the federal earned income tax credit for which that taxpayer is eligible for the same taxable year or would have been eligible but for the identification number requirement pursuant to 26 U.S.C. 32(m), as that section may be amended or renumbered.

B. A taxpayer who is a resident and who files an individual New Mexico tax return may claim a credit in an amount equal to twenty percent for taxable years beginning on or after January 1, 2021, and twenty-five percent for taxable years beginning on or after January 1, 2023, of the federal earned income tax credit for which that taxpayer would have been eligible for the same taxable year but for the age requirement pursuant to 26 U.S.C. 32(c)(1)(A)(ii)(II), as that section may be amended or renumbered; provided that the taxpayer is at least eighteen years of age but has not reached the age of twenty-five.

C. The credit provided in this section may be referred to as the "working families tax credit".

D. The working families tax credit may be deducted from the income tax liability of an individual who claims the credit and qualifies for the credit pursuant to this section. If the credit exceeds the individual's income tax liability for the taxable year, the excess shall be refunded to the individual.

E. As used in this section, "federal earned income tax credit" means the tax credit allowed pursuant to 26 U.S.C. 32, as that section may be amended or renumbered.

History: Laws 2007, ch. 45, § 9; 2008 (2nd S.S.), ch. 4, § 1; 2019, ch. 270, § 13; 2021, ch. 116, § 2.

7-2-18.16. Credit; special needs adopted child tax credit; created; qualifications; duration of credit.

A. A taxpayer who files an individual New Mexico income tax return, who is not a dependent of another individual and who adopts a special needs child on or after January 1, 2007 or has adopted a special needs child prior to January 1, 2007, may claim a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act. The credit authorized pursuant to this section may be referred to as the "special needs adopted child tax credit".

B. A taxpayer may claim and the department may allow a special needs adopted child tax credit in the amount of one thousand five hundred dollars ($1,500) to be claimed against the taxpayer's tax liability for the taxable year imposed pursuant to the Income Tax Act.

C. A taxpayer may claim a special needs adopted child tax credit for each year that the child may be claimed as a dependent for federal taxation purposes by the taxpayer.

D. If the amount of the special needs adopted child tax credit due to the taxpayer exceeds the taxpayer's individual income tax liability, the excess shall be refunded.

E. Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the special needs adopted child tax credit provided in this section that would have been allowed on a joint return.

F. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the department in a manner required by the department.

G. The department shall compile an annual report on the credit provided by this section that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the tax credit.

H. As used in this section, "special needs adopted child" means an individual who may be over eighteen years of age and who is certified by the children, youth and families department or a licensed child placement agency as meeting the definition of a "difficult to place child" pursuant to the Adoption Act [Chapter 32A, Article 5 NMSA 1978]; provided, however, if the classification as a "difficult to place child" is based on a physical or mental impairment or an emotional disturbance the physical or mental impairment or emotional disturbance shall be at least moderately disabling.

History: Laws 2007, ch. 45, § 10; 2024, ch. 67, § 23.

7-2-18.17. Angel investment credit.

A. A taxpayer who files a New Mexico income tax return, is not a dependent of another taxpayer, is an accredited investor and makes a qualified investment may apply for, and the department may allow, a claim for a credit in an amount not to exceed twenty-five percent of the qualified investment; provided that a credit for each qualified investment shall not exceed sixty-two thousand five hundred dollars ($62,500). The tax credit provided in this section shall be known as the "angel investment credit".

B. A taxpayer may claim the angel investment credit:

(1) for not more than one qualified investment per investment round;

(2) for qualified investments in no more than five qualified businesses per taxable year; and

(3) for a qualified investment made on or before December 31, 2030.

C. A taxpayer may apply for an angel investment credit by submitting a completed application to the department on forms and in a manner required by the department no later than one year following the end of the calendar year in which the qualified investment is made. A taxpayer shall not apply for more than one credit for the same qualified investment in the same investment round.

D. Except as provided in Subsection J of this section, a taxpayer shall claim the angel investment credit no later than one year following the date the completed application for the credit is approved by the department.

E. Applications and all subsequent materials submitted to the department related to the application shall also be submitted to the economic development department.

F. The department shall allow a maximum annual aggregate of two million dollars ($2,000,000) in angel investment credits per calendar year. Completed applications shall be considered in the order received. Applications for credits that would have been allowed but for the limit imposed by this subsection shall be allowed in subsequent calendar years.

G. The department shall report annually to the revenue stabilization and tax policy committee and the legislative finance committee on the utilization and effectiveness of the angel investment credit. The report shall include, at a minimum: the number of accredited investors determined to be eligible for the credit in the previous year; the names of those investors; the amount of credit for which each investor was determined to be eligible; and the number and names of the businesses determined to be qualified businesses for purposes of an investment by an accredited investor.

H. A taxpayer who otherwise qualifies for and claims a credit pursuant to this section for a qualified investment made by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to the taxpayer's interest in the partnership or business association.

I. Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim one-half of the credit that would have been allowed on a joint return.

J. The angel investment credit may only be deducted from the taxpayer's income tax liability. Any portion of the tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for five consecutive years.

K. As used in this section:

(1) "accredited investor" means a person who is an accredited investor within the meaning of Rule 501 issued by the federal securities and exchange commission pursuant to the federal Securities Act of 1933, as amended;

(2) "business" means a corporation, general partnership, limited partnership, limited liability company or other similar entity, but excludes an entity that is a

government or a nonprofit organization designated as such by the federal government or any state;

(3) "equity" means common or preferred stock of a corporation, a partnership interest in a limited partnership or a membership interest in a limited liability company, including debt subject to an option in favor of the creditor to convert the debt into common or preferred stock, a partnership interest or a membership interest;

(4) "investment round" means an offer and sale of securities and all other offers and sales of securities that would be integrated with such offer and sale of securities under Regulation D issued by the federal securities and exchange commission pursuant to the federal Securities Act of 1933, as amended;

(5) "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include:

(a) construction;

(b) farming;

(c) processing natural resources, including hydrocarbons; or

(d) preparing meals for immediate consumption, on- or off-premises;

(6) "qualified business" means a business that:

(a) maintains its principal place of business and employs a majority of its full-time employees, if any, in New Mexico and a majority of its tangible assets, if any, are located in New Mexico;

(b) engages in qualified research or manufacturing activities in New Mexico;

(c) is not primarily engaged in or is not primarily organized as any of the following types of businesses: credit or finance services, including banks, savings and loan associations, credit unions, small loan companies or title loan companies; financial brokering or investment; professional services, including accounting, legal services, engineering and any other service the practice of which requires a license; insurance; real estate; construction or construction contracting; consulting or brokering; mining; wholesale or retail trade; providing utility service, including water, sewerage, electricity, natural gas, propane or butane; publishing, including publishing newspapers or other periodicals; broadcasting; or providing internet operating services;

(d) has not issued securities registered pursuant to Section 6 of the federal Securities Act of 1933, as amended; has not issued securities traded on a national securities exchange; is not subject to reporting requirements of the federal Securities

Exchange Act of 1934, as amended; and is not registered pursuant to the federal Investment Company Act of 1940, as amended, at the time of the investment;

(e) has one hundred or fewer employees calculated on a full-time-equivalent basis in the taxable year in which the investment was made; and

(f) has not had gross revenues in excess of five million dollars ($5,000,000) in any fiscal year ending on or before the date of the investment;

(7) "qualified investment" means a cash investment in a qualified business for equity, but does not include an investment by a taxpayer if the taxpayer, a member of the taxpayer's immediate family or an entity affiliated with the taxpayer receives compensation from the qualified business in exchange for services provided to the qualified business within one year of investment in the qualified business; and

(8) "qualified research" means "qualified research" as defined by Section 41 of the Internal Revenue Code.

History: Laws 2007, ch. 172, § 1; 2012, ch. 38, § 1; 2015 (1st S.S.), ch. 2, § 2; 2020, ch. 28, § 1; 2024, ch. 67, § 6.

7-2-18.18. Renewable energy production tax credit.

A. The tax credit provided in this section may be referred to as the "renewable energy production tax credit". The tax credit provided in this section may not be claimed with respect to the same electricity production for which a tax credit pursuant to Section 7-2A-19 NMSA 1978 has been claimed.

B. A taxpayer who files an individual New Mexico income tax return and who is not a dependent of another taxpayer is eligible for the renewable energy production tax credit if the taxpayer:

(1) holds title to a qualified energy generator that first produced electricity on or before January 1, 2018; or

(2) leases property upon which a qualified energy generator operates from a county or municipality under authority of an industrial revenue bond and if the qualified energy generator first produced electricity on or before January 1, 2018.

C. The amount of the tax credit shall equal one cent ($.01) per kilowatt-hour of the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator in the taxable year using a wind- or biomass-derived qualified energy resource; provided that the total amount of tax credits claimed by all taxpayers for a single qualified energy generator using a wind- or biomass-derived qualified energy resource shall not exceed one cent ($.01) per kilowatt-hour of the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator in a taxable year.

D. The amount of the tax credit for electricity produced by a qualified energy generator in the taxable year using a solar-light-derived or solar-heat-derived qualified energy resource shall be at the amounts specified in Paragraphs (1) through (11) of this subsection; provided that the total amount of tax credits claimed by all taxpayers in a taxable year for a single qualified energy generator using a solar-light-derived or solar-heat-derived qualified energy resource shall be limited to the first two hundred thousand megawatt-hours of electricity produced by the qualified energy generator in the taxable year:

(1) one and one-half cents ($.015) per kilowatt-hour in the first taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(2) two cents ($.02) per kilowatt-hour in the second taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(3) two and one-half cents ($.025) per kilowatt-hour in the third taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(4) three cents ($.03) per kilowatt-hour in the fourth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(5) three and one-half cents ($.035) per kilowatt-hour in the fifth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(6) four cents ($.04) per kilowatt-hour in the sixth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(7) three and one-half cents ($.035) per kilowatt-hour in the seventh taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(8) three cents ($.03) per kilowatt-hour in the eighth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(9) two and one-half cents ($.025) per kilowatt-hour in the ninth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(10) two cents ($.02) per kilowatt-hour in the tenth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource; and

(11) one and one-half cents ($.015) per kilowatt-hour in the eleventh taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource.

E. A taxpayer eligible for a renewable energy production tax credit pursuant to Subsection B of this section shall be eligible for the renewable energy production tax credit for one hundred twenty consecutive months, beginning on the date the qualified energy generator begins producing electricity.

F. As used in this section:

(1) "biomass" means organic material that is available on a renewable or recurring basis, including:

(a) forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low-commercial-value materials or undesirable species, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;

(b) agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws and stover, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey and lactose;

(c) animal waste, including manure and slaughterhouse and other processing waste;

(d) solid woody waste materials, including landscape or right-of-way tree trimmings, rangeland maintenance residues, waste pallets, crates and manufacturing, construction and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;

(e) crops and trees planted for the purpose of being used to produce energy;

(f) landfill gas, wastewater treatment gas and biosolids, including organic waste byproducts generated during the wastewater treatment process; and

(g) segregated municipal solid waste, excluding tires and medical and hazardous waste;

(2) "qualified energy generator" means an electric generating facility with at least one megawatt generating capacity located in New Mexico that produces electricity using a qualified energy resource and the electricity produced is sold to an unrelated person; and

(3) "qualified energy resource" means a resource that generates electrical energy by means of a fluidized bed technology or similar low-emissions technology or a zero-emissions generation technology that has substantial long-term production potential and that uses only the following energy sources:

(a) solar light;

(b) solar heat;

(c) wind; or

(d) biomass.

G. A person that holds title to a facility generating electricity from a qualified energy resource or a person that leases such a facility from a county or municipality pursuant to an industrial revenue bond may request certification of eligibility for the renewable energy production tax credit from the energy, minerals and natural resources department, which shall determine if the facility is a qualified energy generator. The energy, minerals and natural resources department may certify the eligibility of an energy generator only if the total amount of electricity that may be produced annually by all qualified energy generators that are certified pursuant to this section and pursuant to Section 7-2A-19 NMSA 1978 will not exceed a total of two million megawatt-hours plus an additional five hundred thousand megawatt-hours produced by qualified energy generators using a solar-light-derived or solar-heat-derived qualified energy resource. Applications shall be considered in the order received. The energy, minerals and natural resources department may estimate the annual power-generating potential of a generating facility for the purposes of this section. The energy, minerals and natural resources department shall issue a certificate to the applicant stating whether the facility is an eligible qualified energy generator and the estimated annual production potential of the generating facility, which shall be the limit of that facility's energy production eligible for the tax credit for the taxable year. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection and shall report annually to the appropriate interim legislative committee information that will allow the legislative committee to analyze the effectiveness of the renewable energy production tax credit, including the identity of qualified energy generators, the energy production means used, the amount of energy produced by those qualified energy generators and whether any applications could not be approved due to program limits.

H. A taxpayer may be allocated all or a portion of the right to claim a renewable energy production tax credit without regard to proportional ownership interest if:

(1) the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership;

(2) the business entity:

(a) would qualify for the renewable energy production tax credit pursuant to Paragraph (1) or (2) of Subsection B of this section;

(b) owns an interest in a business entity that is also taxed for federal income tax purposes as a partnership and that would qualify for the renewable energy production tax credit pursuant to Paragraph (1) or (2) of Subsection B of this section; or

(c) owns, through one or more intermediate business entities that are each taxed for federal income tax purposes as a partnership, an interest in the business entity described in Subparagraph (b) of this paragraph;

(3) the taxpayer and all other taxpayers allocated a right to claim the renewable energy production tax credit pursuant to this subsection own collectively at least a five percent interest in a qualified energy generator;

(4) the business entity provides notice of the allocation and the taxpayer's interest to the energy, minerals and natural resources department on forms prescribed by that department for the taxable year to be claimed; and

(5) the energy, minerals and natural resources department certifies the allocation for the taxable year to be claimed in writing to the taxpayer.

I. Upon receipt of notice of an allocation of the right to claim all or a portion of the renewable energy production tax credit, the energy, minerals and natural resources department shall promptly certify the allocation in writing to the recipient of the allocation.

J. Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

K. A taxpayer may claim the renewable energy production tax credit by submitting to the taxation and revenue department the certificate issued by the energy, minerals and natural resources department, pursuant to Subsection G or H of this section, documentation showing the taxpayer's interest in the facility, documentation of the amount of electricity produced by the facility in the taxable year and any other information the taxation and revenue department may require to determine the amount of the tax credit due the taxpayer.

L. If the requirements of this section have been complied with, the department shall approve payment of the renewable energy production tax credit. The credit may be deducted from a taxpayer's New Mexico income tax liability for the taxable year for which the credit is claimed. If the amount of tax credit exceeds the taxpayer's income tax liability for the taxable year:

(1) the excess may be carried forward for a period of five taxable years; or

(2) if the tax credit was issued with respect to a qualified energy generator that first produced electricity using a qualified energy resource on or after October 1, 2007, the excess shall be refunded to the taxpayer.

M. Once a taxpayer has been granted a renewable energy production tax credit for a given facility, that taxpayer shall be allowed to retain the facility's original date of application for tax credits for that facility until either the facility goes out of production for more than six consecutive months in a year or until the facility's ten-year eligibility has expired.

History: Laws 2007, ch. 204, § 2; 2021, ch. 65, § 6.

7-2-18.19. Sustainable building tax credit.

A. The tax credit provided by this section may be referred to as the "sustainable building tax credit". The sustainable building tax credit shall be available for the construction in New Mexico of a sustainable building, the renovation of an existing building in New Mexico into a sustainable building or the permanent installation of manufactured housing, regardless of where the housing is manufactured, that is a sustainable building. The tax credit provided in this section may not be claimed with respect to the same sustainable building for which the sustainable building tax credit provided in the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] has been claimed.

B. The purpose of the sustainable building tax credit is to encourage the construction of sustainable buildings and the renovation of existing buildings into sustainable buildings.

C. A taxpayer who files an income tax return is eligible to be granted a sustainable building tax credit by the department if the taxpayer submits a document issued pursuant to Subsection J of this section with the taxpayer's income tax return.

D. For taxable years ending on or before December 31, 2016, the sustainable building tax credit may be claimed with respect to a sustainable commercial building. The credit shall be calculated based on the certification level the building has achieved in the LEED green building rating system and the amount of qualified occupied square footage in the building, as indicated on the following chart:

LEED Rating Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-NC Silver	First 10,000 Next 40,000 Over 50,000 up to 500,000	$3.50 $1.75 $.70
LEED-NC Gold	First 10,000 Next 40,000 Over 50,000 up to 500,000	$4.75 $2.00 $1.00
LEED-NC Platinum	First 10,000 Next 40,000 Over 50,000 up to 500,000	$6.25 $3.25 $2.00
LEED-EB or CS Silver	First 10,000 Next 40,000 Over 50,000 up to 500,000	$2.50 $1.25 $.50
LEED-EB or CS Gold	First 10,000 Next 40,000 Over 50,000 up to 500,000	$3.35 $1.40 $.70
LEED-EB or CS Platinum	First 10,000 Next 40,000 Over 50,000 up to 500,000	$4.40 $2.30 $1.40
LEED-CI Silver	First 10,000 Next 40,000 Over 50,000 up to 500,000	$1.40 $.70 $.30
LEED-CI Gold	First 10,000 Next 40,000 Over 50,000 up to 500,000	$1.90 $.80 $.40

LEED-CI Platinum	First 10,000 Next 40,000 Over 50,000 up to 500,000	$2.50 $1.30 $.80

E. For taxable years ending on or before December 31, 2016, the sustainable building tax credit may be claimed with respect to a sustainable residential building. The credit shall be calculated based on the amount of qualified occupied square footage, as indicated on the following chart:

	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-H Silver or Build	First 2,000	$5.00
Green NM Silver	Next 1,000	$2.50
LEED-H Gold or Build	First 2,000	$6.85
Green NM Gold	Next 1,000	$3.40
LEED-H Platinum or Build	First 2,000	$9.00
Green NM Emerald	Next 1,000	$4.45
EPA ENERGY STAR Manufactured Housing	Up to 3,000	$3.00.

F. A person that is a building owner may apply for 1a certificate of eligibility for the sustainable building tax credit from the energy, minerals and natural resources department after the construction, installation or renovation of the sustainable building is complete. Applications shall be considered in the order received. If the energy, minerals and natural resources department determines that the building owner meets the requirements of this subsection and that the building with respect to which the tax credit application is made meets the requirements of this section as a sustainable residential building or a sustainable commercial building, the energy, minerals and natural resources department may issue a certificate of eligibility to the building owner, subject to the limitation in Subsection G of this section. The certificate shall include the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building and a calculation of the maximum amount of sustainable building tax credit for which the building owner would be eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection. If the certification level for the sustainable residential building is awarded on or after January 1, 2007, the energy, minerals and natural resources department may issue a certificate of eligibility to a building owner who is:

(1) the owner of the sustainable residential building at the time the certification level for the building is awarded; or

(2) the subsequent purchaser of a sustainable residential building with respect to which no tax credit has been previously claimed.

G. The energy, minerals and natural resources department may issue a certificate of eligibility only if the total amount of sustainable building tax credits represented by certificates of eligibility issued by the energy, minerals and natural resources department pursuant to this section and pursuant to the Corporate Income and Franchise Tax Act shall not exceed in any calendar year an aggregate amount of one million dollars ($1,000,000) with respect to sustainable commercial buildings and an aggregate amount of four million dollars ($4,000,000) with respect to sustainable residential buildings; provided that no more than one million two hundred fifty thousand dollars ($1,250,000) of the aggregate amount with respect to sustainable residential buildings shall be for manufactured housing. If for any taxable year the energy, minerals and natural resources department determines that the applications for sustainable building tax credits with respect to sustainable residential buildings for that taxable year exceed the aggregate limit set in this section, the energy, minerals and natural resources department may issue certificates of eligibility under the aggregate annual limit for sustainable commercial buildings to owners of sustainable residential buildings that meet the requirements of the energy, minerals and natural resources department and of this section; provided that applications for sustainable building credits for other sustainable commercial buildings total less than the full amount allocated for tax credits for sustainable commercial buildings.

H. Installation of a solar thermal system or a photovoltaic system eligible for the solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 may not be used as a component of qualification for the rating system certification level used in determining eligibility for the sustainable building tax credit, unless a solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 has not been claimed with respect to that system and the building owner and the taxpayer claiming the sustainable building tax credit certify that such a tax credit will not be claimed with respect to that system.

I. To be eligible for the sustainable building tax credit, the building owner shall provide to the taxation and revenue department a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to the requirements of Subsection F of this section and any other information the taxation and revenue department may require to determine the amount of the tax credit for which the building owner is eligible.

J. If the requirements of this section have been complied with, the department shall issue to the building owner a document granting a sustainable building tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the building owner with that taxpayer's income tax return, if applicable, or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

K. If the total approved amount of all sustainable building tax credits for a taxpayer in a taxable year represented by the documents issued pursuant to Subsection J of this section is:

(1) less than one hundred thousand dollars ($100,000), a maximum of twenty-five thousand dollars ($25,000) shall be applied against the taxpayer's income tax liability for the taxable year for which the credit is approved and the next three subsequent taxable years as needed depending on the amount of credit; or

(2) one hundred thousand dollars ($100,000) or more, increments of twenty-five percent of the total credit amount in each of the four taxable years, including the taxable year for which the credit is approved and the three subsequent taxable years, shall be applied against the taxpayer's income tax liability.

L. If the sum of all sustainable building tax credits that can be applied to a taxable year for a taxpayer, calculated according to Paragraph (1) or (2) of Subsection K of this section, exceeds the taxpayer's income tax liability for that taxable year, the excess may be carried forward for a period of up to seven years.

M. A taxpayer who otherwise qualifies and claims a sustainable building tax credit with respect to a sustainable building owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to that taxpayer's interest in the partnership or association. The total credit claimed in the aggregate by all members of the partnership or association with respect to the sustainable building shall not exceed the amount of the credit that could have been claimed by a sole owner of the property.

N. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the sustainable building tax credit that would have been allowed on a joint return.

O. The department shall compile an annual report on the sustainable building tax credit created pursuant to this section that shall include the number of taxpayers approved by the department to receive the tax credit, the aggregate amount of tax credits approved and any other information necessary to evaluate the effectiveness of the tax credit. Beginning in 2015 and every five years thereafter, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the tax credit and whether the tax credit is performing the purpose for which it was created.

P. For the purposes of this section:

(1) "build green New Mexico rating system" means the certification standards adopted by the homebuilders association of central New Mexico;

(2) "LEED-CI" means the LEED rating system for commercial interiors;

(3) "LEED-CS" means the LEED rating system for the core and shell of buildings;

(4) "LEED-EB" means the LEED rating system for existing buildings;

(5) "LEED gold" means the rating in compliance with, or exceeding, the second-highest rating awarded by the LEED certification process;

(6) "LEED" means the most current leadership in energy and environmental design green building rating system guidelines developed and adopted by the United States green building council;

(7) "LEED-H" means the LEED rating system for homes;

(8) "LEED-NC" means the LEED rating system for new buildings and major renovations;

(9) "LEED platinum" means the rating in compliance with, or exceeding, the highest rating awarded by the LEED certification process;

(10) "LEED silver" means the rating in compliance with, or exceeding, the third-highest rating awarded by the LEED certification process;

(11) "manufactured housing" means a multisectioned home that is:

(a) a manufactured home or modular home;

(b) a single-family dwelling with a heated area of at least thirty-six feet by twenty-four feet and a total area of at least eight hundred sixty-four square feet;

(c) constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or New Mexico construction codes up to the date of the unit's construction; and

(d) installed consistent with the Manufactured Housing Act [Chapter 60, Article 14 NMSA 1978] and rules adopted pursuant to that act relating to permanent foundations;

(12) "qualified occupied square footage" means the occupied spaces of the building as determined by:

(a) the United States green building council for those buildings obtaining LEED certification;

(b) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; and

(c) the United States environmental protection agency for ENERGY STAR-certified manufactured homes;

(13) "person" does not include state, local government, public school district or tribal agencies;

(14) "sustainable building" means either a sustainable commercial building or a sustainable residential building;

(15) "sustainable commercial building" means a multifamily dwelling unit, as registered and certified under the LEED-H or build green New Mexico rating system, that is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher and has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network or a building that has been registered and certified under the LEED-NC, LEED-EB, LEED-CS or LEED-CI rating system and that:

(a) is certified by the United States green building council at LEED silver or higher;

(b) achieves any prerequisite for and at least one point related to commissioning under LEED "energy and atmosphere", if included in the applicable rating system; and

(c) has reduced energy consumption, as follows: 1) through 2011, a fifty percent energy reduction will be required based on the national average for that building type as published by the United States department of energy; and beginning January 1, 2012, a sixty percent energy reduction will be required based on the national average for that building type as published by the United States department of energy; and 2) is substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development;

(16) "sustainable residential building" means:

(a) a building used as a single-family residence as registered and certified under the build green New Mexico or LEED-H rating system that: 1) is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher; and 2) has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network; or

(b) manufactured housing that is ENERGY STAR-qualified by the United States environmental protection agency; and

(17) "tribal" means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo.

History: Laws 2007, ch. 204, § 3; 2009, ch. 59, § 1; 2013, ch. 92, § 1.

7-2-18.20. Repealed.

History: Laws 2007, ch. 204, § 5; repealed by Laws 2007, ch. 204, § 20.

7-2-18.21. Repealed.

History: Laws 2007, ch. 204, § 7; repealed by Laws 2023, ch. 85, § 28.

7-2-18.22. Rural health care practitioner tax credit.

A. A taxpayer who files an individual New Mexico tax return, who is not a dependent of another individual, who is an eligible health care practitioner and who has provided health care services in New Mexico in a rural health care underserved area in a taxable year may claim a credit against the tax liability imposed by the Income Tax Act. The credit provided in this section may be referred to as the "rural health care practitioner tax credit".

B. The rural health care practitioner tax credit may be claimed and allowed in an amount that shall not exceed:

(1) five thousand dollars ($5,000) for all physicians, osteopathic physicians, dentists, psychologists, podiatric physicians and optometrists who qualify pursuant to the provisions of this section and have provided health care during a taxable year for at least one thousand five hundred eighty-four hours at a practice site located in an approved rural health care underserved area. Eligible health care practitioners listed in this paragraph who provided health care services for at least seven hundred ninety-two hours but less than one thousand five hundred eighty-four hours at a practice site located in an approved rural health care underserved area during a taxable year are eligible for one-half of the tax credit amount; and

(2) three thousand dollars ($3,000) for all pharmacists, dental hygienists, physician assistants, certified registered nurse anesthetists, certified nurse practitioners, clinical nurse specialists, registered nurses, midwives, licensed clinical social workers, licensed independent social workers, professional mental health counselors, professional clinical mental health counselors, marriage and family therapists, professional art therapists, alcohol and drug abuse counselors and physical therapists who qualify pursuant to the provisions of this section and have provided health care during a taxable year for at least one thousand five hundred eighty-four hours at a

practice site located in an approved rural health care underserved area. Eligible health care practitioners listed in this paragraph who provided health care services for at least seven hundred ninety-two hours but less than one thousand five hundred eighty-four hours at a practice site located in an approved rural health care underserved area during a taxable year are eligible for one-half of the tax credit amount.

C. Before an eligible health care practitioner may claim the rural health care practitioner tax credit, the practitioner shall submit an application to the department of health that describes the practitioner's clinical practice and contains additional information that the department of health may require. The department of health shall determine whether an eligible health care practitioner qualifies for the rural health care practitioner tax credit and shall issue a certificate to each qualifying eligible health care practitioner. The department of health shall provide the taxation and revenue department appropriate information for all eligible health care practitioners to whom certificates are issued in a secure manner on regular intervals agreed upon by both the taxation and revenue department and the department of health.

D. A taxpayer claiming the credit provided by this section shall submit a copy of the certificate issued by the department of health with the taxpayer's New Mexico income tax return for the taxable year. If the amount of the credit claimed exceeds a taxpayer's tax liability for the taxable year in which the credit is being claimed, the excess may be carried forward for three consecutive taxable years.

E. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the department in a manner required by the department.

F. The department shall compile an annual report on the tax credit provided by this section that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the tax credit.

G. As used in this section:

(1) "eligible health care practitioner" means:

(a) a dentist or dental hygienist licensed pursuant to the Dental Health Care Act;

(b) a midwife that is a: 1) certified nurse-midwife licensed by the board of nursing as a registered nurse and licensed by the public health division of the department of health to practice nurse-midwifery as a certified nurse-midwife; or 2) licensed midwife licensed by the public health division of the department of health to practice licensed midwifery;

(c) an optometrist licensed pursuant to the provisions of the Optometry Act [Chapter 61, Article 2 NMSA 1978];

(d) an osteopathic physician licensed pursuant to the provisions of the Medical Practice Act [Chapter 61, Article 6 NMSA 1978];

(e) a physician licensed pursuant to the provisions of the Medical Practice Act or a physician assistant licensed pursuant to the provisions of the Physician Assistant Act [Chapter 61, Article 6C NMSA 1978];

(f) a podiatric physician licensed pursuant to the provisions of the Podiatry Act [Chapter 61, Article 8 NMSA 1978];

(g) a psychologist licensed pursuant to the provisions of the Professional Psychologist Act [Chapter 61, Article 9 NMSA 1978];

(h) a registered nurse licensed pursuant to the provisions of the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978];

(i) a pharmacist licensed pursuant to the provisions of the Pharmacy Act [Chapter 61, Article 11 NMSA 1978];

(j) a licensed clinical social worker or a licensed independent social worker licensed pursuant to the provisions of the Social Work Practice Act [Chapter 61, Article 31 NMSA 1978];

(k) a professional mental health counselor, a professional clinical mental health counselor, a marriage and family therapist, an alcohol and drug abuse counselor or a professional art therapist licensed pursuant to the provisions of the Counseling and Therapy Practice Act [Chapter 61, Article 9A NMSA 1978]; and

(l) a physical therapist licensed pursuant to the provisions of the Physical Therapy Act [61-12D-1 to 61-12D-19 NMSA 1978];

(2) "health care underserved area" means a geographic area or practice location in which it has been determined by the department of health, through the use of indices and other standards set by the department of health, that sufficient health care services are not being provided;

(3) "practice site" means a private practice, public health clinic, hospital, public or private nonprofit primary care clinic or other health care service location in a health care underserved area; and

(4) "rural" means a rural county or an unincorporated area of a partially rural county, as designated by the health resources and services administration of the United States department of health and human services.

History: Laws 2007, ch. 361, § 2; 2024, ch. 67, § 7.

7-2-18.23. Refundable credit; 2007 taxable year.

A. Except as otherwise provided in Subsection B of this section, a taxpayer who for the 2007 taxable year files a New Mexico income tax return, is a full-year or first-year resident of New Mexico and is not a trust, estate or a dependent of another taxpayer is allowed a credit in the amount determined under Subsection C of this section. The credit may be allowed even though the taxpayer has no income taxable under the Income Tax Act for the 2007 taxable year.

B. A claim for the refundable tax credit provided in this section is not allowed for a resident who was an inmate of a public institution for more than six months during the 2007 taxable year.

C. The tax credit allowed in this section shall be in the amount determined from the following tables for:

(1) married taxpayers filing jointly:

Adjusted Gross Income		Credit Amount for Taxpayer and Spouse	Additional Credit Amount for Each Dependent
Over	Not Over		
0	$30,000	$100	$50.00
$30,000	$50,000	$ 80.00	$40.00
$50,000	$70,000	$ 50.00	$25.00
$70,000		$ 0.00	$ 0.00; or

(2) taxpayers filing as single, head of household, married filing separately or as a surviving spouse:

Adjusted Gross Income		Credit Amount for Taxpayer	Additional Credit Amount for Each Dependent
Over	Not Over		
0	$30,000	$50.00	$50.00
$30,000	$50,000	$40.00	$40.00
$50,000	$70,000	$25.00	$25.00
$70,000		$ 0.00	$ 0.00.

D. The tax credit allowed in this section may be credited by the department against the taxpayer's New Mexico income tax liability. If the taxpayer is liable for interest and penalties on the taxpayer's income tax liability for the 2007 taxable year prior to the effective date of this section, the amount of interest and penalties shall not be recomputed due to the credit provided by this section but may be satisfied by applying the credit to the penalty or interest due. Notwithstanding the provisions of Section 7-1-68 NMSA 1978, interest in the amount established by Subsection B of Section 7-1-68 NMSA 1978 shall only be allowed and paid on the amount to be refunded under Subsection E of this section if not refunded or credited within one hundred twenty days after the effective date of this section or the applicable period established in Subsection D of Section 7-1-68 NMSA 1978, whichever is later.

E. If the tax credit exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

F. For purposes of this section, "dependent" means "dependent" as defined by Section 152 of the Internal Revenue Code.

History: Laws 2008 (2nd S.S.), ch. 3, § 1.

7-2-18.24. Geothermal ground-coupled heat pump income tax credit.

A. A taxpayer who files an individual New Mexico income tax return for a taxable year beginning on or after January 1, 2024 and who purchases and installs after the effective date of this section but before December 31, 2034 a geothermal ground-coupled heat pump in a residence, business or agricultural enterprise in New Mexico owned by that taxpayer may apply for, and the department may allow, a tax credit of up to thirty percent of the purchase and installation costs of the system. The credit provided in this section may be referred to as the "geothermal ground-coupled heat pump income tax credit". The total geothermal ground-coupled heat pump income tax credit allowed to a taxpayer shall not exceed nine thousand dollars ($9,000). The department shall allow a geothermal ground-coupled heat pump income tax credit only for geothermal ground-coupled heat pumps that are installed by a nationally accredited ground source heat pump installer certified by the energy, minerals and natural resources department.

B. That portion of a geothermal ground-coupled heat pump income tax credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed shall be refunded to the taxpayer.

C. The energy, minerals and natural resources department shall adopt rules establishing procedures to provide certification of geothermal ground-coupled heat pumps for purposes of obtaining a geothermal ground-coupled heat pump income tax credit. The rules shall address technical specifications and requirements relating to safety, building code and standards compliance, minimum system sizes, system applications and lists of eligible components. The energy, minerals and natural resources department may modify the specifications and requirements as necessary to maintain a high level of system quality and performance.

D. The maximum annual aggregate of credits that may be certified in a calendar year by the energy, minerals and natural resources department is four million dollars ($4,000,000). That department shall not certify a tax credit for which a taxpayer claims a 2021 sustainable building tax credit using a geothermal ground-coupled heat pump as a component of qualification for the rating system certification level used in determining eligibility for that credit. Applications for the credit shall be considered in the order received by the department.

E. A taxpayer who otherwise qualifies and claims a geothermal ground-coupled heat pump income tax credit with respect to property owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to that taxpayer's interest in the partnership or association. The total credit claimed in the aggregate by all members of the partnership or association with respect to the property shall not exceed the amount of the credit that could have been claimed by a sole owner of the property.

F. Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

G. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the department in a manner required by the department.

H. The department shall compile an annual report on the tax credit provided by this section that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the tax credit.

I. As used in this section, "geothermal ground-coupled heat pump" means a heating and refrigerating system that directly or indirectly utilizes available heat below the surface of the earth for distribution of heating and cooling or domestic hot water and that has either a minimum coefficient of performance of three and four-tenths or an efficiency ratio of sixteen or greater.

History: Laws 2009, ch. 271, § 1; 2024, ch. 67, § 25.

7-2-18.25. Repealed.

History: Laws 2009, ch. 279, § 1; repealed by Laws 2023, ch. 85, § 28.

7-2-18.26. Agricultural biomass income tax credit.

A. A taxpayer who owns a dairy or feedlot and who files an individual New Mexico income tax return for a taxable year beginning on or after January 1, 2011 and ending prior to January 1, 2030, may apply for, and the department may allow, a tax credit equal to five dollars ($5.00) per wet ton of agricultural biomass transported from the taxpayer's dairy or feedlot to a facility that uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use. The tax credit created in this section may be referred to as the "agricultural biomass income tax credit".

B. If the requirements of this section have been complied with, the department shall issue to the taxpayer a document granting an agricultural biomass income tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the taxpayer with that taxpayer's income tax return or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

C. Any portion of the agricultural biomass income tax credit that remains unused in a taxable year may be carried forward for a maximum of four consecutive taxable years following the taxable year in which the credit originates until fully expended.

D. A taxpayer who otherwise qualifies and claims an agricultural biomass income tax credit with respect to a dairy or feedlot owned by a partnership or other business association of which the taxpayer is a member may claim the credit only in proportion to that taxpayer's interest in the partnership or business association. The total agricultural biomass income tax credits claimed in the aggregate with respect to the same dairy or feedlot by all members of the partnership or business association shall not exceed the amount of the credit that could have been claimed by a single owner of the dairy or feedlot.

E. Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

F. The energy, minerals and natural resources department shall adopt rules establishing procedures to provide certification of transportation of agricultural biomass to a qualified facility that uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use for purposes of obtaining an agricultural biomass income tax credit. The rules may be modified as determined necessary by the energy, minerals and natural resources department to determine accurate recording of the quantity of agricultural biomass transported and used for the purpose allowable in this section.

G. A taxpayer who claims an agricultural biomass income tax credit shall not also claim an agricultural biomass corporate income tax credit for transportation of the same agricultural biomass on which the claim for that agricultural biomass income tax credit is based.

H. The department shall limit the annual combined total of all agricultural biomass income tax credits and all agricultural biomass corporate income tax credits allowed to a maximum of five million dollars ($5,000,000). Applications for the credit shall be considered in the order received by the department.

I. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the department in a manner required by the department.

J. The department shall compile an annual report on the agricultural biomass income tax credit that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the tax credit.

K. As used in this section:

(1) "agricultural biomass" means wet manure meeting specifications established by the energy, minerals and natural resources department from either a dairy or feedlot commercial operation;

(2) "biocrude" means a nonfossil form of energy that can be transported and refined using existing petroleum refining facilities and that is made from biologically derived feedstocks and other agricultural biomass;

(3) "feedlot" means an operation that fattens livestock for market; and

(4) "dairy" means a facility that raises livestock for milk production.

History: Laws 2010, ch. 84, § 1; 2020, ch. 20, § 1.

7-2-18.27. Repealed.

History: Laws 2011, ch. 89, § 1; repealed by Laws 2023, ch. 85, § 28.

7-2-18.28. Repealed.

History: Laws 2012, ch. 55, § 1; repealed by Laws 2023, ch. 85, § 28.

7-2-18.29. 2015 sustainable building tax credit.

A. The tax credit provided by this section may be referred to as the "2015 sustainable building tax credit". The 2015 sustainable building tax credit shall be available for the construction in New Mexico of a sustainable building, the renovation of an existing building in New Mexico into a sustainable building or the permanent installation of manufactured housing, regardless of where the housing is manufactured, that is a sustainable building; provided that the construction, renovation or installation project is completed prior to April 1, 2023. The tax credit provided in this section may not be claimed with respect to the same sustainable building for which the 2015 sustainable building tax credit provided in the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] or the 2021 sustainable building tax credit pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act has been claimed.

B. The purpose of the 2015 sustainable building tax credit is to encourage the construction of sustainable buildings and the renovation of existing buildings into sustainable buildings.

C. A taxpayer who files an income tax return is eligible to be granted a 2015 sustainable building tax credit by the department if the taxpayer submits a document issued pursuant to Subsection K of this section with the taxpayer's income tax return.

D. For taxable years ending on or before December 31, 2024, the 2015 sustainable building tax credit may be claimed with respect to a sustainable commercial building. The credit shall be calculated based on the certification level the building has achieved in the LEED green building rating system and the amount of qualified occupied square footage in the building, as indicated on the following chart:

LEED Rating Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-NC Silver	First 10,000	$3.50
	Next 40,000	$1.75
	Over 50,000 up to 500,000	$ .70
LEED-NC Gold	First 10,000	$4.75
	Next 40,000	$2.00
	Over 50,000 up to 500,000	$1.00
LEED-NC Platinum	First 10,000	$6.25
	Next 40,000	$3.25
	Over 50,000 up to 500,000	$2.00
LEED-EB or CS Silver	First 10,000	$2.50
	Next 40,000	$1.25
	Over 50,000	

	up to 500,000	$ .50
LEED-EB or CS Gold	First 10,000	$3.35
	Next 40,000	$1.40
	Over 50,000 up to 500,000	$ .70
LEED-EB or CS Platinum	First 10,000	$4.40
	Next 40,000	$2.30
	Over 50,000 up to 500,000	$1.40
LEED-CI Silver	First 10,000	$1.40
	Next 40,000	$ .70
	Over 50,000 up to 500,000	$ .30
LEED-CI Gold	First 10,000	$1.90
	Next 40,000	$ .80
	Over 50,000 up to 500,000	$ .40
LEED-CI Platinum	First 10,000	$2.50
	Next 40,000	$1.30
	Over 50,000 up to 500,000	$ .80.

E. For taxable years ending on or before December 31, 2024, the 2015 sustainable building tax credit may be claimed with respect to a sustainable residential building. The credit shall be calculated based on the amount of qualified occupied square footage, as indicated on the following chart:

Rating System/Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-H Silver or Build Green NM Silver	Up to 2,000	$3.00
LEED-H Gold or Build Green NM Gold	Up to 2,000	$4.50
LEED-H Platinum or Build Green NM Emerald	Up to 2,000	$6.50
Manufactured Housing	Up to 2,000	$3.00.

F. A person that is a building owner may apply for a certificate of eligibility for the 2015 sustainable building tax credit from the energy, minerals and natural resources department after the construction, installation or renovation of the sustainable building is complete. Applications shall be considered in the order received. If the energy, minerals and natural resources department determines that the building owner meets the requirements of this subsection and that the building with respect to which the tax credit application is made meets the requirements of this section as a sustainable residential building or a sustainable commercial building, the energy, minerals and natural resources department may issue a certificate of eligibility to the building owner, subject to the limitations in Subsection G of this section. The certificate shall include the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building and a calculation of the maximum amount of 2015 sustainable building tax credit for which the building owner would be eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection. If the certification level for the sustainable residential building is awarded on or after January 1, 2017 but prior to April 1, 2023, the energy, minerals and natural resources department may issue a certificate of eligibility to a building owner who is:

(1) the owner of the sustainable residential building at the time the certification level for the building is awarded; or

(2) the subsequent purchaser of a sustainable residential building with respect to which no tax credit has been previously claimed.

G. Except as provided in Subsection H of this section, the energy, minerals and natural resources department may issue a certificate of eligibility only if the total amount of 2015 sustainable building tax credits represented by certificates of eligibility issued by the energy, minerals and natural resources department pursuant to this section and pursuant to the Corporate Income and Franchise Tax Act shall not exceed in any calendar year an aggregate amount of:

(1) one million two hundred fifty thousand dollars ($1,250,000) with respect to sustainable commercial buildings;

(2) three million three hundred seventy-five thousand dollars ($3,375,000) with respect to sustainable residential buildings that are not manufactured housing; and

(3) three hundred seventy-five thousand dollars ($375,000) with respect to sustainable residential buildings that are manufactured housing.

H. For any taxable year that the energy, minerals and natural resources department determines that applications for sustainable building tax credits for any type of sustainable building pursuant to Paragraph (1), (2) or (3) of Subsection G of this section are less than the aggregate limit for that type of sustainable building for that taxable year, the energy, minerals and natural resources department shall allow the difference between the aggregate limit and the applications to be added to the aggregate limit of another type of sustainable building for which applications exceeded the aggregate limit for that taxable year. Any excess not used in a taxable year shall not be carried forward to subsequent taxable years.

I. Installation of a solar thermal system or a photovoltaic system eligible for the solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 may not be used as a component of qualification for the rating system certification level used in determining eligibility for the 2015 sustainable building tax credit, unless a solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 has not been claimed with respect to that system and the building owner and the taxpayer claiming the 2015 sustainable building tax credit certify that such a tax credit will not be claimed with respect to that system.

J. To be eligible for the 2015 sustainable building tax credit, the building owner shall provide to the taxation and revenue department a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to the requirements of Subsection F of this section and any other information the taxation and revenue department may require to determine the amount of the tax credit for which the building owner is eligible.

K. If the requirements of this section have been complied with, the department shall issue to the building owner a document granting a 2015 sustainable building tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the building owner with that taxpayer's income tax return, if applicable, or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

L. If the approved amount of a 2015 sustainable building tax credit for a taxpayer in a taxable year represented by a document issued pursuant to Subsection K of this section is:

(1) less than one hundred thousand dollars ($100,000), a maximum of twenty-five thousand dollars ($25,000) shall be applied against the taxpayer's income tax liability for the taxable year for which the credit is approved and the next three subsequent taxable years as needed depending on the amount of credit; or

(2) one hundred thousand dollars ($100,000) or more, increments of twenty-five percent of the total credit amount in each of the four taxable years, including the taxable year for which the credit is approved and the three subsequent taxable years, shall be applied against the taxpayer's income tax liability.

M. If the sum of all 2015 sustainable building tax credits that can be applied to a taxable year for a taxpayer, calculated according to Paragraph (1) or (2) of Subsection L of this section, exceeds the taxpayer's income tax liability for that taxable year, the excess may be carried forward for a period of up to seven years.

N. A taxpayer who otherwise qualifies and claims a 2015 sustainable building tax credit with respect to a sustainable building owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to that taxpayer's interest in the partnership or association. The total credit claimed in the aggregate by all members of the partnership or association with respect to the sustainable building shall not exceed the amount of the credit that could have been claimed by a sole owner of the property.

O. Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the 2015 sustainable building tax credit that would have been allowed on a joint return.

P. The department shall compile an annual report on the 2015 sustainable building tax credit created pursuant to this section that shall include the number of taxpayers approved by the department to receive the tax credit, the aggregate amount of tax credits approved and any other information necessary to evaluate the effectiveness of the tax credit. Beginning in 2019 and every three years thereafter that the credit is in effect, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the tax credit and whether the tax credit is performing the purpose for which it was created.

Q. For the purposes of this section:

(1) "build green New Mexico rating system" means the certification standards adopted by build green New Mexico in November 2014, which include water conservation standards;

(2) "LEED-CI" means the LEED rating system for commercial interiors;

(3) "LEED-CS" means the LEED rating system for the core and shell of buildings;

(4) "LEED-EB" means the LEED rating system for existing buildings;

(5) "LEED gold" means the rating in compliance with, or exceeding, the second-highest rating awarded by the LEED certification process;

(6) "LEED" means the most current leadership in energy and environmental design green building rating system guidelines developed and adopted by the United States green building council;

(7) "LEED-H" means the LEED rating system for homes;

(8) "LEED-NC" means the LEED rating system for new buildings and major renovations;

(9) "LEED platinum" means the rating in compliance with, or exceeding, the highest rating awarded by the LEED certification process;

(10) "LEED silver" means the rating in compliance with, or exceeding, the third-highest rating awarded by the LEED certification process;

(11) "manufactured housing" means a multisectioned home that is:

(a) a manufactured home or modular home;

(b) a single-family dwelling with a heated area of at least thirty-six feet by twenty-four feet and a total area of at least eight hundred sixty-four square feet;

(c) constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or New Mexico construction codes up to the date of the unit's construction; and

(d) installed consistent with the Manufactured Housing Act [Chapter 60, Article 14 NMSA 1978] and rules adopted pursuant to that act relating to permanent foundations;

(12) "qualified occupied square footage" means the occupied spaces of the building as determined by:

(a) the United States green building council for those buildings obtaining LEED certification;

(b) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; and

(c) the United States environmental protection agency for ENERGY STAR-certified manufactured homes;

(13) "person" does not include state, local government, public school district or tribal agencies;

(14) "sustainable building" means either a sustainable commercial building or a sustainable residential building;

(15) "sustainable commercial building" means a multifamily dwelling unit, as registered and certified under the LEED-H or build green New Mexico rating system, that is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher and has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network or a building that has been registered and certified under the LEED-NC, LEED-EB, LEED-CS or LEED-CI rating system and that:

(a) is certified by the United States green building council at LEED silver or higher;

(b) achieves any prerequisite for and at least one point related to commissioning under LEED "energy and atmosphere", if included in the applicable rating system; and

(c) has reduced energy consumption beginning January 1, 2012, by sixty percent based on the national average for that building type as published by the United States department of energy as substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development;

(16) "sustainable residential building" means:

(a) a building used as a single-family residence as registered and certified under the build green New Mexico or LEED-H rating system that: 1) is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher; 2) has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network; 3) has indoor plumbing fixtures and water-using appliances that, on average, have flow rates equal to or lower than the flow rates required for certification by WaterSense; 4) if landscape area is available at the front of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; and 5) if landscape area is available at the rear of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; or

(b) manufactured housing that is ENERGY STAR-qualified by the United States environmental protection agency;

(17) "tribal" means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo; and

(18) "WaterSense" means a program created by the federal environmental protection agency that certifies water-using products that meet the environmental protection agency's criteria for efficiency and performance.

History: Laws 2015, ch. 130, § 1; 2021, ch. 84, § 1.

7-2-18.30. Foster youth employment income tax credit.

A. A taxpayer who is not a dependent of another individual and who employs a qualified foster youth in New Mexico is eligible for a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act in an amount up to one thousand dollars ($1,000) of the gross wages paid to each qualified foster youth by the taxpayer during the taxable year for which the return is filed. A taxpayer who employs a qualified foster youth for less than the full taxable year is eligible for a credit amount equal to one thousand dollars ($1,000) multiplied by the fraction of a full year for which the qualified foster youth was employed. The tax credit provided by this section may be referred to as the "foster youth employment income tax credit".

B. The purpose of the foster youth employment income tax credit is to encourage the employment of individuals who as youth were adjudicated as abused or neglected or who were in the legal custody of the children, youth and families department under the Children's Code [Chapter 32A NMSA 1978] or in the legal custody of a New Mexico Indian nation, tribe or pueblo or the United States department of the interior bureau of Indian affairs division of human services.

C. A taxpayer may claim the foster youth employment income tax credit provided in this section for each taxable year in which the taxpayer employs one or more qualified foster youths; provided that the taxpayer may not claim the foster youth employment income tax credit for any individual qualified foster youth for more than one calendar year from the date of hire.

D. That portion of a foster youth employment income tax credit approved by the department that exceeds a taxpayer's income tax liability in the taxable year in which the foster youth employment income tax credit is claimed shall not be refunded to the taxpayer but may be carried forward for up to three years. The foster youth employment income tax credit shall not be transferred to another taxpayer.

E. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the foster youth employment income tax credit that would have been claimed on a joint return.

F. A taxpayer may be allocated the right to claim a foster youth employment income tax credit in proportion to the taxpayer's ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all of the requirements to be eligible for the credit. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit pursuant to Subsection A of this section.

G. The taxpayer shall submit to the department with respect to each employee for whom the foster youth employment income tax credit is claimed information required by the department with respect to the qualified foster youth's employment by the taxpayer during the taxable year for which the foster youth employment income tax credit is claimed, including information establishing that the employee is a qualified foster youth that can be used to determine that the employee was not also employed in the same taxable year by another taxpayer claiming a foster youth employment income or corporate income tax credit for that employee pursuant to this section or the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978].

H. The department shall:

(1) adopt rules establishing procedures to certify that an employee is a qualified foster youth for purposes of obtaining a foster youth employment income tax credit. The rules shall ensure that not more than one foster youth employment income tax credit per qualified foster youth shall be allowed in a taxable year and that the credits allowed per qualified foster youth are limited to a maximum of one year's employment; and

(2) collaborate with the children, youth and families department, the New Mexico Indian nations, tribes and pueblos and the United States department of the interior bureau of Indian affairs division of human services to establish the certification procedures.

I. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the department in a manner required by the department.

J. The department shall compile an annual report on the foster youth employment income tax credit that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the effectiveness of the credit. The department shall present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the tax credit and whether the tax credit is performing the purpose for which it was created.

K. As used in this section, "qualified foster youth" means an individual:

(1) who:

(a) is currently in the legal custody of the children, youth and families department pursuant to the Children's Code or in the legal custody of a New Mexico Indian nation, tribe or pueblo or the United States department of the interior bureau of Indian affairs division of human services; or

(b) within the seven years prior to the taxable year for which the tax credit is claimed, was aged fourteen years or older and was in the legal custody of the children, youth and families department pursuant to the Children's Code or in the legal custody of a New Mexico Indian nation, tribe or pueblo or the United States department of the interior bureau of Indian affairs division of human services;

(2) who works at least twenty hours per week during the taxable year for which the foster youth employment income tax credit is claimed; and

(3) who was not previously employed by the taxpayer prior to the taxable year for which the foster youth employment income tax credit is claimed.

History: Laws 2018, ch. 36, § 1.

7-2-18.31. New solar market development income tax credit.

A. For taxable years prior to January 1, 2032, a taxpayer who is not a dependent of another individual and who, on or after March 1, 2020, purchases and installs a solar thermal system or a photovoltaic system in a residence, business or agricultural enterprise in New Mexico owned by that taxpayer or by a federally recognized Indian nation, tribe or pueblo and held in leasehold by that taxpayer may apply for, and the department may allow, a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act in an amount provided in Subsection C of this section. The tax credit provided by this section may be referred to as the "new solar market development income tax credit".

B. The purpose of the new solar market development income tax credit is to encourage the installation of solar thermal and photovoltaic systems in residences, businesses and agricultural enterprises.

C. The department may allow a new solar market development income tax credit of ten percent of the purchase and installation costs of a solar thermal or photovoltaic system.

D. The new solar market development income tax credit shall not exceed six thousand dollars ($6,000) per taxpayer per taxable year. The department shall allow a tax credit only for solar thermal and photovoltaic systems certified pursuant to Subsection E of this section.

E. Subject to the limitation provided in Subsection F of this section, a taxpayer shall apply for certification of eligibility for the new solar market development income tax credit from the energy, minerals and natural resources department on forms and in the manner prescribed by that department. Completed applications shall be considered in the order received. The application shall include proof of purchase and installation of a solar thermal or photovoltaic system, that the system meets technical specifications and requirements relating to safety, code and standards compliance, solar collector orientation and sun exposure, minimum system sizes, system applications and lists of eligible components and any additional information that the energy, minerals and natural resources department may require to determine eligibility for the credit. A dated certificate of eligibility shall be issued to the taxpayer providing the amount of the new solar market development income tax credit for which the taxpayer is eligible and the taxable year in which the credit may be claimed. A certificate of eligibility for a new solar market development income tax credit may be sold, exchanged or otherwise transferred to another taxpayer for the full value of the credit. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

F. The aggregate amount of credits that may be certified pursuant to Subsection E of this section is as follows, and applications for certification received after these limitations have been met shall not be approved:

(1) for calendar years 2020 through 2023, twelve million dollars ($12,000,000) for each calendar year; provided that if this limitation has been met for any of those calendar years, an additional total of twenty million dollars ($20,000,000) in credits may be certified for all of those calendar years; and provided further that credits certified pursuant to this paragraph shall be claimed only for taxable year 2023; and

(2) for calendar years 2024 and thereafter, thirty million dollars ($30,000,000).

G. A taxpayer may claim a new solar market development income tax credit for the taxable year in which the taxpayer purchases and installs a solar thermal or photovoltaic system. To receive a new solar market development income tax credit, a taxpayer shall apply to the department on forms and in the manner prescribed by the department within twelve months following the calendar year in which the system was installed; provided that, for a taxpayer who receives a certificate of eligibility pursuant to Paragraph (1) of Subsection F of this section, the taxpayer shall apply to the department within twelve months following the calendar year in which the certification is made. The application shall include a certification made pursuant to Subsection E of this section.

H. That portion of a new solar market development income tax credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed shall be refunded to the taxpayer.

I. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the new solar market development income tax credit that would have been claimed on a joint return.

J. A taxpayer may be allocated the right to claim a new solar market development income tax credit in proportion to the taxpayer's ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all of the requirements to be eligible for the credit. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit pursuant to this section.

K. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the taxation and revenue department in a manner required by that department.

L. The taxation and revenue department shall compile an annual report on the new solar market development income tax credit that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the tax credit.

M. As used in this section:

(1) "photovoltaic system" means an energy system that collects or absorbs sunlight for conversion into electricity; and

(2) "solar thermal system" means an energy system that collects or absorbs solar energy for conversion into heat for the purposes of space heating, space cooling or water heating.

History: Laws 2020, ch. 13, § 1; 2022, ch. 47, § 8; 2024, ch. 67, § 38.

7-2-18.32. 2021 sustainable building tax credit.

A. The tax credit provided by this section may be referred to as the "2021 sustainable building tax credit". For taxable years prior to January 1, 2028, a taxpayer who is a building owner and files an income tax return is eligible to be granted a 2021 sustainable building tax credit by the department if the requirements of this section are met. The 2021 sustainable building tax credit shall be available for the construction in New Mexico of a sustainable building, the renovation of an existing building in New Mexico, the permanent installation of manufactured housing, regardless of where the housing is manufactured, that is a sustainable building or the installation of energy-conserving products to existing buildings in New Mexico, as provided in this section. The tax credit provided in this section may not be claimed with respect to the same sustainable building for which the 2021 sustainable building tax credit provided in the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] or the 2015 sustainable building tax credit pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act has been claimed.

B. The amount of a 2021 sustainable building tax credit shall be determined as follows:

(1) for the construction of a new sustainable commercial building that is broadband ready and electric vehicle ready and is completed on or after January 1, 2022, the amount of credit shall be calculated:

(a) based on the certification level the building has achieved in the rating level and the amount of qualified occupied square footage in the building, as indicated on the following chart:

Rating Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-NC Platinum	First 10,000	$5.25

	Next 40,000	$2.25
	Over 50,000 up to 200,000	$1.00
LEED-EB or CS Platinum	First 10,000	$3.40
	Next 40,000	$1.30
	Over 50,000 up to 200,000	$0.35
LEED-CI Platinum	First 10,000	$1.50
	Next 40,000	$0.40
	Over 50,000 up to 200,000	$0.30
LEED-NC Gold	First 10,000	$3.00
	Next 40,000	$1.00
	Over 50,000 up to 200,000	$0.25
LEED-EB or -CS Gold	First 10,000	$2.00
	Next 40,000	$1.00
	Over 50,000 up to 200,000	$0.25
LEED-CI Gold	First 10,000	$0.90
	Next 40,000	$0.40
	Over 50,000 up to 200,000	$0.10; and

(b) with additional amounts based on the additional criteria and the amount of qualified occupied square footage, as indicated in the following chart:

Additional Criteria	Qualified Occupied Square Footage	Tax Credit per Square Foot
Fully Electric Building	First 50,000	$1.00
	Over 50,000 up to 200,000	$0.50
Zero Carbon, Energy, Waste or Water Certified	First 50,000	$0.25
	Over 50,000 up to 200,000	$0.10;

(2) for the renovation of a commercial building that was built at least ten years prior to the date of the renovation, has twenty thousand square feet or more of space in which temperature is controlled and is broadband ready and electric vehicle ready, the amount of credit shall be calculated by multiplying two dollars twenty-five cents ($2.25) by the amount of qualified occupied square footage in the building, up to a maximum of one hundred fifty thousand dollars ($150,000) per renovation; provided that the renovation reduces total energy and power costs by fifty percent when compared to the most current energy standard for buildings except low-rise residential buildings, as

developed by the American society of heating, refrigerating and air-conditioning engineers;

(3) for the installation of the following energy-conserving products to an existing commercial building with less than twenty thousand square feet of space in which temperature is controlled that is broadband ready, the amount of credit shall be based on the cost of the product installed, which shall include installation costs, and if the building is affordable housing, per product installed:

Product	Amount of Credit	
	Affordable Housing	Non-Affordable Housing
Energy Star Air Source Heat Pump	$2,000	$1,000
Energy Star Ground Source Heat Pump	$2,000	$1,000
Energy Star Windows and Doors	100% of product cost up to $1,000	50% of product cost up to $500
Insulation Improvements That Meet Rules of the Energy, Minerals and Natural Resources Department	100% of product cost up to $2,000	50% of product cost up to $1,000
Energy Star Heat Pump Water Heater	$700	$350
Electric Vehicle Ready	100% of product cost up to $3,000	50% of product cost up to $1,500;

(4) for the construction of a new sustainable residential building that is broadband ready and electric vehicle ready and is completed on or after January 1, 2022, the amount of credit shall be calculated:

(a) based on the certification level the building has achieved in the rating level and the amount of qualified occupied square footage in the building, as indicated on the following chart:

Rating Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-H Platinum	Up to 2,000	$5.50
LEED-H Gold	Up to 2,000	$3.80
Build Green Emerald	Up to 2,000	$5.50

Build Green Gold	Up to 2,000	$3.80
Manufactured Housing	Up to 2,000	$2.00; and

(b) with additional amounts based on the additional criteria and the amount of qualified occupied square footage, as indicated in the following chart:

Additional Criteria	Qualified Occupied Square Footage	Tax Credit per Square Foot
Fully Electric Building	Up to 2,000	$1.00
Zero Carbon, Energy, Waste or Water Certified	Up to 2,000	$0.25; and

(5) for the installation of the following energy-conserving products to an existing residential building, the amount of credit shall be based on the cost of the product installed, which shall include installation costs, and if the building is affordable housing or the taxpayer is a low-income taxpayer, per product installed:

Product	Amount of Credit	
	Affordable Housing and Low-Income	Non-Affordable Housing and Non-Low Income
Energy Star Air Source Heat Pump	$2,000	$1,000
Energy Star Ground Source Heat Pump	$2,000	$1,000
Energy Star Windows and Doors	100% of product cost up to $1,000	50% of product cost up to $500
Insulation Improvements That Meet Rules of the Energy, Minerals and Natural Resources Department	100% of product cost up to $2,000	50% of product cost up to $1,000
Energy Star Heat Pump Water Heater	$700	$350
Electric Vehicle Ready	$1,000	$500.

C. A person who is a building owner may apply for a certificate of eligibility for the 2021 sustainable building tax credit from the energy, minerals and natural resources department after the construction, installation or renovation of the sustainable building or installation of energy-conserving products in an existing building is complete. Applications shall be considered in the order received. If the energy, minerals and natural resources department determines that the building owner meets the requirements of this subsection and that the building with respect to which the application is made meets the requirements of this section for a 2021 sustainable building tax credit, the energy, minerals and natural resources department may issue a certificate of eligibility to the building owner, subject to the limitations in Subsection D of this section. The certificate shall include the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, a calculation of the maximum amount of 2021 sustainable building tax credit for which the building owner would be eligible, the identification number, date of issuance and the first taxable year that the credit shall be claimed. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection. If the certification level for the sustainable residential building is awarded on or after January 1, 2022, the energy, minerals and natural resources department may issue a certificate of eligibility to a building owner who is:

(1) the owner of the sustainable residential building at the time the certification level for the building is awarded; or

(2) the subsequent purchaser of a sustainable residential building with respect to which no tax credit has been previously claimed.

D. Except as provided in Subsection E of this section, the energy, minerals and natural resources department may issue a certificate of eligibility only if the total amount of 2021 sustainable building tax credits represented by certificates of eligibility issued by the energy, minerals and natural resources department pursuant to this section and pursuant to the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] shall not exceed in any calendar year an aggregate amount of:

(1) one million dollars ($1,000,000) with respect to the construction of new sustainable commercial buildings;

(2) two million dollars ($2,000,000) with respect to the construction of new sustainable residential buildings that are not manufactured housing;

(3) two hundred fifty thousand dollars ($250,000) with respect to the construction of new sustainable residential buildings that are manufactured housing;

(4) one million dollars ($1,000,000) with respect to the renovation of large commercial buildings; and

(5) two million nine hundred thousand dollars ($2,900,000) with respect to the installation of energy-conserving products in existing commercial buildings pursuant to Paragraph (3) of Subsection B of this section and existing residential buildings pursuant to Paragraph (5) of Subsection B of this section.

E. For any taxable year that the energy, minerals and natural resources department determines that applications for sustainable building tax credits for any type of sustainable building pursuant to Subsection D of this section are less than the aggregate limit for that type of sustainable building for that taxable year, the energy, minerals and natural resources department shall allow the difference between the aggregate limit and the applications to be added to the aggregate limit of another type of sustainable building for which applications exceeded the aggregate limit for that taxable year. Any excess not used in a taxable year shall not be carried forward to subsequent taxable years.

F. Installation of a solar thermal system or a photovoltaic system eligible for the new solar market development tax credit pursuant to Section 7-2-18.31 NMSA 1978 shall not be used as a component of qualification for the rating system certification level used in determining eligibility for the 2021 sustainable building tax credit, unless a new solar market development tax credit pursuant to Section 7-2-18.31 NMSA 1978 has not been claimed with respect to that system and the building owner and the taxpayer claiming the 2021 sustainable building tax credit certify that such a tax credit will not be claimed with respect to that system.

G. To claim the 2021 sustainable building tax credit, the building owner shall provide to the taxation and revenue department a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to the requirements of Subsection C of this section and any other information the taxation and revenue department may require.

H. If the approved amount of a 2021 sustainable building tax credit for a taxpayer in a taxable year represented by a document issued pursuant to Subsection C of this section is:

(1) less than one hundred thousand dollars ($100,000), a maximum of twenty-five thousand dollars ($25,000) shall be applied against the taxpayer's income tax liability for the taxable year for which the credit is approved and the next three subsequent taxable years as needed depending on the amount of credit; or

(2) one hundred thousand dollars ($100,000) or more, increments of twenty-five percent of the total credit amount in each of the four taxable years, including the taxable year for which the credit is approved and the three subsequent taxable years, shall be applied against the taxpayer's income tax liability.

I. If the sum of all 2021 sustainable building tax credits that can be applied to a taxable year for a taxpayer, calculated according to Paragraph (1) or (2) of Subsection H of this section, exceeds the taxpayer's income tax liability for that taxable year, the excess may be carried forward for a period of up to seven years; provided that if the taxpayer is a low-income taxpayer, the excess shall be refunded to the taxpayer.

J. A taxpayer who otherwise qualifies and claims a 2021 sustainable building tax credit with respect to a sustainable building owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to that taxpayer's interest in the partnership or association. The total credit claimed in the aggregate by all members of the partnership or association with respect to the sustainable building shall not exceed the amount of the credit that could have been claimed by a sole owner of the property.

K. Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the 2021 sustainable building tax credit that would have been allowed on a joint return.

L. If the requirements of this section have been complied with, the department shall issue to the building owner a document granting a 2021 sustainable building tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the building owner with that taxpayer's income tax return, if applicable, or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

M. The department and the energy, minerals and natural resources department shall compile an annual report on the 2021 sustainable building tax credit created pursuant to this section that shall include the number of taxpayers approved to receive the tax credit, the aggregate amount of tax credits approved and any other information necessary to evaluate the effectiveness of the tax credit. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the tax credit.

N. For the purposes of this section:

(1) "broadband ready" means a building with an internet connection capable of connecting to a broadband provider;

(2) "build green emerald" means the emerald level certification standard adopted by build green New Mexico, which includes water conservation standards and uses forty percent less energy than is required by the prescriptive path of the most current residential energy conservation code promulgated by the construction industries division of the regulation and licensing department;

(3) "build green gold" means the gold level certification standard adopted by build green New Mexico, which includes water conservation standards and uses thirty percent less energy than is required by the prescriptive path of the most current residential energy conservation code promulgated by the construction industries division of the regulation and licensing department;

(4) "electric vehicle ready" means a property that for commercial buildings provides at least ten percent of parking spaces and for residential buildings at least one parking space with one forty-ampere, two-hundred-eight-volt or two-hundred-forty-volt

dedicated branch circuit for servicing electric vehicles that terminates in a suitable termination point, such as a receptacle or junction box, and is located in reasonably close proximity to the proposed location of the parking spaces;

(5) "energy rating system index" means a numerical score given to a building where one hundred is equivalent to the 2006 international energy conservation code and zero is equivalent to a net-zero home. As used in this paragraph, "net-zero home" means an energy-efficient home where, on a source energy basis, the actual annual delivered energy is less than or equal to the on-site renewable exported energy;

(6) "Energy Star" means products and devices certified under the energy star program administered by the United States environmental protection agency and United States department of energy that meet the specified performance requirements at the installed locations;

(7) "fully electric building" means a building that uses a permanent supply of electricity as the source of energy for all space heating, water heating, including pools and spas, cooking appliances and clothes drying appliances and, in the case of a new building, has no natural gas or propane plumbing installed in the building or, in the case of an existing building, has no connected natural gas or propane plumbing;

(8) "LEED" means the most current leadership in energy and environmental design green building rating system guidelines developed and adopted by the United States green building council;

(9) "LEED-CI" means the LEED rating system for commercial interiors;

(10) "LEED-CS" means the LEED rating system for the core and shell of buildings;

(11) "LEED-EB" means the LEED rating system for existing buildings;

(12) "LEED gold" means the rating in compliance with, or exceeding, the second-highest rating awarded by the LEED certification process;

(13) "LEED-H" means the LEED rating system for homes;

(14) "LEED-NC" means the LEED rating system for new buildings and major renovations;

(15) "LEED platinum" means the rating in compliance with, or exceeding, the highest rating awarded by the LEED certification process;

(16) "low-income taxpayer" means a taxpayer with an annual household adjusted gross income equal to or less than two hundred percent of the federal poverty

level guidelines published by the United States department of health and human services;

(17) "manufactured housing" means a multisectioned home that is:

(a) a manufactured home or modular home;

(b) a single-family dwelling with a heated area of at least thirty-six feet by twenty-four feet and a total area of at least eight hundred sixty-four square feet;

(c) constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or New Mexico construction codes up to the date of the unit's construction; and

(d) installed consistent with the Manufactured Housing Act [Chapter 60, Article 14 NMSA 1978] and rules adopted pursuant to that act relating to permanent foundations;

(18) "qualified occupied square footage" means the occupied spaces of the building as determined by:

(a) the United States green building council for those buildings obtaining LEED certification;

(b) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; and

(c) the United States environmental protection agency for Energy Star-certified manufactured homes;

(19) "person" does not include state, local government, public school district or tribal agencies;

(20) "sustainable building" means either a sustainable commercial building or a sustainable residential building;

(21) "sustainable commercial building" means:

(a) a commercial building that is certified as any LEED platinum or gold for commercial buildings;

(b) a multifamily dwelling unit that is certified as LEED-H platinum or gold or build green emerald or gold and uses at least thirty percent less energy than is required by the prescriptive path of the most current applicable energy conservation code promulgated by the construction industries division of the regulation and licensing department for build green gold or LEED-H, or uses at least forty percent less energy than is required by the prescriptive path of the most current residential energy conservation code promulgated by the construction industries division of the regulation and licensing department for build green emerald or LEED platinum; or

(c) a building that: 1) is certified at LEED-NC, LEED-EB, LEED-CS or LEED-CI platinum or gold levels; 2) achieves any prerequisite for and at least one point related to commissioning under the LEED energy and atmosphere category, if included in the applicable rating system; and 3) has reduced energy consumption beginning January 1, 2012 by forty percent based on the national average for that building type as published by the United States department of energy as substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development;

(22) "sustainable residential building" means:

(a) a building used as a single-family residence that: 1) is certified as LEED-H platinum or gold or build green emerald or gold; 2) uses at least thirty percent less energy than is required by the prescriptive path of the most current residential energy conservation code promulgated by the construction industries division of the regulation and licensing department for build green gold or LEED-H, or uses at least forty percent less energy than is required by the prescriptive path of the most current residential energy conservation code promulgated by the construction industries division of the regulation and licensing department for build green emerald or LEED platinum; 3) has indoor plumbing fixtures and water-using appliances that, on average, have flow rates equal to or lower than the flow rates required for certification by WaterSense; 4) if landscape area is available at the front of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; and 5) if landscape area is available at the rear of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; or

(b) manufactured housing that is Energy Star-qualified;

(23) "tribal" means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo;

(24) "WaterSense" means a program created by the federal environmental protection agency that certifies water-using products that meet the environmental protection agency's criteria for efficiency and performance;

(25) "zero carbon certified" means a building that is certified as LEED zero carbon by achieving a carbon-dioxide-equivalent balance of zero for the building;

(26) "zero energy certified" means a building that is certified as LEED zero energy by achieving a source energy use balance of zero for the building;

(27) "zero waste certified" means a building that is certified as LEED zero waste by achieving green building certification incorporated's true zero waste certification at the platinum level; and

(28) "zero water certified" means a building that is certified as LEED zero water by achieving a potable water use balance of zero for the building.

History: Laws 2021, ch. 84, § 2; 2022, ch. 47, § 9.

7-2-18.33. Credit; nurses; 2022 taxable year.

A. For taxable year 2022, a taxpayer who is not a dependent of another individual and who was employed full time as a nurse at a hospital located in New Mexico may apply for, and the department may allow, a tax credit against the taxpayer's tax liability pursuant to the Income Tax Act pursuant to the provisions of this section.

B. The amount of tax credit allowed pursuant to this section shall be in an amount equal to one thousand dollars ($1,000).

C. To receive a tax credit provided by this section, a taxpayer shall apply to the department on forms and in the manner prescribed by the department. The application shall include a certification by the hospital for which the taxpayer was employed in 2022 that the taxpayer was employed full time throughout 2022 as a nurse by the hospital.

D. That portion of the tax credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed shall be refunded to the taxpayer.

E. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the taxation and revenue department in a manner required by that department.

F. The department shall compile an annual report on the tax credit provided by this section that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the tax credit.

G. As used in this section:

(1) "full time" means working at least thirty hours per week for forty-four weeks per year;

(2) "hospital" means a facility licensed as a hospital by the department of health; and

(3) "nurse" means a person licensed as a registered nurse or licensed practical nurse pursuant to the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978].

History: Laws 2022, ch. 47, § 3.

7-2-18.34. Child income tax credit.

A. For taxable years prior to January 1, 2032, a taxpayer who is a resident and is not a dependent of another individual may apply for, and the department may allow, a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act for each qualifying child of the taxpayer. The tax credit provided by this section may be referred to as the "child income tax credit".

B. Except as provided in Subsection D of this section, the child income tax credit may be claimed as shown in the following table:

Adjusted gross income is Over	But not over	Amount of credit per qualifying child is
$ 0	$ 25,000	$600
25,000	50,000	400
50,000	75,000	200
75,000	100,000	100
100,000	200,000	75
200,000	350,000	50
350,000		25.

C. If a taxpayer's adjusted gross income is less than zero, the taxpayer may claim a tax credit in the amount shown in the first row of the table provided in Subsection B of this section.

D. For the 2024 taxable year and each subsequent taxable year, the amount of credit shown in the table in Subsection B of this section shall be adjusted to account for inflation. The department shall make the adjustment by multiplying each amount of credit by a fraction, the numerator of which is the consumer price index ending during the prior taxable year and the denominator of which is the consumer price index ending in tax year 2022. The result of the multiplication shall be rounded down to the nearest one dollar ($1.00), except that if the result would be an amount less than the corresponding amount for the preceding taxable year, then no adjustment shall be made.

E. To receive a child income tax credit, a taxpayer shall apply to the department on forms and in the manner prescribed by the department.

F. That portion of a child income tax credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed shall be refunded.

G. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the child income tax credit that would have been claimed on a joint return.

H. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the department in a manner required by the department.

I. The department shall compile an annual report on the child income tax credit that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the effectiveness of the credit. The department shall compile and present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the tax credit.

J. As used in this section:

(1) "consumer price index" means the consumer price index for all urban consumers published by the United States department of labor for the month ending September 30; and

(2) "qualifying child" means "qualifying child" as defined by Section 152(c) of the Internal Revenue Code, as that section may be amended or renumbered, but includes any minor child or stepchild of the taxpayer who would be a qualifying child 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 taxpayer.

History: Laws 2022, ch. 47, § 5; 2023, ch. 211, § 9.

7-2-18.35. Home fire recovery income tax credit.

A. A taxpayer who is not a dependent of another individual and who, beginning on the effective date of this section and prior to January 1, 2030, incurs qualified home expenditures for a home in New Mexico to replace a prior home of the taxpayer that was destroyed by a wildfire in calendar years 2021 through 2023 may claim a tax credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act in an amount equal to the qualified home expenditures incurred by the taxpayer not to exceed fifty thousand dollars ($50,000) per home. The tax credit provided by this section may be referred to as the "home fire recovery income tax credit".

B. A taxpayer who seeks to claim the tax credit shall apply for certification of eligibility from the construction industries division of the regulation and licensing department on forms and in a manner prescribed by that division. The aggregate amount of credits that may be certified as eligible in any calendar year is five million dollars ($5,000,000). An application for certification shall be made no later than twelve months after the calendar year in which construction of the home is completed. Completed applications shall be considered in the order received. If a taxpayer submits an application for the tax credit and the aggregate amount of certifications has been met for the calendar year, the application shall be placed at the front of a queue for certification in a subsequent calendar year. Except as otherwise provided in Subsections F and G of this section, only one tax credit shall be certified per taxpayer.

C. An application for certification of eligibility shall include:

(1) proof that the taxpayer's prior home was destroyed by wildfire in calendar years 2021 through 2023, including a sworn statement by the taxpayer;

(2) proof that the taxpayer incurred expenditures for the construction of a home on the same property of the taxpayer's prior, wildfire-destroyed home, including a contract with a builder or manufacturer;

(3) a sworn statement by the taxpayer and the builder or manufacturer of the home that the construction of the home has been completed and stating the date of its completion; and

(4) any additional information the construction industries division of the regulation and licensing department may require to determine eligibility for the tax credit.

D. If the construction industries division of the regulation and licensing department determines that the taxpayer meets the requirements of this section, the division shall issue a dated certificate of eligibility to the taxpayer providing the amount of tax credit for which the taxpayer is eligible and the taxable year in which the credit may be claimed. The construction industries division shall provide the department with the certificates of eligibility issued pursuant to this subsection in an electronic format at regularly agreed-upon intervals.

E. A taxpayer issued a certificate of eligibility shall claim the tax credit in a manner required by the department within twelve months of being issued the certificate of eligibility.

F. That portion of the tax credit that exceeds a taxpayer's tax liability in the taxable year in which the tax credit is claimed shall not be refunded but may be carried forward for a maximum of three consecutive taxable years.

G. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the tax credit that would have been claimed on a joint return.

H. A taxpayer may be allocated the right to claim the tax credit in proportion to the taxpayer's ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all of the requirements to be eligible for the credit. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit pursuant to this section.

I. The department shall compile an annual report on the tax credit that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the tax credit.

J. As used in this section:

(1) "home" means a dwelling designed for long-term habitation in which the taxpayer resides for a majority of the year and is:

(a) constructed permanently on a taxpayer's property with a foundation and that cannot be moved; or

(b) a manufactured home or modular home that is a single-family dwelling with a heated area of at least thirty-six by twenty-four feet and at least eight hundred sixty-four square feet and constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or the Uniform Building Code, as amended to the date of the unit's construction, and installed consistent with the Manufactured Housing Act [Chapter 60, Article 14 NMSA 1978] and with the rules made pursuant thereto relating to permanent foundations; and

(2) "qualified home expenditures" means gross expenditures for the construction or manufacture of a home on the same property in New Mexico that a taxpayer's prior home was destroyed by a wildfire in calendar years 2021 through 2023, less any compensation related to home construction, manufacture or repair costs received pursuant to the federal Hermit's Peak/Calf Canyon Fire Assistance Act or from insurance or other source of compensation.

History: Laws 2024, ch. 67, § 9.

7-2-18.36. Clean car income tax credit. (Repealed January 1, 2031.)

A. A taxpayer who is not a dependent of another individual and who, beginning on the effective date of this section and prior to January 1, 2030, purchases an electric vehicle, plug-in hybrid electric vehicle or fuel cell vehicle or enters into a new lease of at least three years for one of these vehicles may claim a tax credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act in an amount provided in Subsection B of this section. The tax credit provided by this section may be referred to as the "clean car income tax credit".

B. The amount of the tax credit shall be in an amount equal to:

(1) for taxable years beginning January 1, 2024 and prior to January 1, 2027:

(a) three thousand dollars ($3,000) for a new electric vehicle;

(b) two thousand five hundred dollars ($2,500) for a new plug-in hybrid electric vehicle or fuel cell vehicle;

(c) two thousand five hundred dollars ($2,500) for a previously owned electric vehicle; and

(d) two thousand dollars ($2,000) for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle;

(2) for a taxable year beginning January 1, 2027 and prior to January 1, 2028:

(a) two thousand two hundred twenty dollars ($2,220) for a new electric vehicle;

(b) one thousand eight hundred fifty dollars ($1,850) for a new plug-in hybrid electric vehicle or fuel cell vehicle;

(c) one thousand eight hundred fifty dollars ($1,850) for a previously owned electric vehicle; and

(d) one thousand four hundred eighty dollars ($1,480) for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle;

(3) for a taxable year beginning on January 1, 2028 and prior to January 1, 2029:

(a) one thousand four hundred seventy dollars ($1,470) for a new electric vehicle;

(b) one thousand two hundred twenty-five dollars ($1,225) for a new plug-in hybrid electric vehicle or fuel cell vehicle;

(c) one thousand two hundred twenty-five dollars ($1,225) for a previously owned electric vehicle; and

(d) nine hundred eighty dollars ($980) for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle; and

(4) for the taxable year beginning January 1, 2029:

(a) nine hundred sixty dollars ($960) for a new electric vehicle;

(b) eight hundred dollars ($800) for a new plug-in hybrid electric vehicle or fuel cell vehicle;

(c) eight hundred dollars ($800) for a previously owned electric vehicle; and

(d) six hundred forty dollars ($640) for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle.

C. For a previously owned motor vehicle to be eligible for the tax credit, the vehicle shall have a model year that is at least two years prior to the calendar year in which the taxpayer purchased or leased the vehicle.

D. A taxpayer shall apply for certification of eligibility for the tax credit from the energy, minerals and natural resources department on forms and in the manner prescribed by that department. Except as provided in Subsections I and J of this section, only one tax credit shall be certified per taxpayer per taxable year, and only one tax credit shall be certified per previously owned motor vehicle. The energy, minerals and natural resources department may promulgate rules governing the procedure for administering the provisions of this subsection.

E. An application for certification of eligibility shall include proof of vehicle purchase from or lease through a dealer licensed by the motor vehicle division of the department pursuant to Section 66-4-2 NMSA 1978 or a dealer located on tribal land within New Mexico, the vehicle's registration or application for title and registration in New Mexico and any additional information the energy, minerals and natural resources department may require to determine eligibility for the credit. If the energy, minerals and natural resources department determines that the taxpayer meets the requirements of this section, that department shall issue a dated certificate of eligibility to the taxpayer providing the amount of tax credit for which the taxpayer is eligible and the taxable years in which the credit may be claimed. The energy, minerals and natural resources department shall provide the department with the certificates of eligibility issued pursuant to this subsection in an electronic format at regularly agreed upon intervals.

F. Applications for certification of the tax credit shall be made no later than one year from the date on which the vehicle is purchased or the lease is entered into.

G. A certificate of eligibility for the tax credit may be sold, exchanged or otherwise transferred to another taxpayer for the full value of the credit. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer in an electronic format prescribed by the department.

H. That portion of the tax credit claimed by a taxpayer that exceeds the taxpayer's income tax liability in the taxable year in which a clean car income tax credit is claimed shall be refunded to the taxpayer.

I. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the tax credit that would have been claimed on a joint return.

J. A taxpayer may be allocated the right to claim the tax credit in proportion to the taxpayer's ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all of the requirements to be eligible for the credit. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit pursuant to this section.

K. A taxpayer allowed to claim the tax credit shall claim the tax credit in a manner required by the department. The credit shall be claimed within three taxable years of the end of the year in which the energy, minerals and natural resources department certifies the credit.

L. As used in this section:

(1) "electric vehicle" means a motor vehicle that derives all of the vehicle's power from electricity stored in a battery that:

(a) has a capacity of not less than twenty-five kilowatt-hours;

(b) is capable of powering the vehicle for a range of at least one hundred miles; and

(c) is capable of being recharged from an external source of electricity;

(2) "fuel cell vehicle" means a motor vehicle that:

(a) uses a fuel cell to produce electricity that is used to drive an electric motor; and

(b) is capable of powering the vehicle for a range of at least one hundred miles;

(3) "motor vehicle" means a vehicle with four wheels that:

(a) is required under the Motor Vehicle Code [Chapter 66, Articles 1 to 8 NMSA 1978] to be registered in this state and that is registered in this state;

(b) is made by a manufacturer;

(c) is manufactured primarily for use on public streets, roads or highways;

(d) has not been modified from the original manufacturer specifications;

(e) is rated at not less than two thousand two hundred pounds unloaded base weight and not more than nine thousand seven hundred fifty pounds unloaded base weight;

(f) has a maximum speed capability of at least sixty-five miles per hour; and

(g) is purchased from or leased through a dealer licensed by the motor vehicle division of the department pursuant to Section 66-4-2 NMSA 1978 or a dealer located on tribal land within New Mexico;

(4) "new" means a motor vehicle that has a base manufacturer suggested retail price, before options and destination charges and before any taxes are imposed, of fifty-five thousand dollars ($55,000) or less;

(5) "plug-in hybrid electric vehicle" means a motor vehicle that derives part of the vehicle's power from electricity stored in a battery that:

(a) has a capacity of not less than six kilowatt-hours;

(b) is capable of powering a vehicle for a range of at least thirty miles; and

(c) is capable of being recharged from an external source of electricity;

(6) "previously owned" means a motor vehicle that is not new, that has a market value of twenty-five thousand dollars ($25,000) or less, that is certified by the dealer selling the motor vehicle and for which the dealer provides at least a one-year extended manufacturer's warranty against defects and repairs; and

(7) "tribal land" means all land owned by a tribe and located within the exterior boundaries of the tribe's reservation or grant and all land held by the United States in trust for the tribe.

History: Laws 2024, ch. 67, § 27.

7-2-18.37. Clean car charging unit income tax credit. (Repealed January 1, 2031.)

A. A taxpayer who is not a dependent of another individual and who, beginning on the effective date of this section and prior to January 1, 2030, purchases and installs an electric vehicle charging unit or fuel cell charging unit in New Mexico may claim a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act in an amount provided in Subsection B of this section. The tax credit provided by this section may be referred to as the "clean car charging unit income tax credit".

B. The amount of tax credit shall be in an amount equal to:

(1) for a direct current fast charger or fuel cell charging unit, twenty-five thousand dollars ($25,000) or the cost to purchase and install the direct current fast charger or fuel cell charging unit, whichever is less; and

(2) for all other electric vehicle charging units, four hundred dollars ($400) or the cost to purchase and install the electric vehicle charging unit, whichever is less.

C. A taxpayer shall apply for certification of eligibility for the tax credit from the energy, minerals and natural resources department on forms and in the manner prescribed by that department. Except as provided in Subsections H and I of this section, only one tax credit shall be certified for a direct current fast charger or a fuel cell charging unit per taxpayer per taxable year. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection.

D. An application for certification of eligibility shall include:

(1) a receipt for the purchase and installation of the electric vehicle charging unit or fuel cell charging unit;

(2) for electric vehicle charging units, a copy of the data sheet that specifies the connector type, plug type, voltage and current of the electric vehicle charging unit;

(3) for a fuel cell charging unit, technical specifications on the fuel dispensing unit and fuel storage system, including information about operational pressures of the fuel cell charging unit; and

(4) any other information the energy, minerals and natural resources department may require to evaluate eligibility for the credit.

E. If the energy, minerals and natural resources department determines that the taxpayer meets the requirements of this section, that department shall issue a dated certificate of eligibility to the taxpayer providing the amount of tax credit for which the taxpayer is eligible and the taxable years in which the credit may be claimed. The energy, minerals and natural resources department shall provide the department certificates of eligibility issued in an electronic format at regularly agreed upon intervals.

F. An application for certification of the tax credit shall be made no later than one year from the date in which the electric vehicle charging unit or fuel cell charging unit for which the credit is claimed is purchased and installed.

G. That portion of tax credit that exceeds a taxpayer's income tax liability in the taxable year in which the credit is claimed shall be refunded to the taxpayer.

H. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the tax credit that would have been claimed on a joint return.

I. A taxpayer may be allocated the right to claim the tax credit in proportion to the taxpayer's ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all requirements to be eligible for the credit. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit pursuant to this section.

J. A taxpayer allowed to claim a tax credit pursuant to this section shall claim the tax credit in a manner required by the department. The credit shall be claimed within three taxable years of the end of the year in which the energy, minerals and natural resources department certifies the credit.

K. A taxpayer who claims the 2021 sustainable building tax credit for expenses of purchasing or installing an electric vehicle charging unit or fuel cell charging unit shall not be eligible to claim the tax credit provided by this section.

L. As used in this section:

(1) "direct current fast charger" means an electric vehicle charging unit that provides at least fifty kilowatts of direct current electrical power for charging an electric vehicle through a connector based on fast charging equipment standards and that is approved for installation for that purpose under the National Electrical Code through an underwriters laboratories certification or an equivalent certifying organization;

(2) "electric vehicle" means a motor vehicle subject to the registration fee pursuant to Section 66-6-2 or 66-6-4 NMSA 1978 that derives all of the vehicle's power from electricity stored in a battery that:

(a) has a capacity of not less than twenty-five kilowatt-hours;

(b) is capable of powering the vehicle for a range of at least one hundred miles; and

(c) is capable of being recharged from an external source of electricity;

(3) "electric vehicle charging unit" means a device that:

(a) is used to provide electricity to an electric vehicle or plug-in hybrid electric vehicle;

(b) is designed to create a connection between an electricity source and the electric vehicle or plug-in hybrid electric vehicle; and

(c) uses the electric vehicle's or plug-in hybrid electric vehicle's control system to ensure that electricity flows at an appropriate voltage and current level;

(4) "fuel cell charging unit" means a facility or unit that dispenses liquefied or compressed hydrogen for fuel cell vehicle refueling and that is approved for installation for that purpose under applicable codes and compliant with requirements of applicable certifying organizations;

(5) "fuel cell vehicle" means a motor vehicle subject to the registration fee pursuant to Section 66-6-2 or 66-6-4 NMSA 1978 that:

(a) uses a fuel cell to produce electricity that is used to drive an electric motor; and

(b) is capable of powering the vehicle for a range of at least one hundred miles; and

(6) "plug-in hybrid electric vehicle" means a motor vehicle subject to the registration fee pursuant to Section 66-6-2 or 66-6-4 NMSA 1978 that derives part of the vehicle's power from electricity stored in a battery that:

(a) has a capacity of not less than six kilowatt-hours;

(b) is capable of powering a vehicle for a range of at least thirty miles; and

(c) is capable of being recharged from an external source of electricity.

History: Laws 2024, ch. 67, § 28.

7-2-18.38. Geothermal electricity generation income tax credit.

A. For taxable years prior to January 1, 2032, a taxpayer who is not a dependent of another individual and who holds an interest in a geothermal electricity generation facility may apply for, and the department may allow, a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act. The tax credit provided by this section may be referred to as the "geothermal electricity generation income tax credit".

B. The amount of a tax credit allowed pursuant to this section shall be an amount equal to one and one-half cents ($0.015) per kilowatt-hour of electricity generated in New Mexico in a taxable year by the geothermal electricity generation facility in which the taxpayer holds an interest.

C. A taxpayer shall apply for certification of eligibility for the credit provided by this section from the energy, minerals and natural resources department on forms and in the manner prescribed by that department. The total annual aggregate amount of credits that may be certified for geothermal electricity generation income tax credits and geothermal electricity generation corporate income tax credits in any calendar year is five million dollars ($5,000,000). Completed applications shall be considered in the order received. Applications for certification received after this limitation has been met in a calendar year shall not be approved for that calendar year, but shall be considered for certification in the following calendar year. The application shall include proof that the taxpayer is eligible for certification, including that the geothermal electricity generation facility that produced the energy for which the taxpayer is claiming credit, the geothermal resources used by the geothermal electricity generation facility and the taxpayer's interest in the geothermal electricity generation facility are in accordance with the definitions set forth in this section. For taxpayers approved to receive the credit, the energy, minerals and natural resources department shall issue a certificate of eligibility stating the amount of credit to which the taxpayer is entitled and the taxable year in which the credit may be claimed. The certificate of eligibility shall be numbered for identification and declare the date of issuance and the amount of the tax credit allowed.

D. A taxpayer may claim a geothermal electricity generation income tax credit for the taxable year in which electricity was generated in New Mexico by a geothermal electricity generation facility in which the taxpayer holds an interest. To receive the credit provided by this section, a taxpayer shall apply to the department on forms and in the manner prescribed by the department. The application shall include a certification made pursuant to Subsection C of this section.

E. That portion of a credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed may be carried forward for up to three consecutive years.

F. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the credit that would have been claimed on a joint return.

G. A taxpayer may be allocated the right to claim a credit provided by this section in proportion to the taxpayer's ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all of the requirements to be eligible for the credit. The total credit claimed by all members of the partnership or limited liability company shall not exceed the maximum amount of the credit allowed pursuant to this section.

H. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the department in a manner required by the department.

I. The department shall compile an annual report on the credit provided by this section that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the tax credit.

J. As used in this section:

(1) "geothermal electricity generation facility" means a facility located in New Mexico that generates electricity from geothermal resources and:

(a) for new facilities, begins construction on or after January 1, 2025; or

(b) for existing facilities, on or after January 1, 2025, increases the amount of electricity generated from geothermal resources the facility generated prior to that date by at least one hundred percent;

(2) "geothermal resources" means the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit or the energy, in whatever form, below the surface of the earth present in, resulting from, created by or that may be extracted from this natural heat in excess of two hundred fifty degrees Fahrenheit and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases and steam, in whatever form, found below the surface of the earth, but excluding oil, hydrocarbon gas and other hydrocarbon substances and excluding the heating and cooling capacity of the earth not resulting from the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit as may be used for the heating and cooling of buildings through an on-site geoexchange heat pump or similar on-site system; and

(3) "interest in a geothermal electricity generation facility" means title to a geothermal electricity generation facility; a leasehold interest in such facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in such facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in such facility.

History: Laws 2024, ch. 67, § 33.

7-2-18.39. Advanced energy equipment income tax credit. (Repealed effective January 1, 2034.)

A. The tax credit provided by this section may be referred to as the "advanced energy equipment income tax credit". A taxpayer who is not a dependent of another individual, who makes qualified expenditures for a qualified manufacturing facility located in New Mexico and who files an individual New Mexico income tax return for a taxable year beginning on or after January 1, 2025, and prior to January 1, 2033, may claim the tax credit in the amount provided in Subsection B of this section.

B. The amount of the tax credit shall be in an amount equal to the lesser of twenty percent of the amount of the qualified expenditures made by the taxpayer for a qualified manufacturing facility or twenty-five million dollars ($25,000,000).

C. Prior to incurring a qualified expenditure, a taxpayer shall apply for preliminary certification of eligibility for the tax credit from the energy, minerals and natural resources department on forms and in the manner prescribed by that department. Such preliminary certification shall be made in consultation with the economic development department and shall be limited to confirming that the qualified expenditures proposed to be made by the taxpayer will in whole or in part be used to produce advanced energy products and providing an estimate of the amount of tax credit for which the taxpayer may be eligible. Only one certificate of eligibility shall be issued for all activities performed at a qualified manufacturing facility, regardless of ownership of the facility.

D. Within twelve months of commencement of production of any advanced energy product, the taxpayer shall seek final certification from the energy, minerals and natural resources department. The total annual aggregate amount of advanced energy equipment income tax credits and advanced energy equipment corporate income tax credits that may be certified in a calendar year shall not exceed twenty-five million dollars ($25,000,000). An application for final certification shall include information required by the energy, minerals and natural resources department to determine eligibility for the tax credit, including information substantiating qualified expenditures. If, after consultation with the economic development department, the energy, minerals and natural resources department determines that the taxpayer meets the requirements of this section, the energy, minerals and natural resources department shall issue a dated certificate of eligibility to the taxpayer providing the amount of tax credit for which the taxpayer is eligible and the taxable years in which the credit may be claimed. The energy, minerals and natural resources department shall provide the department with the certificates of eligibility issued pursuant to this subsection in an electronic format at regularly agreed-upon intervals. A certificate of eligibility for the tax credit may be sold, exchanged or otherwise transferred to another taxpayer in increments of not less than one million dollars ($1,000,000); provided that if the total amount certified is less than one million dollars ($1,000,000), the certificate of the entire amount of the credit may be transferred. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer in an electronic format prescribed by the department.

E. A taxpayer allowed to claim the tax credit shall claim the credit in a manner required by the department. The tax credit shall be claimed within one year of receiving final certification from the energy, minerals and natural resources department. The taxpayer shall claim the amount certified and approved against the taxpayer's income tax liabilities. Any amount of credit that exceeds the taxpayer's income tax liabilities may be carried forward for five consecutive taxable years. A taxpayer who claims the tax credit shall report to the department and the energy, minerals and natural resources department on the continued operations of the qualified manufacturing facility.

F. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the tax credit that would have been claimed on a joint return.

G. A taxpayer may be allocated the right to claim the tax credit in a proportion to the taxpayer's ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all of the requirements to be eligible for the credit. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit pursuant to this section.

H. If the taxpayer or a successor in the business of the taxpayer ceases operations at the qualifying manufacturing facility or ceases to produce advanced energy products for at least one hundred eighty days within a two-year period after the taxpayer has claimed the tax credit, any amount of credit that received final certification with respect to that facility that is not claimed against a taxpayer's tax liability shall be extinguished, and within thirty days after the one hundred eightieth day of cessation of operations, the taxpayer who received final certification pursuant to Subsection D of this section shall pay to the department the tax liability against which the certified credit was claimed. For the purposes of this section, a taxpayer shall not be deemed to have ceased operations during reasonable periods for maintenance or retooling, for the repair or replacement of facilities damaged or destroyed or during labor disputes.

I. As used in this section:

(1) "advanced energy product" means a technology, product, system or component eligible for a federal tax credit under Section 45X of the Internal Revenue Code;

(2) "essential" means directly necessary to the production of an advanced energy products;

(3) "manufacturing equipment" means an essential machine, mechanism or tool or a component of an essential machine, mechanism or tool used directly and exclusively in a taxpayer's qualified manufacturing facility and that is subject to depreciation pursuant to the Internal Revenue Code by the taxpayer carrying on the manufacturing. "Manufacturing equipment" does not include a vehicle that leaves the site of a manufacturing operation for the purpose of transporting persons or property, including property for which the taxpayer claims a credit pursuant to Section 7-9-79 NMSA 1978;

(4) "qualified expenditure" means an expenditure made on or after January 1, 2025 and prior to January 1, 2033 for the purchase of that portion of the costs of manufacturing equipment dedicated to manufacturing advanced energy products; and

(5) "qualified manufacturing facility" means a facility located in New Mexico, including any connected, associated or subsidiary facilities, that employs personnel to perform production tasks with manufacturing equipment not previously existing at the facility to produce advanced energy products.

History: Laws 2024, ch. 67, § 35.

7-2-19. Repealed.

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.

7-2-21. Fiscal years permitted.

Any individual who files income tax returns under the Internal Revenue Code on the basis of a fiscal year shall report income under the Income Tax Act on the same basis.

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

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.

7-2-22. Administration.

The Income Tax Act shall be administered pursuant to the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

History: 1953 Comp., § 72-15A-15, enacted by Laws 1965, ch. 202, § 18; 1981, ch. 37, § 33.

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.

7-2-24.1. Optional designation of tax refund contribution for tree plantings.

A. Except as otherwise provided in Subsection C of this section, any individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate any portion of the income tax refund due him to be paid into the conservation planting revolving fund. In the case of a joint return, both individuals must make such designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in substantially the following form:

"Conservation Planting Revolving Fund - Check if you wish to [ ]

contribute a part or all of your tax refund to the Conservation Planting Revolving Fund to pay for the planting of trees in New Mexico. Enter here $ __________ the amount of your contribution."

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978] and any designation made under the provisions of this section to such refunds is void.

History: 1978 Comp., § 7-2-24.1, enacted by Laws 1992, ch. 108, § 4.

7-2-24.2. Optional designation of tax refund contribution; healthy soil program.

A. An individual whose state income tax liability after application of allowable credits and tax rebates in a year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate a portion of the income tax refund due to the individual to be paid to the board of regents of New Mexico state university for support of the healthy soil program in the New Mexico department of agriculture. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

> "Healthy Soil Program - Check [ ] if you wish to contribute a part or all of your tax refund for the support of the healthy soil program in the New Mexico department of agriculture. 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, and any designation made under the provisions of this section to such refunds is void.

History: Laws 2021, ch. 90, § 1.

7-2-25. Repealed.

7-2-26. Repealed.

7-2-27. Repealed.

History: 1978 Comp., § 7-2-27, enacted by Laws 1987, ch. 257, § 2; repealed by 2016, ch. 7, § 4.

7-2-28. Optional designation of tax refund contribution.

A. Any individual whose state income tax liability in any year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate any portion of the income tax refund due to be paid into the veterans' state cemetery fund. In the case of a joint return, both individuals must make such designation.

B. The secretary shall revise the state income tax form to allow the designation by individual taxpayers of such contributions in substantially the following form:

"New Mexico Veterans' State Cemetery Fund – Check [ ] if you wish to contribute a part or all of your tax refund to the Veterans' State Cemetery Fund. Enter here $___________ the amount of your contribution.".

C. The provisions of this section do not apply to refund amounts intercepted under the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and any designation under the provisions of this section with respect to such intercepted refunds is void.

History: 1978 Comp., § 7-2-28, enacted by Laws 1987, ch. 257, § 3; 2011, ch. 42, § 3; 2016, ch. 7, § 2.

7-2-28.1. Veterans' state cemetery fund; created.

The "veterans' state cemetery fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants, donations and amounts designated pursuant to Section 7-2-28 NMSA 1978. Money in the fund at the end of a fiscal year shall not revert to any other fund. The veterans' services department shall administer the fund, and money in the fund is appropriated to the veterans' services department.

History: Laws 2011, ch. 42, § 1; 2016, ch. 7, § 3.

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.

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.

7-2-30.1. Optional designation of tax refund contribution; amyotrophic lateral sclerosis research fund.

A. Except as otherwise provided in Subsection C of this section, any individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate any portion of the income tax refund due to the individual to be paid to the amyotrophic lateral sclerosis research fund. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"Amyotrophic Lateral Sclerosis Research Fund -

Check [ ] if you wish to contribute a part or all of your tax refund to the amyotrophic lateral sclerosis research fund for amyotrophic lateral sclerosis (Lou Gehrig's disease) research. Enter here $_________ the amount of your contribution.".

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 2005, ch. 56, § 2.

7-2-30.2. Optional designation of tax refund contribution; energy, minerals and natural resources department; state parks division.

A. Except as otherwise provided in Subsection C of this section, an individual whose state income tax liability after application of allowable credits and tax rebates in a year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate a portion of the income tax refund due to the individual to be paid to the state parks division of the energy, minerals and natural resources department for the kids in parks education program. In the case of a joint return, both individuals must make such designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"State Parks Division – Check if you wish to contribute a part or all [ ]

of your tax refund to the state parks division of the energy, minerals and

natural resources department for the kids in parks education program.

Enter here $__________ the amount of your contribution."

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 2005, ch. 87, § 2.

7-2-30.3. Optional designation of tax refund contribution; national guard member and family assistance.

A. Except as otherwise provided in Subsection C of this section, an individual whose state income tax liability after application of allowable credits and tax rebates in a year is lower than the amount of money held by the department to the credit of the individual for that tax year may designate a portion of the income tax refund due to the individual to be contributed for assistance to members of the New Mexico national guard and to their families. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"National Guard Member and Family Assistance – Check [ ] if you wish to contribute a part or all of your tax refund for assistance to members of the New Mexico national guard and to their families. Enter here $_____ the amount of your contribution.".

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 2005, ch. 220, § 2; 2015, ch. 150, § 2; 2018, ch. 4, § 2.

7-2-30.4. Optional designation of tax refund contribution; Vietnam veterans memorial.

A. Except as otherwise provided in Subsection C of this section, any individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the taxation and revenue department to the credit of such individual for that tax year may designate any portion of the income tax refund due to the individual to be paid to the veterans' services department for the operation, maintenance and improvement of the Vietnam veterans memorial near Angel Fire, New Mexico. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"Vietnam Veterans Memorial - Check [ ] if you wish to contribute a part or all of your tax refund to the veterans' services department for the operation, maintenance and improvement of the Vietnam Veterans Memorial near Angel Fire, New Mexico. Enter here $_________ the amount of your contribution.".

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 2009, ch. 175, § 2; 2017, ch. 115, § 2.

7-2-30.5. Optional designation of tax refund contribution; veterans' enterprise fund.

A. Except as otherwise provided in Subsection C of this section, any individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate any portion of the income tax refund due to the individual to be paid to the veterans' enterprise fund. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"Veterans' Enterprise Fund - Check [ ] if you wish to contribute a part or all of your tax refund to the veterans' enterprise fund to carry out the programs, duties or services of the veterans' services department. Enter here $_________ the amount of your contribution.".

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 2012, ch. 7, § 1.

7-2-30.6. Optional designation of tax refund contribution; lottery tuition fund.

A. Except as otherwise provided in Subsection C of this section, any individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate any portion of the income tax refund due to the individual to be paid to the lottery tuition fund. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"Lottery Tuition Fund - Check [ ] if you wish to contribute a part or all of your tax refund to the lottery tuition fund to provide tuition assistance for New Mexico resident undergraduates. Enter here $_________ the amount of your contribution.".

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 2012, ch. 57, § 1.

7-2-30.7. Optional designation of tax refund contribution; equine shelter rescue fund.

A. Any individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate any portion of the income tax refund due to the individual to be paid to the equine shelter rescue fund. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"Equine Shelter Rescue Fund - Check [ ] if you wish to contribute a part or all of your tax refund to the equine shelter rescue fund. Enter here $_________ the amount of your contribution.".

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 2013, ch. 49, § 2; 2023, ch. 45, § 1.

7-2-30.8. Finding; optional designation of tax refund contribution; senior services.

A. The legislature finds that it is in the public interest to provide additional money to enhance or expand vital services to New Mexico's elderly population. This section provides a means by which individuals may donate all or a portion of their income tax refund, through a voluntary check-off designation, to provide supplemental funding through the non-metro area agency on aging to senior service providers throughout the state. It is the intent of the legislature that this program of income tax refund check-off is supplemental to any other funding and is in no way intended to take the place of the funding that would otherwise be appropriated for this purpose.

B. Except as otherwise provided in Subsection D of this section, an individual whose state income tax liability after application of allowable credits and tax rebates in a year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate a portion of the income tax refund due to the individual to be paid to the aging and long-term services department for distribution statewide through the area agencies on aging for the provision of supplemental senior services throughout the state, including senior services provided through the north central New Mexico economic development district as the non-metro area agency on aging, the city of Albuquerque/Bernalillo county area agency on aging, the Indian area agency on aging and the Navajo area agency on aging. In the case of a joint return, both individuals must make the designation.

C. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"Supplemental Senior Services – Check[ ]
if you wish to contribute a part or all of your tax
refund to provide supplemental funding to enhance or
expand senior services throughout the state.
Enter here $_____________ the amount of your contribution.".

D. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

E. The department shall distribute one hundred percent of the tax refund contributions pursuant to this section to the aging and long-term services department for distribution statewide through the area agencies on aging. The agencies on aging shall cooperatively establish a grant program based on need that is available to all senior service providers in the state that meet the requirements of the program. The agencies shall seek input from senior service providers in developing the grant program.

History: Laws 2015, ch. 50, § 1.

7-2-30.9. Optional designation of tax refund contribution; animal care and facility fund.

A. An individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the department to the credit of that individual for that tax year may designate a portion of the income tax refund due to the individual to be paid to the animal care and facility fund to carry out the statewide dog and cat spay and neuter program. In the case of a joint return, both individuals must make that designation.

B. The department shall revise the state income tax form to allow the designation of a contribution in the following form:

> "Statewide Dog and Cat Spay and Neuter Program - Check [ ] if you wish to contribute a part or all of your tax refund to the Animal Care and Facility Fund to carry out the statewide dog and cat spay and neuter program. Enter here $_________ the amount of your contribution.".

C. The provisions of this section do not apply to an income tax refund subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and a designation made pursuant to the provisions of this section to that refund is void.

History: Laws 2015, ch. 82, § 1.

7-2-30.10. Repealed.

History: Laws 2017, ch. 116, § 1; repealed by Laws 2017, ch. 116, § 3.

7-2-30.11. Optional designation of tax refund contribution; New Mexico housing trust fund.

A. Any individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate any portion of the income tax refund due to the individual to be paid to the New Mexico housing trust fund. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"New Mexico Housing Trust Fund - Check [ ] if you wish to contribute a part or all of your tax refund to the New Mexico Housing Trust Fund for affordable housing programs. 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 2018, ch. 51, § 1.

7-2-31. Optional designation of tax refund contribution.

A. Any individual whose state income tax liability in any year is lower than the amount of money held by the taxation and revenue department to the credit of that individual for that tax year may designate two dollars ($2.00) of the income tax refund due the individual to be paid to a state political party. "State political party", for the purposes of this section, means those parties that on January 1 of the taxable year for which the return is filed meet the requirements of Section 1-7-2(A) NMSA 1978. In the case of a joint return, each individual may make a designation.

B. The secretary of taxation and revenue shall revise the state income tax form to allow on the face of the form the designation by individual taxpayers of contributions to state political parties in substantially the following form:

> "New Mexico Political Party Income Tax Refund Check-Off - Check if you wish to contribute two dollars ($2.00) of your income tax refund to a state political party that qualifies as such under Section 1-7-2 NMSA 1978. My contribution should be made to the ______________________________ party."(name of state political party)

C. The secretary of taxation and revenue shall provide a list on the state income tax form of the qualified state political parties to which the taxpayer may make a contribution.

D. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 1992, ch. 108, § 1.

7-2-31.1. Optional refund contribution provisions; conditional repeal.

A. By August 31, 2000, and by August 31 of every succeeding year, the secretary shall determine the total amount contributed through the preceding July 31 on returns filed for taxable years ending in the preceding calendar year pursuant to each provision of the Income Tax Act that allows a taxpayer the option of directing the department to contribute all or any part of an income tax refund due the taxpayer to a specified account, fund or entity.

B. If the secretary's determination pursuant to Subsection A of this section regarding an optional refund contribution provision is that the total amount contributed is less than five thousand dollars ($5,000), exclusive of directions for contributions disregarded under Subsection C of this section, the secretary shall certify that fact to the secretary of state. Any optional refund contribution provision for which a certification is made for three consecutive years is repealed, effective on the January 1 following the third certification.

C. The department shall disregard a direction on a return to make an optional refund contribution if the amount of refund due on the return is determined by the department to be less than the sum of the amounts directed to be contributed.

D. Notwithstanding the provisions of Section 7-1-26 NMSA 1978, a taxpayer may not claim and the department may not allow a refund with respect to any optional refund contribution that was made by the department at the direction of the taxpayer.

History: Laws 1999, ch. 47, § 5.

7-2-32. Deduction; payments into education trust fund.

A taxpayer may claim a deduction from net income in an amount equal to the payments made by the taxpayer into the education trust fund pursuant to an education investment agreement or prepaid tuition contract under the Education Trust Act [Chapter 21, Article 21K NMSA 1978] in the taxable year for which the deduction is being claimed. The amount of payments made on behalf of any one beneficiary that may be deducted shall not exceed in the aggregate the cost of attendance at the applicable institution of higher education, as determined by the education trust board. Married individuals who file separate returns for the taxable year in which they could have filed a joint return may each claim only one-half of the deduction that would have been allowed on the joint return. Individuals having income both within and without this state shall apportion this deduction in accordance with regulations of the secretary.

History: Laws 1997, ch. 259, § 8; 2023, ch. 17, § 2.

7-2-33. Repealed.

7-2-34. Deduction; net capital gain income.

A. A taxpayer may claim a deduction from net income in an amount equal to the greater of:

(1) the taxpayer's net capital gain income for the taxable year for which the deduction is being claimed, but not to exceed two thousand five hundred dollars ($2,500); or

(2) forty percent of up to one million dollars ($1,000,000) of the taxpayer's net capital gain income from the sale of a business that is allocated or apportioned to New Mexico pursuant to Section 7-2-11 NMSA 1978 for the taxable year for which the deduction is being claimed.

B. Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the deduction provided by this section that would have been allowed on the joint return.

C. As used in this section, "net capital gain" means "net capital gain" as defined in Section 1222 (11) of the Internal Revenue Code.

History: Laws 1999, ch. 205, § 1; 2003, ch. 2, § 7; 2019, ch. 270, § 14; 2024, ch. 67, § 8.

7-2-35. Deleted.

History: Laws 2000 (2nd S.S.), ch. 7, § 1.

7-2-36. Deduction; expenses related to organ donation.

A. A taxpayer may claim a deduction from net income in an amount not to exceed ten thousand dollars ($10,000) of organ donation-related expenses, including lost wages, lodging expenses and travel expenses, incurred during the taxable year by the taxpayer or the taxpayer's dependent as a result of the taxpayer's or dependent's donation of a human organ to another person for transfer of that human organ to the body of another person.

B. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the deduction provided by this section that would have been allowed on a joint return.

C. For the purposes of this section:

(1) "dependent" means "dependent" as defined by Section 152 of the Internal Revenue Code, as that section may be amended or renumbered; and

(2) "human organ" means all or part of a heart, liver, pancreas, kidney, intestine, lung or bone marrow.

History: Laws 2005, ch. 113, § 1.

7-2-37. Deduction; unreimbursed or uncompensated medical care expenses.

A. Prior to January 1, 2025, a taxpayer may claim a deduction from net income in an amount determined pursuant to Subsection B of this section for medical care expenses paid during the taxable year for medical care of the taxpayer, the taxpayer's spouse or a dependent if the expenses are not reimbursed or compensated for by insurance or otherwise and have not been included in the taxpayer's itemized deductions, as defined in Section 63 of the Internal Revenue Code, for the taxable year.

B. The deduction provided in Subsection A of this section may be claimed in an amount equal to the following percentage of medical care expenses paid during the taxable year based on the taxpayer's filing status and adjusted gross income as follows:

(1) for surviving spouses and married individuals filing joint returns:

If adjusted gross income is:	The following percent of medical care expenses paid may be deducted:
Not over $30,000	25 percent
More than $30,000 but not more than $70,000	15 percent
Over $70,000	10 percent;

(2) for single individuals and married individuals filing separate returns:

If adjusted gross income is:	The following percent of medical care expenses paid may be deducted:
Not over $15,000	25 percent
More than $15,000 but not more than $35,000	15 percent
Over $35,000	10 percent; and

(3) for heads of household:

If adjusted gross income is:	The following percent of medical care expenses paid may be deducted:
Not over $20,000	25 percent
More than $20,000 but not more than $50,000	15 percent
Over $50,000	10 percent.

C. As used in this section:

(1) "dependent" means "dependent" as defined in Section 152 of the Internal Revenue Code;

(2) "health care facility" means a hospital, outpatient facility, diagnostic and treatment center, rehabilitation center, free-standing hospice or other similar facility at which medical care is provided;

(3) "medical care" means the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body;

(4) "medical care expenses" means amounts paid for:

(a) the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body, excluding cosmetic surgery, if provided by a physician or in a health care facility;

(b) prescribed drugs or insulin;

(c) qualified long-term care services as defined in Section 7702B(c) of the Internal Revenue Code;

(d) insurance covering medical care, including amounts paid as premiums under Part B of Title 18 of the Social Security Act or for a qualified long-term care insurance contract defined in Section 7702B(b) of the Internal Revenue Code, if the insurance or other amount is paid from income included in the taxpayer's adjusted gross income for the taxable year;

(e) nursing services, regardless of where the services are rendered, if provided by a practical nurse or a professional nurse licensed to practice in the state pursuant to the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978];

(f) specialized treatment or the use of special therapeutic devices if the treatment or device is prescribed by a physician and the patient can show that the expense was incurred primarily for the prevention or alleviation of a physical or mental defect or illness; and

(g) care in an institution other than a hospital, such as a sanitarium or rest home, if the principal reason for the presence of the person in the institution is to receive the medical care available; provided that if the meals and lodging are furnished as a necessary part of such care, the cost of the meals and lodging are "medical care expenses";

(5) "physician" means a medical doctor, osteopathic physician, dentist, podiatrist, chiropractic physician or psychologist licensed or certified to practice in New Mexico; and

(6) "prescribed drug" means a drug or biological that requires a prescription of a physician for its use by an individual.

History: Laws 2015 (1st S.S.), ch. 2, § 3.

7-2-38. Deduction; income set aside for future distribution from an estate or trust to a nonresident individual.

A. Before January 1, 2025, a taxpayer that is an estate or trust may claim a deduction from net income in the amount equal to income, excluding income derived from real property located in New Mexico, mineral, oil and gas interests located in New Mexico, water rights located in New Mexico and any other income allocated or apportioned to New Mexico, set aside for future distribution to a nonresident individual beneficiary as provided in the estate's or trust's governing instrument.

B. The purpose of the deduction allowed by this section is to increase estate and trust business in New Mexico.

C. Concerning the deduction allowed by this section, in determining:

(1) the extent to which income of an estate or trust is set aside for future distribution to a nonresident individual beneficiary, if all or part of the estate's or trust's federal taxable income, regardless of whether it is added to the estate or trust corpus for estate or trust accounting purposes, is distributable in future taxable years to or for the benefit of a named individual beneficiary or a first-named class of individual beneficiaries and if, on the last day of the estate's or trust's taxable year, one or more named individual beneficiaries or one or more members of the first-named class of individual beneficiaries is living, then the portion of the federal taxable income considered set aside for future distribution to:

(a) a named individual beneficiary is determined by: 1) ascertaining the share or shares of each named individual beneficiary as if the estate or trust had terminated on the last day of the taxable year and then ascertaining the portion of that income realized by the estate or trust during the taxable year while the beneficiary was a nonresident; and 2) presuming that the beneficiary was living and residing in the state in which the putative parents resided during the taxable year; and

(b) a first-named class of individual beneficiaries is determined by: 1) ascertaining the members of the class and the share of each member as if the estate or trust had terminated on the last day of the taxable year and then ascertaining the portion of that income of each share realized by the estate or trust while the member was a nonresident; and 2) presuming that the member was living and residing with the person the relationship to whom defines membership in the class;

(2) the share of income of each beneficiary of an estate or trust in the federal taxable income, it is presumed that the discretion of a person over the distribution of that income, regardless of whether the person acts in a fiduciary capacity or is subject to a standard, has not been exercised, unless that discretion is irrevocably exercised as of the last day of the taxable year; and

(3) the time federal taxable income is realized:

(a) interest income is considered realized when payable;

(b) dividend income is considered realized on the day the dividend is payable;

(c) gains and losses from the sale or exchange of property are considered realized or deductible, as appropriate, on the settlement date of the sale or the effective date of the exchange; and

(d) commissions on income or principal are deemed deductible on the date charged.

D. A taxpayer allowed a deduction in accordance with this section shall report the amount of the deduction separately and as required by the department.

E. Beginning in 2020, the department shall compile an annual report on the deduction allowed by this section that includes the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and other information necessary to evaluate the deduction's effectiveness. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction and whether the deduction is fulfilling its purpose.

History: Laws 2019, ch. 264, § 1.

7-2-39. Deduction from net income for certain dependents.

A. As long as the exemption amount pursuant to Section 151 of the Internal Revenue Code means zero, a taxpayer who is not a dependent of another individual and files a return as a head of household or married filing jointly may claim a deduction from net income in an amount equal to the product of four thousand dollars ($4,000) multiplied by the difference between the number of dependents claimed on the taxpayer's return and one.

B. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction to the department in a manner required by the department.

C. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deduction. The department shall present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the deduction.

D. As used in this section, "dependent" means "dependent" as defined in Section 152 of the Internal Revenue Code.

History: Laws 2019, ch. 270, § 15.

7-2-40. Deduction; income from leasing a liquor license.

A. Prior to January 1, 2026, a taxpayer who is a liquor license lessor and who held the license on June 30, 2021 may claim a deduction from net income in an amount equal to the gross receipts from sales of alcoholic beverages made by each liquor license lessee in an amount, if the liquor license is a dispenser's license and sales of alcoholic beverages for consumption off premises are less than fifty percent of total alcoholic beverage sales, not to exceed fifty thousand dollars ($50,000) for each of four taxable years.

B. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of a deduction provided by this section that would have been claimed on a joint return.

C. A taxpayer may claim the deduction provided by this section in proportion to the taxpayer's ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all of the requirements to be eligible for the deduction. The total deduction claimed in the aggregate by all members of the partnership or association with respect to the deduction shall not exceed the amount of the deduction that could have been claimed by a sole owner of the business.

D. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction to the department in a manner required by the department.

E. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the cost of the deduction. The department shall provide the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the deduction.

F. As used in this section:

(1) "alcoholic beverage" means alcoholic beverage as defined in the Liquor Control Act;

(2) "dispenser's license" means a license issued pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] allowing the licensee to sell, offer for sale or have in the person's possession with the intent to sell alcoholic beverages both by the drink for consumption on the licensed premises and in unbroken packages, including growlers, for consumption and not for resale off the licensed premises;

(3) "growler" means a clean, refillable, resealable container that has a liquid capacity that does not exceed one gallon and that is intended and used for the sale of beer, wine or cider;

(4) "liquor license" means a dispenser's license issued pursuant to Section 60-6A-3 NMSA 1978 or a dispenser's license issued pursuant to Section 60-6A-12 NMSA 1978 issued prior to July 1, 2021;

(5) "liquor license lessee" means a person that leases a liquor license from a liquor license lessor; and

(6) "liquor license lessor" means a person that leases a liquor license to a third party.

History: Laws 2021, ch. 7, § 1.

7-2-41. Deduction; school supplies purchased by a public school teacher.

A. A taxpayer who is not a dependent of another individual and is a public school teacher may claim a deduction from net income in an amount equal to the costs of school supplies purchased by the public school teacher in a taxable year, not to exceed:

(1) for a taxable year beginning on January 1, 2024 and prior to January 1, 2025, five hundred dollars ($500); and

(2) for a taxable year beginning on January 1, 2025 and prior to January 1, 2029, one thousand dollars ($1,000).

B. To claim a deduction pursuant to this section, a taxpayer shall submit to the department information required by the secretary establishing that the taxpayer is eligible to claim a deduction pursuant to this section.

C. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction to the department in a manner required by the department.

D. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers approved by the department to receive the deduction, the aggregate amount of deductions approved and any other information necessary to evaluate the deduction. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the deduction.

E. As used in this section:

(1) "public school teacher" means a person who is licensed as a teacher pursuant to the Public School Code [Chapter 22 NMSA 1978, except Article 5A] and who teaches at a public school, as that term is defined in the Public School Code; and

(2) "school supplies" means items purchased by a public school teacher and used by the students of the teacher in the teacher's classroom for educational purposes, including notebooks, paper, writing instruments, crayons, art supplies, rulers, maps and globes, but not including computers or other similar digital devices, watches, radios, digital music players, headphones, sporting equipment, portable or desktop telephones, cellular telephones or other electronic communication devices, copiers, office equipment, furniture or fixtures.

History: Laws 2024, ch. 67, § 24.

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.

7-2A-2. Definitions.

For the purpose of the Corporate Income and Franchise Tax Act and unless the context requires otherwise:

A. "bank" means any national bank, national banking association, state bank or bank holding company;

B. "apportioned net income" or "apportioned net loss" means net income allocated and apportioned to New Mexico pursuant to the provisions of the Corporate Income and Franchise Tax Act or the Uniform Division of Income for Tax Purposes Act [Chapter 7, Article 4 NMSA 1978], but excluding from the sales factor any sales that represent intercompany transactions between members of the filing group;

C. "base income" means the federal taxable income or the federal net operating loss of a corporation for the taxable year calculated pursuant to the Internal Revenue Code, after special deductions provided in Sections 241 through 249 of the Internal Revenue Code but without any deduction for net operating losses, as if the corporation filed a federal tax return as a separate domestic entity, modified as follows:

(1) adding to that income:

(a) interest received on a state or local bond exempt under the Internal Revenue Code;

(b) the amount of any deduction claimed in calculating taxable income for all expenses and costs directly or indirectly paid, accrued or incurred to a captive real estate investment trust;

(c) the amount of any deduction, other than for premiums, for amounts paid directly or indirectly to a commonly controlled entity that is exempt from corporate income tax pursuant to Section 7-2A-4 NMSA 1978; and

(d) for taxable years beginning on or after January 1, 2023, an amount equal to the amount of credit claimed and allowed for that year pursuant to Section 7-3A-10 NMSA 1978 with respect to the distributed net income of a pass-through entity;

(2) subtracting from that income:

(a) income from obligations of the United States net of expenses incurred to earn that income;

(b) other amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States net of any related expenses; and

(c) an amount equal to one hundred percent of the income of the corporation under Section 951A of the Internal Revenue Code, less the amount deducted pursuant to Section 250 of the Internal Revenue Code;

(3) making other adjustments deemed necessary to properly reflect income of the unitary group, including attribution of income or expense related to unitary assets held by related corporations that are not part of the filing group; and

(4) for a taxpayer that conducts a lawful business pursuant to the laws of this state, excludes an amount equal to any expenditure that is eligible to be claimed as a federal income tax deduction but is disallowed pursuant to Section 280E of the Internal Revenue Code, as that section may be amended or renumbered;

D. "captive real estate investment trust" means a corporation, trust or association taxed as a real estate investment trust pursuant to Section 857 of the Internal Revenue Code, the shares or beneficial interests of which are not regularly traded on an established securities market; provided that more than fifty percent of any class of beneficial interests or shares of the real estate investment trust are owned directly, indirectly or constructively by the taxpayer during all or a part of the taxpayer's taxable year;

E. "common ownership" means the direct or indirect control or ownership of more than fifty percent of the outstanding voting stock, ownership of which is determined pursuant to Section 1563 of the Internal Revenue Code, as that section may be amended or renumbered, of:

(1) a parent-subsidiary controlled group as defined in Section 1563 of the Internal Revenue Code, except that fifty percent shall be substituted for eighty percent;

(2) a brother-sister controlled group as defined in Section 1563 of the Internal Revenue Code; or

(3) three or more corporations each of which is a member of a group of corporations described in Paragraph (1) or (2) of this subsection, and one of which is:

(a) a common parent corporation included in a group of corporations described in Paragraph (1) of this subsection; and

(b) included in a group of corporations described in Paragraph (2) of this subsection;

F. "consolidated group" means the group of entities properly filing a federal consolidated return under the Internal Revenue Code for the taxable year;

G. "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 and limited liability companies taxed as corporations under the Internal Revenue Code;

H. "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;

I. "filing group" means a group of corporations properly included in a return pursuant to Section 7-2A-8.3 NMSA 1978 for a particular taxable year;

J. "fiscal year" means any accounting period of twelve months ending on the last day of any month other than December;

K. "grandfathered net operating loss carryover" means:

(1) the amount of net loss properly reported to New Mexico for taxable years beginning January 1, 2013 and prior to January 1, 2020 as part of a timely filed original return, or an amended return for those taxable years filed prior to January 1, 2020, to the extent such loss can be attributed to one or more corporations that are properly

included in the taxpayer's return for the first taxable year beginning on or after January 1, 2020;

(2) reduced by:

(a) adding back deductions that were taken by the corporation or corporations for royalties or interest paid to one or more related corporations, but only to the extent that such adjustment would not create a net loss for such related corporations; and

(b) the amount of net operating loss deductions taken prior to January 1, 2020 that would be charged against those losses consistent with the Internal Revenue Code and provisions of the Corporate Income and Franchise Tax Act applicable to the year of the deduction; and

(3) apportioned to New Mexico using the apportionment factors that can properly be attributed to the corporation or corporations for the year of the net loss;

L. "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended;

M. "net income" means:

(1) the base income of a corporation properly filing a tax return as a separate entity; or

(2) the combined base income and losses of corporations that are part of a filing group that is computed after eliminating intercompany income and expense in a manner consistent with the consolidated filing requirements of the Internal Revenue Code and the Corporate Income and Franchise Tax Act;

N. "net operating loss carryover" means the apportioned net loss properly reported on an original or amended tax return for taxable years beginning on or after January 1, 2020 by the taxpayer:

(1) plus:

(a) the portion of an apportioned net loss properly reported to New Mexico for a taxable year beginning on or after January 1, 2020, on a separate year return, to the extent the taxpayer would have been entitled to include the portion of such apportioned net loss in the taxpayer's consolidated net operating loss carryforward under the Internal Revenue Code if the taxpayer filed a consolidated federal return; and

(b) the taxpayer's grandfathered net operating loss carryover; and

(2) minus:

(a) the amount of the net operating loss carryover attributed to an entity that has left the filing group, computed in a manner consistent with the consolidated filing requirements of the Internal Revenue Code and applicable regulations, as if the taxpayer were filing a consolidated return; and

(b) the amount of net operating loss deductions properly taken by the taxpayer;

O. "net operating loss deduction" means the portion of the net operating loss carryover that may be deducted from the taxpayer's apportioned net income under the Internal Revenue Code as of January 1, 2018 for the taxable year in which the deduction is taken, including the eighty percent limitation of Section 172(a) of the Internal Revenue Code as of January 1, 2018 calculated on the basis of the taxpayer's apportioned net income;

P. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, joint venture, syndicate or other association; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or agency, department or instrumentality thereof;

Q. "real estate investment trust" has the meaning ascribed to the term in Section 856 of the Internal Revenue Code, as that section may be amended or renumbered;

R. "related corporation" means a corporation that is under common ownership with one or more corporations but that is not included in the same tax return;

S. "return" means any tax or information return, including a water's-edge or worldwide combined return, a consolidated return, a declaration of estimated tax or a claim for refund, including any amendments or supplements to the return, required or permitted pursuant to a law subject to administration and enforcement pursuant to the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] and filed with the department by or on behalf of any person;

T. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

U. "separate year return" means a properly filed original or amended return for a taxable year beginning on or after January 1, 2020 by a taxpayer reporting a loss, a portion of which is claimed as part of the net operating loss carryover by another taxpayer in a subsequent return period;

V. "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;

W. "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;

X. "taxable income" means a taxpayer's apportioned net income minus the net operating loss deduction for the taxable year;

Y. "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;

Z. "taxpayer" means any corporation or group of corporations filing a return pursuant to Section 7-2A-8.3 NMSA 1978 subject to the taxes imposed by the Corporate Income and Franchise Tax Act;

AA. "unitary group" means a group of two or more corporations, including a captive real estate investment trust, but not including an S corporation, an insurance company subject to the provisions of the New Mexico Insurance Code [59A-1-1 NMSA 1978], an insurance company that would be subject to the New Mexico Insurance Code if the insurance company engaged in business in this state or a real estate investment trust that is not a captive real estate investment trust, that are:

(1) related through common ownership; and

(2) economically interdependent with one another as demonstrated by the following factors:

(a) centralized management;

(b) functional integration; and

(c) economies of scale;

BB. "water's-edge group" means all corporations that are part of a unitary group, except:

(1) corporations that are exempt from corporate income tax pursuant to Section 7-2A-4 NMSA 1978; and

(2) corporations organized or incorporated outside the United States or its possessions or territories that have less than twenty percent of their property, payroll and sales sourced to locations within the United States, following the sourcing rules of the Uniform Division of Income for Tax Purposes Act [Chapter 7, Article 4 NMSA 1978]; and

CC. "worldwide combined group" means all members of a unitary group, except members that are exempt from corporate income tax pursuant to Section 7-2A-4 NMSA 1978, irrespective of the country in which the corporations are incorporated or conduct business activity.

History: 1978 Comp., § 7-2A-2, enacted by Laws 1986, ch. 20, § 33; 1991, ch. 9, § 25; 1993, ch. 307, § 3; 1993, ch. 309, § 1; 1995, ch. 11, § 5; 1999, ch. 47, § 6; 2014, ch. 53, § 2; 2017, ch. 95, § 1; 2019, ch. 270, § 16; 2020 (1st S.S.), ch. 4, § 2; 2021 (1st S.S.), ch. 4, § 52; 2023, ch. 85, § 8; 2024, ch. 67, § 37.

7-2A-3. Imposition and levy of taxes.

A. A tax to be known as the "corporate income tax" is imposed at the rate specified in the Corporate Income and Franchise Tax Act upon the taxable income of a corporation or group of corporations, in whatever jurisdiction organized or incorporated, that is 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; 2019, ch. 270, § 17.

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.

7-2A-4.1. Repealed.

History: Laws 2022, ch. 46, § 2; repealed by Laws 2023, ch. 159, § 4.

7-2A-5. Corporate income tax rates.

The corporate income tax imposed on corporations by Section 7-2A-3 NMSA 1978 shall be five and nine-tenths percent of taxable income.

History: 1978 Comp., § 7-2A-5, enacted by Laws 1981, ch. 37, § 38; 1981, ch. 176, § 1; 1983, ch. 213, § 8; 1986, ch. 20, § 36; 1987, ch. 277, § 5; 2013, ch. 160, § 3; 2019, ch. 270, § 18; 2024, ch. 67, § 10.

7-2A-5.1. Corporate franchise tax amount.

The corporate franchise tax amount imposed on a corporation by Section 7-2A-3 NMSA 1978 shall be fifty dollars ($50.00) per taxable year or any fraction thereof.

History: Laws 1986, ch. 20, § 37; 1992, ch. 78, § 3.

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.

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.

7-2A-8. Repealed.

History: 1978 Comp., § 7-2A-8, enacted by Laws 1981, ch. 37, § 41; 1983, ch. 213, § 9; 1986, ch. 20, § 40; 1990, ch. 49, § 12; 1995, ch. 11, § 6; 1996, ch. 16, § 2; repealed by Laws 2019, ch. 270, § 58.

7-2A-8.1. Repealed.

7-2A-8.2. Repealed.

7-2A-8.3. Combined and consolidated returns.

A. Corporations that are part of a unitary group shall file a return properly reporting and paying tax on taxable income as a worldwide combined group unless they properly elect to report and pay tax on taxable income as a water's-edge or consolidated group, pursuant to department rules and instructions, on the first original return required to be filed for taxable years beginning on or after January 1, 2020. Corporations electing to file a consolidated return must file on that same basis for federal income tax purposes. Once a unitary or consolidated group has properly made an election to file as a water's-edge or consolidated group, the group and any of the group's members shall file a return on that basis for at least seven consecutive years unless the secretary grants permission otherwise. Corporations that are part of a unitary group filing a return are jointly and severally liable for the tax imposed pursuant to the Corporate Income and Franchise Tax Act on taxable income.

B. Corporations required to file a return as part of a filing group pursuant to this section may designate a member of the group to act as the principal corporation to file the return, make any elections, claim tax credits or refunds or perform any other act on behalf of the group with respect to the corporate income tax; provided that the members of the group remain jointly and severally liable for the taxes due pursuant to Subsection A of this section.

History: 1978 Comp., § 7-2A-8.3, enacted by Laws 1983, ch. 213, § 12; 1986, ch. 20, § 43; 1993, ch. 307, § 4; 1993, ch. 309, § 2; 2013, ch. 160, § 4; 2019, ch. 270, § 19.

7-2A-8.4. Repealed.

History: 1978 Comp., § 7-2A-8.4, enacted by Laws 1983, ch. 213, § 13; 1986, ch. 20, § 44; 1993, ch. 307, § 5; 1993, ch. 309, § 3; repealed by Laws 2019, ch. 270, § 58.

7-2A-8.5. Repealed.

7-2A-8.6. Credit for preservation of cultural property; corporate income tax credit.

A. Tax credits for the preservation of cultural property may be claimed as follows:

(1) to encourage the restoration, rehabilitation and preservation of cultural properties, a taxpayer that files a corporate income tax return and that is the owner of a cultural property listed on the official New Mexico register of cultural properties, with its consent, may claim a credit not to exceed twenty-five thousand dollars ($25,000) in an amount equal to one-half of the cost of restoration, rehabilitation or preservation of the cultural property; or

(2) if a cultural property, whose owner may otherwise claim the credit set forth in Paragraph (1) of this subsection is also located within an arts and cultural district designated by the state or a municipality pursuant to the Arts and Cultural District Act [15-5A-1 to 15-5A-7 NMSA 1978], the owner of that cultural property may claim a credit not to exceed fifty thousand dollars ($50,000), including any credit claimed pursuant to Paragraph (1) of this subsection, in an amount equal to one-half of the cost of restoration, rehabilitation or preservation of the cultural property.

B. The taxpayer may claim the credit if:

(1) it submitted a plan and specifications for restoration, rehabilitation or preservation to the committee and received approval from the committee for the plan and specifications prior to commencement of the restoration, rehabilitation or preservation;

(2) it received certification from the committee after completing the restoration, rehabilitation or preservation, or committee-approved phase, that it conformed to the plan and specifications and preserved and maintained those qualities of the property that made it eligible for inclusion in the official register; and

(3) the project is completed within twenty-four months of the date the project is approved by the committee in accordance with Paragraph (1) of this subsection.

C. A taxpayer may claim the credit provided in this section for each taxable year in which preservation, restoration or rehabilitation is carried out. Claims for the credit provided in this section shall be limited to three consecutive years, and the maximum aggregate credit allowable shall not exceed twenty-five thousand dollars ($25,000) if governed by Paragraph (1) of Subsection A of this section, or fifty thousand dollars ($50,000) if governed by Paragraph (2) of Subsection A of this section, for any single restoration, rehabilitation or preservation project certified by the committee for any cultural property listed on the official New Mexico register. No single project may extend beyond a period of more than two years.

D. A taxpayer who otherwise qualifies and claims a credit on a restoration, rehabilitation or preservation project on property owned by a partnership of which the taxpayer is a member may claim a credit only in proportion to the taxpayer's interest in the partnership. The total credit claimed by all members of the partnership shall not exceed twenty-five thousand dollars ($25,000) if governed by Paragraph (1) of Subsection A of this section, or fifty thousand dollars ($50,000) if governed by Paragraph (2) of Subsection A of this section, in the aggregate for any single restoration, preservation or rehabilitation project for any cultural property listed on the official New Mexico register approved by the committee.

E. The credit provided in this section may only be deducted from the taxpayer's corporate income tax liability. Any portion of the maximum tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for four consecutive years; provided, however, the total tax credits claimed under this section shall not exceed twenty-five thousand dollars ($25,000) if governed by Paragraph (1) of Subsection A of this section, or fifty thousand dollars ($50,000) if governed by Paragraph (2) of Subsection A of this section, for any single restoration, rehabilitation or preservation project for any cultural property listed on the official New Mexico register.

F. The historic preservation division shall promulgate regulations for the implementation of this section.

G. As used in this section:

(1) "committee" means the cultural properties review committee created in Section 18-6-4 NMSA 1978; and

(2) "historic preservation division" means the historic preservation division of the cultural affairs department created in Section 18-6-8 NMSA 1978.

History: 1978 Comp., § 7-2A-8.6, enacted by Laws 1984, ch. 34, § 2; 1986, ch. 20, § 46; 2007, ch. 160, § 15.

7-2A-8.7. Repealed.

7-2A-8.8. Repealed.

History: Laws 1998, ch. 97, § 3; repealed by Laws 2023, ch. 85, § 28.

7-2A-8.9. Tax credit; certain conveyances of real property.

A. There shall be allowed as a credit against the tax liability imposed by the Corporate Income and Franchise Tax Act an amount equal to fifty percent of the fair market value of land or interest in land that is conveyed for the purpose of open space, natural resource or biodiversity conservation, agricultural preservation or watershed or historic preservation as an unconditional donation in perpetuity by the landowner or taxpayer to a public or private conservation agency eligible to hold the land and interests therein for conservation or preservation purposes. The fair market value of qualified donations made pursuant to this section shall be substantiated by a "qualified appraisal" prepared by a "qualified appraiser", as those terms are defined under applicable federal laws and regulations governing charitable contributions.

B. The amount of the credit that may be claimed by a taxpayer shall not exceed one hundred thousand dollars ($100,000) for a conveyance made prior to January 1, 2008 and shall not exceed two hundred fifty thousand dollars ($250,000) for a conveyance made on or after that date. In addition, in a taxable year the credit used may not exceed the amount of corporate income tax otherwise due. A portion of the credit that is unused in a taxable year may be carried over for a maximum of twenty consecutive taxable years following the taxable year in which the credit originated until fully expended. A taxpayer may claim only one tax credit per taxable year.

C. Qualified donations shall include the conveyance in perpetuity of a fee interest in real property or a less-than-fee interest in real property, such as a conservation restriction, preservation restriction, agricultural preservation restriction or watershed preservation restriction, pursuant to the Land Use Easement Act [47-12-1 to 47-12-6 NMSA 1978]; provided that the less-than-fee interest qualifies as a charitable contribution deduction under Section 170(h) of the Internal Revenue Code. Dedications of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits shall not be considered as qualified donations pursuant to the Land Conservation Incentives Act [75-9-1 to 75-9-6 NMSA 1978].

D. Qualified donations shall be eligible for the tax credit if the donations are made to the state of New Mexico, a political subdivision thereof or a charitable organization described in Section 501(c)(3) of the Internal Revenue Code and that meets the requirements of Section 170(h)(3) of that code.

E. To be eligible for treatment as qualified donations under this section, land or interests in lands must be certified by the secretary of energy, minerals and natural resources as fulfilling the purposes as set forth in Section 5-9-2 NMSA 1978. The use and protection of the lands, or interests therein, for open space, natural area protection, biodiversity habitat conservation, land preservation, agricultural preservation, historic preservation or similar use or purpose of the property shall be assured in perpetuity.

F. A taxpayer may apply for certification of eligibility for the tax credit provided by this section from the energy, minerals and natural resources department. If the energy, minerals and natural resources department determines that the application meets the requirements of this section and that the property conveyed will not adversely affect the property rights of contiguous landowners, it shall issue a certificate of eligibility to the taxpayer, which shall include a calculation of the maximum amount of tax credit for which the taxpayer would be eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection.

G. To receive a credit pursuant to this section, a person shall apply to the taxation and revenue department on forms and in the manner prescribed by the department. The application shall include a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to Subsection F of this section. If all of the requirements of this section have been complied with, the taxation and revenue department shall issue to the applicant a document granting the tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed for the qualified donation made pursuant to this section.

H. The tax credit represented by a document issued pursuant to Subsection G of this section for a conveyance made on or after January 1, 2008, or an increment of that tax credit, may be sold, exchanged or otherwise transferred, and may be carried forward for a period of twenty taxable years following the taxable year in which the credit originated until fully expended. A tax credit or increment of a tax credit may only be transferred once. The credit may be transferred to any taxpayer. A taxpayer to whom a credit has been transferred may use the credit for the taxable year in which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but in no event may the transferred credit be used more than twenty years after it was originally issued.

I. A tax credit issued pursuant to this section shall be transferred through a qualified intermediary. The qualified intermediary shall, by means of a sworn notarized statement, notify the taxation and revenue department of the transfer and of the date of the transfer within ten days of the transfer. Credits shall only be transferred in increments of ten thousand dollars ($10,000) or more. The qualified intermediary shall keep an account of the credits and have the authority to issue sub-numbers registered with the taxation and revenue department and traceable to the original credit.

J. If a charitable deduction is claimed on the taxpayer's federal income tax for any contribution for which the credit provided by this section is claimed, the taxpayer's itemized deductions for New Mexico income tax shall be reduced by the amount of the deduction for the contribution in order to determine the New Mexico taxable income of the taxpayer.

K. For the purposes of this section:

(1) "qualified intermediary" does not include a person who has been previously convicted of a felony, who has had a professional license revoked, who is engaged in the practice defined in Section 61-28B-3 NMSA 1978 and who is identified in Section 61-29-2 NMSA 1978, and does not include any entity owned wholly or in part or employing any of the foregoing persons; and

(2) "taxpayer" means a citizen or resident of the United States, a domestic partnership, a limited liability company, a domestic corporation, an estate, including a foreign estate, or a trust.

History: 1978 Comp., § 7-2A-8.9, enacted by Laws 2003, ch. 331, § 8; 2007, ch. 335, § 2.

7-2A-9. Taxpayer returns; payment of tax.

A. Every corporation deriving income from any business transaction, property or employment within this state, that is not exempt from tax under the Corporate Income and Franchise Tax Act and that is required by the laws of the United States to file a federal income tax return shall file a complete tax return with the department in form and content as prescribed by the secretary. Except as provided in Subsection C of this section, a corporation that is required by the provisions of the Corporate Income and Franchise Tax Act to file a return or pay a tax shall, on or before the due date of the corporation's federal corporate income tax return for the taxable year, file the return and pay the tax imposed for that year.

B. Every domestic or foreign corporation that is not exempt from tax under the Corporate Income and Franchise Tax Act, that is employed or engaged in the transaction of business in, into or from this state or that derives any income from property or employment within this state and every domestic or foreign corporation, regardless of whether it is engaged in active business, that has or exercises its corporate franchise in this state and that is not exempt from tax under the Corporate Income and Franchise Tax Act shall file a return in the form and content as prescribed by the secretary and pay the tax levied pursuant to Subsection B of Section 7-2A-3 NMSA 1978 in the amount for each corporation as specified in Section 7-2A-5.1 NMSA 1978. Returns and payment of tax for corporate franchise tax for a taxable year shall be filed and paid on the date specified in Subsection A or C of this section for payment of corporate income tax for the preceding taxable year.

C. A corporation that is required by the provisions of the Corporate Income and Franchise Tax Act to file a return or pay a tax and that is approved by the department to use electronic media for filing and paying taxes shall, if using electronic media for filing and paying taxes, file the return and pay the tax levied for that taxable year on or before the last day of the month in which the corporation's federal corporate income tax return is originally due for the taxable year. The due date provided by this subsection does not apply to corporations that have received a filing extension from New Mexico or an extension from the federal internal revenue service for the same taxable year.

History: 1978 Comp., § 7-2A-9, enacted by Laws 1981, ch. 37, § 42; 1986, ch. 20, § 47; 1989, ch. 111, § 2; 2015 (1st S.S.), ch. 2, § 4; 2016, ch. 15, § 2.

7-2A-9.1. Estimated tax due; payment of estimated tax; penalty; exemption.

A. Every taxpayer shall pay estimated corporate income tax to the state of New Mexico during its taxable year if its tax after applicable credits is five thousand dollars ($5,000) or more in the current taxable year. A taxpayer to which this section applies shall calculate estimated tax by one of the following methods:

(1) estimating the amount of tax due, net of any credits, for the current taxable year, provided that the estimated amount is at least eighty percent of the amount determined to be due for the taxable year;

(2) using as the estimate an amount equal to one hundred percent of the tax due for the previous taxable year, if the previous taxable year was a full twelve-month year;

(3) using as the estimate an amount equal to one hundred ten percent of the tax due for the taxable year immediately preceding the previous taxable year, if the taxable year immediately preceding the previous taxable year was a full twelve-month year and the return for the previous taxable year has not been filed and the extended due date for filing that return has not occurred at the time the first installment is due for the taxable year; or

(4) estimating the amount of tax due, net of any credits, for each fiscal quarter of the current taxable year, provided that the estimated amount is at least eighty percent of the amount determined to be due for that quarter.

B. If Subsection A of this section applies, the amount of estimated tax shall be paid in installments as provided in this subsection. Twenty-five percent of the estimated tax calculated under Paragraph (1), (2) or (3) of Subsection A of this section or one hundred percent of the estimated tax calculated under Paragraph (4) of Subsection A of this section is due on or before the following dates: the fifteenth day of the fourth month of the taxable year, the fifteenth day of the sixth month of the taxable year, the fifteenth day of the ninth month of the taxable year and the fifteenth day of the twelfth month of the taxable year. Application of this subsection to a taxable year that is a fractional part of a year shall be determined by regulation of the secretary.

C. Every taxpayer to which Subsection A of this section applies that fails to pay the estimated tax when due or that makes estimated tax payments during the taxable year that are less than the lesser of eighty percent of the income tax imposed on the taxpayer under the Corporate Income and Franchise Tax Act or the amount required by Paragraph (2), (3) or (4) of Subsection A of this section shall be subject to the interest and penalty provisions of Sections 7-1-67 and 7-1-69 NMSA 1978 on the underpayment.

D. For purposes of this section, the amount of underpayment shall be the excess of the amount of the installment that would be required to be paid if the estimated tax were equal to eighty percent of the tax shown on the return for the taxable year or the amount required by Paragraph (2), (3) or (4) of Subsection A of this section or, if no return was filed, eighty percent of the tax for the taxable year for which the estimated tax is due less the amount, if any, of the installment paid on or before the last date prescribed for payment.

E. For purposes of this section, the period of underpayment shall run from the date the installment was required to be paid to whichever of the following dates is earlier:

(1) the fifteenth day of the third month following the end of the taxable year; or

(2) with respect to any portion of the underpayment, the date on which such portion is paid. For the purposes of this paragraph, a payment of estimated tax on any installment date shall be applied as a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under Subsection D of this section due on such installment date.

F. For the purposes of this section, the amount of tax deducted and withheld with respect to a taxpayer under the Withholding Tax Act [Chapter 7, Article 3 NMSA 1978] or the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act [Chapter 7, Article 3A NMSA 1978] shall be deemed a payment of estimated tax. An equal amount of the amount of withheld tax shall be deemed paid on each due date for the applicable taxable year unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts withheld shall be deemed payments of estimated tax on the dates on which the amounts were actually withheld. The taxpayer may apply the provisions of this subsection separately to amounts withheld under the Withholding Tax Act or the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. Amounts of tax paid by taxpayers pursuant to Section 7-3A-3 NMSA 1978 shall not be deemed a payment of estimated tax.

History: 1978 Comp., § 7-2A-9.1, enacted by Laws 1986, ch. 5, § 1; 1990, ch. 49, § 13; 1992, ch. 78, § 4; 1995, ch. 11, § 7; 1997, ch. 60, § 1; 2003, ch. 86, § 2; 2003, ch. 295, § 1; 2009, ch. 4, § 1; 2010, ch. 53, § 2.

7-2A-9.2. Limitation on claiming of credits and tax rebates.

A credit or tax rebate provided in the Corporate Income and Franchise Tax Act that is claimed shall be disallowed if the claim for the credit or tax rebate was first made after the end of the third calendar year following the calendar year in which the return upon which the credit or rebate was first claimable was initially due.

History: 1978 Comp., § 7-2A-9.2, enacted by Laws 1990, ch. 23, § 2.

7-2A-10. Information returns.

A. Pursuant to regulation, the secretary may require any person doing business in this state and making payments in the course of business to another person to file information returns with the department.

B. The provisions of this section also apply to payments made by the state of New Mexico, by the governing bodies of any political subdivision of the state of New Mexico, by any agency, department or instrumentality of the state or of any political subdivision thereof and, to the extent permitted by law or pursuant to any agreement entered into by the secretary, to payments made by any other governmental body or by an agency, department or instrumentality thereof.

History: 1978 Comp., § 7-2A-10, enacted by Laws 1981, ch. 37, § 43; 1983, ch. 213, § 14; 1986, ch. 20, § 48.

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.

7-2A-12. Fiscal years permitted.

Any corporation which files income tax returns under the Internal Revenue Code on the basis of a fiscal year shall report income under the Corporate Income and Franchise Tax Act on the same basis.

History: 1978 Comp., § 7-2A-12, enacted by Laws 1981, ch. 37, § 45; 1986, ch. 20, § 50.

7-2A-13. Administration.

The Corporate Income and Franchise Tax Act shall be administered pursuant to the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

History: 1978 Comp., § 7-2A-13, enacted by Laws 1981, ch. 37, § 46; 1986, ch. 20, § 51.

7-2A-14. Corporate-supported child care; credits allowed.

A. A taxpayer that pays for child care services in New Mexico for dependent children of an employee of the taxpayer during the employee's hours of employment may claim a credit against the corporate income tax imposed pursuant to the Corporate Income and Franchise Tax Act in an amount equal to thirty percent of the total expenses, net of any reimbursements, for child care services incurred and paid by the taxpayer in the taxable year.

B. A taxpayer that operates a child care facility in New Mexico used primarily by the dependent children of the taxpayer's employees may also claim a credit against the corporate income tax imposed pursuant to the Corporate Income and Franchise Tax Act in an amount equal to thirty percent of the net cost of operating the child care facility for the taxable year. If two or more taxpayers share in the cost of operating a child care facility primarily for the dependent children of the taxpayers' employees, each taxpayer shall be allowed a credit in relation to the taxpayer's share of the cost of operating the child care facility. Each taxpayer's share of the tax credit shall be determined by dividing the employer's share of the net cost of operating the child care facility by the number of children served and multiplying the result by the number of the taxpayer's employees' children served. The credit allowed pursuant to this subsection may be taken only if the child care facility is operated under the authority of a license issued pursuant to the Public Health Act [Chapter 24, Article 1 NMSA 1978] and is operated without profit by the taxpayer. For the purposes of this section, the term "net cost" means the cost of operating a child care facility less any amounts collected as fees for use of the facility, any federal tax credits with respect to the facility or its operation and any other payment or reimbursement from any other source other than the credit provided by this section.

C. For the purposes of this section, "dependent children" means children under twelve years of age.

D. The credits provided for by Subsections A and B of this section may only be deducted from the taxpayer's corporate income tax liability for the taxable year in which the expenditures occurred. The credit may not exceed thirty thousand dollars ($30,000) in any taxable year. If the credit amount exceeds the corporate income tax liability, the excess may be carried forward for three consecutive years; provided that in no event shall the annual credit amount exceed thirty thousand dollars ($30,000).

History: Laws 1983, ch. 218, § 1; 1986, ch. 20, § 52; 1995, ch. 11, § 8.

7-2A-15. Repealed.

History: Laws 1994, ch. 115, § 2; repealed by Laws 2023, ch. 85, § 28.

7-2A-16. Intergovernmental business tax credit.

A. With respect to the net income of a taxpayer engaged in the transaction of business occurring after July 1, 1997 from a new business on Indian land, the person who is liable for the payment of the corporate income tax may claim a credit as provided in Subsection D of this section against the corporate income tax for the aggregate amount of tax paid to an Indian nation, tribe or pueblo located in whole or in part within New Mexico.

B. The credit provided by this section may be referred to as the "intergovernmental business tax credit".

C. As used in this section:

(1) "aggregate amount of tax" means the total of all taxes imposed by an Indian nation, tribe or pueblo located in whole or in part in New Mexico on income derived from the new business's activity on Indian land, except a tax shall not be included in that total if the tax is eligible for a credit pursuant to the provisions of Section 7-29C-1 NMSA 1978 or any other intergovernmental tax credit that provides a similar tax credit;

(2) "Indian land" means all land in New Mexico that on March 1, 1997 was:

(a) within the exterior boundaries of an Indian reservation or pueblo grant; or

(b) lands held in trust by the United States for an individual Indian nation, tribe or pueblo;

(3) "new business" means a manufacturer or processor that occupies a new business facility or a grower that commences operation in New Mexico on or after July 1, 1997; and

(4) "new business facility" means a facility on Indian land that satisfies the following requirements:

(a) the facility is employed by the taxpayer in the operation of a revenue-producing enterprise. The facility shall not be considered a "new business facility" in the hands of the taxpayer if the taxpayer's only activity with respect to the facility is to lease it to another person;

(b) the facility is acquired by or leased to the taxpayer on or after January 1, 1997. The facility shall be deemed to have been acquired by or leased to the taxpayer on or after the specified date if the transfer of title to the taxpayer, the transfer of possession pursuant to a binding contract to transfer title to the taxpayer or the commencement of the term of the lease to the taxpayer occurs on or after that date or if the facility is constructed, erected or installed by or on behalf of the taxpayer, the construction, erection or installation is completed on or after that date;

(c) the facility is a newly acquired facility in which the taxpayer is not continuing the operation of the same or a substantially identical revenue-producing enterprise that previously was in operation on the Indian land of the Indian nation, tribe or pueblo where the facility is now located; a facility is a "newly acquired facility" if the facility was acquired or leased by the taxpayer from another person even if the facility was employed in a revenue-producing enterprise on the Indian land of the same Indian nation, tribe or pueblo immediately prior to the transfer of the title to the facility to the taxpayer or immediately prior to the commencement of the term of the lease of the facility to the taxpayer by another person provided that the revenue-producing enterprise of the previous occupant was not the same or substantially identical to the taxpayer's revenue-producing enterprise; and

(d) the facility is not a replacement business facility for a business facility that existed on the Indian land of the Indian nation, tribe or pueblo where the business is now located.

D. The intergovernmental business tax credit shall be determined separately for each reporting period and shall be equal to fifty percent of the lesser of:

(1) the aggregate amount of tax paid by a taxpayer; or

(2) the amount of the taxpayer's corporate income tax due for the reporting period from the new business's activity conducted on Indian land.

E. The department shall administer and interpret the provisions of this section in accordance with the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

F. The burden of showing entitlement to a credit authorized by this section is on the taxpayer claiming it, and the taxpayer shall furnish to the appropriate tax collecting agency, in the manner determined by the department, proof of payment of the aggregate amount of tax on which the credit is based.

G. For a taxpayer qualifying for the credit provided by this section that conducts business in New Mexico both on and off Indian land, the taxpayer's corporate income tax liability derived from the new business activity conducted on Indian land shall be equal to the sum of the products of one-half of the taxpayer's New Mexico corporate income tax liability before application of the credit provided by this section multiplied by the payroll factor and one-half of the taxpayer's New Mexico corporate income tax liability before application of the credit provided by this section multiplied by the property factor. The factors shall be determined as follows:

(1) the payroll factor is a fraction, the numerator of which is the amount of compensation paid to employees employed during the tax period by the taxpayer in his new business on Indian land, and the denominator of which is the total amount of compensation paid to employees employed during the tax period by the taxpayer in all of New Mexico, including Indian land; and

(2) the property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the new business on Indian land in New Mexico during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible property owned or rented and used in New Mexico, including on Indian land, during the tax period.

History: Laws 1997, ch. 58, § 1.

7-2A-17. Repealed.

7-2A-17.1. Job mentorship tax credit.

A. To encourage New Mexico businesses to hire youth participating in career preparation education programs, a taxpayer that is a New Mexico business and that files a corporate income tax return may claim a credit in an amount equal to fifty percent of gross wages paid to qualified students who are employed by the taxpayer during the taxable year for which the return is filed. The tax credit provided by this section may be referred to as the "job mentorship tax credit".

B. A taxpayer may claim the job mentorship tax credit provided in this section for each taxable year in which the taxpayer employs one or more qualified students. The maximum aggregate credit allowable shall not exceed fifty percent of the gross wages paid to not more than ten qualified students employed by the taxpayer for up to three hundred twenty hours of employment of each qualified student in each taxable year for a maximum of three taxable years for each qualified student. In no event shall a taxpayer claim a credit in excess of twelve thousand dollars ($12,000) in any taxable year. The employer shall certify that hiring the qualified student does not displace or replace a current employee.

C. The department shall issue job mentorship tax credit certificates upon request to any accredited New Mexico secondary school that has a school-sanctioned career preparation education program. The maximum number of certificates that may be issued in a school year to any one school is equal to the number of qualified students in the school-sanctioned career preparation education program on October 15 of that school year, as certified by the school principal.

D. A job mentorship tax credit certificate may be executed by a school principal with respect to a qualified student, and the executed certificate may be transferred to a New Mexico business that employs that student. By executing the certificate with respect to a student, the school principal certifies that the school has a school-sanctioned career preparation education program and the student is a qualified student.

E. To claim the job mentorship tax credit, the taxpayer must submit with respect to each employee for whom the credit is claimed:

(1) a properly executed job mentorship tax credit certificate;

(2) information required by the secretary with respect to the employee's employment by the taxpayer during the taxable year for which the credit is claimed; and

(3) information required by the secretary that the employee was not also employed in the same taxable year by another New Mexico business qualifying for and claiming a job mentorship tax credit for that employee pursuant to this section or the Income Tax Act [Chapter 7, Article 2 NMSA 1978].

F. The job mentorship tax credit may only be deducted from the taxpayer's corporate income tax liability for the taxable year. Any portion of the maximum credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for three consecutive taxable years; provided the total credits claimed pursuant to this section shall not exceed the maximum allowable under Subsection B of this section.

G. As used in this section:

(1) "career preparation education program" means a work-based learning or school-to-career program designed for secondary school students to create academic and career goals and objectives and find employment in a job meeting those goals and objectives;

(2) "New Mexico business" means a corporation that carries on a trade or business in New Mexico and that employs in New Mexico fewer than three hundred full-time employees during the taxable year; and

(3) "qualified student" means an individual who is at least fourteen years of age but not more than twenty-one years of age who is attending full time an accredited New Mexico secondary school and who is a participant in a career preparation education program sanctioned by the secondary school.

History: Laws 2003, ch. 400, § 2.

7-2A-18. Repealed.

History: Laws 2001, ch. 73, § 2; repealed by Laws 2023, ch. 85, § 28.

7-2A-19. Renewable energy production tax credit; limitations; definitions; claiming the credit.

A. The tax credit provided in this section may be referred to as the "renewable energy production tax credit". The tax credit provided in this section may not be claimed with respect to the same electricity production for which the renewable energy production tax credit provided in the Income Tax Act [Chapter 7, Article 2 NMSA 1978] has been claimed.

B. A person is eligible for the renewable energy production tax credit if the person:

(1) holds title to a qualified energy generator that first produced electricity on or before January 1, 2018; or

(2) leases property upon which a qualified energy generator operates from a county or municipality under authority of an industrial revenue bond and if the qualified energy generator first produced electricity on or before January 1, 2018.

C. The amount of the tax credit shall equal one cent ($.01) per kilowatt-hour of the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator in the taxable year using a wind- or biomass-derived qualified energy resource; provided that the total amount of tax credits claimed by all taxpayers for a single qualified energy generator using a wind- or biomass-derived qualified energy resource shall not exceed one cent ($.01) per kilowatt-hour of the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator in a taxable year.

D. The amount of the tax credit for electricity produced by a qualified energy generator in the taxable year using a solar-light-derived or solar-heat-derived qualified energy resource shall be at the amounts specified in Paragraphs (1) through (11) of this subsection; provided that the total amount of tax credits claimed by all taxpayers in a taxable year for a single qualified energy generator using a solar-light-derived or solar-heat-derived qualified energy resource shall be limited to the first two hundred thousand megawatt-hours of electricity produced by the qualified energy generator in the taxable year:

(1) one and one-half cents ($.015) per kilowatt-hour in the first taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(2) two cents ($.02) per kilowatt-hour in the second taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(3) two and one-half cents ($.025) per kilowatt-hour in the third taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(4) three cents ($.03) per kilowatt-hour in the fourth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(5) three and one-half cents ($.035) per kilowatt-hour in the fifth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(6) four cents ($.04) per kilowatt-hour in the sixth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(7) three and one-half cents ($.035) per kilowatt-hour in the seventh taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(8) three cents ($.03) per kilowatt-hour in the eighth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(9) two and one-half cents ($.025) per kilowatt-hour in the ninth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(10) two cents ($.02) per kilowatt-hour in the tenth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource; and

(11) one and one-half cents ($.015) per kilowatt-hour in the eleventh taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource.

E. A taxpayer eligible for a renewable energy production tax credit pursuant to Subsection B of this section shall be eligible for the renewable energy production tax credit for one hundred twenty consecutive months, beginning on the date the qualified energy generator begins producing electricity.

F. As used in this section:

(1) "biomass" means organic material that is available on a renewable or recurring basis, including:

(a) forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low-commercial-value materials or undesirable species, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;

(b) agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws and stover, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey and lactose;

(c) animal waste, including manure and slaughterhouse and other processing waste;

(d) solid woody waste materials, including landscape or right-of-way tree trimmings, rangeland maintenance residues, waste pallets, crates and manufacturing, construction and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;

(e) crops and trees planted for the purpose of being used to produce energy;

(f) landfill gas, wastewater treatment gas and biosolids, including organic waste byproducts generated during the wastewater treatment process; and

(g) segregated municipal solid waste, excluding tires and medical and hazardous waste;

(2) "qualified energy generator" means an electric generating facility with at least one megawatt generating capacity located in New Mexico that produces electricity using a qualified energy resource and the electricity produced is sold to an unrelated person; and

(3) "qualified energy resource" means a resource that generates electrical energy by means of a fluidized bed technology or similar low-emissions technology or a zero-emissions generation technology that has substantial long-term production potential and that uses only the following energy sources:

(a) solar light;

(b) solar heat;

(c) wind; or

(d) biomass.

G. A person that holds title to a facility generating electricity from a qualified energy resource or a person that leases such a facility from a county or municipality pursuant to an industrial revenue bond may request certification of eligibility for the renewable energy production tax credit from the energy, minerals and natural resources department, which shall determine if the facility is a qualified energy generator. The energy, minerals and natural resources department may certify the eligibility of an energy generator only if the total amount of electricity that may be produced annually by all qualified energy generators that are certified pursuant to this section and pursuant to the Income Tax Act will not exceed a total of two million megawatt-hours plus an additional five hundred thousand megawatt-hours produced by qualified energy generators using a solar-light-derived or solar-heat-derived qualified energy resource. Applications shall be considered in the order received. The energy, minerals and natural resources department may estimate the annual power-generating potential of a generating facility for the purposes of this section. The energy, minerals and natural resources department shall issue a certificate to the applicant stating whether the facility is an eligible qualified energy generator and the estimated annual production potential of the generating facility, which shall be the limit of that facility's energy production eligible for the tax credit for the taxable year. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection and shall report annually to the appropriate interim legislative committee information that will allow the legislative committee to analyze the effectiveness of the renewable energy production tax credit, including the identity of qualified energy generators, the energy production means used, the amount of energy produced by those qualified energy generators and whether any applications could not be approved due to program limits.

H. A taxpayer may be allocated all or a portion of the right to claim a renewable energy production tax credit without regard to proportional ownership interest if:

(1) the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership;

(2) the business entity:

(a) would qualify for the renewable energy production tax credit pursuant to Paragraph (1) or (2) of Subsection B of this section;

(b) owns an interest in a business entity that is also taxed for federal income tax purposes as a partnership and that would qualify for the renewable energy production tax credit pursuant to Paragraph (1) or (2) of Subsection B of this section; or

(c) owns, through one or more intermediate business entities that are each taxed for federal income tax purposes as a partnership, an interest in the business entity described in Subparagraph (b) of this paragraph;

(3) the taxpayer and all other taxpayers allocated a right to claim the renewable energy production tax credit pursuant to this subsection own collectively at least a five percent interest in a qualified energy generator;

(4) the business entity provides notice of the allocation and the taxpayer's interest to the energy, minerals and natural resources department on forms prescribed by that department for the taxable year to be claimed; and

(5) the energy, minerals and natural resources department certifies the allocation for the taxable year to be claimed in writing to the taxpayer.

I. Upon receipt of notice of an allocation of the right to claim all or a portion of the renewable energy production tax credit, the energy, minerals and natural resources department shall promptly certify the allocation in writing to the recipient of the allocation.

J. A taxpayer may claim the renewable energy production tax credit by submitting to the taxation and revenue department the certificate issued by the energy, minerals and natural resources department, pursuant to Subsection G or H of this section, documentation showing the taxpayer's interest in the facility, documentation of the amount of electricity produced by the facility in the taxable year and any other information the taxation and revenue department may require to determine the amount of the tax credit due the taxpayer.

K. If the requirements of this section have been complied with, the department shall approve payment of the renewable energy production tax credit. The credit may be deducted from a taxpayer's New Mexico corporate income tax liability for the taxable year for which the credit is claimed. If the amount of tax credit exceeds the taxpayer's corporate income tax liability for the taxable year:

(1) the excess may be carried forward for a period of five taxable years; or

(2) if the tax credit was issued with respect to a qualified energy generator that first produced electricity using a qualified energy resource on or after October 1, 2007, the excess shall be refunded to the taxpayer.

L. Once a taxpayer has been granted a renewable energy production tax credit for a given facility, that taxpayer shall be allowed to retain the facility's original date of application for tax credits for that facility until either the facility goes out of production for more than six consecutive months in a year or until the facility's ten-year eligibility has expired.

History: Laws 2002, ch. 59, § 1; 2003, ch. 419, § 1; 2005, ch. 104, § 7; 2005, ch. 181, § 1; 2007, ch. 204, § 1; 2021, ch. 65, § 7.

7-2A-19.1. Clean car corporate income tax credit. (Repealed January 1, 2031.)

A. A taxpayer that, beginning on the effective date of this section and prior to January 1, 2030, purchases an electric vehicle, plug-in hybrid electric vehicle or fuel cell vehicle or enters into a new lease of at least three years for one of these vehicles may claim a tax credit against the taxpayer's tax liability imposed pursuant to the Corporate Income and Franchise Tax Act in an amount provided in Subsection B of this section. The tax credit provided by this section may be referred to as the "clean car corporate income tax credit".

B. The amount of the tax credit shall be in an amount equal to:

(1) for taxable years beginning January 1, 2024 and prior to January 1, 2027:

(a) three thousand dollars ($3,000) for a new electric vehicle;

(b) two thousand five hundred dollars ($2,500) for a new plug-in hybrid electric vehicle or fuel cell vehicle;

(c) two thousand five hundred dollars ($2,500) for a previously owned electric vehicle; and

(d) two thousand dollars ($2,000) for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle;

(2) for a taxable year beginning January 1, 2027 and prior to January 1, 2028:

(a) two thousand two hundred twenty dollars ($2,220) for a new electric vehicle;

(b) one thousand eight hundred fifty dollars ($1,850) for a new plug-in hybrid electric vehicle or fuel cell vehicle;

(c) one thousand eight hundred fifty dollars ($1,850) for a previously owned electric vehicle; and

(d) one thousand four hundred eighty dollars ($1,480) for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle;

(3) for a taxable year beginning on January 1, 2028 and prior to January 1, 2029:

(a) one thousand four hundred seventy dollars ($1,470) for a new electric vehicle;

(b) one thousand two hundred twenty-five dollars ($1,225) for a new plug-in hybrid electric vehicle or fuel cell vehicle;

(c) one thousand two hundred twenty-five dollars ($1,225) for a previously owned electric vehicle; and

(d) nine hundred eighty dollars ($980) for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle; and

(4) for the taxable year beginning January 1, 2029:

(a) nine hundred sixty dollars ($960) for a new electric vehicle;

(b) eight hundred dollars ($800) for a new plug-in hybrid electric vehicle or fuel cell vehicle;

(c) eight hundred dollars ($800) for a previously owned electric vehicle; and

(d) six hundred forty dollars ($640) for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle.

C. For a previously owned vehicle to be eligible for the tax credit, the vehicle shall have a model year that is at least two years prior to the calendar year in which the taxpayer purchased or leased the vehicle.

D. A taxpayer shall apply for certification of eligibility for the tax credit from the energy, minerals and natural resources department on forms and in the manner prescribed by that department. Only one tax credit shall be certified per taxpayer per taxable year. The energy, minerals and natural resources department may promulgate rules governing the procedure for administering the provisions of this subsection.

E. An application for certification of eligibility shall include proof of vehicle purchase from or lease through a dealer licensed by the motor vehicle division of the department pursuant to Section 66-4-2 NMSA 1978 or a dealer located on tribal land within New Mexico, the vehicle's registration or application for title and registration in New Mexico and any additional information the energy, minerals and natural resources department may require to determine eligibility for the credit. If the energy, minerals and natural resources department determines that the taxpayer meets the requirements of this section, that department shall issue a dated certificate of eligibility to the taxpayer providing the amount of tax credit for which the taxpayer is eligible and the taxable years in which the credit may be claimed. The energy, minerals and natural resources department shall provide the department with the certificates of eligibility issued pursuant to this subsection in an electronic format at regularly agreed upon intervals.

F. Applications for certification of the tax credit shall be made no later than one year from the date on which the vehicle is purchased or the lease is entered into.

G. A certificate of eligibility for the tax credit may be sold, exchanged or otherwise transferred to another taxpayer for the full value of the credit. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer in an electronic format prescribed by the department.

H. That portion of the tax credit claimed by a taxpayer that exceeds the taxpayer's income tax liability in the taxable year in which a clean car corporate income tax credit is claimed shall be refunded to the taxpayer.

I. A taxpayer allowed to claim the tax credit shall claim the tax credit in a manner required by the department. The credit shall be claimed within three taxable years of the end of the year in which the energy, minerals and natural resources department certifies the credit.

J. As used in this section:

(1) "electric vehicle" means a motor vehicle that derives all of the vehicle's power from electricity stored in a battery that:

(a) has a capacity of not less than twenty-five kilowatt-hours;

(b) is capable of powering the vehicle for a range of at least one hundred miles; and

(c) is capable of being recharged from an external source of electricity;

(2) "fuel cell vehicle" means a motor vehicle that:

(a) uses a fuel cell to produce electricity that is used to drive an electric motor; and

(b) is capable of powering the vehicle for a range of at least one hundred miles;

(3) "motor vehicle" means a vehicle with four wheels that:

(a) is required under the Motor Vehicle Code [Chapter 66, Articles 1 to 8 NMSA 1978] to be registered in this state and that is registered in this state;

(b) is made by a manufacturer;

(c) is manufactured primarily for use on public streets, roads or highways;

(d) has not been modified from the original manufacturer specifications;

(e) is rated at not less than two thousand two hundred pounds unloaded base weight and not more than nine thousand seven hundred fifty pounds unloaded base weight;

(f) has a maximum speed capability of at least sixty-five miles per hour; and

(g) is purchased from or leased through a dealer licensed by the motor vehicle division of the department pursuant to Section 66-4-2 NMSA 1978 or a dealer located on tribal land within New Mexico;

(4) "new" means a motor vehicle that has a base manufacturer suggested retail price, before options and destination charges and before any taxes are imposed, of fifty-five thousand dollars ($55,000) or less;

(5) "plug-in hybrid electric vehicle" means a motor vehicle that derives part of the vehicle's power from electricity stored in a battery that:

(a) has a capacity of not less than six kilowatt-hours;

(b) is capable of powering a vehicle for a range of at least thirty miles; and

(c) is capable of being recharged from an external source of electricity;

(6) "previously owned" means a motor vehicle that is not new and that has a market value of twenty-five thousand dollars ($25,000) or less; and

(7) "tribal land" means all land owned by a tribe and located within the exterior boundaries of the tribe's reservation or grant and all land held by the United States in trust for the tribe.

History: Laws 2024, ch. 67, § 29.

7-2A-19.2. Clean car charging unit corporate income tax credit. (Repealed January 1, 2031.)

A. A taxpayer that, beginning on the effective date of this section and prior to January 1, 2030, purchases and installs an electric vehicle charging unit or fuel cell charging unit in New Mexico may claim a credit against the taxpayer's tax liability imposed pursuant to the Corporate Income and Franchise Tax Act in an amount provided in Subsection B of this section. The tax credit provided by this section may be referred to as the "clean car charging unit corporate income tax credit".

B. The amount of tax credit shall be in an amount equal to:

(1) for a direct current fast charger or fuel cell charging unit, twenty-five thousand dollars ($25,000) or the cost to purchase and install the direct current fast charger or fuel cell charging unit, whichever is less; and

(2) for all other electric vehicle charging units, four hundred dollars ($400) or the cost to purchase and install the electric vehicle charging unit, whichever is less.

C. A taxpayer shall apply for certification of eligibility for the tax credit from the energy, minerals and natural resources department on forms and in the manner prescribed by that department. Only one tax credit shall be certified for a direct current fast charger or a fuel cell charging unit per taxpayer per taxable year. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection.

D. An application for certification of eligibility shall include:

(1) a receipt for the purchase and installation of the electric vehicle charging unit or fuel cell charging unit;

(2) for electric vehicle charging units, a copy of the data sheet that specifies the connector type, plug type, voltage and current of the electric vehicle charging unit;

(3) for a fuel cell charging unit, technical specifications on the fuel dispensing unit and fuel storage system, including information about operational pressures of the fuel cell charging unit; and

(4) any other information the energy, minerals and natural resources department may require to evaluate eligibility for the credit.

E. If the energy, minerals and natural resources department determines that the taxpayer meets the requirements of this section, that department shall issue a dated certificate of eligibility to the taxpayer providing the amount of tax credit for which the taxpayer is eligible and the taxable years in which the credit may be claimed. The energy, minerals and natural resources department shall provide the department certificates of eligibility issued in an electronic format at regularly agreed upon intervals.

F. An application for certification of the tax credit shall be made no later than one year from the date in which the electric vehicle charging unit or fuel cell charging unit for which the credit is claimed is purchased and installed.

G. That portion of tax credit that exceeds a taxpayer's income tax liability in the taxable year in which the credit is claimed shall be refunded to the taxpayer.

H. A taxpayer allowed to claim a tax credit pursuant to this section shall claim the tax credit in a manner required by the department. The credit shall be claimed within three taxable years of the end of the year in which the energy, minerals and natural resources department certifies the credit.

I. A taxpayer that claims the 2021 sustainable building tax credit for expenses of purchasing or installing an electric vehicle charging unit or fuel cell charging unit shall not be eligible to claim the tax credit provided by this section.

J. As used in this section:

(1) "direct current fast charger" means an electric vehicle charging unit that provides at least fifty kilowatts of direct current electrical power for charging an electric vehicle through a connector based on fast charging equipment standards and that is approved for installation for that purpose under the National Electrical Code through an underwriters laboratories certification or an equivalent certifying organization;

(2) "electric vehicle" means a motor vehicle subject to the registration fee pursuant to Section 66-6-2 or 66-6-4 NMSA 1978 that derives all of the vehicle's power from electricity stored in a battery that:

(a) has a capacity of not less than twenty-five kilowatt-hours;

(b) is capable of powering the vehicle for a range of at least one hundred miles; and

(c) is capable of being recharged from an external source of electricity;

(3) "electric vehicle charging unit" means a device that:

(a) is used to provide electricity to an electric vehicle or plug-in hybrid electric vehicle;

(b) is designed to create a connection between an electricity source and the electric vehicle or plug-in hybrid electric vehicle; and

(c) uses the electric vehicle's or plug-in hybrid electric vehicle's control system to ensure that electricity flows at an appropriate voltage and current level;

(4) "fuel cell charging unit" means a facility or unit that dispenses liquefied or compressed hydrogen for fuel cell vehicle refueling and that is approved for installation for that purpose under applicable codes and compliant with requirements of applicable certifying organizations;

(5) "fuel cell vehicle" means a motor vehicle subject to the registration fee pursuant to Section 66-6-2 or 66-6-4 NMSA 1978 that:

(a) uses a fuel cell to produce electricity that is used to drive an electric motor; and

(b) is capable of powering the vehicle for a range of at least one hundred miles; and

(6) "plug-in hybrid electric vehicle" means a motor vehicle subject to the registration fee pursuant to Section 66-6-2 or 66-6-4 NMSA 1978 that derives part of the vehicle's power from electricity stored in a battery that:

(a) has a capacity of not less than six kilowatt-hours;

(b) is capable of powering a vehicle for a range of at least thirty miles; and

(c) is capable of being recharged from an external source of electricity.

History: Laws 2024, ch. 67, § 30.

7-2A-19.3. Advanced energy equipment corporate income tax credit. (Repealed effective January 1, 2034.)

A. The tax credit provided by this section may be referred to as the "advanced energy equipment corporate income tax credit". A taxpayer that makes qualified expenditures for a qualified manufacturing facility located in New Mexico and that files a corporate income tax return for a taxable year beginning on or after January 1, 2025, and prior to January 1, 2033, may claim the tax credit in the amount provided in Subsection B of this section.

B. The amount of the tax credit shall be in an amount equal to the lesser of twenty percent of the amount of the qualified expenditures made by the taxpayer for a qualified manufacturing facility or twenty-five million dollars ($25,000,000).

C. Prior to incurring a qualified expenditure, a taxpayer shall apply for preliminary certification of eligibility for the tax credit from the energy, minerals and natural resources department on forms and in the manner prescribed by that department. Such preliminary certification shall be made in consultation with the economic development department and shall be limited to confirming that the qualified expenditures proposed to be made by the taxpayer will in whole or in part be used to produce advanced energy products and providing an estimate of the amount of tax credit for which the taxpayer may be eligible. Only one certificate of eligibility shall be issued for all activities performed at a qualified manufacturing facility, regardless of ownership of the facility.

D. Within twelve months of commencement of production of any advanced energy product, the taxpayer shall seek final certification from the energy, minerals and natural resources department. The total annual aggregate amount of advanced energy equipment corporate income tax credits and advanced energy equipment income tax credits that may be certified in a calendar year shall not exceed twenty-five million dollars ($25,000,000). An application for final certification shall include information required by the energy, minerals and natural resources department to determine eligibility for the tax credit, including information substantiating qualified expenditures. If, after consultation with the economic development department, the energy, minerals and natural resources department determines that the taxpayer meets the requirements of this section, the energy, minerals and natural resources department shall issue a dated certificate of eligibility to the taxpayer providing the amount of tax credit for which the taxpayer is eligible and the taxable years in which the credit may be claimed. The energy, minerals and natural resources department shall provide the department with the certificates of eligibility issued pursuant to this subsection in an electronic format at regularly agreed-upon intervals. A certificate of eligibility for the tax credit may be sold, exchanged or otherwise transferred to another taxpayer in increments of not less than one million dollars ($1,000,000); provided that if the total amount certified is less than one million dollars ($1,000,000), a certificate of the entire amount of the credit may be transferred. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer in an electronic format prescribed by the department.

E. A taxpayer allowed to claim the tax credit shall claim the credit in a manner required by the department. The tax credit shall be claimed within one year of receiving final certification from the energy, minerals and natural resources department. The taxpayer shall claim the amount certified and approved against the taxpayer's corporate income tax liabilities. Any amount of credit that exceeds the taxpayer's corporate income tax liabilities may be carried forward for five consecutive taxable years. A taxpayer that claims the tax credit shall report to the department and the energy, minerals and natural resources department on the continued operations of the qualified manufacturing facility.

F. If the taxpayer or a successor in the business of the taxpayer ceases operations at the qualifying manufacturing facility or ceases to produce advanced energy products for at least one hundred eighty days within a two-year period after the taxpayer has claimed the tax credit, any amount of credit that received final certification with respect to that facility that is not claimed against a taxpayer's tax liability shall be extinguished, and within thirty days after the one hundred eightieth day of cessation of operations, the taxpayer that received final certification pursuant to Subsection D of this section shall pay to the department the tax liability against which the certified credit was claimed. For the purposes of this section, a taxpayer shall not be deemed to have ceased operations during reasonable periods for maintenance or retooling, for the repair or replacement of facilities damaged or destroyed or during labor disputes.

G. As used in this section:

(1) "advanced energy product" means a technology, product, system or component eligible for a federal tax credit under Section 45X of the Internal Revenue Code;

(2) "essential" means directly necessary to the production of an advanced energy products;

(3) "manufacturing equipment" means an essential machine, mechanism or tool or a component of an essential machine, mechanism or tool used directly and exclusively in a taxpayer's qualified manufacturing facility and that is subject to depreciation pursuant to the Internal Revenue Code by the taxpayer carrying on the manufacturing. "Manufacturing equipment" does not include a vehicle that leaves the site of a manufacturing operation for the purpose of transporting persons or property, including property for which the taxpayer claims a credit pursuant to Section 7-9-79 NMSA 1978;

(4) "qualified expenditure" means an expenditure made on or after January 1, 2025 and prior to January 1, 2033 for the purchase of that portion of the costs of manufacturing equipment dedicated to manufacturing advanced energy products; and

(5) "qualified manufacturing facility" means a facility located in New Mexico, including any connected, associated or subsidiary facilities, that employs personnel to perform production tasks with manufacturing equipment not previously existing at the facility to produce advanced energy products.

History: Laws 2024, ch. 67, § 36.

7-2A-20. Repealed.

History: Laws 2002, ch. 91, § 2.

7-2A-21. Sustainable building tax credit.

A. The tax credit provided by this section may be referred to as the "sustainable building tax credit". The sustainable building tax credit shall be available for the construction in New Mexico of a sustainable building, the renovation of an existing building in New Mexico into a sustainable building or the permanent installation of manufactured housing, regardless of where the housing is manufactured, that is a sustainable building. The tax credit provided in this section may not be claimed with respect to the same sustainable building for which the sustainable building tax credit provided in the Income Tax Act [Chapter 7, Article 2 NMSA 1978] has been claimed.

B. The purpose of the sustainable building tax credit is to encourage the construction of sustainable buildings and the renovation of existing buildings into sustainable buildings.

C. A taxpayer that files a corporate income tax return is eligible to be granted a sustainable building tax credit by the department if the taxpayer submits a document issued pursuant to Subsection J of this section with the taxpayer's corporate income tax return.

D. For taxable years ending on or before December 31, 2016, the sustainable building tax credit may be claimed with respect to a sustainable commercial building. The credit shall be calculated based on the certification level the building has achieved in the LEED green building rating system and the amount of qualified occupied square footage in the building, as indicated on the following chart:

LEED Rating Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-NC Silver	First 10,000 Next 40,000 Over 50,000 up to 500,000	$3.50 $1.75 $.70
LEED-NC Gold	First 10,000 Next 40,000 Over 50,000 up to 500,000	$4.75 $2.00 $1.00
LEED-NC Platinum	First 10,000 Next 40,000 Over 50,000 up to 500,000	$6.25 $3.25 $2.00
LEED-EB or CS Silver	First 10,000 Next 40,000	$2.50 $1.25

	Over 50,000 up to 500,000	$.50
LEED-EB or CS Gold	First 10,000	$3.35
	Next 40,000	$1.40
	Over 50,000 up to 500,000	$.70
LEED-EB or CS Platinum	First 10,000	$4.40
	Next 40,000	$2.30
	Over 50,000 up to 500,000	$1.40
LEED-CI Silver	First 10,000	$1.40
	Next 40,000	$.70
	Over 50,000 up to 500,000	$.30
LEED-CI Gold	First 10,000	$1.90
	Next 40,000	$.80
	Over 50,000 up to 500,000	$.40
LEED-CI Platinum	First 10,000	$2.50
	Next 40,000	$1.30
	Over 50,000 up to 500,000	$.80

E. For taxable years ending on or before December 31, 2016, the sustainable building tax credit may be claimed with respect to a sustainable residential building. The credit shall be calculated based on the amount of qualified occupied square footage, as indicated on the following chart:

	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-H Silver or Build Green NM Silver	First 2,000	$5.00
	Next 1,000	$2.50
LEED-H Gold or Build Green NM Gold	First 2,000	$6.85
	Next 1,000	$3.40
LEED-H Platinum or Build Green NM Emerald	First 2,000	$9.00
	Next 1,000	$4.45

EPA ENERGY STAR Manufactured Housing	Up to 3,000	$3.00.

F. A person that is a building owner may apply for a certificate of eligibility for the sustainable building tax credit from the energy, minerals and natural resources department after the construction, installation or renovation of the sustainable building is complete. Applications shall be considered in the order received. If the energy, minerals and natural resources department determines that the building owner meets the requirements of this subsection and that the building with respect to which the tax credit application is made meets the requirements of this section as a sustainable residential building or a sustainable commercial building, the energy, minerals and natural resources department may issue a certificate of eligibility to the building owner, subject to the limitation in Subsection G of this section. The certificate shall include the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building and a calculation of the maximum amount of sustainable building tax credit for which the building owner would be eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection. If the certification level for the sustainable residential building is awarded on or after January 1, 2007, the energy, minerals and natural resources department may issue a certificate of eligibility to a building owner who is:

(1) the owner of the sustainable residential building at the time the certification level for the building is awarded; or

(2) the subsequent purchaser of a sustainable residential building with respect to which no tax credit has been previously claimed.

G. The energy, minerals and natural resources department may issue a certificate of eligibility only if the total amount of sustainable building tax credits represented by certificates of eligibility issued by the energy, minerals and natural resources department pursuant to this section and pursuant to the Income Tax Act shall not exceed in any calendar year an aggregate amount of one million dollars ($1,000,000) with respect to sustainable commercial buildings and an aggregate amount of four million dollars ($4,000,000) with respect to sustainable residential buildings; provided that no more than one million two hundred fifty thousand dollars ($1,250,000) of the aggregate amount with respect to sustainable residential buildings shall be for manufactured housing. If for any taxable year the energy, minerals and natural resources department determines that the applications for sustainable building tax credits with respect to sustainable residential buildings for that taxable year exceed the aggregate limit set in this section, the energy, minerals and natural resources department may issue certificates of eligibility under the aggregate annual limit for sustainable commercial buildings to owners of sustainable residential buildings that meet the requirements of the energy, minerals and natural resources department and of this section; provided that applications for sustainable building credits for other sustainable commercial buildings total less than the full amount allocated for tax credits for sustainable commercial buildings.

H. Installation of a solar thermal system or a photovoltaic system eligible for the solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 may not be used as a component of qualification for the rating system certification level used in determining eligibility for the sustainable building tax credit, unless a solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 has not been claimed with respect to that system and the building owner and the taxpayer claiming the sustainable building tax credit certify that such a tax credit will not be claimed with respect to that system.

I. To be eligible for the sustainable building tax credit, the building owner shall provide to the taxation and revenue department a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to the requirements of Subsection F of this section and any other information the taxation and revenue department may require to determine the amount of the tax credit for which the building owner is eligible.

J. If the requirements of this section have been complied with, the department shall issue to the building owner a document granting a sustainable building tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the building owner with that taxpayer's income tax return, if applicable, or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

K. If the total approved amount of all sustainable building tax credits for a taxpayer in a taxable year represented by the documents issued pursuant to Subsection J of this section is:

(1) less than one hundred thousand dollars ($100,000), a maximum of twenty-five thousand dollars ($25,000) shall be applied against the taxpayer's corporate income tax liability for the taxable year for which the credit is approved and the next three subsequent taxable years as needed depending on the amount of credit; or

(2) one hundred thousand dollars ($100,000) or more, increments of twenty-five percent of the total credit amount in each of the four taxable years, including the taxable year for which the credit is approved and the three subsequent taxable years, shall be applied against the taxpayer's corporate income tax liability.

L. If the sum of all sustainable building tax credits that can be applied to a taxable year for a taxpayer, calculated according to Paragraph (1) or (2) of Subsection K of this section, exceeds the taxpayer's corporate income tax liability for that taxable year, the excess may be carried forward for a period of up to seven years.

M. A taxpayer that otherwise qualifies and claims a sustainable building tax credit with respect to a sustainable building owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to that taxpayer's interest in the partnership or association. The total credit claimed in the aggregate by all members of the partnership or association with respect to the sustainable building shall not exceed the amount of the credit that could have been claimed by a sole owner of the property.

N. The department shall compile an annual report on the sustainable building tax credit created pursuant to this section that shall include the number of taxpayers approved by the department to receive the tax credit, the aggregate amount of tax credits approved and any other information necessary to evaluate the effectiveness of the tax credit. Beginning in 2015 and every five years thereafter, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the tax credit and whether the tax credit is performing the purpose for which it was created.

O. For the purposes of this section:

(1) "build green New Mexico rating system" means the certification standards adopted by the homebuilders association of central New Mexico;

(2) "LEED-CI" means the LEED rating system for commercial interiors;

(3) "LEED-CS" means the LEED rating system for the core and shell of buildings;

(4) "LEED-EB" means the LEED rating system for existing buildings;

(5) "LEED gold" means the rating in compliance with, or exceeding, the second-highest rating awarded by the LEED certification process;

(6) "LEED" means the most current leadership in energy and environmental design green building rating system guidelines developed and adopted by the United States green building council;

(7) "LEED-H" means the LEED rating system for homes;

(8) "LEED-NC" means the LEED rating system for new buildings and major renovations;

(9) "LEED platinum" means the rating in compliance with, or exceeding, the highest rating awarded by the LEED certification process;

(10) "LEED silver" means the rating in compliance with, or exceeding, the third-highest rating awarded by the LEED certification process;

(11) "manufactured housing" means a multisectioned home that is:

(a) a manufactured home or modular home;

(b) a single-family dwelling with a heated area of at least thirty-six feet by twenty-four feet and a total area of at least eight hundred sixty-four square feet;

(c) constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or New Mexico construction codes up to the date of the unit's construction; and

(d) installed consistent with the Manufactured Housing Act [Chapter 60, Article 14 NMSA 1978] and rules adopted pursuant to that act relating to permanent foundations;

(12) "qualified occupied square footage" means the occupied spaces of the building as determined by:

(a) the United States green building council for those buildings obtaining LEED certification;

(b) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; and

(c) the United States environmental protection agency for ENERGY STAR-certified manufactured homes;

(13) "person" does not include state, local government, public school district or tribal agencies;

(14) "sustainable building" means either a sustainable commercial building or a sustainable residential building;

(15) "sustainable commercial building" means a multifamily dwelling unit, as registered and certified under the LEED-H or build green New Mexico rating system, that is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher and has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network or a building that has been registered and certified under the LEED-NC, LEED-EB, LEED-CS or LEED-CI rating system and that:

(a) is certified by the United States green building council at LEED silver or higher;

(b) achieves any prerequisite for and at least one point related to commissioning under LEED "energy and atmosphere", if included in the applicable rating system; and

(c) has reduced energy consumption, as follows: 1) through 2011, a fifty percent energy reduction will be required based on the national average for that building type as published by the United States department of energy; and beginning January 1, 2012, a sixty percent energy reduction will be required based on the national average for that building type as published by the United States department of energy; and 2) is substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development;

(16) "sustainable residential building" means:

(a) a building used as a single-family residence as registered and certified under the build green New Mexico or LEED-H rating systems that: 1) is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher; and 2) has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network; or

(b) manufactured housing that is ENERGY STAR-qualified by the United States environmental protection agency; and

(17) "tribal" means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo.

History: Laws 2007, ch. 204, § 4; 2009, ch. 59, § 2; 2013, ch. 92, § 2.

7-2A-22. Repealed.

History: Laws 2007, ch. 204, § 6; repealed by Laws 2007, ch. 204, § 20.

7-2A-23. Repealed.

History: Laws 2007, ch. 204, § 8; repealed by Laws 2023, ch. 85, § 28.

7-2A-24. Geothermal ground-coupled heat pump corporate income tax credit.

A. A taxpayer that files a New Mexico corporate income tax return for a taxable year beginning on or after January 1, 2024 and that purchases and installs after the effective date of this section but before December 31, 2034 a geothermal ground-coupled heat pump in a property owned by the taxpayer may claim against the taxpayer's corporate income tax liability, and the department may allow, a tax credit of up to thirty percent of the purchase and installation costs of the system. The credit provided in this section may be referred to as the "geothermal ground-coupled heat pump corporate income tax credit". The total geothermal ground-coupled heat pump corporate income tax credit allowed to a taxpayer shall not exceed nine thousand dollars ($9,000). The department shall allow a geothermal ground-coupled heat pump corporate income tax credit only for geothermal ground-coupled heat pumps that are installed by a nationally accredited ground source heat pump installer certified by the energy, minerals and natural resources department.

B. That portion of a geothermal ground-coupled heat pump corporate income tax credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed shall be refunded to the taxpayer.

C. The energy, minerals and natural resources department shall adopt rules establishing procedures to provide certification of geothermal ground-coupled heat pumps for purposes of obtaining a geothermal ground-coupled heat pump corporate income tax credit. The rules shall address technical specifications and requirements relating to safety, building code and standards compliance, minimum system sizes, system applications and lists of eligible components. The energy, minerals and natural resources department may modify the specifications and requirements as necessary to maintain a high level of system quality and performance.

D. The maximum annual aggregate of credits that may be certified in a calendar year by the energy, minerals and natural resources department is four million dollars ($4,000,000). That department shall not certify a tax credit for which a taxpayer claims a 2021 sustainable building tax credit using a geothermal ground-coupled heat pump as a component of qualification for the rating system certification level used in determining eligibility for that credit. Applications for the credit shall be considered in the order received by the department.

E. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the department in a manner required by the department.

F. The department shall compile an annual report on the tax credit provided by this section that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the tax credit.

G. As used in this section, "geothermal ground-coupled heat pump" means a heating and refrigerating system that directly or indirectly utilizes available heat below the surface of the earth for distribution of heating and cooling or domestic hot water and that has either a minimum coefficient of performance of three and four-tenths or an efficiency ratio of sixteen or greater.

History: Laws 2009, ch. 271, § 2; 2024, ch. 67, § 26.

7-2A-24.1. Geothermal electricity generation corporate income tax credit.

A. For taxable years prior to January 1, 2032, a taxpayer that holds an interest in a geothermal electricity generation facility may apply for, and the department may allow, a credit against the taxpayer's tax liability imposed pursuant to the Corporate Income and Franchise Tax Act. The tax credit provided by this section may be referred to as the "geothermal electricity generation corporate income tax credit".

B. The amount of a tax credit allowed pursuant to this section shall be an amount equal to one and one-half cents ($0.015) per kilowatt-hour of electricity generated in New Mexico in a taxable year by the geothermal electricity generation facility in which the taxpayer holds an interest.

C. A taxpayer shall apply for certification of eligibility for the credit provided by this section from the energy, minerals and natural resources department on forms and in the manner prescribed by that department. The total annual aggregate amount of geothermal electricity generation corporate income tax credits and geothermal electricity generation income tax credits that may be certified in any calendar year is five million dollars ($5,000,000). Completed applications shall be considered in the order received. Applications for certification received after this limitation has been met in a calendar year shall not be approved for that calendar year, but shall be considered for certification in the following calendar year. The application shall include proof that the taxpayer is eligible for certification, including that the geothermal electricity generation facility that produced the energy for which the taxpayer is claiming credit, the geothermal resources used by the geothermal electricity generation facility and the taxpayer's interest in the geothermal electricity generation facility are in accordance with the definitions set forth in this section. For taxpayers approved to receive the credit, the energy, minerals and natural resources department shall issue a certificate of eligibility stating the amount of credit to which the taxpayer is entitled and the taxable year in which the credit may be claimed. The certificate of eligibility shall be numbered for identification and declare the date of issuance and the amount of the tax credit allowed.

D. A taxpayer may claim a geothermal electricity generation corporate income tax credit for the taxable year in which electricity was generated in New Mexico by a geothermal electricity generation facility in which the taxpayer holds an interest. To receive the credit provided by this section, a taxpayer shall apply to the department on forms and in the manner prescribed by the department. The application shall include a certification made pursuant to Subsection C of this section.

E. That portion of a credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed may be carried forward for up to three consecutive years.

F. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the department in a manner required by that department.

G. The department shall compile an annual report on the credit provided by this section that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the tax credit.

H. As used in this section:

(1) "geothermal electricity generation facility" means a facility located in New Mexico that generates electricity from geothermal resources and:

(a) for new facilities, begins construction on or after January 1, 2025; or

(b) for existing facilities, on or after January 1, 2025, increases the amount of electricity generated from geothermal resources the facility generated prior to that date by at least one hundred percent;

(2) "geothermal resources" means the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit or the energy, in whatever form, below the surface of the earth present in, resulting from, created by or that may be extracted from this natural heat in excess of two hundred fifty degrees Fahrenheit and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases and steam, in whatever form, found below the surface of the earth, but excluding oil, hydrocarbon gas and other hydrocarbon substances and excluding the heating and cooling capacity of the earth not resulting from the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit as may be used for the heating and cooling of buildings through an on-site geoexchange heat pump or similar on-site system; and

(3) "interest in a geothermal electricity generation facility" means title to a geothermal electricity generation facility; a leasehold interest in such facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in such facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in such facility.

History: Laws 2024, ch. 67, § 34.

7-2A-25. Repealed.

History: Laws 2009, ch. 279, § 2; repealed by Laws 2023, ch. 85, § 28.

7-2A-26. Agricultural biomass corporate income tax credit.

A. A taxpayer that files a New Mexico corporate income tax return for a taxable year beginning on or after January 1, 2011 and ending prior to January 1, 2030 for a dairy or feedlot owned by the taxpayer may claim against the taxpayer's corporate income and franchise tax liability, and the department may allow, a tax credit equal to five dollars ($5.00) per wet ton of agricultural biomass transported from the taxpayer's dairy or feedlot to a facility that uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use. The credit provided in this section may be referred to as the "agricultural biomass corporate income tax credit".

B. If the requirements of this section have been complied with, the department shall issue to the taxpayer a document granting an agricultural biomass corporate income tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the taxpayer with that taxpayer's corporate income tax return or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

C. A portion of the agricultural biomass corporate income tax credit that remains unused in a taxable year may be carried forward for a maximum of four consecutive taxable years following the taxable year in which the credit originates until the credit is fully expended.

D. The energy, minerals and natural resources department shall adopt rules establishing procedures to provide certification of transportation of agricultural biomass to a qualified facility that uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use for purposes of obtaining an agricultural biomass corporate income tax credit. The rules may be modified as determined necessary by the energy, minerals and natural resources department to determine accurate recording of the quantity of agricultural biomass transported and used for the purpose allowable in this section.

E. A taxpayer that claims an agricultural biomass corporate income tax credit shall not also claim an agricultural biomass income tax credit for transportation of the same agricultural biomass on which the claim for that agricultural biomass income tax credit is based.

F. The department shall limit the annual combined total of all agricultural biomass income tax credits and all agricultural biomass corporate income tax credits allowed to a maximum of five million dollars ($5,000,000). Applications for the credit shall be considered in the order received by the department.

G. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the department in a manner required by the department.

H. The department shall compile an annual report on the agricultural biomass corporate income tax credit that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the tax credit.

I. As used in this section:

(1) "agricultural biomass" means wet manure meeting specifications established by the energy, minerals and natural resources department from either a dairy or feedlot commercial operation;

(2) "biocrude" means a nonfossil form of energy that can be transported and refined using existing petroleum refining facilities and that is made from biologically derived feedstocks and other agricultural biomass;

(3) "feedlot" means an operation that fattens livestock for market; and

(4) "dairy" means a facility that raises livestock for milk production.

History: Laws 2010, ch. 84, § 2; 2020, ch. 20, § 2.

7-2A-27. Repealed.

History: Laws 2012, ch. 55, § 2; repealed by Laws 2023, ch. 85, § 28.

7-2A-28. 2015 sustainable building tax credit.

A. The tax credit provided by this section may be referred to as the "2015 sustainable building tax credit". The 2015 sustainable building tax credit shall be available for the construction in New Mexico of a sustainable building, the renovation of an existing building in New Mexico into a sustainable building or the permanent installation of manufactured housing, regardless of where the housing is manufactured, that is a sustainable building; provided that the construction, renovation or installation project is completed prior to April 1, 2023. The tax credit provided in this section may not be claimed with respect to the same sustainable building for which the 2015 sustainable building tax credit provided in the Income Tax Act [Chapter 7, Article 2 NMSA 1978] or the 2021 sustainable building tax credit pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act has been claimed.

B. The purpose of the 2015 sustainable building tax credit is to encourage the construction of sustainable buildings and the renovation of existing buildings into sustainable buildings.

C. A taxpayer that files a corporate income tax return is eligible to be granted a 2015 sustainable building tax credit by the department if the taxpayer submits a document issued pursuant to Subsection K of this section with the taxpayer's corporate income tax return.

D. For taxable years ending on or before December 31, 2024, the 2015 sustainable building tax credit may be claimed with respect to a sustainable commercial building. The credit shall be calculated based on the certification level the building has achieved in the LEED green building rating system and the amount of qualified occupied square footage in the building, as indicated on the following chart:

LEED Rating Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-NC Silver	First 10,000	$3.50
	Next 40,000	$1.75
	Over 50,000 up to 500,000	$ .70
LEED-NC Gold	First 10,000	$4.75
	Next 40,000	$2.00
	Over 50,000 up to 500,000	$1.00
LEED-NC Platinum	First 10,000	$6.25
	Next 40,000	$3.25
	Over 50,000 up to 500,000	$2.00
LEED-EB or CS Silver	First 10,000	$2.50
	Next 40,000	$1.25
	Over 50,000 up to 500,000	$ .50
LEED-EB or CS Gold	First 10,000	$3.35
	Next 40,000	$1.40
	Over 50,000 up to 500,000	$ .70
LEED-EB or CS Platinum	First 10,000	$4.40
	Next 40,000	$2.30
	Over 50,000 up to 500,000	$1.40
LEED-CI Silver	First 10,000	$1.40
	Next 40,000	$ .70
	Over 50,000	

	up to 500,000	$ .30
LEED-CI Gold	First 10,000	$1.90
	Next 40,000	$ .80
	Over 50,000 up to 500,000	$ .40
LEED-CI Platinum	First 10,000	$2.50
	Next 40,000	$1.30
	Over 50,000 up to 500,000	$ .80.

E. For taxable years ending on or before December 31, 2024, the 2015 sustainable building tax credit may be claimed with respect to a sustainable residential building. The credit shall be calculated based on the amount of qualified occupied square footage, as indicated on the following chart:

Rating System/Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-H Silver or Build Green NM Silver	Up to 2,000	$3.00
LEED-H Gold or Build Green NM Gold	Up to 2,000	$4.50
LEED-H Platinum or Build Green NM Emerald	Up to 2,000	$6.50
Manufactured Housing	Up to 2,000	$3.00.

F. A person that is a building owner may apply for a certificate of eligibility for the 2015 sustainable building tax credit from the energy, minerals and natural resources department after the construction, installation or renovation of the sustainable building is complete. Applications shall be considered in the order received. If the energy, minerals and natural resources department determines that the building owner meets the requirements of this subsection and that the building with respect to which the tax credit application is made meets the requirements of this section as a sustainable residential building or a sustainable commercial building, the energy, minerals and natural resources department may issue a certificate of eligibility to the building owner, subject to the limitations in Subsection G of this section. The certificate shall include the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building and a calculation of the maximum amount of 2015 sustainable building tax credit for which the building owner would be eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection. If the certification level for the sustainable residential building is awarded on or after January 1, 2017 but prior to April 1, 2023, the energy, minerals and natural resources department may issue a certificate of eligibility to a building owner who is:

(1) the owner of the sustainable residential building at the time the certification level for the building is awarded; or

(2) the subsequent purchaser of a sustainable residential building with respect to which no tax credit has been previously claimed.

G. Except as provided in Subsection H of this section, the energy, minerals and natural resources department may issue a certificate of eligibility only if the total amount of 2015 sustainable building tax credits represented by certificates of eligibility issued by the energy, minerals and natural resources department pursuant to this section and pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] shall not exceed in any calendar year an aggregate amount of:

(1) one million two hundred fifty thousand dollars ($1,250,000) with respect to sustainable commercial buildings;

(2) three million three hundred seventy-five thousand dollars ($3,375,000) with respect to sustainable residential buildings that are not manufactured housing; and

(3) three hundred seventy-five thousand dollars ($375,000) with respect to sustainable residential buildings that are manufactured housing.

H. For any taxable year that the energy, minerals and natural resources department determines that applications for sustainable building tax credits for any type of sustainable building pursuant to Paragraph (1), (2) or (3) of Subsection G of this section are less than the aggregate limit for that type of sustainable building for that taxable year, the energy, minerals and natural resources department shall allow the difference between the aggregate limit and the applications to be added to the aggregate limit of another type of sustainable building for which applications exceeded the aggregate limit for that taxable year. Any excess not used in a taxable year shall not be carried forward to subsequent taxable years.

I. Installation of a solar thermal system or a photovoltaic system eligible for the solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 may not be used as a component of qualification for the rating system certification level used in determining eligibility for the 2015 sustainable building tax credit, unless a solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 has not been claimed with respect to that system and the building owner and the taxpayer claiming the 2015 sustainable building tax credit certify that such a tax credit will not be claimed with respect to that system.

J. To be eligible for the 2015 sustainable building tax credit, the building owner shall provide to the taxation and revenue department a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to the requirements of Subsection F of this section and any other information the taxation and revenue department may require to determine the amount of the tax credit for which the building owner is eligible.

K. If the requirements of this section have been complied with, the department shall issue to the building owner a document granting a 2015 sustainable building tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the building owner with that taxpayer's income tax return, if applicable, or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

L. If the approved amount of a 2015 sustainable building tax credit for a taxpayer in a taxable year represented by a document issued pursuant to Subsection K of this section is:

(1) less than one hundred thousand dollars ($100,000), a maximum of twenty-five thousand dollars ($25,000) shall be applied against the taxpayer's corporate income tax liability for the taxable year for which the credit is approved and the next three subsequent taxable years as needed depending on the amount of credit; or

(2) one hundred thousand dollars ($100,000) or more, increments of twenty-five percent of the total credit amount in each of the four taxable years, including the taxable year for which the credit is approved and the three subsequent taxable years, shall be applied against the taxpayer's corporate income tax liability.

M. If the sum of all 2015 sustainable building tax credits that can be applied to a taxable year for a taxpayer, calculated according to Paragraph (1) or (2) of Subsection L of this section, exceeds the taxpayer's corporate income tax liability for that taxable year, the excess may be carried forward for a period of up to seven years.

N. A taxpayer that otherwise qualifies and claims a 2015 sustainable building tax credit with respect to a sustainable building owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to that taxpayer's interest in the partnership or association. The total credit claimed in the aggregate by all members of the partnership or association with respect to the sustainable building shall not exceed the amount of the credit that could have been claimed by a sole owner of the property.

O. The department shall compile an annual report on the 2015 sustainable building tax credit created pursuant to this section that shall include the number of taxpayers approved by the department to receive the tax credit, the aggregate amount of tax credits approved and any other information necessary to evaluate the effectiveness of the tax credit. Beginning in 2019 and every three years thereafter that the credit is in effect, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the tax credit and whether the tax credit is performing the purpose for which it was created.

P. For the purposes of this section:

(1) "build green New Mexico rating system" means the certification standards adopted by build green New Mexico in November 2014, which include water conservation standards;

(2) "LEED-CI" means the LEED rating system for commercial interiors;

(3) "LEED-CS" means the LEED rating system for the core and shell of buildings;

(4) "LEED-EB" means the LEED rating system for existing buildings;

(5) "LEED gold" means the rating in compliance with, or exceeding, the second-highest rating awarded by the LEED certification process;

(6) "LEED" means the most current leadership in energy and environmental design green building rating system guidelines developed and adopted by the United States green building council;

(7) "LEED-H" means the LEED rating system for homes;

(8) "LEED-NC" means the LEED rating system for new buildings and major renovations;

(9) "LEED platinum" means the rating in compliance with, or exceeding, the highest rating awarded by the LEED certification process;

(10) "LEED silver" means the rating in compliance with, or exceeding, the third-highest rating awarded by the LEED certification process;

(11) "manufactured housing" means a multisectioned home that is:

(a) a manufactured home or modular home;

(b) a single-family dwelling with a heated area of at least thirty-six feet by twenty-four feet and a total area of at least eight hundred sixty-four square feet;

(c) constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or New Mexico construction codes up to the date of the unit's construction; and

(d) installed consistent with the Manufactured Housing Act and rules adopted pursuant to that act relating to permanent foundations;

(12) "qualified occupied square footage" means the occupied spaces of the building as determined by:

(a) the United States green building council for those buildings obtaining LEED certification;

(b) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; and

(c) the United States environmental protection agency for ENERGY STAR-certified manufactured homes;

(13) "person" does not include state, local government, public school district or tribal agencies;

(14) "sustainable building" means either a sustainable commercial building or a sustainable residential building;

(15) "sustainable commercial building" means a multifamily dwelling unit, as registered and certified under the LEED-H or build green New Mexico rating system, that is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher and has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network or a building that has been registered and certified under the LEED-NC, LEED-EB, LEED-CS or LEED-CI rating system and that:

(a) is certified by the United States green building council at LEED silver or higher;

(b) achieves any prerequisite for and at least one point related to commissioning under LEED "energy and atmosphere", if included in the applicable rating system; and

(c) has reduced energy consumption beginning January 1, 2012, by sixty percent based on the national average for that building type as published by the United States department of energy as substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development;

(16) "sustainable residential building" means:

(a) a building used as a single-family residence as registered and certified under the build green New Mexico or LEED-H rating systems that: 1) is certified by the

United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher; 2) has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network; 3) has indoor plumbing fixtures and water-using appliances that, on average, have flow rates equal to or lower than the flow rates required for certification by WaterSense; 4) if landscape area is available at the front of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; and 5) if landscape area is available at the rear of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; or

(b) manufactured housing that is ENERGY STAR-qualified by the United States environmental protection agency;

(17) "tribal" means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo; and

(18) "WaterSense" means a program created by the federal environmental protection agency that certifies water-using products that meet the environmental protection agency's criteria for efficiency and performance.

History: Laws 2015, ch. 130, § 2; 2021, ch. 84, § 3.

7-2A-28.1. 2021 sustainable building tax credit.

A. The tax credit provided by this section may be referred to as the "2021 sustainable building tax credit". For taxable years prior to January 1, 2028, a taxpayer that is a building owner and files a corporate income tax return is eligible to be granted a 2021 sustainable building tax credit by the department if the requirements of this section are met. The 2021 sustainable building tax credit shall be available for the construction in New Mexico of a sustainable building, the renovation of an existing building in New Mexico, the permanent installation of manufactured housing, regardless of where the housing is manufactured, that is a sustainable building or the installation of energy-conserving products to existing buildings in New Mexico, as provided in this section. The tax credit provided in this section may not be claimed with respect to the same sustainable building for which the 2021 sustainable building tax credit provided in the Income Tax Act [Chapter 7, Article 2 NMSA 1978] or the 2015 sustainable building tax credit pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act has been claimed.

B. The amount of a 2021 sustainable building tax credit shall be determined as follows:

(1) for the construction of a new sustainable commercial building that is broadband ready and electric vehicle ready and is completed on or after January 1, 2022, the amount of credit shall be calculated:

(a) based on the certification level the building has achieved in the rating level and the amount of qualified occupied square footage in the building, as indicated on the following chart:

Rating Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-NC Platinum	First 10,000	$5.25
	Next 40,000	$2.25
	Over 50,000 up to 200,000	$1.00
LEED-EB or CS Platinum	First 10,000	$3.40
	Next 40,000	$1.30
	Over 50,000 up to 200,000	$0.35
LEED-CI Platinum	First 10,000	$1.50
	Next 40,000	$0.40
	Over 50,000 up to 200,000	$0.30
LEED-NC Gold	First 10,000	$3.00
	Next 40,000	$1.00
	Over 50,000 up to 200,000	$0.25
LEED-EB or -CS Gold	First 10,000	$2.00
	Next 40,000	$1.00
	Over 50,000 up to 200,000	$0.25
LEED-CI Gold	First 10,000	$0.90
	Next 40,000	$0.40
	Over 50,000 up to 200,000	$0.10; and

(b) with additional amounts based on the additional criteria and the amount of qualified occupied square footage, as indicated in the following chart:

Additional Criteria	Qualified Occupied Square Footage	Tax Credit per Square Foot
Fully Electric Building	First 50,000	$1.00
	Over 50,000 up to 200,000	$0.50
Zero Carbon, Energy, Waste or Water Certified	First 50,000	$0.25
	Over 50,000 up to 200,000	$0.10;

(2) for the renovation of a commercial building that was built at least ten years prior to the date of the renovation, has twenty thousand square feet or more of space in which temperature is controlled and is broadband ready and electric vehicle ready, the amount of credit shall be calculated by multiplying two dollars twenty-five cents ($2.25) by the amount of qualified occupied square footage in the building, up to a maximum of one hundred fifty thousand dollars ($150,000) per renovation; provided that the renovation reduces total energy and power costs by fifty percent when compared to the most current energy standard for buildings except low-rise residential buildings, as developed by the American society of heating, refrigerating and air-conditioning engineers;

(3) for the installation of the following energy-conserving products to an existing commercial building with less than twenty thousand square feet of space in which temperature is controlled that is broadband ready, the amount of credit shall be based on the cost of the product installed, which shall include installation costs, and if the building is affordable housing, per product installed:

Product	Amount of Credit	
	Affordable Housing	Non-Affordable Housing
Energy Star Air Source Heat Pump	$2,000	$1,000
Energy Star Ground Source Heat Pump	$2,000	$1,000
Energy Star Windows and Doors	100% of product cost up to $1,000	50% of product cost up to $500
Insulation Improvements That Meet Rules of the Energy, Minerals and Natural Resources Department	100% of product cost up to $2,000	50% of product cost up to $1,000
Energy Star Heat Pump Water Heater	$700	$350
Electric Vehicle Ready	100% of product cost up to $3,000	50% of product cost up to $1,500;

(4) for the construction of a new sustainable residential building that is broadband ready and electric vehicle ready and is completed on or after January 1, 2022, the amount of credit shall be calculated:

(a) based on the certification level the building has achieved in the rating level and the amount of qualified occupied square footage in the building, as indicated on the following chart:

Rating Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-H Platinum	Up to 2,000	$5.50
LEED-H Gold	Up to 2,000	$3.80
Build Green Emerald	Up to 2,000	$5.50
Build Green Gold	Up to 2,000	$3.80
Manufactured Housing	Up to 2,000	$2.00; and

(b) with additional amounts based on the additional criteria and the amount of qualified occupied square footage, as indicated in the following chart:

Additional Criteria	Qualified Occupied Square Footage	Tax Credit per Square Foot
Fully Electric Building	Up to 2,000	$1.00
Zero Carbon, Energy, Waste or Water Certified	Up to 2,000	$0.25; and

(5) for the installation of the following energy-conserving products to an existing residential building, the amount of credit shall be based on the cost of the product installed, which shall include installation costs, and if the building is affordable housing or the taxpayer is a low-income taxpayer, per product installed:

Product	Amount of Credit Affordable Housing and Low-Income	Non-Affordable Housing and Non-Low Income
Energy Star Air Source Heat Pump	$2,000	$1,000
Energy Star Ground Source Heat Pump	$2,000	$1,000
Energy Star Windows and Doors	100% of product cost up to $1,000	50% of product cost up to $500
Insulation Improvements That Meet Rules of the Energy, Minerals and Natural Resources Department	100% of product cost up to $2,000	50% of product cost up to $1,000

Energy Star Heat Pump Water Heater	$700	$350
Electric Vehicle Ready	$1,000	$500.

C. A person that is a building owner may apply for a certificate of eligibility for the 2021 sustainable building tax credit from the energy, minerals and natural resources department after the construction, installation or renovation of the sustainable building or installation of energy-conserving products in an existing building is complete. Applications shall be considered in the order received. If the energy, minerals and natural resources department determines that the building owner meets the requirements of this subsection and that the building with respect to which the application is made meets the requirements of this section for a 2021 sustainable building tax credit, the energy, minerals and natural resources department may issue a certificate of eligibility to the building owner, subject to the limitations in Subsection D of this section. The certificate shall include the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, a calculation of the maximum amount of 2021 sustainable building tax credit for which the building owner would be eligible, the identification number, date of issuance and the first taxable year that the credit shall be claimed. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection. If the certification level for the sustainable residential building is awarded on or after January 1, 2022, the energy, minerals and natural resources department may issue a certificate of eligibility to a building owner that is:

(1) the owner of the sustainable residential building at the time the certification level for the building is awarded; or

(2) the subsequent purchaser of a sustainable residential building with respect to which no tax credit has been previously claimed.

D. Except as provided in Subsection E of this section, the energy, minerals and natural resources department may issue a certificate of eligibility only if the total amount of 2021 sustainable building tax credits represented by certificates of eligibility issued by the energy, minerals and natural resources department pursuant to this section and pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] shall not exceed in any calendar year an aggregate amount of:

(1) one million dollars ($1,000,000) with respect to the construction of new sustainable commercial buildings;

(2) two million dollars ($2,000,000) with respect to the construction of new sustainable residential buildings that are not manufactured housing;

(3) two hundred fifty thousand dollars ($250,000) with respect to the construction of new sustainable residential buildings that are manufactured housing;

(4) one million dollars ($1,000,000) with respect to the renovation of large commercial buildings; and

(5) two million nine hundred thousand dollars ($2,900,000) with respect to the installation of energy-conserving products in existing commercial buildings pursuant to Paragraph (3) of Subsection B of this section and existing residential buildings pursuant to Paragraph (5) of Subsection B of this section.

E. For any taxable year that the energy, minerals and natural resources department determines that applications for sustainable building tax credits for any type of sustainable building pursuant to Subsection D of this section are less than the aggregate limit for that type of sustainable building for that taxable year, the energy, minerals and natural resources department shall allow the difference between the aggregate limit and the applications to be added to the aggregate limit of another type of sustainable building for which applications exceeded the aggregate limit for that taxable year. Any excess not used in a taxable year shall not be carried forward to subsequent taxable years.

F. Installation of a solar thermal system or a photovoltaic system eligible for the new solar market development tax credit pursuant to Section 7-2-18.31 NMSA 1978 shall not be used as a component of qualification for the rating system certification level used in determining eligibility for the 2021 sustainable building tax credit, unless a new solar market development tax credit pursuant to Section 7-2-18.31 NMSA 1978 has not been claimed with respect to that system and the building owner and the taxpayer claiming the 2021 sustainable building tax credit certify that such a tax credit will not be claimed with respect to that system.

G. To claim the 2021 sustainable building tax credit, the building owner shall provide to the taxation and revenue department a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to the requirements of Subsection C of this section and any other information the taxation and revenue department may require.

H. If the approved amount of a 2021 sustainable building tax credit for a taxpayer in a taxable year represented by a document issued pursuant to Subsection C of this section is:

(1) less than one hundred thousand dollars ($100,000), a maximum of twenty-five thousand dollars ($25,000) shall be applied against the taxpayer's corporate income tax liability for the taxable year for which the credit is approved and the next three subsequent taxable years as needed depending on the amount of credit; or

(2) one hundred thousand dollars ($100,000) or more, increments of twenty-five percent of the total credit amount in each of the four taxable years, including the taxable year for which the credit is approved and the three subsequent taxable years, shall be applied against the taxpayer's corporate income tax liability.

I. If the sum of all 2021 sustainable building tax credits that can be applied to a taxable year for a taxpayer, calculated according to Paragraph (1) or (2) of Subsection H of this section, exceeds the taxpayer's corporate income tax liability for that taxable year, the excess may be carried forward for a period of up to seven years.

J. A taxpayer that otherwise qualifies and claims a 2021 sustainable building tax credit with respect to a sustainable building owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to that taxpayer's interest in the partnership or association. The total credit claimed in the aggregate by all members of the partnership or association with respect to the sustainable building shall not exceed the amount of the credit that could have been claimed by a sole owner of the property.

K. If the requirements of this section have been complied with, the department shall issue to the building owner a document granting a 2021 sustainable building tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the building owner with that taxpayer's income tax return, if applicable, or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

L. The department and the energy, minerals and natural resources department shall compile an annual report on the 2021 sustainable building tax credit created pursuant to this section that shall include the number of taxpayers approved to receive the tax credit, the aggregate amount of tax credits approved and any other information necessary to evaluate the effectiveness of the tax credit. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the tax credit.

M. For the purposes of this section:

(1) "broadband ready" means a building with an internet connection capable of connecting to a broadband provider;

(2) "build green emerald" means the emerald level certification standard adopted by build green New Mexico, which includes water conservation standards and uses forty percent less energy than is required by the prescriptive path of the most current residential energy conservation code promulgated by the construction industries division of the regulation and licensing department;

(3) "build green gold" means the gold level certification standard adopted by build green New Mexico, which includes water conservation standards and uses thirty percent less energy than is required by the prescriptive path of the most current residential energy conservation code promulgated by the construction industries division of the regulation and licensing department;

(4) "electric vehicle ready" means a property that provides for commercial buildings at least ten percent of parking spaces and for residential buildings at least one parking space with one forty-ampere, two-hundred-eight-volt or two-hundred-forty-volt dedicated branch circuit for servicing electric vehicles that terminates in a suitable termination point, such as a receptacle or junction box, and is located in reasonably close proximity to the proposed location of the parking spaces;

(5) "energy rating system index" means a numerical score given to a building where one hundred is equivalent to the 2006 international energy conservation code and zero is equivalent to a net-zero home. As used in this paragraph, "net-zero home" means an energy-efficient home where, on a source energy basis, the actual annual delivered energy is less than or equal to the on-site renewable exported energy;

(6) "Energy Star" means products and devices certified under the energy star program administered by the United States environmental protection agency and United States department of energy that meet the specified performance requirements at the installed locations;

(7) "fully electric building" means a building that uses a permanent supply of electricity as the source of energy for all space heating, water heating, including pools and spas, cooking appliances and clothes drying appliances and, in the case of a new building, has no natural gas or propane plumbing installed in the building or, in the case of an existing building, has no connected natural gas or propane plumbing;

(8) "LEED" means the most current leadership in energy and environmental design green building rating system guidelines developed and adopted by the United States green building council;

(9) "LEED-CI" means the LEED rating system for commercial interiors;

(10) "LEED-CS" means the LEED rating system for the core and shell of buildings;

(11) "LEED-EB" means the LEED rating system for existing buildings;

(12) "LEED gold" means the rating in compliance with, or exceeding, the second-highest rating awarded by the LEED certification process;

(13) "LEED-H" means the LEED rating system for homes;

(14) "LEED-NC" means the LEED rating system for new buildings and major renovations;

(15) "LEED platinum" means the rating in compliance with, or exceeding, the highest rating awarded by the LEED certification process;

(16) "low-income taxpayer" means a taxpayer with an annual household adjusted gross income equal to or less than two hundred percent of the federal poverty level guidelines published by the United States department of health and human services;

(17) "manufactured housing" means a multisectioned home that is:

(a) a manufactured home or modular home;

(b) a single-family dwelling with a heated area of at least thirty-six feet by twenty-four feet and a total area of at least eight hundred sixty-four square feet;

(c) constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or New Mexico construction codes up to the date of the unit's construction; and

(d) installed consistent with the Manufactured Housing Act [Chapter 60, Article 14 NMSA 1978] and rules adopted pursuant to that act relating to permanent foundations;

(18) "qualified occupied square footage" means the occupied spaces of the building as determined by:

(a) the United States green building council for those buildings obtaining LEED certification;

(b) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; and

(c) the United States environmental protection agency for Energy Star-certified manufactured homes;

(19) "person" does not include state, local government, public school district or tribal agencies;

(20) "sustainable building" means either a sustainable commercial building or a sustainable residential building;

(21) "sustainable commercial building" means:

(a) a commercial building that is certified as any LEED platinum or gold for commercial buildings;

(b) a multifamily dwelling unit that is certified as LEED-H platinum or gold or build green emerald or gold and uses at least thirty percent less energy than is required by the prescriptive path of the most current applicable energy conservation code promulgated by the construction industries division of the regulation and licensing department for build green gold or LEED-H, or uses at least forty percent less energy than is required by the prescriptive path of the most current residential energy conservation code promulgated by the construction industries division of the regulation and licensing department for build green emerald or LEED platinum; or

(c) a building that: 1) is certified at LEED-NC, LEED-EB, LEED-CS or LEED-CI platinum or gold levels; 2) achieves any prerequisite for and at least one point related to commissioning under the LEED energy and atmosphere category, if included in the applicable rating system; and 3) has reduced energy consumption beginning January 1, 2012 by forty percent based on the national average for that building type as published by the United States department of energy as substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development;

(22) "sustainable residential building" means:

(a) a building used as a single-family residence that: 1) is certified as LEED-H platinum or gold or build green emerald or gold; 2) uses at least thirty percent less energy than is required by the prescriptive path of the most current residential energy conservation code promulgated by the construction industries division of the regulation and licensing department for build green gold or LEED-H, or uses at least forty percent less energy than is required by the prescriptive path of the most current residential energy conservation code promulgated by the construction industries division of the regulation and licensing department for build green emerald or LEED platinum; 3) has indoor plumbing fixtures and water-using appliances that, on average, have flow rates equal to or lower than the flow rates required for certification by WaterSense; 4) if landscape area is available at the front of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; and 5) if landscape area is available at the rear of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; or

(b) manufactured housing that is Energy Star-qualified;

(23) "tribal" means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo;

(24) "WaterSense" means a program created by the federal environmental protection agency that certifies water-using products that meet the environmental protection agency's criteria for efficiency and performance;

(25) "zero carbon certified" means a building that is certified as LEED zero carbon by achieving a carbon-dioxide-equivalent balance of zero for the building;

(26) "zero energy certified" means a building that is certified as LEED zero energy by achieving a source energy use balance of zero for the building;

(27) "zero waste certified" means a building that is certified as LEED zero waste by achieving green building certification incorporated's true zero waste certification at the platinum level; and

(28) "zero water certified" means a building that is certified as LEED zero water by achieving a potable water use balance of zero for the building.

History: Laws 2021, ch. 84, § 4; 2022, ch. 47, § 10.

7-2A-29. Foster youth employment corporate income tax credit.

A. A taxpayer that employs a qualified foster youth in New Mexico is eligible for a credit against the taxpayer's tax liability imposed pursuant to the Corporate Income and Franchise Tax Act in an amount up to one thousand dollars ($1,000) of the gross wages paid to each qualified foster youth by the taxpayer during the taxable year for which the return is filed. A taxpayer that employs a qualified foster youth for less than the full taxable year is eligible for a credit amount equal to one thousand dollars ($1,000) multiplied by the fraction of a full year for which the qualified foster youth was employed. The tax credit provided by this section may be referred to as the "foster youth employment corporate income tax credit".

B. The purpose of the foster youth employment corporate income tax credit is to encourage the employment of individuals who as youth were adjudicated as abused or neglected or who were in the legal custody of the children, youth and families department under the Children's Code [Chapter 32A NMSA 1978] or in the legal custody of a New Mexico Indian nation, tribe or pueblo or the United States department of the interior bureau of Indian affairs division of human services.

C. A taxpayer may claim the foster youth employment corporate income tax credit provided in this section for each taxable year in which the taxpayer employs one or more qualified foster youths; provided that the taxpayer may not claim the foster youth employment corporate income tax credit for any individual qualified foster youth for more than one calendar year from the date of hire.

D. That portion of a foster youth employment corporate income tax credit approved by the department that exceeds a taxpayer's corporate income tax liability in the taxable year in which the foster youth employment corporate income tax credit is claimed shall not be refunded to the taxpayer but may be carried forward for up to three years. The foster youth employment corporate income tax credit shall not be transferred to another taxpayer.

E. The taxpayer shall submit to the department with respect to each employee for whom the foster youth employment corporate income tax credit is claimed information required by the department with respect to the qualified foster youth's employment by the taxpayer during the taxable year for which the foster youth employment corporate income tax credit is claimed, including information establishing that the employee is a qualified foster youth that can be used to determine that the employee was not also employed in the same taxable year by another taxpayer claiming a foster youth employment income or corporate income tax credit for that employee pursuant to this section or the Income Tax Act [Chapter 7, Article 2 NMSA 1978].

F. The department shall:

(1) adopt rules establishing procedures to certify that an employee is a qualified foster youth for purposes of obtaining a foster youth employment corporate income tax credit. The rules shall ensure that not more than one foster youth employment corporate income tax credit per qualified foster youth shall be allowed in a taxable year and that the credits allowed per qualified foster youth are limited to a maximum of one year's employment; and

(2) collaborate with the children, youth and families department, the New Mexico Indian nations, tribes and pueblos and the United States department of the interior bureau of Indian affairs division of human services to establish the certification procedures.

G. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the department in a manner required by the department.

H. The department shall compile an annual report on the foster youth employment corporate income tax credit that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the effectiveness of the credit. The department shall present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the tax credit and whether the tax credit is performing the purpose for which it was created.

I. As used in this section, "qualified foster youth" means an individual:

(1) who:

(a) is currently in the legal custody of the children, youth and families department pursuant to the Children's Code or in the legal custody of a New Mexico Indian nation, tribe or pueblo or the United States department of the interior bureau of Indian affairs division of human services; or

(b) within the seven years prior to the taxable year for which the tax credit is claimed, was aged fourteen years or older and was in the legal custody of the children, youth and families department pursuant to the Children's Code or in the legal custody of a New Mexico Indian nation, tribe or pueblo or the United States department of the interior bureau of Indian affairs division of human services;

(2) who works at least twenty hours per week during the taxable year for which the foster youth employment corporate income tax credit is claimed; and

(3) who was not previously employed by the taxpayer prior to the taxable year for which the foster youth employment corporate income tax credit is claimed.

History: Laws 2018, ch. 36, § 2.

7-2A-30. Deduction to offset material financial effects of changes in deferred tax amounts due to certain changes made to sections 7-2A-2, 7-2A-3, 7-2A-8.3, 7-4-10 and 7-4-18 NMSA 1978.

A. For each of ten consecutive taxable years beginning on or after January 1, 2026, a filing group subject to the corporate income tax whose members are part of a publicly traded company may claim a deduction, as provided by Subsection B of this section, from taxable income before net operating losses are deducted.

B. The deduction for each taxable year shall not exceed one-tenth of the amount necessary to offset the aggregate increase in net deferred tax liabilities, the aggregate decrease in net deferred tax assets or an aggregate change from a net deferred tax asset to a net deferred tax liability, as measured under generally accepted accounting principles, that resulted from the changes to Sections 7-2A-2, 7-2A-3, 7-2A-8.3, 7-4-10 and 7-4-18 NMSA 1978 made by this 2019 act; provided that:

(1) the amount of the aggregate change in deferred tax assets and deferred tax liabilities is properly included in the calculation of the deferred tax asset or deferred tax liability reported as part of the consolidated financial statements, as required by the federal Securities Exchange Act of 1934, for the first reporting period affected by the changes to Sections 7-2A-2, 7-2A-3, 7-2A-8.3, 7-4-10 and 7-4-18 NMSA 1978 made by this 2019 act but for the deduction provided by this section; and

(2) if the deduction provided by this section is greater than the taxpayer's net income, any excess amount shall be carried forward and applied as a deduction to the taxpayer's net income in future income years until fully utilized.

C. A filing group shall not claim a deduction pursuant to this section unless the filing group files a preliminary notice with the secretary prior to January 1, 2023 and provides necessary information to show the calculation of the deduction expected to be claimed, as the secretary may require.

History: Laws 2019, ch. 270, § 20; 2021, ch. 65, § 8.

7-2A-31. Deduction; income from leasing a liquor license.

A. Prior to January 1, 2026, a taxpayer that is a liquor license lessor and that held the license on June 30, 2021 may claim a deduction from taxable income in an amount equal to the gross receipts from sales of alcoholic beverages made by each liquor license lessee in an amount, if the liquor license is a dispenser's license and sales of alcoholic beverages for consumption off premises are less than fifty percent of total alcoholic beverage sales, not to exceed fifty thousand dollars ($50,000) for each of four taxable years.

B. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction to the department in a manner required by the department.

C. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the cost of the deduction. The department shall provide the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the deduction.

D. As used in this section:

(1) "alcoholic beverage" means alcoholic beverage as defined in the Liquor Control Act;

(2) "dispenser's license" means a license issued pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] allowing the licensee to sell, offer for sale or have in the person's possession with the intent to sell alcoholic beverages both by the drink for consumption on the licensed premises and in unbroken packages, including growlers, for consumption and not for resale off the licensed premises;

(3) "growler" means a clean, refillable, resealable container that has a liquid capacity that does not exceed one gallon and that is intended and used for the sale of beer, wine or cider;

(4) "liquor license" means a dispenser's license issued pursuant to Section 60-6A-3 NMSA 1978 or a dispenser's license issued pursuant to Section 60-6A-12 NMSA 1978 issued prior to July 1, 2021;

(5) "liquor license lessee" means a person that leases a liquor license from a liquor license lessor; and

(6) "liquor license lessor" means a person that leases a liquor license to a third party.

History: Laws 2021, ch. 7, § 2.

ARTICLE 2B
Solar Capital Investments (Recompiled.)

7-2B-1. Recompiled.

ARTICLE 2C
Tax Refund Intercept Program

7-2C-1. Short title.

Chapter 7, Article 2C NMSA 1978 may be cited as the "Tax Refund Intercept Program Act".

History: Laws 1985, ch. 106, § 1; 1993, ch. 30, § 12.

7-2C-2. Purpose.

A. The purpose of the Tax Refund Intercept Program Act is to comply with state and federal law:

(1) by enhancing the enforcement of child support and medical support obligations;

(2) to aid collection of outstanding debts owed for:

(a) overpayment of public assistance and overissuance of food stamps;

(b) overpayment of unemployment compensation benefits and nonpayment of contributions or payments in lieu of contributions or other amounts due under the Unemployment Compensation Law [Chapter 51 NMSA 1978];

(c) nonpayment of reimbursements owed to the uninsured employers' fund under the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978]; and

(d) nonpayment of the workers' compensation fee due under the Workers' Compensation Administration Act [Chapter 52, Article 5 NMSA 1978];

(3) to promote repayment of educational loans;

(4) to aid collection of fines, fees and costs owed to the district, magistrate and municipal courts;

(5) to aid collection of fines, fees and costs owed to the Bernalillo county metropolitan court; and

(6) to aid in the payment to the state investment officer of film production tax credit amounts owed to the state investment officer due to loans made against the credit pursuant to Subsection D of Section 7-27-5.26 NMSA 1978.

B. Efforts to accomplish the purpose of the Tax Refund Intercept Program Act may be enhanced by establishing a system to collect debts, in particular, outstanding child support obligations, educational loans, amounts due under the Unemployment Compensation Law, the Workers' Compensation Act and the Workers' Compensation Administration Act, fines, fees and costs owed to the district, magistrate and municipal courts, film production tax credit amounts owed to the state investment officer and fines, fees and costs owed to the Bernalillo county metropolitan court, by setting off the amount of such debts against the state income tax refunds or film production tax credit amounts due the debtors.

History: Laws 1985, ch. 106, § 2; 1987, ch. 125, § 1; 1988, ch. 49, § 1; 1991, ch. 184, § 1; 1993, ch. 261, § 2; 1994, ch. 76, § 1; 1997, ch. 210, § 1; 2005, ch. 101, § 1; 2006, ch. 52, § 1; 2006, ch. 53, § 1.

7-2C-3. Definitions.

As used in the Tax Refund Intercept Program Act:

A. "claimant agency" means the taxation and revenue department or any of its divisions, the human services department [health care authority department], the workforce transition services division of the workforce solutions department, the higher education department, the workers' compensation administration, any corporation authorized to be formed under the Educational Assistance Act [Chapter 21, Article 21A NMSA 1978], a district, magistrate or municipal court or the Bernalillo county metropolitan court;

B. "debt" means a legally enforceable obligation of an employer subject to the Unemployment Compensation Law [Chapter 51 NMSA 1978], the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] and the Workers' Compensation Administration Act [Chapter 52, Article 5 NMSA 1978], or an individual to pay a liquidated amount of money that:

(1) is equal to or more than one hundred dollars ($100);

(2) is due and owing a claimant agency, which a claimant agency is obligated by law to collect or which, in the case of an educational loan, a claimant agency has lawfully contracted to collect;

(3) has accrued through contract, tort, subrogation or operation of law; and

(4) either:

(a) has been secured by a warrant of levy and lien for amounts due under the Unemployment Compensation Law or workers' compensation fees due under the Workers' Compensation Administration Act; or

(b) has been reduced to judgment for all other cases;

C. "debtor" means any employer subject to the Unemployment Compensation Law, the Workers' Compensation Act and the Workers' Compensation Administration Act, or any individual owing a debt;

D. "department" or "division" means, unless the context indicates otherwise, the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "educational loan" means any loan for educational purposes owned by a public post-secondary educational institution, originated and owned by the higher education department or owned or guaranteed by any corporation authorized to be formed under the Educational Assistance Act;

F. "medical support" means amounts owed to the human services department [health care authority department] pursuant to the provisions of Subsection B of Section 40-4C-12 NMSA 1978;

G. "public post-secondary educational institution" means a publicly owned or operated institution of higher education or other publicly owned or operated post-secondary educational facility located within New Mexico;

H. "spouse" means an individual who is or was a spouse of the debtor and who has joined with the debtor in filing a joint return of income tax pursuant to the provisions of the Income Tax Act [Chapter 7, Article 2 NMSA 1978], which joint return has given rise to a refund that may be subject to the provisions of the Tax Refund Intercept Program Act; and

I. "refund" means a refund, including any amount of tax rebates or credits, under the Income Tax Act or the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] that the department has determined to be due to an individual or corporation.

History: Laws 1985, ch. 106, § 3; 1986, ch. 20, § 53; 1987, ch. 125, § 2; 1988, ch. 49, § 2; 1991, ch. 141, § 1; 1991, ch. 184, § 2; 1993, ch. 261, § 3; 1994, ch. 56, § 1; 1994, ch. 76, § 2; 1997, ch. 210, § 2; 2006, ch. 52, § 2; 2006, ch. 53, § 2; 2017, ch. 82, § 1.

7-2C-4. Remedy additional.

The remedies of a claimant agency under the Tax Refund Intercept Program Act are in addition to and not in substitution for any other remedies available by law.

History: Laws 1985, ch. 106, § 4.

7-2C-5. Department to aid in collection of debts through setoff.

Subject to the limitations contained in the Tax Refund Intercept Program Act, the department, upon request, shall render assistance in the collection of any debt owed to a claimant agency or any debt that a claimant agency is obligated by law to collect. This assistance shall be provided by withholding from any refund due to the debtor pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] the amount of debt meeting the requirements of the Tax Refund Intercept Program Act and paying over to the claimant agency the amount withheld.

History: Laws 1985, ch. 106, § 5; 1994, ch. 56, § 2.

7-2C-6. Procedures for setoff; notifications to debtor.

A. Each year a claimant agency seeking to collect a debt through setoff shall notify the department in the manner and by the date required by the department, which date shall be in the period from November 1 through December 15. The notice to the department shall include the amount of the debt, the name and identification number of the debtor and such other information as the department may require. The notice shall also include certification that the debt is due and owing the claimant agency or that the claimant agency is obligated by law to collect the debt. This notice shall be effective only to initiate setoff against refunds that would be made in the calendar year subsequent to the year in which notification is made to the department.

B. The claimant agency shall inform the department within one week of any changes in the status of any debt submitted by the claimant agency for setoff.

C. Upon proper and timely notification from the claimant agency, the department shall determine whether the debtor is entitled to a refund of at least fifty dollars ($50.00). The department shall notify the claimant agency in writing, or in such other manner as the department and the claimant agency may agree, with respect to each debt accepted for setoff whether the debtor is due a refund of fifty dollars ($50.00) or more and, if so, the amount of refund, the address of the debtor entered upon the return and, if the refund arises from a joint return, the name and address of the spouse as entered upon the return.

D. Within ten days after receiving the notification from the department pursuant to Subsection C of this section, the claimant agency shall send a notice by first class mail to the debtor at the debtor's last known address. The notice required by this subsection shall include:

(1) a statement that a transfer of the refund will be made and that the claimant agency intends to set off the amount of the transfer against a claimed debt;

(2) the amount of the debt asserted and a description of how the debt asserted arose;

(3) the name, address and telephone number of the claimant agency;

(4) the amount of refund to be set off against the debt asserted;

(5) a statement that the debtor has thirty days from the date indicated on the notice to contest the setoff by applying to the claimant agency for a hearing with respect to the validity of the debt asserted by that agency; and

(6) a statement that failure of the debtor to apply for a hearing within thirty days will be deemed a waiver of the opportunity to contest the setoff and to a hearing.

E. If the refund against which a debt is intended to be set off results from a joint tax return, the claimant agency shall send a notice by first class mail to the spouse named on the return within ten days after receiving the notification from the department pursuant to Subsection C of this section. The notice to the spouse shall contain the following information:

(1) a statement that a transfer of the refund will be made and that the claimant agency intends to set off the amount of the transfer against a claimed debt;

(2) the total amount of the refund and the amount of each claimed debt;

(3) the name, address and telephone number of the claimant agency;

(4) a statement that no debt is claimed against the spouse and that the spouse may be entitled to receive all or part of the refund regardless of the claimed debt against the debtor spouse;

(5) a statement that to assert a claim to all or part of the refund, the spouse shall apply to the claimant agency for a hearing within thirty days from the date indicated on the notice with respect to the entitlement of the spouse to all or part of the refund from which a transfer will be made at the request of the claimant agency; and

(6) a statement that failure of the spouse to apply for a hearing within thirty days may be deemed a waiver of any claim of the spouse with respect to the refund.

F. A debtor may contest the setoff of a debt by applying to the claimant agency for a hearing within thirty days of the date the notice required by Subsection D of this section is sent to the debtor. Failure of the debtor to apply for a hearing within the time required shall constitute a waiver of the right to contest the debt or the setoff of the debt.

G. A spouse may contest the setoff of a debt against a refund to which the spouse claims entitlement in whole or in part by applying to the claimant agency for a hearing within thirty days of the date the notice required by Subsection E of this section was sent to the spouse. Failure of the spouse to apply for a hearing within the time required shall constitute a waiver of the right to contest the setoff of the debt against a refund to which the spouse may claim entitlement.

H. The department shall apply against the refund the amount of the claimed debt, not to exceed the amount of the refund, and shall transfer that amount to the claimant agency with an accounting of the amount transferred. When the amount of refund due exceeds the amount of all applied debts, the department shall treat the excess as it does other refunds relating to income taxes.

I. Whether or not the refund due the debtor exceeds the amount of the applied debt, the department shall notify the debtor at the time of the transfer to the claimant agency of:

(1) the fact of the transfer and that the claimant agency intends to set off the amount of the transfer against the asserted debt;

(2) the total amount of the refund;

(3) the amount of debt asserted by the claimant agency; and

(4) the name, address and telephone number of the claimant agency.

J. Once the department has sent to the debtor the notice required by Subsection I of this section, together with any excess of the amount of refund over the amount of asserted debts, the department shall be deemed to have made the refund required by the Income Tax Act [Chapter 7, Article 2 NMSA 1978] or the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978].

History: Laws 1985, ch. 106, § 6; 1994, ch. 56, § 3; 2006, ch. 52, § 3; 2006, ch. 53, § 3.

7-2C-7. Suspense account.

Upon receipt of money transferred from the department pursuant to Subsection H of Section 7-2C-6 NMSA 1978, the claimant agency shall deposit and hold the money in the suspense account until a final determination of the setoff is made.

History: Laws 1985, ch. 106, § 7; 1994, ch. 56, § 4.

7-2C-8. Interest becomes obligation of claimant agency.

Once a transfer is made by the department pursuant to Subsection H of Section 7-2C-6 NMSA 1978, notwithstanding any other provision of law to the contrary, the department, except in its capacity as a claimant agency, is not obligated in any manner for the payment of interest to the debtor or to the claimant agency with respect to that portion of the refund against which the asserted debt was applied for any period after the date of transfer. Any interest subsequently determined to be due the debtor with respect to any refund against which the asserted debt was applied for any period after the date of transfer is the responsibility of the claimant agency; provided, however, compliance by the department and claimant agency with the provisions of the Tax Refund Intercept Program Act bars accrual of interest, notwithstanding the provisions of Section 7-1-68 NMSA 1978.

History: Laws 1985, ch. 106, § 8; 1994, ch. 56, § 5.

7-2C-9. Administrative hearing required of claimant agency; department exempted.

A. The claimant agency shall provide notice and opportunity for hearing, consistent with due process, as required by Subsections F and G of Section 7-2C-6 NMSA 1978.

B. Notwithstanding any other provision of law, the department, except in its capacity as a claimant agency, is not obligated to grant, and will not grant, a hearing to any debtor or spouse with respect to any action taken or any issue arising under the provisions of the Tax Refund Intercept Program Act.

History: Laws 1985, ch. 106, § 9; 1994, ch. 56, § 6.

7-2C-10. Final determination and notice of setoff.

A. The determination of the validity and the amount of the setoff asserted or the application of setoff to a refund to which a debtor or spouse asserts entitlement in whole or in part under the provisions of the Tax Refund Intercept Program Act shall be final upon the exhaustion of the administrative or appellate process as applicable.

B. If, during application of setoff procedures, any changes occur in the amount of the refund subject to setoff, including any changes resulting from the filing of amended returns or the filing of additional returns during the calendar year for which the claimant agency has requested setoff with respect to the debtor, the department shall notify the claimant agency of these changes. The department shall promulgate regulations or other appropriate administrative directives to set forth the procedures by which such notice shall be made and by which the amount held in suspense shall be adjusted when required.

C. Upon final determination of the entitlement of a debtor or spouse to any or all of that portion of a refund that has been transferred to the claimant agency, as the amount transferred may be adjusted in accordance with Subsection B of this section, the claimant agency shall remit to the debtor or spouse from the suspense fund the amount determined to be due, with an appropriate accounting. A copy of the accounting shall be sent to the department.

D. Upon final determination, the claimant agency shall remit to itself from the suspense account that amount determined to be due the claimant agency and shall credit that amount against the debt. In the case that the amount remitted is not sufficient to extinguish the debt, the claimant agency shall have the right to pursue collection of the remaining debt through any available remedy, including a proceeding under the Tax Refund Intercept Program Act for other calendar years.

E. Upon remittance from the suspense fund to the credit of the debtor's account pursuant to Subsection D of this section, the claimant agency shall notify the debtor in writing of the final determination of the setoff. A copy of the notice shall be sent to the department. The notice shall include:

(1) a final accounting of the refund against which the debt was set off, including the amount of the refund to which the debtor was entitled prior to setoff;

(2) the final determination of the amount of the debt that has been satisfied and the amount of debt, if any, still due and owing; and

(3) the amount of the refund in excess of the debt finally determined to be due and owing and the amount of any interest due.

F. Upon remittance from the suspense fund to the credit of the debtor's account pursuant to Subsection D of this section, any amount finally determined to be due to the debtor with respect to the refund amount shall be promptly paid by the claimant agency from the suspense account to the debtor with an appropriate accounting. Interest due the debtor with respect to the amount of refund finally determined to be due the debtor for any period after the transfer to the suspense fund by the department pursuant to Subsection H of Section 7-2C-6 NMSA 1978 is authorized to be paid by the claimant agency from any funds available to it for this purpose.

History: Laws 1985, ch. 106, § 10; 1994, ch. 56, § 7.

7-2C-11. Priority of claims.

A. Claims of the department take precedence over the claim of any competing claimant agency, whether the department asserts a claim or sets off an asserted debt under the provisions of the Tax Refund Intercept Program Act or under the provisions of any other law that authorizes the department to apply amounts of tax owed against any refund due an individual pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978].

B. After claims of the department, claims shall take priority in the following order before claims of any competing claimant agency:

(1) claims of the human services department [health care authority department] resulting from child support enforcement liabilities;

(2) claims of the human services department [health care authority department] resulting from medical support liabilities;

(3) claims resulting from educational loans made under the Educational Assistance Act [Chapter 21, Article 21A NMSA 1978];

(4) claims of the human services department [health care authority department] resulting from temporary assistance for needy families liabilities;

(5) claims of the human services department [health care authority department] resulting from supplemental nutrition assistance program liabilities;

(6) claims of the workforce transition services division of the workforce solutions department arising under the Unemployment Compensation Law [Chapter 51 NMSA 1978];

(7) claims of a district court for fines, fees or costs owed to that court;

(8) claims of a magistrate court for fines, fees or costs owed to that court;

(9) claims of the Bernalillo county metropolitan court for fines, fees or costs owed to that court;

(10) claims of a municipal court for fines, fees or costs owed to that court;

(11) claims of the workers' compensation administration arising under the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] or the Workers' Compensation Administration Act [Chapter 52, Article 5 NMSA 1978]; and

(12) claims from educational loans made by the higher education department.

History: Laws 1985, ch. 106, § 11; 1988, ch. 49, § 3; 1991, ch. 184, § 3; 1993, ch. 261, § 4; 1994, ch. 76, § 3; 1997, ch. 210, § 3; 2006, ch. 52, § 4; 2006, ch. 53, § 4; 2017, ch. 82, § 2.

7-2C-12. Administrative costs; charges appropriated to department.

A. The department shall charge claimant agencies an administrative fee of three percent of the debts for the claimant agencies pursuant to the Tax Refund Intercept Program Act.

B. The administrative fee authorized pursuant to Subsection A of this section shall be withheld on all debts set off and collected by the department on or after July 1, 1997 and shall be distributed monthly to the New Mexico finance authority to be pledged irrevocably for the payment of the principal, interest and expenses or other obligations related to the bonds for the taxation and revenue information management systems project. That distribution shall continue until the earlier of December 31, 2005 or the date on which the New Mexico finance authority certifies to the department that all obligations for bonds issued pursuant to Section 12 of this 1997 act have been fully discharged or provision has been made for their discharge and directs the department to cease distributing the money from the fee pursuant to Subsection A of this section to the authority. Thereafter, the administrative fees are appropriated to the department for use in administering the Tax Refund Intercept Program Act.

History: Laws 1985, ch. 106, § 12; 1994, ch. 56, § 8; 1997, ch. 125, § 5.

7-2C-13. Confidentiality; exemption.

A. The information obtained by a claimant agency from the department in accordance with the provisions of the Tax Refund Intercept Program Act shall be confidential and shall be used by the claimant agency only in pursuit of the collection of a debt under the provisions of the Tax Refund Intercept Program Act. Any employee or former employee of a claimant agency who unlawfully discloses any information obtained from the department is guilty of a misdemeanor and shall, upon conviction, be fined not more than one thousand dollars ($1,000) or imprisoned not more than one year or both and shall not be employed by the state for a period of five years after the date of conviction.

B. Notwithstanding other provisions of law prohibiting disclosure by the department of information from a taxpayer's return, the department may provide to a claimant agency any information deemed necessary by the department to accomplish the purposes of the Tax Refund Intercept Program Act.

History: Laws 1985, ch. 106, § 13; 1994, ch. 56, § 9.

7-2C-14. Repealed.

ARTICLE 2D
Venture Capital Investments

7-2D-1. Short title.

Chapter 7, Article 2D NMSA 1978 may be cited as the "Venture Capital Investment Act".

History: Laws 1993, ch. 313, § 1; 1995, ch. 89, § 1.

7-2D-2. Definitions.

As used in the Venture Capital Investment Act:

A. "capital gain tax differential" equals either:

(1) an amount equal to fifty percent of the federal income tax paid by the taxpayer on qualified diversifying business net capital gains; or

(2) in the event that the taxpayer makes an election pursuant to Section 7-2D-13 NMSA 1978, and the taxpayer has not previously paid federal income tax on the qualified diversifying business net capital gain that accrued prior to that election, then an amount equal to fifty percent of the federal income tax paid by the taxpayer on the gain on the sale of that qualified diversifying business stock times the percentage derived by dividing the gain on such stock accruing since the election by the total gain on the stock accruing since its original acquisition without regard to the election;

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

C. "Internal Revenue Code" means the federal Internal Revenue Code of 1986, as amended or renumbered;

D. "manufacturing business" means the manufacture of, and the business activities related to the manufacture of, all nondurable and durable goods;

E. "New Mexico income tax" means the tax imposed pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978];

F. "qualified diversifying business net capital gain" means the net capital gain for the taxable year determined under the Internal Revenue Code by taking into account only gains or losses from sales or exchanges of qualified diversifying business stock with a holding period of more than five years at the time of the sale or exchange;

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

H. "taxpayer" means any individual subject to the tax imposed pursuant to the Income Tax Act; and

I. "testing period" means the five-year period a stock is held by a taxpayer, beginning with the first day of the taxpayer's holding period for the stock.

History: Laws 1993, ch. 313, § 2; 1995, ch. 89, § 2.

7-2D-3. Repealed.

7-2D-4. Additional definition; qualified diversifying business stock.

A. For purposes of the Venture Capital Investment Act, "qualified diversifying business stock" means, except as otherwise provided in Section 7-2D-13 NMSA 1978, any stock in a corporation that is originally issued after June 30, 1994 but before July 1, 2001, if:

(1) on the date of issuance the corporation is a qualified diversifying business;

(2) except as otherwise provided in Subsection B of this section and in Sections 7-2D-9 and 7-2D-10 NMSA 1978, the stock is acquired by the taxpayer at its original issue, either:

(a) in exchange for money or other property, not including stock; or

(b) as compensation for services, other than services performed as an underwriter of such stock; and

(3) the corporation throughout the testing period is an active manufacturing business and a New Mexico business and at the end of the testing period is a successful business.

B. For purposes of Paragraph (2) of Subsection A of this section, stock shall not be treated as acquired by the taxpayer at its original issue if:

(1) it is issued directly or indirectly in redemption of, or otherwise in exchange for, stock that is not qualified diversifying business stock; or

(2) it is issued in an exchange described in Section 351 of the Internal Revenue Code in exchange for property other than qualified diversifying business stock if, immediately after the exchange, both the issuer and transferee of the stock are members of the same controlled group of corporations as defined in Section 1563 of the Internal Revenue Code.

History: Laws 1993, ch. 313, § 4; 1995, ch. 89, § 3.

7-2D-5. Additional definition; qualified diversifying business.

A. For purposes of the Venture Capital Investment Act, "qualified diversifying business" means, except as otherwise provided in Section 7-2D-13 NMSA 1978, any domestic corporation that has its commercial domicile in New Mexico and with respect to which the aggregate amount of money, other property and services received by the corporation for stock, as a contribution to capital and as paid-in surplus, plus the accumulated earnings and profits of the corporation, does not exceed twenty-five million dollars ($25,000,000); provided:

(1) the aggregate amount shall be determined at the time of issuance and shall include amounts received in the issuance and all prior issuances; and

(2) in the case of stock issued in a calendar year after 1993, the aggregate amount shall not exceed an amount equal to twenty-five million dollars ($25,000,000) multiplied by the cost-of-living adjustment determined under Section 1 (f)(3) of the Internal Revenue Code for that calendar year by substituting "1992" for "1987" in Subparagraph (B) of that section.

B. For the purpose of determining the aggregate amount in Subsection A of this section:

(1) the amount taken into account with respect to any property other than money shall be an amount equal to the adjusted basis of that property for determining capital gain:

(a) reduced to not below zero by any liability to which the property was subject or that was assumed by the corporation; and

(b) determined at the time the property was received by the corporation; and

(2) the amount taken into account with respect to stock issued for services shall be the value of those services.

History: Laws 1993, ch. 313, § 5; 1995, ch. 89, § 4.

7-2D-6. Additional definition; active manufacturing business.

A. Except as otherwise provided in this section, for the purposes of the Venture Capital Investment Act, "active manufacturing business" means a corporation that throughout the testing period:

(1) either:

(a) is engaged in the active conduct of a manufacturing business; and

(b) uses substantially all of its assets in the active conduct of a manufacturing trade or business; provided, rights to computer software that produce income described in Section 543(d) of the Internal Revenue Code and any assets that are held for investment and are to be used to finance future research and experimentation or working capital needs of the corporation shall be treated as assets used in the active conduct of a manufacturing business; or

(2) is engaged in any of the following activities, whether or not the corporation has any gross income from such activities at the time of the determination:

(a) start-up activities described in Section 195(c)(1)(A) of the Internal Revenue Code;

(b) activities resulting in the payment or incurring of expenditures that may be treated as research and experimental expenditures under Section 174 of the Internal Revenue Code; or

(c) activities with respect to in-house research expenses described in Section 41(b)(4) of the Internal Revenue Code.

B. A corporation shall not be considered an active manufacturing business if at any time during the testing period:

(1) more than ten percent of the value of its assets in excess of liabilities consists of stock in other corporations that are not subsidiaries of that corporation; provided:

(a) for purposes of this section, stock and debt in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets and to conduct its ratable share of the subsidiary's activities; and

(b) a corporation shall be considered a subsidiary if the parent owns at least fifty percent of the combined voting power of all classes of stock entitled to vote or at least fifty percent in value of all outstanding stock of that corporation; or

(2) more than ten percent of the total value of its assets is real property that is not used in the active conduct of a manufacturing business. The ownership of, dealing in or renting of real property shall not be treated as the active conduct of a manufacturing business.

History: Laws 1993, ch. 313, § 6; 1995, ch. 89, § 5.

7-2D-7. Additional definition; New Mexico business.

For the purposes of the Venture Capital Investment Act, "New Mexico business" means a corporation that throughout the testing period meets these conditions:

A. the corporation has its commercial domicile in New Mexico and all of its corporate directors who are also employees of the corporation are full-time residents of New Mexico;

B. at least two-thirds of all of the corporation's employees, at least two-thirds of its employees who perform research, development or design activities and at least two-thirds of its employees who perform manufacturing activities are full-time residents of New Mexico;

C. the corporation maintains an employee stock purchase plan, incentive stock option plan or similar plan pursuant to which employees of the corporation have the opportunity to acquire equity ownership in the corporation; and

D. the corporation employs on a full-time basis an average of at least fifty full-time New Mexico residents.

History: Laws 1993, ch. 313, § 7; 1995, ch. 89, § 6.

7-2D-8. Additional definition; successful business.

For the purposes of the Venture Capital Investment Act, "successful business" means a corporation that, at the end of the taxpayer's holding period, has experienced a net increase in valuation of at least fifteen million dollars ($15,000,000); provided:

A. the increase in valuation shall be calculated by subtracting the valuation of the corporation at the time it was determined to be a qualified diversifying business from the current valuation of the corporation at the time of the transfer giving rise to the qualified diversifying business net capital gain;

B. the current valuation of the corporation at the time of the transfer giving rise to the qualified diversifying business net capital gain equals the per-share value of the money and property received by the taxpayer on the transfer multiplied by the outstanding shares of the corporation, as calculated using the number of shares that would be outstanding if all outstanding convertible securities were fully converted and all outstanding options and warrants were fully exercised; and

C. in the case of any stock issued in a calendar year after 1994, the net increase in valuation required shall be an amount equal to fifteen million dollars ($15,000,000) multiplied by the cost-of-living adjustment determined under Section 1(f)(3) of the Internal Revenue Code for that calendar year by substituting "1992" for "1987" in Subparagraph (B) of that section.

History: Laws 1993, ch. 313, § 8; 1995, ch. 89, § 7.

7-2D-8.1. Repealed.

History: 1978 Comp., § 7-2D-8.1, enacted by Laws 1995, ch. 89, § 8; repealed by Laws 2023, ch. 85, § 28.

7-2D-9. Special rules for options, warrants and certain convertible investments.

A. In the case of stock that is acquired by the taxpayer through the exercise of a nontransferable option or warrant issued in exchange for the performance of services for the corporation issuing it, through the conversion of convertible debt or in exchange for securities of the corporation in a transaction described in Section 368 of the Internal Revenue Code:

(1) the stock shall be treated as acquired by the taxpayer at original issue; and

(2) the stock shall be treated as having been held during the period that the option, warrant or debt was held or that the security was outstanding.

B. For purposes of Subsection A of Section 7-2D-5 NMSA 1978 and notwithstanding Subsection B of that section, in the case of a debt instrument converted to stock or stock issued in exchange for securities in a transaction described in Section 368 of the Internal Revenue Code, such stock shall be treated as issued for an amount equal to the sum of:

(1) the principal amount of the debt or security at the time of the conversion or exchange; and

(2) accrued but unpaid interest on that loan or security.

History: Laws 1993, ch. 313, § 9; 1995, ch. 89, § 9.

7-2D-10. Certain tax-free and other transfers.

A. This section applies to the following transfers of stock:

(1) by gift;

(2) at death;

(3) to the extent that the basis of the property in the hands of the transferee is determined by reference to the basis of the property in the hands of the transferor by reason of Sections 334(b), 723 or 732 of the Internal Revenue Code; and

(4) of qualified diversifying business stock for other qualified diversifying business stock in a transaction described in Section 351 of the Internal Revenue Code or a reorganization described in Section 368 of the Internal Revenue Code.

B. In the case of a transfer of stock to which this section applies, the transferee shall be treated as having acquired the stock in the same manner as the transferor and as having held such stock during any continuous period immediately preceding the transfer during which it was held or treated as held under this section by the transferor.

C. In the case of a transaction described in Section 351 of the Internal Revenue Code or a reorganization described in Section 368 of the Internal Revenue Code, if a qualified diversifying business stock is transferred for other stock that is not qualified diversifying business stock, the transfer shall be treated as a transfer to which this section applies solely with respect to the person receiving such other stock.

D. This section applies to the sale or exchange of stock treated as qualified diversifying business stock by reason of Subsection C of this section only to the extent of the gain, if any, that would have been recognized at the time of the transfer described in Subsection C of this section if Section 351 or 368 of the Internal Revenue Code had not applied at that time.

E. For purposes of this subsection, stock treated as qualified diversifying business stock under Subsection C of this section shall be so treated for subsequent transactions or reorganizations, except that the limitation of Subsection D of this section shall be applied as of the time of the first transfer to which Subsection C of this section applied.

F. Except in the case of a transaction described in Section 368 of the Internal Revenue Code, this section applies only if, immediately after the transaction, the corporation issuing the stock owns, directly or indirectly, stock representing control, within the meaning of Section 368(c) of the Internal Revenue Code, of the corporation whose stock was transferred.

History: Laws 1993, ch. 313, § 10.

7-2D-11. Stock exchanged for property.

For purposes of the Venture Capital Investment Act, in the case where the taxpayer transfers property other than money or stock to a corporation in exchange for stock in that corporation:

A. the stock shall be treated as having been acquired by the taxpayer on the date of that exchange; and

B. the basis of the stock in the hands of the taxpayer shall be treated as equal to the fair market value of the property exchanged.

History: Laws 1993, ch. 313, § 11.

7-2D-12. Pass-thru entities.

For purposes of the Venture Capital Investment Act, any gain or loss of a pass-thru entity that is treated for purposes of that act as a gain or loss of any person holding an interest in that entity shall retain its character as qualified diversifying business capital gain or loss in the hands of that person.

History: Laws 1993, ch. 313, § 12.

7-2D-13. Election.

A. On any date after June 30, 1993, a taxpayer who holds any stock of a corporation that has its commercial domicile in New Mexico and meets the requirements of this section may elect to have the stock treated as a qualified diversifying business stock in accordance with the provisions of this section for purposes of claiming the tax credit pursuant to the Venture Capital Investment Act.

B. On any date after June 30, 1994, if a taxpayer holds any stock of a corporation that has its commercial domicile in New Mexico on that date and which stock, at the time it was issued, would have been treated as qualified diversifying business stock pursuant to the Venture Capital Investment Act but for the facts that the stock was issued on or before June 30, 1994 and that the stock was issued by a corporation that at the time did not have its commercial domicile in New Mexico and the value of such stock on that date exceeds its adjusted basis, the taxpayer may elect to set that date as the election date and treat the stock as having been sold on that date for an amount equal to its value on that date and as having been reacquired on that date for an amount equal to such value.

C. For purposes of determining the tax credit pursuant to Section 7-2D-8.1 NMSA 1978 and whether or not the taxpayer actually incurs federal or New Mexico income tax liability, the gain from sales determined in Subsection B of this section shall be treated as received or accrued and the holding period of the reacquired stock shall be treated as beginning on that election date. Such stock shall be treated after such reacquisition as acquired in the same manner and at the same time as the original acquisition. Neither the requirement of Subsection A of Section 7-2D-4 NMSA 1978 that the stock must have been issued after June 30, 1994 nor the requirement of Subsection A of Section 7-2D-5 NMSA 1978 that the issuing corporation have its commercial domicile in New Mexico shall apply.

D. An election under this section with respect to any stock shall be made in the manner the secretary prescribes. Such an election, once made with respect to any stock, is irrevocable.

E. Notwithstanding the provisions of this section, no credit shall be allowed or claimed on any qualified diversifying business net capital gain arising from the sale of stock prior to July 1, 1998.

History: Laws 1993, ch. 313, § 13; 1995, ch. 89, § 10.

7-2D-14. Administration of act.

The Venture Capital Investment Act shall be administered pursuant to the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

History: Laws 1993, ch. 313, § 14.

ARTICLE 2E
Rural Job Tax Credits

7-2E-1. Repealed.

History: Laws 1999, ch. 183, § 1; 2001, ch. 184, § 1; 2005, ch. 104, § 8.

7-2E-1.1. Tax credit; rural job tax credit.

A. The tax credit created by this section may be referred to as the "rural job tax credit". Every eligible employer may apply for, and the taxation and revenue department may approve, a tax credit for each qualifying job the employer creates. The maximum tax credit amount with respect to each qualifying job is equal to:

(1) twenty-five percent of the first sixteen thousand dollars ($16,000) in wages paid for the qualifying job if the job is performed or based at a location in a tier one area; or

(2) twelve and one-half percent of the first sixteen thousand dollars ($16,000) in wages paid if the qualifying job is performed or based at a location in a tier two area.

B. The purpose of the rural job tax credit is to encourage businesses to start new businesses or expand existing businesses in rural areas of the state.

C. The amount of the rural job tax credit shall be six and one-fourth percent of the first sixteen thousand dollars ($16,000) in wages paid for the qualifying job in a qualifying period. The rural job tax credit may be claimed for each qualifying job for a maximum of:

(1) four qualifying periods for each qualifying job performed or based at a location in a tier one area; and

(2) two qualifying periods for each qualifying job performed or based at a location in a tier two area.

D. With respect to each qualifying job for which an eligible employer seeks the rural job tax credit, the employer shall certify:

(1) the amount of wages paid to each eligible employee during each qualifying period;

(2) the number of weeks during the qualifying period the position was occupied;

(3) whether the qualifying job was in a tier one or tier two area;

(4) whether the application pertains to the first, second, third or fourth qualifying period, depending on whether the taxpayer is in a tier one or tier two area;

(5) the total number of employees employed by the employer at the job location on the day prior to the qualifying period and on the last day of the qualifying period;

(6) whether the eligible employer is receiving or is eligible to receive development training program assistance pursuant to Section 21-19-7 NMSA 1978; and

(7) whether the eligible employer has ceased business operations at any of its business locations in New Mexico.

E. The economic development department shall determine which employers are eligible employers and shall report the listing of eligible businesses to the taxation and revenue department in a manner and at times the departments shall agree upon.

F. To receive a rural job tax credit with respect to any qualifying period, an eligible employer shall apply to the taxation and revenue department once per calendar year on forms and in the manner the department may prescribe. The annual application shall include a certification made pursuant to Subsection D of this section and contain all qualifying periods that closed during the calendar year for which the application is made. Any qualifying period that did not close in the calendar year for which the application is made shall be denied by the department. The application for a calendar year shall be filed no later than December 31 of the following calendar year. If a taxpayer fails to file the annual application within the time limits provided in this section, the department shall deny the application. If all the requirements of this section have been complied with, the taxation and revenue department shall issue to the applicant a document granting a tax credit for the appropriate qualifying period. The tax credit document shall be numbered for identification and declare its date of issuance and the amount of rural job tax credit allowed for the respective jobs created. The tax credit documents may be sold, exchanged or otherwise transferred and may be carried forward for a period of three years from the date of issuance. The parties to such a transaction to sell, exchange or transfer a rural job tax credit document shall notify the department of the transaction within ten days of the sale, exchange or transfer.

G. The holder of the tax credit document may claim all or a portion of the rural job tax credit granted by the document against the holder's modified combined tax liability, personal income tax liability or corporate income tax liability. Any balance of rural job tax credit granted by the document may be carried forward for up to three years from the date of issuance of the tax credit document. No amount of rural job tax credit may be applied against a gross receipts tax or compensating tax imposed by a municipality or county.

H. Notwithstanding the provisions of Section 7-1-8 NMSA 1978, the taxation and revenue department may disclose to any person the balance of rural job tax credit remaining on any tax credit document and the balance of credit remaining on that document for any period.

I. The secretary of economic development, the secretary of taxation and revenue and the secretary of workforce solutions or their designees shall annually evaluate the effectiveness of the rural job tax credit in stimulating economic development in the rural areas of New Mexico and make a joint report of their findings to each session of the legislature so long as the rural job tax credit is in effect.

J. A qualifying job shall not be eligible for a rural job tax credit pursuant to this section if:

(1) the job is created due to a business merger, acquisition or other change in organization;

(2) the eligible employee was terminated from employment in New Mexico by another employer involved in the merger, acquisition or other change in organization; or

(3) the job is performed by:

(a) the person who performed the job or its functional equivalent prior to the business merger, acquisition or other change in organization; or

(b) a person replacing the person who performed the job or its functional equivalent prior to the business merger, acquisition or other change in organization.

K. Notwithstanding Subsection J of this section, a qualifying job that was created by another employer and for which the rural job tax credit application was received by the taxation and revenue department prior to July 1, 2013 and is under review or has been approved shall remain eligible for the rural job tax credit for the balance of the qualifying periods for which the job qualifies by the new employer that results from a business merger, acquisition or other change in the organization.

L. A job shall not be eligible for a rural job tax credit pursuant to this section if the job is created due to an eligible employer entering into a contract or becoming a subcontractor to a contract with a governmental entity that replaces one or more entities performing functionally equivalent services for the governmental entity in New Mexico unless the job is a qualifying job that was not being performed by an employee of the replaced entity.

M. As used in this section:

(1) "dependent" means "dependent" as defined in 26 U.S.C. 152(a), as that section may be amended or renumbered;

(2) "eligible employee" means any individual other than an individual who:

(a) is a dependent of the employer;

(b) if the employer is an estate or trust, is a grantor, beneficiary or fiduciary of the estate or trust or is a dependent of a grantor, beneficiary or fiduciary of the estate or trust;

(c) if the employer is a corporation, is a dependent of an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation;

(d) if the employer is an entity other than a corporation, estate or trust, is a dependent of an individual who owns, directly or indirectly, more than fifty percent of the capital and profits interests in the entity; or

(e) is working or has worked as an employee or as an independent contractor for an entity that, directly or indirectly, owns stock in a corporation of the eligible employer or other interest of the eligible employer that represents fifty percent or more of the total voting power of that entity or has a value equal to fifty percent or more of the capital and profits interests in the entity;

(3) "eligible employer" means an employer who is eligible for in-plant training assistance pursuant to Section 21-19-7 NMSA 1978;

(4) "metropolitan statistical area" means a metropolitan statistical area in New Mexico as determined by the United States bureau of the census;

(5) "modified combined tax liability" means the total liability for the reporting period for the gross receipts tax imposed by Section 7-9-4 NMSA 1978 together with any tax collected at the same time and in the same manner as that gross receipts tax, such as the compensating tax, the withholding tax, the interstate telecommunications gross receipts tax, the surcharges imposed by Section 63-9D-5 NMSA 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978, minus the amount of any credit other than the rural job tax credit applied against any or all of these taxes or surcharges; but "modified combined tax liability" excludes all amounts collected with respect to a gross receipts tax or compensating tax imposed by a municipality or county;

(6) "new job" means a job that is occupied by an employee who has not been employed in New Mexico by the eligible employer in the three years prior to the date of hire;

(7) "qualifying job" means a new job that was created after July 1, 2000 and that was not created due to a change in organizational structure established by the employer that is occupied by an eligible employee for at least forty-four weeks of a qualifying period;

(8) "qualifying period" means the period of twelve months beginning on the day an eligible employee begins working in a qualifying job or the period of twelve months beginning on the anniversary of the day an eligible employee began working in a qualifying job;

(9) "rural area" means any part of the state other than:

(a) an H class county;

(b) the state fairgrounds;

(c) an incorporated municipality within a metropolitan statistical area if the municipality's population is thirty thousand or more according to the most recent federal decennial census; and

(d) any area within ten miles of the exterior boundaries of a municipality described in Subparagraph (c) of this paragraph;

(10) "tier one area" means:

(a) any municipality within the rural area if the municipality's population according to the most recent federal decennial census is fifteen thousand or less; or

(b) any part of the rural area that is not within the exterior boundaries of a municipality;

(11) "tier two area" means any municipality within the rural area if the municipality's population according to the most recent federal decennial census is more than fifteen thousand; and

(12) "wages" means all compensation paid by an eligible employer to an eligible employee through the employer's payroll system, including those wages the employee elects to defer or redirect, such as the employee's contribution to 401(k) or cafeteria plan programs, but not including benefits or the employer's share of payroll taxes.

History: Laws 2007, ch. 172, § 2; 2013, ch. 58, § 1; 2021, ch. 65, § 9.

7-2E-2. Repealed.

History: Laws 1999, ch. 183, § 2; 2000, ch. 33, § 2; repealed by Laws 2005, ch. 104, § 27.

ARTICLE 2F
Film Production Tax Credit

7-2F-1. Film production tax credit; film production companies that commence principal photography prior to January 1, 2016.

A. The tax credit created by this section may be referred to as the "film production tax credit".

B. Except as otherwise provided in this section, an eligible film production company may apply for, and the taxation and revenue department may allow, subject to the limitation in this section, a tax credit in an amount equal to twenty-five percent of:

(1) direct production expenditures made in New Mexico that:

(a) are directly attributable to the production in New Mexico of a film or commercial audiovisual product;

(b) are subject to taxation by the state of New Mexico;

(c) exclude direct production expenditures for which another taxpayer claims the film production tax credit; and

(d) do not exceed the usual and customary cost of the goods or services acquired when purchased by unrelated parties. The secretary of taxation and revenue may determine the value of the goods or services for purposes of this section when the buyer and seller are affiliated persons or the sale or purchase is not an arm's length transaction; and

(2) postproduction expenditures made in New Mexico that:

(a) are directly attributable to the production of a commercial film or audiovisual product;

(b) are for services performed in New Mexico;

(c) are subject to taxation by the state of New Mexico;

(d) exclude postproduction expenditures for which another taxpayer claims the film production tax credit; and

(e) do not exceed the usual and customary cost of the goods or services acquired when purchased by unrelated parties. The secretary of taxation and revenue may determine the value of the goods or services for purposes of this section when the buyer and seller are affiliated persons or the sale or purchase is not an arm's length transaction.

C. In addition to the percentage applied pursuant to Subsection B of this section, another five percent shall be applied in calculating the amount of the film production tax credit to direct production expenditures:

(1) on a standalone pilot intended for series television in New Mexico or on series television productions intended for commercial distribution with an order for at least six episodes in a single season; provided that the New Mexico budget for each of those six episodes is fifty thousand dollars ($50,000) or more; or

(2) on a production with a total New Mexico budget of the following amounts; provided that the expenditures are directly attributable and paid to a New Mexico resident who is hired as industry crew, or who is hired as a producer, writer or director working directly with the physical production and has filed a New Mexico income tax return as a resident in the two previous taxable years:

(a) not more than thirty million dollars ($30,000,000) that shoots at least ten principal photography days in New Mexico at a qualified production facility; provided that a film production company in principal photography on or after April 10, 2015 shall: 1) shoot at least seven of those days at a sound stage that is a qualified production facility and the remaining number of required days, if any, at a standing set that is a qualified production facility; and 2) for each of the ten days, include industry crew working on the premises of those facilities for a minimum of eight hours within a twenty-four-hour period; or

(b) thirty million dollars ($30,000,000) or more that shoots at least fifteen principal photography days in New Mexico at a qualified production facility; provided that a film production company in principal photography on or after April 10, 2015 shall: 1) shoot at least ten of those days at a sound stage that is a qualified production facility and the remaining number of required days, if any, at a standing set that is a qualified production facility; and 2) for each day of the fifteen days, include industry crew working on the premises of the facility for a minimum of eight hours within a twenty-four-hour period.

D. With respect to expenditures attributable to a production for which the film production company receives a tax credit pursuant to the federal new markets tax credit program, the percentage to be applied in calculating the film production tax credit is twenty percent.

E. A claim for film production tax credits shall be filed as part of a return filed pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] or the Corporate

Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978]. The date a credit claim is received by the taxation and revenue department shall determine the order that a credit claim is authorized for payment by the department.

F. Except as otherwise provided in this section and Section 10 of this 2019 act, credit claims authorized for payment pursuant to the Film Production Tax Credit Act shall be paid pursuant to provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] to the taxpayer as follows:

(1) a credit claim amount of less than two million dollars ($2,000,000) per taxable year shall be paid immediately upon authorization for payment of the credit claim;

(2) a credit claim amount of two million dollars ($2,000,000) or more but less than five million dollars ($5,000,000) per taxable year shall be divided into two equal payments, with the first payment to be made immediately upon authorization of the payment of the credit claim and the second payment to be made twelve months following the date of the first payment; and

(3) a credit claim amount of five million dollars ($5,000,000) or more per taxable year shall be divided into three equal payments, with the first payment to be made immediately upon authorization of payment of the credit claim, the second payment to be made twelve months following the date of the first payment and the third payment to be made twenty-four months following the date of the first payment.

G. For a fiscal year in which the amount of total credit claims authorized for payment is less than the aggregate amount of credit claims that may be authorized for payment pursuant to Section 7-2F-12 NMSA 1978, the next scheduled payments for credit claims authorized for payment pursuant to Subsection F of this section shall be accelerated for payment for that fiscal year and shall be paid to a taxpayer pursuant to the Tax Administration Act and in the order in which outstanding payments are scheduled in the queue established pursuant to Section 7-2F-12 NMSA 1978; provided that the total credit claims authorized for payment shall not exceed the aggregate amount of credit claims that may be authorized for payment pursuant to this section. If a partial payment is made pursuant to this subsection, the difference owed shall retain its original position in the queue.

H. Any amount of a credit claim that is carried forward pursuant to Subsection F of this section shall be subject to the limit on the aggregate amount of credit claims that may be authorized for payment pursuant to Section 7-2F-12 NMSA 1978.

I. A credit claim shall only be considered received by the taxation and revenue department if the credit claim is made on a complete return filed after the close of the taxable year. All direct production expenditures and postproduction expenditures incurred during the taxable year by a film production company shall be submitted as part of the same income tax return and paid pursuant to this section. A credit claim shall not be divided and submitted with multiple returns or in multiple years.

J. For purposes of determining the payment of credit claims pursuant to this section, the secretary of taxation and revenue may require that credit claims of affiliated persons be combined into one claim if necessary to accurately reflect closely integrated activities of affiliated persons.

K. The film production tax credit shall not be claimed with respect to direct production expenditures or postproduction expenditures for which the film production company has delivered a nontaxable transaction certificate pursuant to Section 7-9-86 NMSA 1978.

L. A production for which the film production tax credit is claimed pursuant to Paragraph (1) of Subsection B of this section shall contain an acknowledgment to the state of New Mexico in the end screen credits that the production was filmed in New Mexico, and a state logo provided by the division shall be included and embedded in the end screen credits of long-form narrative film productions and television episodes, unless otherwise agreed upon in writing by the film production company and the division.

M. To be eligible for the film production tax credit, a film production company shall submit to the division information required by the division to demonstrate conformity with the requirements of the Film Production Tax Credit Act, including detailed information on each direct production expenditure and each postproduction expenditure. A film production company shall make reasonable efforts, as determined by the division, to contract with a specialized vendor that provides goods and services, inventory or services directly related to that vendor's ordinary course of business. A film production company shall provide to the division a projection of the film production tax credit claim the film production company plans to submit in the fiscal year. In addition, the film production company shall agree in writing:

(1) to pay all obligations the film production company has incurred in New Mexico;

(2) to post a notice at completion of principal photography on the website of the division that:

(a) contains production company information, including the name of the production, the address of the production company and contact information that includes a working phone number, fax number and email address for both the local production office and the permanent production office to notify the public of the need to file creditor claims against the film production company; and

(b) remains posted on the website until all financial obligations incurred in the state by the film production company have been paid;

(3) that outstanding obligations are not waived should a creditor fail to file;

(4) to delay filing of a claim for the film production tax credit until the division delivers written notification to the taxation and revenue department that the film production company has fulfilled all requirements for the credit; and

(5) to submit a completed application for the film production tax credit and supporting documentation to the division within one year of making the final expenditures in New Mexico that were incurred for the registered project and that are included in the credit claim.

N. The division shall determine the eligibility of the company and shall report this information to the taxation and revenue department in a manner and at times the economic development department and the taxation and revenue department shall agree upon. The division shall also post on its website all information provided by the film production company that does not reveal revenue, income or other information that may jeopardize the confidentiality of income tax returns, including that the division shall report quarterly the projected amount of credit claims for the fiscal year.

O. To provide guidance to film production companies regarding the amount of credit capacity remaining in the fiscal year, the taxation and revenue department shall post monthly on that department's website the aggregate amount of credits claimed and processed for the fiscal year.

P. To receive a film production tax credit, a film production company shall apply to the taxation and revenue department on forms and in the manner the department may prescribe. The application shall include a certification of the amount of direct production expenditures or postproduction expenditures made in New Mexico with respect to the film production for which the film production company is seeking the film production tax credit; provided that for the film production tax credit, the application shall be submitted within one year of the date of the last direct production expenditure in New Mexico or the last postproduction expenditure in New Mexico. If the amount of the requested tax credit exceeds five million dollars ($5,000,000), the application shall also include the results of an audit, conducted by a certified public accountant licensed to practice in New Mexico, verifying that the expenditures have been made in compliance with the requirements of this section. If the requirements of this section have been complied with, the taxation and revenue department shall approve the film production tax credit and issue a document granting the tax credit.

Q. The film production company may apply all or a portion of the film production tax credit granted against personal income tax liability or corporate income tax liability. If the amount of the film production tax credit claimed exceeds the film production company's tax liability for the taxable year in which the credit is being claimed, the excess shall be refunded.

R. That amount of a film production tax credit for total payments as applied to direct production expenditures for the services of performing artists shall not exceed five million dollars ($5,000,000) for services rendered by nonresident performing artists and featured resident principal performing artists in a production. This limitation shall not apply to the services of background artists and resident performing artists who are not cast in industry standard featured principal performer roles.

S. As used in this section, "direct production expenditure" means a transaction that is subject to taxation in New Mexico:

(1) including an expenditure for:

(a) payment of wages, fringe benefits or fees for talent, management or labor to a person who is a New Mexico resident;

(b) payment for wages and per diem for a performing artist who is not a New Mexico resident and who is directly employed by the film production company; provided that the film production company deducts and remits, or causes to be deducted and remitted, income tax from the first day of services rendered in New Mexico at the maximum rate pursuant to the Withholding Tax Act [Chapter 7, Article 3 NMSA 1978];

(c) payment to a personal services business for the services of a performing artist if: 1) the personal services business pays gross receipts tax in New Mexico on the portion of those payments qualifying for the tax credit; and 2) the film production company deducts and remits, or causes to be deducted and remitted, income tax at the maximum rate in New Mexico pursuant to Subsection H of Section 7-3A-3 NMSA 1978 on the portion of those payments qualifying for the tax credit paid to a personal services business where the performing artist is a full or part owner of that business or subcontracts with a personal services business where the performing artist is a full or part owner of that business; and

(d) any of the following provided by a vendor: 1) the story and scenario to be used for a film;2) set construction and operations, wardrobe, accessories and related services; 3) photography, sound synchronization, lighting and related services; 4) editing and related services; 5) rental of facilities and equipment; 6) leasing of vehicles, not including the chartering of aircraft for out-of-state transportation; however, New Mexico-based chartered aircraft for in-state transportation directly attributable to the production shall be considered a direct production expenditure; provided that only the first one hundred dollars ($100) of the daily expense of leasing a vehicle for passenger transportation on roadways in the state may be claimed as a direct production expenditure; 7) food or lodging; provided that only the first one hundred fifty dollars ($150) of lodging per individual per day is eligible to be claimed as a direct production expenditure; 8) commercial airfare if purchased through a New Mexico-based travel agency or travel company for travel to and from New Mexico or within New Mexico that is directly attributable to the production; 9) insurance coverage and bonding if purchased through a New Mexico-based insurance agent, broker or bonding agent; 10) services for an external audit upon submission of an application for a film production tax credit by an accounting firm that submits the application pursuant to this section; and 11) other direct costs of producing a film in accordance with generally accepted entertainment industry practice; and

(2) does not include an expenditure for:

(a) a gift with a value greater than twenty-five dollars ($25.00);

(b) artwork or jewelry, except that a work of art or a piece of jewelry may be a direct production expenditure if: 1) it is used in the film production; and 2) the expenditure is less than two thousand five hundred dollars ($2,500);

(c) entertainment, amusement or recreation;

(d) subcontracted goods or services provided by a vendor when subcontractors are not subject to state taxation, such as equipment and locations provided by the military, government and religious organizations; or

(e) a service provided by a person who is not a New Mexico resident and employed in an industry crew position, excluding a performing artist, where it is the standard entertainment industry practice for the film production company to employ a person for that industry crew position, except when the person who is not a New Mexico resident is hired or subcontracted by a vendor; and when the film production company, as determined by the division and when applicable in consultation with industry, provides: 1) reasonable efforts to hire resident crew; and 2) financial or promotional contributions toward education or workforce development efforts in New Mexico, including at least one of the following: a payment to a New Mexico public education institution that administers at least one industry-recognized film or multimedia program, as determined by the division, in an amount equal to two and one-half percent of payments made to nonresidents in approved positions employed by the vendor; promotion of the New Mexico film industry by directors, actors or executive producers affiliated with the production company's project through social media that is managed by the state; radio interviews facilitated by the division; enhanced screen credit acknowledgments; or related events that are facilitated, conducted or sponsored by the division.

T. As used in this section, "film production company" means a person that produces one or more films or any part of a film and that commences principal photography prior to January 1, 2016.

U. As used in this section, "vendor" means a person who sells or leases goods or services that are related to standard industry craft inventory, who has a physical presence in New Mexico and is subject to gross receipts tax pursuant to the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] and income tax pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] or corporate income tax pursuant to the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] but excludes a personal services business and services provided by nonresidents hired or subcontracted if the tasks and responsibilities are associated with:

(1) the standard industry job position of:

(a) a director;

(b) a writer;

(c) a producer;

(d) an associate producer;

(e) a co-producer;

(f) an executive producer;

(g) a production supervisor;

(h) a director of photography;

(i) a motion picture driver whose sole responsibility is driving;

(j) a production or personal assistant;

(k) a designer;

(l) a still photographer; or

(m) a carpenter and utility technician at an entry level; and

(2) nonstandard industry job positions and personal support services.

History: Laws 2002, ch. 36, § 1; 2003, ch. 127, § 1; 2005, ch. 104, § 9; 2006, ch. 78, § 1; 2007, ch. 172, § 3; 2011, ch. 165, § 1; 2011, ch. 177, § 2; 2013, ch. 160, § 5; 2015, ch. 143, § 1; 2019, ch. 87, § 3.

7-2F-1.1. Short title.

Chapter 7, Article 2F NMSA 1978 may be cited as the "Film Production Tax Credit Act".

History: Laws 2011, ch. 165, § 2 and Laws 2011, ch. 177, § 3.

7-2F-2. Definitions.

As used in the Film Production Tax Credit Act:

A. "affiliated person" means a person who directly or indirectly owns or controls, is owned or controlled by or is under common ownership or control with another person through ownership of voting securities or other ownership interests representing a majority of the total voting power of the entity;

B. "background artist" means a person who is not a performing artist but is a person of atmospheric business whose work includes atmospheric noise, normal actions, gestures and facial expressions of that person's assignment; or a person of atmospheric business whose work includes special abilities that are not stunts; or a substitute for another actor, whether photographed as a double or acting as a stand-in;

C. "below-the-line crew" means a person in a position that is off-camera and who provides technical services during the physical production of a film. "Below-the-line crew" does not include a person who is a writer, director, producer or background artist or performing artist for the film;

D. "commercial audiovisual product" means a film or a video game intended for commercial exploitation;

E. "direct production expenditure" means a transaction that is subject to taxation in New Mexico and is certified pursuant to Subsection A of Section 7-2F-12 NMSA 1978:

(1) including an expenditure for:

(a) payment of wages, fringe benefits or fees for talent, management or labor to a person who is a New Mexico resident;

(b) payment for standard industry craft inventory when provided by a below-the-line crew that is a New Mexico resident in addition to its below-the-line crew services;

(c) payment for wages and per diem for a performing artist who is not a New Mexico resident and who is directly employed by the film production company; provided that the film production company deducts and remits, or causes to be deducted and remitted, income tax from the first day of services rendered in New Mexico at the maximum rate pursuant to the Withholding Tax Act [Chapter 7, Article 3 NMSA 1978];

(d) payment to a personal services business for the services of a performing artist if: 1) the personal services business pays gross receipts tax in New Mexico on the portion of those payments qualifying for the tax credit; and 2) the film production company deducts and remits, or causes to be deducted and remitted, income tax at the maximum rate in New Mexico pursuant to Subsection H of Section 7-3A-3 NMSA 1978 on the portion of those payments qualifying for the tax credit paid to a personal services business where the performing artist is a full or part owner of that business or subcontracts with a personal services business where the performing artist is a full or part owner of that business; and

(e) any of the following provided by a vendor: 1) the story and scenario to be used for a film; 2) set construction and operations, wardrobe, accessories and related services; 3) photography, sound synchronization, lighting and related services; 4) editing and related services; 5) rental of facilities and equipment; 6) the first one hundred fifty dollars ($150) of the daily expense of leasing of vehicles, not including the chartering of aircraft for out-of-state transportation; however, New Mexico-based chartered aircraft for in-state transportation directly attributable to the production shall be considered a direct production expenditure; 7) food; 8) the first three hundred dollars ($300) of lodging per individual, per day; 9) commercial airfare if purchased through a New Mexico-based travel agency or travel company for travel to and from New Mexico or within New Mexico that is directly attributable to the production; 10) insurance coverage and bonding if purchased through a New Mexico-based insurance agent, broker or bonding agent; 11) subcontracted goods and services from businesses; provided that the ordinary course of business of the vendor procuring the goods and services from the subcontractor directly relates to standard film industry goods and services; and 12) other direct costs of producing a film in accordance with generally accepted entertainment industry practice; and

(2) does not include an expenditure for:

(a) a gift with a value greater than one hundred dollars ($100);

(b) artwork or jewelry, except that a work of art or a piece of jewelry may be a direct production expenditure if: 1) it is used in the film production; and 2) the expenditure is less than two thousand five hundred dollars ($2,500);

(c) entertainment, amusement or recreation;

(d) subcontracted goods or services provided by a vendor when the subcontractors providing those goods or services to the vendor are not subject to state taxation, such as equipment and locations provided by the military, government and organizations that demonstrate to the taxation and revenue 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 1986, as amended or renumbered;

(e) subcontracted services provided by a vendor when the subcontracted services are provided by a person who is below-the-line crew and is not a New Mexico resident;

(f) hidden or other indirect service fees, costs, commissions or other remuneration received by third parties and that are not directly paid by the film production company or expressly enumerated on a film production company's filing to claim a new film production tax credit;

(g) wages for a person who is not a New Mexico resident and who falsely claims to be a New Mexico resident. The wages of such person shall not be considered an eligible expense for two years from the date in which the person is determined by the taxation and revenue department as having made a false claim, regardless of whether the person becomes a New Mexico resident within that time frame; or

(h) which the film production company receives funding pursuant to Section 21-19-7.1 NMSA 1978;

F. "division" means the New Mexico film division of the economic development department;

G. "federal new markets tax credit program" means the tax credit program codified as Section 45D of the United States Internal Revenue Code of 1986, as amended;

H. "film" means a single medium or multimedia program, including television programs but excluding advertising messages other than national or regional advertising messages intended for exhibition, that:

(1) is fixed on film, a digital medium, videotape, computer disc, laser disc or other similar delivery medium;

(2) can be viewed or reproduced;

(3) is not intended to and does not violate a provision of Chapter 30, Article 37 NMSA 1978; and

(4) is intended for reasonable commercial exploitation for the delivery medium used;

I. "film production company" means a person that produces one or more films or commercial audiovisual products or any part of a film or commercial audiovisual product;

J. "fiscal year" means the state fiscal year beginning on July 1;

K. "New Mexico film partner" means a film production company that has made a commitment to produce films or commercial audiovisual products in New Mexico and has purchased or executed a ten-year contract to lease a qualified production facility;

L. "New Mexico resident" means an individual who is domiciled in this state during any part of the taxable year or an individual who is physically present in this state for one hundred eighty-five days or more during the taxable year; but any individual, other than someone who was physically present in the state for one hundred eighty-five days or more during the taxable year and who, on or before the last day of the taxable year, changed the individual's place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently without this state is not a resident for the purposes of the Film Production Tax Credit Act for periods after that change of abode;

M. "performing artist" means an actor, on-camera stuntperson, puppeteer, pilot who is a stuntperson or actor, specialty foreground performer or narrator; and who speaks a line of dialogue, is identified with the product or reacts to narration as assigned. "Performing artist" does not include a background artist;

N. "personal services business" means a business organization, with or without physical presence, that receives payments pursuant to the Film Production Tax Credit Act for the services of a performing artist;

O. "physical presence" means a physical address in New Mexico from which a vendor conducts business, stores inventory or otherwise creates, assembles or offers for sale the product purchased or leased by a film production company and the vendor or an employee of the vendor is a resident;

P. "postproduction expenditure" means an expenditure, certified pursuant to Subsection A of Section 7-2F-12 NMSA 1978, for editing, Foley recording, automatic dialogue replacement, sound editing, special effects, including computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling or addition of sound or visual effects; but not including an expenditure for advertising, marketing, distribution or expense payments;

Q. "principal photography" means the production of a film during which the main visual elements are created;

R. "qualified production facility" means a building, or complex of buildings, building improvements and associated back-lot facilities in which films are or are intended to be regularly produced and that contain at least one:

(1) sound stage with contiguous floor space of at least seven thousand square feet and a ceiling height of no less than eighteen feet; or

(2) standing set that includes at least one interior, and at least five exteriors, built or re-purposed for film production use on a continual basis and is located on at least fifty acres of contiguous space designated for film production use; and

S. "vendor" means a person who sells or leases goods or services that are related to standard industry craft inventory, who has a physical presence in New Mexico and is subject to gross receipts tax pursuant to the Gross Receipts and Compensating Tax Act

[Chapter 7, Article 9 NMSA 1978] or income tax pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] or corporate income tax pursuant to the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] but excludes a personal services business and services provided by nonresidents hired or subcontracted if the tasks and responsibilities are associated with the standard industry job position of director, writer or producer.

History: 1978 Comp., § 7-2F-2, enacted by Laws 2003, ch. 127, § 2; 2005, ch. 104, § 10; 2006, ch. 78, § 2; 2007, ch. 172, § 4; 2011, ch. 177, § 4; 2013, ch. 160, § 6; 2015, ch. 143, § 2; 2019, ch. 87, § 4; 2023, ch. 211, § 31.

7-2F-2.1. Additional definitions.

As used in Sections 7-2F-6 through 7-2F-12 NMSA 1978:

A. "direct production expenditure":

(1) except as provided in Paragraph (2) of this subsection, means a transaction that is subject to taxation in New Mexico, including:

(a) payment of wages, fringe benefits or fees for talent, management or labor to a person who is a New Mexico resident;

(b) payment for standard industry craft inventory when provided by a resident industry crew in addition to its industry crew services;

(c) payment for wages and per diem for a performing artist who is not a New Mexico resident and who is directly employed by a film production company; provided that the film production company deducts and remits, or causes to be deducted and remitted, income tax from the first day of services rendered in New Mexico at the maximum rate pursuant to the Withholding Tax Act [Chapter 7, Article 3 NMSA 1978];

(d) payment to a personal services business on the wages and per diem paid to a performing artist of the personal services business if: 1) the personal services business pays gross receipts tax in New Mexico on the portion of those payments qualifying for the tax credit; and 2) the film production company deducts and remits, or causes to be deducted and remitted, income tax at the maximum rate in New Mexico pursuant to Subsection H of Section 7-3A-3 NMSA 1978 on the portion of those payments qualifying for the tax credit paid to a personal services business where the performing artist is a full or part owner of that business or subcontracts with a personal services business where the performing artist is a full or part owner of that business; and

(e) any of the following provided by a vendor: 1) the story and scenario to be used for a film; 2) set construction and operations, wardrobe, accessories and related services; 3) photography, sound synchronization, lighting and related services; 4) editing and related services; 5) rental of facilities and equipment; 6) leasing of vehicles, not including the chartering of aircraft for out-of-state transportation; however, New Mexico-based chartered aircraft for in-state transportation directly attributable to the production shall be considered a direct production expenditure; provided that only the first one hundred dollars ($100) of the daily expense of leasing a vehicle for passenger transportation on roadways in the state may be claimed as a direct production expenditure; 7) food or lodging; provided that only the first one hundred fifty dollars ($150) of lodging per individual per day is eligible to be claimed as a direct production expenditure; 8) commercial airfare if purchased through a New Mexico-based travel agency or travel company for travel to and from New Mexico or within New Mexico that is directly attributable to the production; 9) insurance coverage and bonding if purchased through a New Mexico-based insurance agent, broker or bonding agent; 10) services for an external audit upon submission of an application for a film production tax credit by an accounting firm that submits the application pursuant to Subsection I of Section 7-2F-6 NMSA 1978; and 11) other direct costs of producing a film in accordance with generally accepted entertainment industry practice; and

(2) does not include an expenditure for:

(a) a gift with a value greater than twenty-five dollars ($25.00);

(b) artwork or jewelry, except that a work of art or a piece of jewelry may be a direct production expenditure if: 1) it is used in the film production; and 2) the expenditure is less than two thousand five hundred dollars ($2,500);

(c) entertainment, amusement or recreation; or

(d) subcontracted goods or services provided by a vendor when subcontractors are not subject to state taxation, such as equipment and locations provided by the military, government and religious organizations;

B. "film production company" means a person that produces one or more films or any part of a film and that commences principal photography on or after January 1, 2016; and

C. "vendor" means a person who sells or leases goods or services that are related to standard industry craft inventory, who has a physical presence in New Mexico and is subject to gross receipts tax pursuant to the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] and income tax pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] or corporate income tax pursuant to the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] but excludes a personal services business.

History: Laws 2015, ch. 143, § 4; 2016, ch. 77, § 2.

7-2F-3. Purposes; goals.

The purposes and goals of the Film Production Tax Credit Act are to:

A. establish the film industry as a permanent component of the economic base of New Mexico;

B. develop a pool of trained professionals and businesses in New Mexico to supply and support the film industry in the state;

C. increase employment of New Mexico residents;

D. improve the economic success of existing businesses in New Mexico; and

E. develop the infrastructure in the state necessary for a thriving film industry.

History: Laws 2011, ch. 165, § 4; 2016, ch. 77, § 3.

7-2F-4. Reporting; accountability.

A. The economic development department shall:

(1) collect data to be used in an econometric tool that objectively assesses the effectiveness of the credits provided by the Film Production Tax Credit Act;

(2) track the direct expenditures for the credits;

(3) with the support and assistance of the legislative finance committee staff and the taxation and revenue department, review and assess the analysis developed in Paragraph (1) of this subsection and create a report for presentation to the revenue stabilization and tax policy committee and the legislative finance committee that provides an objective assessment of the effectiveness of the credits; and

(4) report annually to the revenue stabilization and tax policy committee and the legislative finance committee on aggregate approved tax credits made pursuant to the Film Production Tax Credit Act and the past performance of and current outlook for the Film Production Tax Credit Act, including:

(a) the aggregate amount of credits paid subject to the aggregate amount allowed pursuant to Subsection B of Section 7-2F-12 NMSA 1978 in the prior fiscal year and the current amount of claims in the queue pursuant to Subsection C of Section 7-2F-12 NMSA 1978;

(b) the aggregate amount of approved credits paid in the prior fiscal year for expenditures by certain film production companies that are not subject to the aggregate amount of claims allowed pursuant to Section 7-2F-12 NMSA 1978;

(c) the number of applicants receiving the additional credit for television pilots and series pursuant to Section 7-2F-7 NMSA 1978;

(d) the number of applicants receiving the additional amount for expenditures made in certain areas of the state pursuant to Section 8 [7-2F-14 NMSA 1978] of this 2019 act;

(e) the aggregate amount of direct production expenditures and post production expenditures in New Mexico during the prior fiscal year, shown by county;

(f) the total number and wages of New Mexico residents employed by film production companies in the prior fiscal year; and

(g) any other relevant information, as determined by the division.

B. The division shall develop a form on which the taxpayer claiming a credit pursuant to the Film Production Tax Credit Act shall submit a report to accompany the taxpayer's application for that credit.

C. With respect to the production on which the application for a credit is based, the film production company shall report to the division at a minimum the following information:

(1) the total aggregate wages of the members of the New Mexico resident crew;

(2) the number of New Mexico residents employed;

(3) the total amount of gross receipts taxes paid;

(4) the total number of hours worked by New Mexico residents;

(5) the total expenditures made in New Mexico that do not qualify for the credit;

(6) the aggregate wages paid to the members of the nonresident crew while working in New Mexico;

(7) the aggregate amount of direct production expenditures and postproduction expenditures in New Mexico in the prior fiscal year, shown by county; and

(8) other information deemed necessary by the division and economic development department to determine the effectiveness of the credit.

D. For purposes of assessing the effectiveness of a credit, the inability of the economic development department to aggregate data due to sample size shall not relieve the department of the requirement to report all relevant data to the legislature. The division shall provide notice to a film production company applying for a credit that information provided to the division may be revealed by the department in reports to the legislature.

History: Laws 2011, ch. 165, § 5; 2015, ch. 143, § 3; 2016, ch. 77, § 4; 2019, ch. 87, § 5.

7-2F-5. Assignment.

A. A film production company that is eligible to receive a credit pursuant to the Film Production Tax Credit Act may assign the payment of an authorized film production tax credit or a film and television tax credit to a third-party financial institution, or to an authorized third party, one time in a full or partial amount. If the parties to the assignment have complied with the procedures established by the taxation and revenue department for the assignment of a film production tax credit payment, the department shall remit to the institution that amount of tax credit approved by the department that would otherwise be remitted to the company.

B. For the purposes of this section:

(1) "authorized third party" means an entity that:

(a) holds the rights to a film for which a film production tax credit may be claimed; and

(b) initiates that film's production; and

(2) "financial institution" means:

(a) a fund purposely created to produce a film; or

(b) a bank, savings institution or credit union that is organized or chartered pursuant to the laws of New Mexico or the United States and that files a New Mexico income tax return.

History: Laws 2015, ch. 62, § 1; 2016, ch. 77, § 5.

7-2F-6. Film and television tax credit; film production companies that commence principal photography on or after January 1, 2016.

A. The tax credit created by this section may be referred to as the "film and television tax credit".

B. An eligible film production company may apply for, and the taxation and revenue department may allow, subject to the limitation in Section 7-2F-12 NMSA 1978, a tax credit in an amount equal to twenty-five percent of:

(1) direct production expenditures made in New Mexico that:

(a) are directly attributable to the production in New Mexico of a film or commercial audiovisual product;

(b) are subject to taxation by the state of New Mexico;

(c) exclude direct production expenditures for which another taxpayer claims the film and television tax credit; and

(d) do not exceed the usual and customary cost of the goods or services acquired when purchased by unrelated parties. The secretary of taxation and revenue may determine the value of the goods or services for purposes of this section when the buyer and seller are affiliated persons or the sale or purchase is not an arm's length transaction; and

(2) postproduction expenditures made in New Mexico that:

(a) are directly attributable to the production of a commercial film or audiovisual product;

(b) are for postproduction services performed in New Mexico;

(c) are subject to taxation by the state of New Mexico;

(d) exclude postproduction expenditures for which another taxpayer claims the film and television tax credit; and

(e) do not exceed the usual and customary cost of the goods or services acquired when purchased by unrelated parties. The secretary of taxation and revenue may determine the value of the goods or services for purposes of this section when the buyer and seller are affiliated persons or the sale or purchase is not an arm's length transaction.

C. With respect to expenditures attributable to a production for which the film production company receives a tax credit pursuant to the federal new markets tax credit program, the percentage to be applied in calculating the film and television tax credit is twenty percent.

D. The film and television tax credit shall not be claimed with respect to direct production expenditures or postproduction expenditures for which the film production company has delivered a nontaxable transaction certificate pursuant to Section 7-9-86 NMSA 1978.

E. A production for which the film and televison [television] tax credit is claimed pursuant to Paragraph (1) of Subsection B of this section shall contain an acknowledgment to the state of New Mexico in the end screen credits that the production was filmed in New Mexico, and a state logo provided by the division shall be included and embedded in the end screen credits of long-form narrative film productions and television episodes, unless otherwise agreed upon in writing by the film production company and the division.

F. To be eligible for the film and television tax credit, a film production company shall submit to the division information required by the division to demonstrate conformity with the requirements of the Film Production Tax Credit Act, including detailed information on each direct production expenditure and each postproduction expenditure. A film production company shall provide to the division a projection of the film and television tax credit claim the film production company plans to submit in the fiscal year. In addition, the film production company shall agree in writing:

(1) to pay all obligations the film production company has incurred in New Mexico;

(2) to post a notice at completion of principal photography on the website of the division that:

(a) contains production company information, including the name of the production, the address of the production company and contact information that includes a working phone number, fax number and email address for both the local production office and the permanent production office to notify the public of the need to file creditor claims against the film production company; and

(b) remains posted on the website until all financial obligations incurred in the state by the film production company have been paid;

(3) that outstanding obligations are not waived should a creditor fail to file;

(4) to delay filing of a claim for the film and television tax credit until the division delivers written notification to the taxation and revenue department that the film production company has fulfilled all requirements for the credit; and

(5) to submit a completed application for the film and television tax credit and supporting documentation to the division within one year of the close of the film production company's taxable year in which the expenditures in New Mexico were incurred for the registered project and that are included in the credit claim.

G. The division shall determine the eligibility of the company and shall report this information to the taxation and revenue department in a manner and at times the economic development department and the taxation and revenue department shall agree upon. The division shall also post on its website all information provided by the film production company that does not reveal revenue, income or other information that may jeopardize the confidentiality of income tax returns, including that the division shall report quarterly the projected amount of credit claims for the fiscal year.

H. To provide guidance to film production companies regarding the amount of credit capacity remaining in the fiscal year, the taxation and revenue department shall post monthly on that department's website the aggregate amount of credits claimed and processed for the fiscal year.

I. To receive a film and television tax credit, a film production company shall apply to the taxation and revenue department on forms and in the manner the department may prescribe. The application shall include a certification of the amount of direct production expenditures or postproduction expenditures made in New Mexico with respect to the film production for which the film production company is seeking the film and television tax credit; provided that for the film and television tax credit, the application shall be submitted within one year of the date of the last direct production expenditure in New Mexico or the last postproduction expenditure in New Mexico incurred within the film production company's taxable year. If the amount of the requested tax credit exceeds five million dollars ($5,000,000), the application shall also include the results of an audit, conducted by a certified public accountant licensed to practice in New Mexico, verifying that the expenditures have been made in compliance with the requirements of this section. If the requirements of this section have been complied with, subject to the provisions of Section 7-2F-12 NMSA 1978, the taxation and revenue department shall approve the film and television tax credit and issue a document granting the tax credit.

J. The film production company may apply all or a portion of the film and television tax credit granted against personal income tax liability or corporate income tax liability. If the amount of the film and television tax credit claimed exceeds the film production company's tax liability for the taxable year in which the credit is being claimed, the excess shall be refunded.

History: Laws 2015, ch. 143, § 5; 2016, ch. 77, § 6.

7-2F-7. Additional credit; television pilots and series.

A. In addition to the credit provided by Section 7-2F-6 NMSA 1978, an additional five percent shall be applied in calculating the amount of the film and television tax credit to direct production expenditures, except as provided in Subsections C and D of this section, on:

(1) a standalone pilot intended for series television in New Mexico; and

(2) series television productions intended for commercial distribution with an order for at least six episodes in a single season; provided that the New Mexico budget for each of those six episodes is fifty thousand dollars ($50,000) or more.

B. A film production company applying for an additional credit pursuant to this section shall not be eligible for the additional credit pursuant to Section 7-2F-8 NMSA 1978.

C. Direct production expenditures that are payments to a nonresident performing artist in a standalone pilot shall not be eligible for the additional credit pursuant to this section.

D. Payments to a nonresident performing artist for a television series may be eligible for the additional credit pursuant to this section; provided that:

(1) a television series completes at least one season of the scheduled episodes for that series in New Mexico;

(2) the film production company certifies the intention to produce a subsequent season to the series described in Paragraph (1) of this subsection in New Mexico; and

(3) the film production company, or its parent company, produces or begins production of an additional eligible television series in New Mexico during the same film production company's taxable year as the television series. Payments to a nonresident performing artist for the additional television series may also be eligible for the additional credit pursuant to this section.

History: Laws 2015, ch. 143, § 6; 2016, ch. 77, § 7.

7-2F-8. Additional credit; qualified production facilities.

A. In addition to the credit provided by Section 7-2F-6 NMSA 1978, an additional five percent shall be applied in calculating the amount of the film and television tax credit to direct production expenditures that are directly attributable and paid to a New Mexico resident who is hired as industry crew, or who is hired as a producer, writer or director working directly with the physical production and has filed a New Mexico income tax return as a resident in the two previous taxable years. The direct production expenditures shall be on a production with a total new budget of:

(1) not more than thirty million dollars ($30,000,000) that shoots at least ten principal photography days in New Mexico at a qualified production facility; provided that a film production company shall:

(a) shoot at least seven of those days at a sound stage that is a qualified production facility and the remaining number of required days, if any, at a standing set that is a qualified production facility; and

(b) for each of the ten days, include industry crew working on the premises of those facilities for a minimum of eight hours within a twenty-four-hour period; or

(2) thirty million dollars ($30,000,000) or more that shoots at least fifteen principal photography days in New Mexico at a qualified production facility; provided that a film production company shall:

(a) shoot at least ten of those days at a sound stage that is a qualified production facility and the remaining number of required days, if any, at a standing set that is a qualified production facility; and

(b) for each day of the fifteen days, include industry crew working on the premises of the facility for a minimum of eight hours within a twenty-four-hour period.

B. A film production company that receives an additional credit pursuant to Section 7-2F-7 NMSA 1978 shall not be eligible for the additional credit pursuant to this section.

History: Laws 2015, ch. 143, § 7; 2016, ch. 77, § 8.

7-2F-9. Additional credit; nonresident industry crew.

A film production company may apply for, and the taxation and revenue department may allow, subject to the limitation in this section, a tax credit in an amount equal to fifteen percent of the payment of wages, fringe benefits and per diem for nonresident industry crew; provided that:

A. the service for which payment is made is rendered in New Mexico;

B. payments for nonresident industry crew exclude payments for production designer, director of photography, line producer, costume designer, still unit photographer and driver whose sole responsibility is driving;

C. the number of nonresident industry crew shall be employed by the film production company in New Mexico, and shall be, as calculated by the division upon receipt of the first application for a film production tax credit and review of the project's New Mexico budget:

(1) four positions for up to two million dollars ($2,000,000) of the final New Mexico budget;

(2) one additional position for each additional one million dollars ($1,000,000) of the project's final New Mexico budget of at least two million dollars ($2,000,000) up to ten million dollars ($10,000,000);

(3) one additional position for each additional five million dollars ($5,000,000) of the project's final New Mexico budget of at least ten million dollars ($10,000,000) up to fifty million dollars ($50,000,000);

(4) one additional position for every additional ten million dollars ($10,000,000) of the project's final New Mexico budget of at least fifty million dollars ($50,000,000) and thereafter;

(5) eight additional positions, above the number of positions described in this subsection, for a television pilot episode that has not been ordered to series at the time of New Mexico production; provided that the film production company certifies to the division that the series is intended to be produced in New Mexico if the pilot is ordered to series; and

(6) no more than thirty positions; provided that, at the discretion of the division, up to and including ten additional positions may be permitted if five other films are being produced in New Mexico at the time of the film production company's production; and

D. the film production company makes financial or promotional contributions toward educational or work force development efforts in New Mexico as determined by the division, including:

(1) a payment to a New Mexico educational institution that administers at least one industry-recognized film or multimedia program, as determined by the division, equal to at least two and one-half percent of the direct production expenditures for the payment of wages, fringe benefits and per diem for nonresident industry crew made by the film production company to nonresident industry crew; or

(2) promotion of the New Mexico film industry by directors, actors or producers affiliated with the film production company's project through:

(a) social media that is managed by the state;

(b) radio interviews facilitated by the division;

(c) enhanced screen credit acknowledgments; or

(d) related events that are facilitated, conducted or sponsored by the division.

History: Laws 2015, ch. 143, § 8.

7-2F-10. Payments for performing artists; credit limitation.

That amount of a film and television tax credit for the total payments of direct production expenditures for the services of performing artists shall not exceed five million dollars ($5,000,000) for services rendered by nonresident performing artists and featured resident principal performing artists in a production. This limitation shall not apply to the services of background artists and resident performing artists who are not cast in industry standard featured principal performer roles.

History: Laws 2015, ch. 143, § 9.

7-2F-11. Requirements to contract with certain vendors.

A. A film production company shall make reasonable efforts, as determined by the division, to contract with a specialized vendor whose ordinary course of business directly relates to a standard industry craft inventory and that:

(1) provides services;

(2) provides inventory, for sale or lease, that is maintained in New Mexico and represented by the specialized vendor; or

(3) subcontracts similar standard industry craft inventory from other businesses with or without physical presence.

B. If a film production company does not contract with a specialized vendor, but contracts with a vendor that provides services, does not sell or lease standard industry craft inventory and outsources inventory from out-of-state businesses for a film production company, the film production company shall provide documentation of reasonable efforts made to find a specialized vendor.

History: Laws 2015, ch. 143, § 10.

7-2F-12. Credit claims; certification of direct production and postproduction expenditures; aggregate amount of claims allowed; exception.

A. The division shall certify a film production company's budget for direct production expenditures and postproduction expenditures during a preproduction meeting with the division; provided that the division is prohibited from certifying a film production company's budget if the total expected claims in excess of the aggregate amount of claims that may be authorized for payment pursuant to Subsection B of this section would exceed one hundred million dollars ($100,000,000) in any fiscal year; and provided further that the limitation in this subsection shall not apply to certification of a budget for a New Mexico film partner.

B. Except as provided in Laws 2019, Chapter 87, Section 10, the aggregate amount of claims for a credit provided by the Film Production Tax Credit Act that may be authorized in any fiscal year with respect to the direct production expenditures or postproduction expenditures made on film or commercial audiovisual products shall be in the following amounts; provided that direct production expenditures and postproduction expenditures made by a New Mexico film partner shall not be subject to the aggregate amount of claims provided by this subsection:

(1) prior to fiscal year 2024, one hundred ten million dollars ($110,000,000);

(2) from fiscal year 2024 through fiscal year 2028, the amount provided in Paragraph (1) of this subsection shall be increased by ten million dollars ($10,000,000) in each of those fiscal years; and

(3) for fiscal year 2029 and subsequent fiscal years, one hundred sixty million dollars ($160,000,000).

C. If a film production company submits a claim for a credit pursuant to the Film Production Tax Credit Act and the aggregate amount of claims pursuant to Subsection B of this section has been met for the fiscal year, the claim shall be placed at the front of a queue for payment in a subsequent fiscal year. Claims shall be placed in order of the date on which the completed return in which the credit is claimed is filed. Claims authorized for payment shall be paid pursuant to the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

D. To provide guidance to film production companies regarding the amount of credit capacity remaining in the fiscal year, the taxation and revenue department shall post monthly on that department's website the aggregate amount of credits claimed and paid for the fiscal year. In addition, the division shall post monthly on the division's website the aggregate amount of claims certified pursuant to Subsection A of this section for the fiscal year or any subsequent fiscal year.

History: Laws 2015, ch. 143, § 11; repealed and reenacted by Laws 2019, ch. 87, § 6; 2023, ch. 211, § 32.

7-2F-13. New film production tax credit.

A. The tax credit created by this section may be referred to as the "new film production tax credit".

B. A film production company that meets the requirements of the Film Production Tax Credit Act may apply for, and the taxation and revenue department may allow, a tax credit in an amount equal to twenty-five percent of:

(1) direct production expenditures made in New Mexico that:

(a) are directly attributable to the production in New Mexico of a film or commercial audiovisual product;

(b) are subject to taxation by the state of New Mexico;

(c) exclude direct production expenditures for which another taxpayer claims the new film production tax credit; and

(d) do not exceed the usual and customary cost of the goods or services acquired when purchased by unrelated parties. The secretary of taxation and revenue may determine the value of the goods or services for purposes of this section when the buyer and seller are affiliated persons or the sale or purchase is not an arm's length transaction; and

(2) postproduction expenditures made in New Mexico that:

(a) are directly attributable to the production of a commercial film or audiovisual product;

(b) are for services performed in New Mexico;

(c) are subject to taxation by the state of New Mexico;

(d) exclude postproduction expenditures for which another taxpayer claims the new film production tax credit; and

(e) do not exceed the usual and customary cost of the goods or services acquired when purchased by unrelated parties. The secretary of taxation and revenue may determine the value of the goods or services for purposes of this section when the buyer and seller are affiliated persons or the sale or purchase is not an arm's length transaction.

C. With respect to expenditures attributable to a production for which the film production company receives a tax credit pursuant to the federal new markets tax credit program, the percentage to be applied in calculating the amount of credit allowed pursuant to the Film Production Tax Credit Act is twenty percent.

D. A claim for new film production tax credits shall be filed as part of a return filed pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] or the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] or an information return filed by an entity assigned payment of an authorized credit pursuant to Section 7-2F-5 NMSA 1978. The date a complete credit claim is received by the taxation and revenue department shall determine the order that a credit claim is authorized for payment by the department. The film production company may apply all or a portion of the new film production tax credit granted against personal income tax liability or corporate income tax liability. If the amount of the credit claimed exceeds the film production company's tax liability for the taxable year in which the credit is being claimed, the excess shall be refunded.

E. A credit claim shall only be considered received by the taxation and revenue department if the credit claim is made on a complete return filed after the close of the taxable year. All direct production expenditures and postproduction expenditures incurred during the taxable year by a film production company shall be submitted as part of the same income tax return and paid pursuant to this section. A credit claim shall not be divided and submitted with multiple returns or in multiple years.

F. For purposes of determining the payment of credit claims pursuant to this section, the secretary of taxation and revenue may require that credit claims of affiliated persons be combined into one claim if necessary to accurately reflect closely integrated activities of affiliated persons.

G. The new film production tax credit shall not be claimed with respect to direct production expenditures or postproduction expenditures for which the film production company has delivered a nontaxable transaction certificate pursuant to Section 7-9-86 NMSA 1978 or alternative evidence pursuant to Section 7-9-43 NMSA 1978.

H. A production for which the new film production tax credit is claimed pursuant to Paragraph (1) of Subsection B of this section shall contain an acknowledgment to the state of New Mexico. Unless otherwise agreed upon in writing by the film production company and the division, the acknowledgment shall be in the end screen credits that the production was filmed in New Mexico and a three-second static or animated state logo provided by the division shall be included and embedded in the following:

(1) end screen credits before the below-the-line crew crawl for the life of the project of long-form narrative film productions; and

(2) body of the program for the life of television episodes, the placement of which shall be:

(a) in the opening sequence;

(b) as a bumper into or out of a commercial break; or

(c) in a prominent position in each single project's end credits with no less than a half screen exposure, but not covering content.

I. To be eligible for the new film production tax credit, a film production company shall submit to the division information required by the division to demonstrate conformity with the requirements of the Film Production Tax Credit Act, including production data deemed necessary by the division and the economic development department to determine the effectiveness of the credit, and a projection of the new film production tax credit claim the film production company plans to submit. In addition, the film production company shall agree in writing:

(1) to pay all obligations the film production company has incurred in New Mexico;

(2) to post a notice at completion of principal photography on the website of the division that:

(a) contains production company information, including the name of the production and contact information that includes a working phone number and email address for both the local production office and the permanent production office to notify the public of the need to file creditor claims against the film production company; and

(b) remains posted on the website until all financial obligations incurred in the state by the film production company have been paid;

(3) that outstanding obligations are not waived should a creditor fail to file;

(4) to delay filing of a claim for the new film production tax credit until the division delivers written notification to the taxation and revenue department that the film production company has fulfilled all requirements for the credit; and

(5) to submit a completed application for the new film production tax credit and supporting documentation to the division within one year of making the final expenditures in New Mexico that were incurred for the registered project and that are included in the credit claim.

J. The division, in consultation with the taxation and revenue department, shall determine the eligibility of the film production company and shall report this information to the taxation and revenue department in a manner and at times the economic development department and the taxation and revenue department shall agree upon. The division shall also post on its website all information provided by the film production company that does not reveal revenue, income or other information that may jeopardize the confidentiality of income tax returns.

K. To receive a new film production tax credit, a film production company shall apply to the taxation and revenue department on forms and in the manner the department may prescribe. The application shall include a certification of the amount of direct production expenditures or postproduction expenditures made in New Mexico with respect to the film production for which the film production company is seeking the credit; provided that for the credit, the application shall be submitted within one year of the date of the last direct production expenditure in New Mexico or the last postproduction expenditure in New Mexico. If the amount of the requested tax credit exceeds five million dollars ($5,000,000), the application shall also include the results of an audit, conducted by a certified public accountant licensed to practice in New Mexico, verifying that the expenditures have been made in compliance with the requirements of this section. If the requirements of this section have been complied with, the taxation and revenue department shall approve the credit and issue a document granting the credit.

L. Except as provided in Subsection M of this section, that amount of a new film production tax credit for total payments as applied to direct production expenditures for the services of performing artists shall not exceed five million dollars ($5,000,000) for services rendered by nonresident performing artists in a production. This limitation shall not apply to the services of background artists or resident performing artists cast in industry standard feature performing roles.

M. In addition to the amount of payments allowed pursuant to Subsection L of this section, that amount of a new film production tax credit for total payments as applied to direct production expenditures made by a New Mexico film partner for the services of nonresident performing artists, directors, producers, screenwriters and editors shall not exceed ten million dollars ($10,000,000) for services rendered for each production; provided that the total payments allowed pursuant to this subsection shall not exceed an annual aggregate maximum of forty million dollars ($40,000,000) for all productions in a fiscal year. If the aggregate amount of payments made in a fiscal year is less than the annual aggregate maximum, then the difference in that fiscal year shall be added to the annual aggregate maximum allowed in the following fiscal year.

History: Laws 2019, ch. 87, § 7; 2023, ch. 211, § 33.

7-2F-14. Additional amounts to be applied in calculating credit amounts; expenditures made in certain areas of the state; television pilots and series.

A. In addition to the percentage of direct production expenditures and postproduction expenditures calculated pursuant to Section 7-2F-13 NMSA 1978, an additional percentage shall be applied for payments for direct production expenditures and postproduction expenditures, as follows:

(1) ten percent for work, services or items provided on location for a production of a film or commercial audiovisual product that is located in New Mexico at least sixty miles from the city hall of the county seat of certain counties; and

(2) five percent for either of the following:

(a) on a standalone pilot intended for series television in New Mexico or on series television productions intended for commercial distribution with an order for at least six episodes in a single season; provided that the New Mexico budget for each of those six episodes is fifty thousand dollars ($50,000) or more; or

(b) on a production in a qualified production facility.

B. As used in this section, "certain counties" means class A counties with a net taxable value of property for property taxation purposes of greater than seven billion five hundred million dollars ($7,500,000,000).

History: Laws 2019, ch. 87, § 8; 2023, ch. 211, § 34.

7-2F-15. Nonresident below-the-line crew credit.

A film production company may apply for, and the taxation and revenue department may allow, a tax credit, which may be referred to as the "nonresident below-the-line crew credit", in an amount equal to fifteen percent of the payment of wages for below-the-line crew who are not New Mexico residents, that are directly attributable to the production in New Mexico of a film or commercial audiovisual product for which the film production company is claiming a new film production tax credit; provided that:

A. the service for which payment is made is rendered in New Mexico;

B. the payment of wages excludes payments:

(1) for below-the-line crew who are producers, directors, screenwriters, cast and production assistants; and

(2) made to a personal services business;

C. prior to July 1, 2028, for a film production company that is a New Mexico film partner, the total amount of wages applied toward the additional credit allowed pursuant to this section may be up to one hundred percent of the amount of wages of resident below-the-line wages claimed; provided that the film production company provides a seventy-two-hour notice of the opportunity to be hired to resident below-the-line crew, which may be through a collective bargaining unit that represents resident below-the-line crew; and

D. for a film production company that is not a New Mexico film partner and, beginning July 1, 2028, for a film production company that is a New Mexico film partner:

(1) the total eligible wages for below-the-line crew who are not New Mexico residents are not more than fifteen percent of the production's total New Mexico budget for below-the-line crew wages; and

(2) the film production company may claim the nonresident below-the-line crew credit for employing up to the following numbers of nonresident below-the-line crew in New Mexico and shall be as calculated by the division upon application for certification pursuant to Subsection A of Section 7-2F-12 NMSA 1978; provided that the total number shall not exceed twenty positions:

(a) five positions if the production's final New Mexico budget is up to two million seven hundred fifty thousand dollars ($2,750,000);

(b) ten positions if the production's final New Mexico budget is greater than two million seven hundred fifty thousand dollars ($2,750,000) and up to seven million five hundred thousand dollars ($7,500,000);

(c) fifteen positions if the production's final New Mexico budget is greater than seven million five hundred thousand dollars ($7,500,000) and up to eleven million dollars ($11,000,000);

(d) one position in addition to the number of positions provided in Subparagraph (c) of this paragraph for every ten million dollars ($10,000,000) over eleven million dollars ($11,000,000) of the production's final New Mexico budget; and

(e) five positions in addition to the number of positions provided in Subparagraphs (a) through (d) of this paragraph for a television pilot episode that has been ordered to series; provided that the film production company certifies to the division that the series is intended to be produced in New Mexico.

History: Laws 2019, ch. 87, § 9; 2023, ch. 211, § 35.

ARTICLE 2G
New Mexico Filmmaker Tax Credit (Repealed.)

7-2G-1. Repealed.

History: Laws 2005, ch. 337, § 1; Laws 2006, ch. 78, § 3.

ARTICLE 2H
Native American Veterans' Income Tax Settlement Fund

7-2H-1. Legislative findings.

A. Native Americans have had a long history of serving their country through active duty in the armed forces of the United States during periods of both war and peace and have made great sacrifices in serving their country through active duty in the military during periods of war and peace.

B. Native American veterans domiciled within the boundaries of their tribal lands or their spouse's tribal lands during their periods of active military service may have been exempt from paying state personal income taxes on their military income, but may have had state personal income taxes withheld from their military income.

C. Native American veterans now are barred by the state statute of limitations from claiming refunds of state personal income taxes that may have been withheld from their military income when they were domiciled within the boundaries of their tribal lands or their spouse's tribal lands during the period of their active military duty, and even if not barred by the statute of limitations, the passage of time extending to decades will make it difficult for many Native American veterans to meet strict standards of proof that they are entitled to a refund of withheld state personal income taxes.

D. It is incumbent upon the state to ensure that it was not unjustly enriched by the withholding of state personal income taxes from Native American veterans who were domiciled within the boundaries of their tribal lands or their spouse's tribal lands during the period of their active military duty, and the state should implement a feasible means of refunding to Native American veterans any state personal income taxes that were withheld from military income while they were domiciled within the boundaries of their tribal lands or their spouse's tribal lands during the period of their active military duty.

History: Laws 2008, ch. 89, § 1; 2009, ch. 289, § 1.

7-2H-2. Definition.

As used in Chapter 7, Article 2H NMSA 1978, "fund" means the Native American veterans' income tax settlement fund.

History: Laws 2008, ch. 89, § 2; 2009, ch. 289, § 2.

7-2H-3. Native American veterans' income tax settlement fund; created; purpose; appropriations.

A. The "Native American veterans' income tax settlement fund" is created as a nonreverting fund in the state treasury and shall be administered by the taxation and revenue department. The fund shall consist of money that is appropriated or donated or that otherwise accrues to the fund.

B. The taxation and revenue department shall establish procedures and adopt rules as required to administer the fund and to make settlement payments from the fund as approved by the secretary of taxation and revenue.

C. Money in the fund is appropriated to the taxation and revenue department to make settlement payments to Native American veterans who were domiciled within the boundaries of their tribal lands or their spouse's tribal lands during the period of their active military duty and had state personal income taxes withheld from their military income, or to their heirs pursuant to applicable law. Settlement payments shall include the amount of state personal income taxes withheld from eligible Native American veterans that have not been previously refunded to the veterans and interest on the amount withheld from the date of withholding computed on a daily basis at the rate specified for individuals pursuant to Section 6621 of the Internal Revenue Code of 1986. No settlement payments shall be made for any taxable year for which a refund claim may be timely filed with the taxation and revenue department. Money shall be disbursed from the fund only on warrant of the secretary of finance and administration upon vouchers signed by the secretary of taxation and revenue or the secretary's authorized representative. Any unexpended or unencumbered balance remaining in the fund at the end of a fiscal year shall not revert to the general fund.

D. Beginning in fiscal year 2010 and in subsequent fiscal years, not more than five percent of the fund is appropriated from the fund to the taxation and revenue department for expenditure in the fiscal year in which it is appropriated to administer the fund. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall revert to the Native American veterans' income tax settlement fund.

E. Beginning in fiscal year 2010 and in subsequent fiscal years, not more than five percent of the fund is appropriated from the fund to the veterans' services department for expenditure in the fiscal year in which it is appropriated to assist in outreach and public relations and in determining eligibility for settlement payments. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall revert to the Native American veterans' income tax settlement fund.

History: Laws 2008, ch. 89, § 3; 2009, ch. 289, § 3; 2018, ch. 52, § 1.

7-2H-4. Duties of the secretary.

A. The secretary of veterans' services shall conduct a study in cooperation with the taxation and revenue department to determine whether Native American veterans who were domiciled within the boundaries of their tribal lands or their spouse's tribal lands during the period of their active military duty had state personal income taxes withheld from their military income and if so, to determine the amount of such state personal income taxes withheld and the number and identity of Native American veterans or their survivors affected by the withholding of such state personal income taxes.

B. The secretary of taxation and revenue and the secretary of veterans' services shall promulgate rules for a state program to compensate Native American veterans or their survivors for state personal income taxes withheld from military income while on active military duty and domiciled within the boundaries of the veteran's or the veteran's spouse's tribal lands.

C. The secretary of taxation and revenue shall report to the appropriate interim legislative committee no later than October 1 of each year regarding estimates of the amount of state personal income taxes withheld from the military income of Native American veterans domiciled on their respective tribal lands, the number of Native American veterans or their survivors affected by such withholding of state personal income taxes, total expenditures from the fund for the previous fiscal year and the anticipated appropriations to the fund needed to pay for settlements to be entered into for the next fiscal year.

History: Laws 2008, ch. 89, § 4; 2009, ch. 289, § 4.

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.

7-3-2. Definitions.

As used in the Withholding Tax Act:

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

B. "employee" means either an individual domiciled within the state who performs services either within or without the state for an employer or, to the extent permitted by law, an individual domiciled outside of the state who performs services within the state for an employer;

C. "employer" means a person or an officer, agent or employee of that person having control of the payment of wages, doing business in or deriving income from sources within the state for whom an individual performs or performed any service as the employee of that person, except that if the person for whom the individual performs or performed the services does not have control over the payment of the wages for such services, "employer" means the person having control of the payment of wages;

D. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended;

E. "payee" means an individual to whom a payor is making a pension or annuity payment;

F. "payor" means a person making payment of a pension or annuity to an individual domiciled in New Mexico;

G. "payroll period" means a period for which a payment of wages is made to an employee by the employee's employer;

H. "person" means an individual, a club, a company, a cooperative association, a corporation, an estate, a firm, a joint venture, a partnership, a receiver, a syndicate, a trust or other association, a limited liability company, a limited liability partnership or a gas, water or electric utility owned or operated by a county or municipality and, to the extent permitted by law, a federal, state or other governmental unit or subdivision or an agency, a department or an instrumentality thereof;

I. "wagerer" means any person who receives winnings that are subject to withholding;

J. "wages" means remuneration in cash or other form for services performed by an employee for an employer;

K. "winnings that are subject to withholding" means "winnings which are subject to withholding" as that term is defined in Section 3402 of the Internal Revenue Code;

L. "withholdee" means:

(1) an individual domiciled in New Mexico receiving a pension or annuity from which an amount of tax is deducted and withheld pursuant to the Withholding Tax Act;

(2) an employee; and

(3) a wagerer; and

M. "withholder" means a payor, an employer or any person required to deduct and withhold from winnings that are subject to withholding.

History: 1978 Comp., § 7-3-2, enacted by Laws 1990, ch. 64, § 1; 1996, ch. 16, § 3; 1999, ch. 14, § 1; 2000, ch. 33, § 3; 2002, ch. 9, § 1; 2010, ch. 53, § 3.

7-3-3. Tax withheld at source.

A. Every employer who deducts and withholds a portion of an employee's wages for payment of income tax under the provisions of the Internal Revenue Code shall deduct and withhold an amount for each payroll period computed from a state withholding tax table furnished by the department; provided:

(1) if the employee instructs the employer to withhold a greater amount, the employer shall deduct and withhold the greater amount;

(2) if the employee is not a resident of New Mexico and is to perform services in New Mexico for fifteen or fewer days cumulatively during the calendar year, the

employer is not required to deduct and withhold an amount from that employee's wages; and

(3) if the aggregate monthly amount withheld under this section would be less than one dollar ($1.00) for an employee, the employer shall not be required to deduct and withhold wages in regard to that employee.

B. The department shall devise and furnish a state withholding tax table based on statutes made and provided to employers required to withhold amounts under this section. This table shall be devised to provide for a yearly aggregate withholding that will approximate the state income tax liability of average taxpayers in each exemption category.

C. If an individual requests in writing that the payor deduct and withhold an amount from the amount of the pension or annuity due the individual, the payor making payment of a pension or annuity to an individual domiciled in New Mexico shall deduct and withhold the amount requested to be deducted and withheld, provided that the payor is not required to deduct and withhold any amount less than ten dollars ($10.00) per payment. The written request shall include the payee's name, current address, taxpayer identification number and, if applicable, the contract, policy or account number to which the request applies.

D. Every person in New Mexico who is required by the provisions of the Internal Revenue Code to deduct and withhold federal tax from payment of winnings that are subject to withholding shall deduct and withhold from such payment a tax in an amount equal to six percent of the winnings, except that an Indian nation, tribe or pueblo or an agency, department, subdivision or instrumentality thereof is not required to deduct or withhold from payments made to members or spouses of members of that Indian nation, tribe or pueblo.

History: 1953 Comp., § 72-15-51, enacted by Laws 1961, ch. 243, § 3; 1990, ch. 64, § 2; 1995, ch. 11, § 9; 1996, ch. 16, § 4.

7-3-4. Deductions considered taxes.

Amounts deducted under the provisions of the Withholding Tax Act shall be a collected tax. No employee shall have a right of action against the employer for any amount deducted and withheld from the employee's wages. No individual who has instructed a payor to deduct and withhold an amount from the pension or annuity due that individual shall have a right of action against a payor for any amount deducted and withheld pursuant to the instruction. No wagerer who receives winnings that are subject to withholding shall have a right of action against the person who deducted and withheld an amount from the wagerer's winnings for the amount deducted and withheld.

History: 1953 Comp., § 72-15-52, enacted by Laws 1961, ch. 243, § 4; 1971, ch. 27, § 1; 1990, ch. 64, § 3; 1996, ch. 16, § 5.

7-3-5. Withholder liable for amounts deducted and withheld; exceptions.

Every withholder shall be liable for amounts required to be deducted and withheld by the Withholding Tax Act regardless of whether the amounts were in fact deducted and withheld, except that:

A. if the withholder fails to deduct and withhold the required amounts and if the tax against which the required amounts would have been credited is paid, the withholder shall not be liable for those amounts not deducted and withheld; or

B. if the withholder's failure to deduct and withhold the required amounts was due to reasonable cause, the withholder shall not be liable for amounts not deducted and withheld.

History: 1953 Comp., § 72-15-53, enacted by Laws 1961, ch. 243, § 5; 1990, ch. 64, § 4; 1999, ch. 14, § 2; 2010, ch. 53, § 4.

7-3-6. Date payment due.

Taxes withheld under the provisions of the Withholding Tax Act must be paid on or before the twenty-fifth day of the month following the month when the taxes were required to be withheld.

History: 1978 Comp., § 7-3-6, enacted by Laws 1969, ch. 25, § 1; 2000, ch. 33, § 4; 2010, ch. 53, § 5.

7-3-7. Statements of withholding.

A. Every employer shall file with the department an annual statement of withholding for each employee. The statement shall be in a form prescribed by the department, except employers with twenty-five or more employees shall file statements using a department-approved electronic medium. The statement shall be filed with the department on or before the last day of January 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 payer shall file with the department 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 payer. The statement shall be in a form prescribed by the department, except employers with twenty-five or more employees shall file statements using a department-approved electronic medium. The statement shall be in a form prescribed by the department and shall be filed with the department on or before the last day of January of the year following that for which the statement is made. It shall include the total amount of pension or annuity paid to the individual and the amount of tax withheld for the calendar year.

C. Every person required to deduct and withhold tax from a payment of winnings that are subject to withholding shall file with the department an annual statement of withholding for each wagerer from whom some portion of a payment of winnings has been deducted and withheld by that person. The statement shall be filed using a department-approved electronic medium and shall be filed with the department on or before the last day of January of the year following that for which the statement is made. It shall include the total amount of winnings paid to the individual and the amount of tax withheld for the calendar year. The department may also require any person who is required to submit an information return to the internal revenue service regarding the winnings of another person to submit copies of the return to the department.

History: 1953 Comp., § 72-15-56, enacted by Laws 1961, ch. 243, § 8; 1990, ch. 64, § 5; 1996, ch. 16, § 6; 2010, ch. 53, § 6; 2018, ch. 59, § 1.

7-3-8. Annual statement of withholding and information regarding state assistance for low-income New Mexicans to be provided to withholdees.

On or before January 31 of the year following that for which the annual statement of withholding is made pursuant to Section 7-3-7 NMSA 1978, a withholder shall provide to a withholdee:

A. a copy of the annual statement of withholding; and

B. information regarding state assistance for low-income New Mexicans, including information regarding refundable tax rebates and credits for low-income filers provided by the state, such as the low-income comprehensive tax rebate and the working families tax credit. The information shall be provided in English and in Spanish on a form and in a manner required by the department, and the department shall make the information available on the department's website.

History: Laws 1999, ch. 205, § 1; 2003, ch. 2, § 7; 2019, ch. 270, § 14; 2021, ch. 116, § 3.

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.

7-3-10. Voluntary submission to act.

Any employee whose participation under the Withholding Tax Act is not mandatory may subject himself or herself to its provisions with the consent of the employer.

History: 1953 Comp., § 72-15-66, enacted by Laws 1961, ch. 243, § 18; 1990, ch. 64, § 8.

7-3-11. Acts to be performed by agents; liability of third parties.

A. When a fiduciary, agent or other person has the control, receipt, custody or disposal of or pays the wages of an employee or group of employees employed by one or more employers and the fiduciary, agent or other person has been designated by the United States secretary of the treasury to perform such acts as are required of employers for federal withholding purposes under the Internal Revenue Code, the fiduciary, agent or other person shall perform the acts required of employers by the provisions of the Withholding Tax Act. All provisions of Chapter 7 NMSA 1978 applicable in respect to an employer shall be applicable to a fiduciary, agent or other person so designated, but the employer, unless provided otherwise by law, for whom the fiduciary, agent or other person acts shall remain subject to the provisions of Chapter 7 NMSA 1978 applicable in respect to employers.

B. For purposes of the Withholding Tax Act, if a lender, surety or other person who is not an employer under the Withholding Tax Act with respect to an employee or group of employees, pays wages directly to the employee or group of employees employed by one or more employers or to an agent on behalf of the employee or employees, the lender, surety or other person shall be liable in its own person and estate to the state of New Mexico in a sum equal to the taxes required to be deducted and withheld from those wages by the employer. Any amount paid pursuant to this subsection shall be credited against the liability of the employer.

History: 1978 Comp., § 7-3-11, enacted by Laws 1990, ch. 64, § 9.

7-3-12. Repealed.

History: Laws 1999, ch. 14, § 3; 2000, ch. 33, § 5; 2003, ch. 86, § 3; 2005, ch. 185 § 1; repealed by Laws 2010, ch. 53, § 18.

7-3-13. Withholding information return required; penalty.

A. An employer that has more than fifty employees and is not required to file an unemployment insurance tax form with the workforce solutions department or a payor shall file quarterly a withholding information return with the department on or before the last day of the month following the close of the calendar quarter.

B. The quarterly withholding information return required by this section shall contain all information required by the department, including:

(1) each employee's or payee's social security number;

(2) each employee's or payee's name;

(3) each employee's or payee's gross wages, pensions or annuity payments;

(4) each employee's or payee's state income tax withheld; and

(5) the workers' compensation fees due on behalf of each employee or payee.

C. Each quarterly withholding information return shall be filed with the department using a department-approved electronic medium.

D. Any employer or payor required to file the quarterly withholding information return who fails to do so by the due date or to file the return in accordance with Subsection C of this section is subject to a penalty in the amount of fifty dollars ($50.00).

History: Laws 2010, ch. 53, § 7.

7-3-14. Composite returns.

A. A pass-through entity may file a composite income tax return on behalf of electing nonresident members reporting and paying income tax at the highest marginal rate provided in Section 7-2A-5 NMSA 1978 on the members' pro rata or distributive shares of income of the pass-through entity from doing business in, or deriving income from sources within, this state.

B. A nonresident member whose only source of income within a state is from one or more pass-through entities may elect to be included in a composite income tax return filed pursuant to this section.

C. A nonresident member that has been included in a composite income tax return may file an individual income tax return and shall receive credit for tax paid on the member's behalf by the pass-through entity.

D. As used in this section:

(1) "pass-through entity" means a corporation that for the applicable tax year is treated as an S corporation pursuant to Section 1362(a) of the Internal Revenue

Code and any entity with one or more members that is not taxed as a corporation pursuant to Subchapter C of the Internal Revenue Code;

(2) "member" means a shareholder of an S corporation; a partner in a general partnership, a limited partnership or a limited liability partnership; a member of a limited liability company; or a beneficiary of a trust; and

(3) "nonresident" means an individual who is not a resident of or domiciled in the state, a business entity that does not have its commercial domicile in the state or a trust not organized in the state.

History: Laws 2021, ch. 83, § 5.

ARTICLE 3A
Oil and Gas Proceeds and Pass-Through Entity Withholding Tax

7-3A-1. Short title.

Chapter 7, Article 3A NMSA 1978 may be referred to as the "Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act".

History: 1978 Comp., § 7-3A-1, enacted by Laws 2003, ch. 86, § 4; 2010, ch. 53, § 8.

7-3A-2. Definitions.

As used in the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act:

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

B. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended;

C. "net income" means, for any pass-through entity:

(1) in the case of an owner that is taxed as a corporation for federal income tax purposes, "net income" as defined in the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978]; and

(2) for all other owners, "net income" as defined in the Income Tax Act [Chapter 7, Article 2 NMSA 1978];

D. "oil and gas" means crude oil, natural gas, liquid hydrocarbons or any combination thereof, or carbon dioxide;

E. "oil and gas proceeds" means any amount derived from oil and gas production from any well located in New Mexico and payable as royalty interest, overriding royalty interest, production payment interest, working interest or any other obligation expressed as a right to a specified interest in the cash proceeds received from the sale of oil and gas production or in the cash value of that production, subject to all taxes withheld therefrom pursuant to law; "oil and gas proceeds" excludes "net profits interest" and other types of interest the extent of which cannot be determined with reference to a specified share of the oil and gas production and excludes any amounts deducted by the remitter from payments to interest owners or paid by interest owners to the remitter that are for expenses related to the production from the well or cessation of production from the well for which the interest owner is liable;

F. "owner" means a partner in a partnership not taxed as a corporation for federal income tax purposes for the taxable year, a shareholder of an S corporation or of a corporation other than an S corporation that is not taxed as a corporation for federal income tax purposes for the taxable year, a member of a limited liability company or any similar person holding an ownership interest in any pass-through entity. "Owner" also means a performing artist to whom payments are due from a personal services business;

G. "partnership" means a combination of persons, including a partnership, joint venture, common trust fund, association, pool or working agreement, or any other combination of persons that is treated as a partnership for federal income tax purposes;

H. "pass-through entity" means a personal services business or any other business association other than:

(1) a sole proprietorship;

(2) an estate or trust that does not distribute income to beneficiaries;

(3) a corporation, limited liability company, partnership or other entity not a sole proprietorship taxed as a corporation for federal income tax purposes for the taxable year;

(4) a partnership that is organized as an investment partnership in which the partners' income is derived solely from interest, dividends and sales of securities;

(5) a single member limited liability company that is treated as a disregarded entity for federal income tax purposes; or

(6) a publicly traded partnership as defined in Subsection (b) of Section 7704 of the Internal Revenue Code;

I. "person" means an individual, club, company, cooperative association, corporation, estate, firm, joint venture, partnership, receiver, syndicate, trust or other association, limited liability company, limited liability partnership or gas, water or electric utility owned or operated by a county or municipality and, to the extent permitted by law, a federal, state or other governmental unit or subdivision or an agency, a department or an instrumentality thereof;

J. "personal services business" means a business organization that receives payments for the services of a performing artist for purposes of the film production tax credit;

K. "remittee" means a person that is entitled to payment of oil and gas proceeds by a remitter; and

L. "remitter" means a person that pays oil and gas proceeds to any remittee.

History: 1978 Comp., § 7-3A-2, enacted by Laws 2003, ch. 86, § 5; 2010, ch. 53, § 9; 2011, ch. 177, § 5; 2012, ch. 40, § 1.

7-3A-3. Withholding from oil and gas proceeds and net income.

A. Except as otherwise provided in this section, a remitter shall deduct and withhold from each payment of oil and gas proceeds being made to a remittee for each quarter an amount equal to the rate specified in Subsection D of this section multiplied by the amount prior to withholding that otherwise would have been payable to the remittee.

B. Except as otherwise provided in this section, a pass-through entity shall deduct and withhold from each owner's allocable share of net income for that calendar year an amount equal to the rate specified in Subsection D of this section multiplied by the owner's allocable share of that net income, reduced, but not below zero, by the amount required to be withheld from the owner's allocable share of net income under Subsection A of this section.

C. The obligation to deduct and withhold from payments or allocable net income as provided in Subsections A and B of this section does not apply to payments that are made to:

(1) a corporation whose principal place of business is in New Mexico or an individual who is a resident of New Mexico;

(2) remittees with a New Mexico address as shown on internal revenue service form 1099-Misc or a successor form or on a *pro forma* 1099-Misc or a successor form for those entities that do not receive an internal revenue service form 1099-Misc;

(3) the United States, this state or any agency, instrumentality or political subdivision of either;

(4) any federally recognized Indian nation, tribe or pueblo or any agency, instrumentality or political subdivision thereof; or

(5) organizations that have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the Internal Revenue Code. However, the obligation to deduct and withhold from payments of allocable net income to organizations identified in this paragraph applies if that income constitutes unrelated business income.

D. Except as provided in Subsection H of this section, the rate of withholding shall be set by a department directive; provided that the rate may not exceed the higher of the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the taxable year or the maximum bracket rate set by Section 7-2A-5 NMSA 1978 for the taxable year; and provided further that remitters shall be given ninety days' notice of a change in the rate.

E. If a remitter receives oil and gas proceeds from which an amount has been deducted and withheld pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act or a pass-through entity has deducted and withheld an amount pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act from the allocable share of net income of an owner that is also a pass-through entity, the remitter or payee pass-through entity may take credit for that amount in determining the amount the remitter or payee pass-through entity must withhold and deduct pursuant to this section.

F. If the amount to be withheld from all payments to a remittee in a calendar quarter has not exceeded thirty dollars ($30.00) and a payment to a remittee is less than ten dollars ($10.00), no withholding is required. If the amount to be withheld from an owner's allocable share of net income in any calendar year is less than one hundred dollars ($100), no withholding is required.

G. Except as provided in Subsection H of this section, at the option of a remitter or pass-through entity, a remitter or pass-through entity may agree with a remittee or an owner that the remittee or owner pay the amount that the remitter or pass-through entity would have been required to withhold and remit to the department on behalf of the remittee or owner pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. The payments by the remittee or owner shall be remitted on the dates set forth in Section 7-3A-6 NMSA 1978 on forms and in the manner required by the department.

H. Excluding wages, a personal services business shall deduct and withhold an amount equal to the owner's allocable share of net income multiplied by the highest rate for single individuals provided in Section 7-2-7 NMSA 1978.

I. If the remittee or owner is an insurance company and falls under the provisions of Section 59A-6-6 NMSA 1978, no withholding is required pursuant to this section.

History: 1978 Comp., § 7-3A-3, enacted by Laws 2003, ch. 86, § 6; 2010, ch. 53, § 10; 2011, ch. 177, § 6; 2012, ch. 40, § 2.

7-3A-4. Deductions considered taxes.

Amounts deducted under the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act are a collected tax. A remittee who receives payment of oil and gas proceeds or an owner with an allocable share of net income does not have a right of action against the remitter or pass-through entity for the amount deducted and withheld from the oil and gas proceeds or an allocable share of net income.

History: 1978 Comp., § 7-3A-4, enacted by Laws 2003, ch. 86, § 7; 2010, ch. 53, § 11; 2012, ch. 40, § 3.

7-3A-5. Remitters and pass-through entities liable for amounts deducted and withheld; exceptions.

A. Every remitter or pass-through entity is liable for:

(1) amounts required to be deducted and withheld by the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act regardless of whether the amounts were in fact deducted and withheld; and

(2) for the amounts that a remittee or an owner has agreed to remit pursuant to Subsection G of Section 7-3A-3 NMSA 1978, once the department has notified the remitter or pass-through entity that the remittee or owner has failed to remit.

B. A remitter or pass-through entity is not liable for amounts required to be deducted and withheld by the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act but not deducted or withheld if:

(1) the remitter or pass-through entity fails to deduct and withhold the required amounts and if the tax against which the required amounts would have been credited is paid; or

(2) the remitter's or pass-through entity's failure to deduct and withhold the required amounts is due to reasonable cause.

History: 1978 Comp., § 7-3A-5, enacted by Laws 2003, ch. 86, § 8; 2010, ch. 53, § 12; 2012, ch. 40, § 4.

7-3A-6. Date payment due; form.

A. Amounts withheld under the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act by a remitter are due on or before the twenty-fifth day of the month following the end of the calendar quarter when the taxes were required to be withheld.

B. Amounts withheld under the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act by a pass-through entity are due on or before the due date of the federal tax return required for the pass-through entity.

C. The amount withheld shall be remitted on a form and in a manner required by the department, provided that amounts withheld and remitted from oil and gas proceeds are kept distinct from every other tax or withheld amount.

History: 1978 Comp., § 7-3A-6, enacted by Laws 2003, ch. 86, § 9; 2010, ch. 53, § 13; 2012, ch. 40, § 5.

7-3A-7. Statements of withholding.

A. Every remitter shall:

(1) file an annual statement of withholding for each remittee that:

(a) is in electronic format and includes a form 1099-Misc or a successor form or on a pro forma 1099-Misc or a successor form for those entities that do not receive an internal revenue service form 1099-Misc;

(b) is filed with the department on or before the last day of February of the year following that for which the statement is made; and

(c) includes the total oil and gas proceeds paid to the remittee and the total amount of tax withheld for the calendar year; and

(2) provide a copy of the annual statement of withholding to the remittee on or before February 15 of the year following the year for which the statement is made.

B. The department shall develop and adopt rules regarding the filing of a report pursuant to this section and the attachment of form 1099-Misc or a successor form or a pro forma 1099-Misc or a successor form, if the remitter is not able to file those forms in an electronic format.

C. Every remitter shall file an electronic report of the remittees who have certified that the remittee is responsible for filing the remittee's own oil and gas proceeds tax report and for paying the remittee's oil and gas proceeds tax liability due.

D. Every pass-through entity doing business in New Mexico shall:

(1) file an annual information return with the department that:

(a) is filed on or before: 1) the due date of the entity's federal return for the taxable year; or 2) if the entity's taxable year is a calendar year, if the entity is approved by the department to use electronic media for filing and if the entity uses electronic media to file the annual information return, the end of the month in which the entity's federal return is due;

(b) is signed by the business manager or one of the owners of the pass-through entity; and

(c) contains all information required by the department, including the pass-through entity's gross income; the pass-through entity's net income; the amount of each owner's allocable share of the pass-through entity's net income; and the name, address and tax identification number of each owner entitled to an allocable share of net income; and

(2) provide to each of its owners sufficient information to enable the owner to comply with the provisions of the Income Tax Act [Chapter 7, Article 2 NMSA 1978] and the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] with respect to the owner's allocable share of net income.

E. The department shall compile each year the annual statements of withholding received from the remitters and the annual information returns received from pass-through entities and compare the compilations with the records of corporations, individuals, estates or trusts filing income tax returns.

History: 1978 Comp., § 7-3A-7, enacted by Laws 2003, ch. 86, § 10; 2010, ch. 53, § 14; 2012, ch. 40, § 6; 2015 (1st S.S.), ch. 2, § 5.

7-3A-8. Withheld amounts credited against income tax.

The entire amount of oil and gas proceeds and an allocable share of net income upon which the tax was deducted and withheld or upon which payments were made by owners in lieu of withholding shall be included in the base income of the remittee for purposes of the Income Tax Act [Chapter 7, Article 2 NMSA 1978] and the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978]. The amount of tax deducted and withheld or payments made by owners in lieu of withholding pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act during the taxable year shall be credited against any income tax or corporate income tax due from the remittee or owner.

History: 1978 Comp., § 7-3A-8, enacted by Laws 2003, ch. 86, § 11; 2010, ch. 53, § 15; 2012, ch. 40, § 7.

7-3A-9. Interpretation of act; administration and enforcement of act; report to legislature.

A. The department shall interpret the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

B. The department shall administer and enforce the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

C. No later than December 1 of each year, the department shall submit a report to the legislature showing:

(1) the total amount of taxes withheld by remitters and paid to the department during the previous calendar year pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act; and

(2) the amount of taxes withheld by remitters pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act that were credited against income taxes or corporate income taxes by remittees during the previous calendar year.

History: 1978 Comp., § 7-3A-9, enacted by Laws 2003, ch. 86, § 12; 2010, ch. 53, § 16; 2011, ch. 139, § 1.

7-3A-10. Election of entity-level tax; credit.

A. A pass-through entity may elect on an annual basis to pay a tax at the entity level for a taxable year. The tax that may elected to be paid pursuant to this section may be referred to as the "entity-level tax".

B. A pass-through entity electing to pay the entity-level tax shall make the election by filing a complete entity-level tax return with the department in the form and manner as prescribed by the department. The election shall be binding on all owners of the electing pass-through entity. The return shall be filed no later than the original or extended due date of the entity's federal partnership or S corporation return for the taxable year. Payment of the entity-level tax shall accompany or precede the filing of the return.

C. The entity-level tax is imposed on the distributed net income of the pass-through entity for the taxable year. The rate of entity-level tax is equal to the higher of the maximum tax rate imposed pursuant to Section 7-2-7 NMSA 1978 or the maximum tax rate imposed pursuant to Section 7-2A-5 NMSA 1978 for the taxable year.

D. Distributed net income of a pass-through entity shall equal the amount allocated and apportioned to New Mexico pursuant to the Uniform Division of Income for Tax Purposes Act [Chapter 7, Article 4 NMSA 1978] from the following:

(1) the total income of the pass-through entity properly reported for federal income tax purposes plus, for partnerships, the amount of guaranteed payments other than premiums for health insurance paid by the partnership on behalf of a partner, less the net income or guaranteed payments properly allocated or made to:

(a) the United States, this state or a political subdivision of either;

(b) a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico, or any political subdivision thereof;

(c) an organization that has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code;

(d) a corporate partner that would properly include the income in the partner's New Mexico tax return as part of the partner's unitary business income; or

(e) a pass-through entity that is an owner of the electing pass-through entity; and

(2) less the amount of net capital gains that may be deducted pursuant to Section 7-2-34 NMSA 1978 and is properly allocated to owners who are subject to tax pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978].

E. A net operating loss shall not be included in the distributed net income calculated pursuant to Subsection D of this section but may be carried forward until exhausted.

F. Pass-through entities electing to pay the entity-level tax shall make estimated payments of the tax on forms and in the manner as determined by the department. Amounts remitted pursuant to Subsection B of Section 7-3A-3 NMSA 1978 by entities electing to pay the entity-level tax shall be deemed payments of estimated entity-level tax.

G. If, for a taxable year, the sum of the estimated payments of tax made by a pass-through entity pursuant to Subsection F of this section exceeds the amount of entity-level tax owed, the pass-through entity may apply for a refund of the difference. If, for a taxable year, the entity-level tax owed by a pass-through entity exceeds the sum of the estimated payments made by the pass-through entity, the pass-through entity shall remit the difference on or before the date the pass-through entity's entity-level tax is due.

H. An owner of a pass-through entity electing to pay the tax imposed under this section may be allowed a tax credit in an amount equal to the owner's share of the tax; provided that the pass-through entity paid the tax and furnished sufficient information on the pass-through entity's tax return to identify that owner. If the amount of the credit exceeds the amount of the owner's tax liabilities pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978], the excess shall be refunded to the owner.

I. As used in this section:

(1) "guaranteed payments" means the guaranteed payments described in Section 707(c) of the Internal Revenue Code, as that section may be amended or renumbered;

(2) "net capital gain" means "net capital gain" as defined in Section 1222(11) of the Internal Revenue Code;

(3) "net operating loss" means "net operating loss" as defined in Section 7-2-2 NMSA 1978; and

(4) "pass-through entity" means a partnership or corporation that elects to pass income, losses, deductions and credits through to the entity's owners for federal tax purposes.

History: Laws 2022, ch. 46, § 3 2023, ch. 159, § 3.

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.

7-4-2. Definitions.

As used in the Uniform Division of Income for Tax Purposes Act:

A. "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and income from the disposition or liquidation of a business or segment of a business. "Business income" includes income from tangible and intangible property if the acquisition, management or disposition of the property constitute integral parts of the taxpayer's regular trade or business operations;

B. "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed;

C. "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services;

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

E. "nonbusiness income" means all income other than business income;

F. "sales" means all gross receipts of the taxpayer not allocated under Sections 7-4-5 through 7-4-9 NMSA 1978 of the Uniform Division of Income for Tax Purposes Act;

G. "secretary" means the secretary of taxation and revenue or a division director delegated by the secretary; and

H. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

History: 1953 Comp., § 72-15A-17, enacted by Laws 1965, ch. 203, § 2; 1986, ch. 20, § 55; 1999, ch. 47, § 7.

7-4-3. Allocation and apportionment of income in general.

Except as otherwise provided by law any taxpayer having income which is taxable both within and without this state, other than the rendering of purely personal services by an individual shall allocate and apportion his net income as provided in the Uniform Division of Income for Tax Purposes Act.

History: 1953 Comp., § 72-15A-18, enacted by Laws 1965, ch. 203, § 3; 1981, ch. 37, § 48.

7-4-4. When taxable in another state.

For purposes of allocation and apportionment of income under the Uniform Division of Income for Tax Purposes Act, a taxpayer is taxable in another state if:

A. in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

B. that state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether the state does or does not.

History: 1953 Comp., § 72-15A-19, enacted by Laws 1965, ch. 203, § 4.

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.

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.

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.

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.

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.

7-4-10. Apportionment of business income.

A. Except as provided in Subsections B and C of this section, all business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three.

B. If eighty percent or more of the New Mexico numerators of the property and payroll factors for a filing group, or for a taxpayer that is not a member of a filing group, are employed in manufacturing or operating a computer processing facility, the filing group or the taxpayer may elect to have business income apportioned to this state by multiplying the income by the sales factor for the taxable year.

C. If a filing group, or a taxpayer that is not a member of a filing group, has a headquarters operation in New Mexico, the filing group or the taxpayer may elect to have business income apportioned to this state by multiplying the income by the sales factor for the taxable year.

D. To elect the method of apportionment provided by Subsection B or C of this section, the taxpayer shall notify the department of the election, in writing, no later than the date on which the taxpayer files the return for the first taxable year to which the election will apply. The election shall apply as follows:

(1) if the election is made for taxable years beginning prior to January 1, 2020, to the taxable year in which the election is made and to each taxable year thereafter for three years, or until the taxable year ending prior to January 1, 2020, whichever is earlier;

(2) if the election is made for a taxable year beginning on or after January 1, 2020, to the taxable year in which the election is made and to each taxable year thereafter until the taxpayer notifies the department, in writing, that the election is terminated, except that the taxpayer shall not terminate the election until the method of apportioning business income provided by Subsection B or C of this section has been used by the taxpayer for at least three consecutive taxable years, including a total of at least thirty-six calendar months; and

(3) if the election is made by a qualifying filing group, the election shall apply to the members of the filing group properly included pursuant to Section 7-2A-8.3 NMSA 1978.

E. For purposes of this section:

(1) "filing group" means "filing group" as that term is defined in the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978];

(2) "headquarters operation" means:

(a) the center of operations of a business: 1) where corporate staff employees are physically employed; 2) where the centralized functions are primarily performed, including administrative, planning, managerial, human resources, purchasing, information technology and accounting, but not including operating a call center; 3) the function and purpose of which is to manage and direct most aspects and functions of the business operations within a subdivided area of the United States; 4) from which final authority over regional or subregional offices, operating facilities and any other offices of the business are issued; and 5) including national and regional headquarters if the national headquarters is subordinate only to the ownership of the business or its representatives and the regional headquarters is subordinate to the national headquarters; or

(b) the center of operations of a business: 1) the function and purpose of which is to manage and direct most aspects of one or more centralized functions; and 2) from which final authority over one or more centralized functions is issued;

(3) "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include:

(a) construction;

(b) farming;

(c) power generation; provided that "manufacturing" includes electricity generation at a facility that does not require location approval and a certificate of convenience and necessity prior to commencing construction or operation of the facility pursuant to the Public Utility Act [Chapter 62, Articles 1 to 13 of NMSA 1978];

(d) processing natural resources, including hydrocarbons; or

(e) processing or preparation of meals for immediate consumption; and

(4) "operating a computer processing facility" means managing the necessary and ancillary activities for the operation of a facility primarily used to process data or information, but does not include managing the operation of facilities that are predominantly used to support sales of tangible property or the provision of banking, financial or professional services.

History: 1978 Comp., § 7-4-10, enacted by Laws 1993, ch. 153, § 1; 2001, ch. 57, § 1; 2001, ch. 284, § 3; 2001, ch. 337, § 1; 2002, ch. 37, § 6; 2009, ch. 147, § 1; 2013, ch. 160, § 7; 2015 (1st S.S.), ch. 2, § 6; 2019, ch. 270, § 21; 2020, ch. 80, § 3; 2024, ch. 67, § 31.

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.

7-4-12. Valuation of property for inclusion in property factor.

Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rate is the annual rental paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

History: 1953 Comp., § 72-15A-27, enacted by Laws 1965, ch. 203, § 12.

7-4-13. Determination of average value of property for inclusion in property factor.

The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the department may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

History: 1953 Comp., § 72-15A-28, enacted by Laws 1965, ch. 203, § 13; 1986, ch. 20, § 56.

7-4-14. Payroll factor for apportionment of business income.

The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

History: 1953 Comp., § 72-15A-29, enacted by Laws 1965, ch. 203, § 14.

7-4-15. Determination of compensation for inclusion in payroll factor.

Compensation is paid in this state if:

A. the individual's service is performed entirely within the state; or

B. the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

C. some of the service is performed in the state and:

(1) the base of operations, or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

History: 1953 Comp., § 72-15A-30, enacted by Laws 1965, ch. 203, § 15.

7-4-16. Sales factor for apportionment of business income.

The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

History: 1953 Comp., § 72-15A-31, enacted by Laws 1965, ch. 203, § 16.

7-4-17. Determination of sales in this state of tangible personal property for inclusion in sales factor.

Sales of tangible personal property are in this state if:

A. the property is delivered or shipped to a purchaser other than the United States government within this state regardless of the f. o. b. point or other conditions of the sale; or

B. the property is shipped from an office, store, warehouse, factory or other place of storage in this state and:

(1) the purchaser is the United States government; or

(2) the taxpayer:

(a) is not taxable in the state of the purchaser; and

(b) did not make an election for apportionment of business income pursuant to Subsection B or C of Section 7-4-10 NMSA 1978.

History: 1953 Comp., § 72-15A-32, enacted by Laws 1965, ch. 203, § 17; 2013, ch. 160, § 8; 2015 (1st S.S.), ch. 2, § 7.

7-4-18. Determination of sales in this state of other than tangible personal property for inclusion in sales factor.

A. Sales, other than sales described in Section 7-4-17 NMSA 1978, are in this state:

(1) in the case of sale, rental, lease or license of real property, if and to the extent the real property is located in this state;

(2) in the case of rental, lease or license of tangible personal property, if and to the extent the tangible personal property is located in this state;

(3) in the case of sale of a service, if and to the extent the service is delivered to a location in this state; and

(4) in the case of sale, rental, lease or license of intangible property, if and to the extent the intangible property is used in this state.

B. If the state or states of assignment under Subsection A of this section cannot be determined, the state or states of assignment shall be reasonably approximated.

C. If the taxpayer is not taxable in a state to which a sale is assigned pursuant to Subsection A of this section or if the state of assignment cannot be determined or reasonably approximated pursuant to Subsection B of this section, that sale shall be excluded from the numerator and denominator of the sales factor.

D. The department may promulgate rules as necessary or appropriate to carry out the purposes of this section.

History: 1953 Comp., § 72-15A-33, enacted by Laws 1965, ch. 203, § 18; 2019, ch. 270, § 22.

7-4-19. Equitable adjustment of standard allocation or apportionment.

If the allocation and apportionment provisions of the Uniform Division of Income for Tax Purposes Act do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

A. separate accounting;

B. the exclusion of any one or more of the factors;

C. the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

D. the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

History: 1953 Comp., § 72-15A-34, enacted by Laws 1965, ch. 203, § 19; 1977, ch. 249, § 46; 1986, ch. 20, § 57.

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.

7-4-21. Construction of act.

The Uniform Division of Income for Tax Purposes Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: 1953 Comp., § 72-15A-36, enacted by Laws 1965, ch. 203, § 21.

ARTICLE 5
Multistate Tax Compact

7-5-1. Compact enacted and entered into.

The "Multistate Tax Compact" is enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

"MULTISTATE TAX COMPACT

Article I. Purposes.

The purposes of this compact are to:

1. facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes;

2. promote uniformity or compatibility in significant components of tax systems;

3. facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration; and

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, that 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 that 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 that is required by state or local law to be separately stated from the sales price by the seller, or that 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, that: (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; and

9. "tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax that 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 of this compact;

Article III. Elements of Income Tax Laws.

1. Each party state or any subdivision thereof that 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.

2. 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) that owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipe line, 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; and

(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 that 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 the taxpayer's 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 the taxpayer's income from activities subject to this article, the taxpayer may elect to allocate and apportion the taxpayer's 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, the taxpayer 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 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 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 the purchaser 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 the attorney general's 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 chair, a vice chair and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix the executive director's 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 chair, vice chair, 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; and

(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) of this article, 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; and

(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, the person may be required to attend for such purpose at any time and place fixed by the commission within the state of which the person 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 of this compact, 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 of this compact.

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 of this compact, 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 the taxpayer 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 the taxpayer 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 the member 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 the member is required on account of the member's service to forego the regular compensation attaching to the member's 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 1 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 of this compact may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to Article VI 3 of this compact 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; and

(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; 2021, ch. 69, § 1.

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.

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.

7-5-6. Local government advisors.

The governor, after consultation with representatives of local governments, shall appoint three persons who are representative of subdivisions affected or likely to be affected by the Multistate Tax Compact. The member of the commission representing New Mexico, and any alternate designated by him, shall consult regularly with these appointees, in accordance with Article VI 1(b) of the compact.

History: 1953 Comp., § 72-15A-42, enacted by Laws 1967, ch. 56, § 6.

7-5-7. Interaudits provisions made applicable.

Article VIII of the Multistate Tax Compact relating to interaudits shall be in force in and with respect to New Mexico.

History: 1953 Comp., § 72-15A-44, enacted by Laws 1967, ch. 56, § 8.

ARTICLE 5A
Streamlined Sales and Use Tax Administration

7-5A-1. Short title.

This act may be cited as the "Streamlined Sales and Use Tax Administration Act".

History: Laws 2005, ch. 225, § 1.

7-5A-2. Legislative findings.

The legislature finds that a simplified sales tax and use tax system that treats transactions in a competitively neutral manner will strengthen and preserve sales taxes and use taxes as vital revenue sources for this state and its local governments and will help preserve the fiscal sovereignty of this state. The legislature also finds that such a system will substantially reduce the administrative burdens of collection for sellers. While states have the sovereign right to set their own tax policies, states should cooperatively develop a streamlined sales tax and use tax system that is simplified, uniform and fair.

History: Laws 2005, ch. 225, § 2.

7-5A-3. Definitions.

As used in the Streamlined Sales and Use Tax Administration Act:

A. "agreement" means the streamlined sales and use tax agreement;

B. "certified automated system" means software certified jointly by member states to:

(1) calculate the sales tax imposed by each jurisdiction on a transaction;

(2) determine the amount of tax to remit to the appropriate state; and

(3) maintain a record of the transaction;

C. "certified service provider" means an agent that performs all of the sales tax functions of a seller and that is certified jointly by member states to perform all of the sales tax functions of the seller;

D. "member state" means a state of the United States that enters into the agreement with another state and the District of Columbia if it enters into the agreement with another state;

E. "person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation and any other legal entity;

F. "sales tax" means the gross receipts tax levied pursuant to the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] or a tax imposed by a state on the sale of goods or services;

G. "seller" means a person making sales, leases and rentals of personal property and services; and

H. "use tax" means the compensating tax levied pursuant to the Gross Receipts and Compensating Tax Act.

History: Laws 2005, ch. 225, § 3.

7-5A-4. Authority to enter agreement.

A. The secretary of taxation and revenue may enter into the agreement with one or more member states to simplify and modernize sales tax and use tax administration and to reduce the burden of tax compliance for sellers.

B. The secretary of taxation and revenue is authorized to:

(1) act jointly with member states to establish standards for a certified automated system and establish performance standards for multistate sellers pursuant to the agreement;

(2) take actions reasonably required to implement the provisions of the Streamlined Sales and Use Tax Administration Act; and

(3) adopt rules with member states pursuant to the agreement.

C. The secretary of taxation and revenue or the secretary's designee is authorized to represent this state before member states.

History: Laws 2005, ch. 225, § 4.

7-5A-5. Relationship to state law.

A provision of the agreement does not invalidate or amend any provision of state law. Implementation of a condition of the agreement shall be adopted by the legislature.

History: Laws 2005, ch. 225, § 5.

7-5A-6. Agreement requirements.

The secretary of taxation and revenue shall not enter into the agreement unless the agreement:

A. sets restrictions to achieve more uniform state tax rates by limiting:

(1) the number of member state tax rates;

(2) the application of maximums on the amount of member state taxes due on transactions; and

(3) the application of thresholds on the application of member state taxes;

B. establishes uniform standards for:

(1) sourcing transactions to taxing jurisdictions;

(2) administering exempt sales; and

(3) providing allowances that a seller can receive for bad debts;

C. requires member states to develop and adopt uniform definitions of sales tax and use tax terms that enable the member states to make policy choices consistent with the definitions;

D. provides for a certified automated system that allows a seller to register to collect and remit sales taxes and use taxes for each member state;

E. provides that registration with the certified automated system and the collection of a sales tax and a use tax in a member state will not be used to determine if the seller has a nexus with a member state for tax purposes;

F. provides for reduction of the burden of complying with local sales taxes and use taxes by:

(1) restricting variances between the member state and local tax bases;

(2) requiring each member state to administer the sales tax and use tax levied by a local jurisdiction within the member state so that a seller collecting and remitting the taxes will not be required to register or file a return with, remit funds to or be subject to an independent audit from a local taxing jurisdiction;

(3) restricting change in each local sales tax rate and use tax rate and setting an effective date for a change in the boundaries of a local taxing jurisdiction; and

(4) providing notice of a change in each local sales tax rate and use tax rate and of a change in the boundaries of a local taxing jurisdiction;

G. outlines monetary allowances provided by member states to sellers and certified service providers;

H. requires each state to certify compliance with the terms of the agreement before becoming a member state and to maintain compliance with provisions of the agreement pursuant to the law of the member state while a member state;

I. requires each member state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information; and

J. provides for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives with which to consult with respect to the administration of the agreement.

History: Laws 2005, ch. 225, § 6.

7-5A-7. Member states.

The agreement is an accord among member states in furtherance of their governmental functions. The agreement permits each member state to establish and maintain a cooperative, uniform, simplified system to apply sales taxes and use taxes pursuant to the law of the member state.

History: Laws 2005, ch. 225, § 7.

7-5A-8. Limited binding and beneficial effect.

A. The agreement binds and benefits only this state and other member states. Only a member state is an intended beneficiary of the agreement. A benefit to a person other than a member state is established by the law of this state and member states and not by the terms of the agreement.

B. A person shall not:

(1) have a cause of action or a defense pursuant to the agreement; and

(2) challenge an action or inaction of a department, agency, political subdivision or instrumentality of this state on the grounds that the action or inaction is not consistent with the agreement.

C. A law of this state or the application of the law is valid despite the inconsistency of the law or its application with the agreement.

History: Laws 2005, ch. 225, § 8.

7-5A-9. Liability.

A. A certified service provider is liable for sales taxes and use taxes due from each member state on each sales transaction that it processes for the seller, except as otherwise provided by this section. A seller that contracts with the certified service provider is not liable to this state for sales tax or use tax due on a transaction processed by the certified service provider unless the seller misrepresents the type of item it sells or commits fraud. In the absence of probable cause that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on transactions processed by the certified service provider. A seller is subject to audit for a transaction not processed by the certified service provider. Member states acting jointly may:

(1) audit data pertaining to the seller that is stored in the certified automated system; and

(2) review procedures of the seller to determine if the certified automated system functions properly and the extent to which the transactions of the seller are processed by this certified service provider.

B. A certified service provider is responsible for the proper functioning of a certified automated system and is liable to this state for underpayments of tax attributable to system errors. A seller that uses a certified automated system is liable to this state for reporting and remitting tax.

C. A seller that has a proprietary system for determining the amount of tax due on a transaction and has agreed to establish a performance standard for the system is liable for failure of the system to meet the standard.

History: Laws 2005, ch. 225, § 9.

ARTICLE 6
Banking and Financial Corporations Tax (Repealed.)

7-6-1 to 7-6-9. Repealed.

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.

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.

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.

7-7-4. Nonresidents; tax imposed; exemption.

A. Tax in an amount computed as provided in this section is imposed on the transfer of the net estate located in New Mexico of every nonresident.

B. The tax shall be computed by multiplying the federal credit by a fraction, the numerator of which is the value of the property located in New Mexico and the denominator of which is the value of the decedent's gross estate.

C. For purposes of this section, the following is included as property located in New Mexico:

(1) debts arising from transactions in, or having a business situs in, New Mexico; and

(2) the securities of any corporation or other entity organized under the laws of New Mexico.

D. The transfer of the personal property of a nonresident is exempt from the tax imposed by this section to the extent that the personal property of residents is exempt from taxation under the laws of the state in which the nonresident is domiciled.

History: 1953 Comp., § 72-33-4, enacted by Laws 1973, ch. 345, § 4; 1999, ch. 47, § 8.

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.

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.

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.

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.

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.

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.

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.

7-7-13, 7-7-14. Reserved.

7-7-15. Short title.

Sections 7-7-15 through 7-7-20 NMSA 1978 may be cited as the "Art Acceptance Act".

History: 1978 Comp., § 7-7-15, enacted by Laws 1983, ch. 209, § 1; 1993, ch. 30, § 13.

7-7-16. Definitions.

As used in the Art Acceptance Act [7-7-15 to 7-7-20 NMSA 1978]:

A. "board" means the board of regents of the museum of New Mexico;

B. "decedent" means the deceased individual;

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

D. "museum" means the museum of New Mexico;

E. "personal representative" means the executor or administrator of a decedent or, if no executor or administrator is appointed, qualified and acting, any person who has possession of any property of the decedent; and

F. "work of art" includes any painting, drawing, print, photograph, sculpture, carving, textile, basketry, artifact, natural specimen, rare book, authors' papers, objects of historical or technical interest or other article of intrinsic cultural value.

History: 1978 Comp., § 7-7-16, enacted by Laws 1983, ch. 209, § 2; 1986, ch. 20, § 60; 1987, ch. 164, § 1.

7-7-17. Payment of estate tax in works of art.

A decedent's estate may pay all or part of any tax owed by the decedent's estate to the state by payment in the form of one or more works of art in the manner provided by the Art Acceptance Act [7-7-15 to 7-7-20 NMSA 1978], provided:

A. the decedent has so directed by a will; or

B. in the absence of a direction in the decedent's will, the personal representative finds that this method of payment is advantageous to the estate.

History: 1978 Comp., § 7-7-17, enacted by Laws 1983, ch. 209, § 3.

7-7-18. Procedure for payment in works of art.

A. The personal representative desiring to pay all or part of an estate tax owed the state in the form of one or more works of art shall first obtain an appraisal of the work acceptable to the federal internal revenue service and shall then notify the museum director in writing of the desire to offer the work to the museum. The board shall, within a reasonable period of time and upon the recommendation of the museum director, notify the personal representative and the division in writing as to whether in the judgment of the board it would be advantageous to the state to accept the one or more works of art as payment or partial payment for the estate tax. The board's decision shall be final and not appealable.

B. Acceptance of a work of art shall be deemed advantageous to the state if its acceptance meets the following criteria:

(1) it encourages growth of the museum's collections by the addition of significant and original works of art;

(2) it furthers the preservation and understanding of the arts traditions which exist in New Mexico;

(3) it furthers the appreciation of arts and cultures by the people of New Mexico; or

(4) it is compatible with the standards and collections policies of the museum.

History: 1978 Comp., § 7-7-18, enacted by Laws 1983, ch. 209, § 4.

7-7-19. Agreement on valuation.

A. If the board finds that it would be advantageous for the state to accept payment in one or more works of art as payment or partial payment for the estate tax, the personal representative shall, as a condition of state acceptance of this method of payment, forward a copy of the proposed valuation to the division. The division shall have forty-five days from the date of the notification of the proposed valuation to object to that valuation.

B. If the division objects to the proposed valuation, it shall set forth the objection in writing and forward it to the personal representative. The personal representative may take into account the division's objections and submit a new valuation for the division's approval. If the division rejects the new valuation within forty-five days of its submission, the state shall be deemed not to accept the proposed method of payment in works of art.

C. If the division does not object to a submitted valuation of a work of art within forty-five days of its submission, the state shall be deemed to have accepted the work of art for the museum collection as complete or partial payment of the estate tax owed and the board shall assume title to that work of art as soon as practicable.

History: 1978 Comp., § 7-7-19, enacted by Laws 1983, ch. 209, § 5.

7-7-20. Credit against tax.

A. Upon assumption of title to a work of art by the board, the department shall credit against the amount owed by the estate the valuation of that work of art as agreed upon under Section 7-7-19 NMSA 1978. In no case shall any credit allowed by the Art Acceptance Act [7-7-15 to 7-7-20 NMSA 1978] be greater than the amount of the estate tax owed by the decedent's estate.

B. The board shall not during any fiscal year assume title to works of art which have an aggregate value of more than five million dollars ($5,000,000).

History: 1978 Comp., § 7-7-20, enacted by Laws 1983, ch. 209, § 6; 1987, ch. 164, § 2.

ARTICLE 8
Uniform Unclaimed Property Act (Repealed, Recompiled.)

7-8-1 to 7-8-40. Repealed and Recompiled.

ARTICLE 8A
Uniform Unclaimed Property Act

7-8A-1. Definitions.

As used in the Uniform Unclaimed Property Act (1995):

(1) "administrator" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department who exercises authority lawfully delegated to him by the secretary;

(2) "apparent owner" means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder;

(3) "business association" means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, safekeeping depository, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit;

(4) "domicile" means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation;

(5) "financial organization" means a savings and loan association, building and loan association, savings bank, industrial bank, bank, banking organization or credit union;

(6) "holder" means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to the Uniform Unclaimed Property Act (1995);

(7) "insurance company" means an association, corporation or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection and workers' compensation insurance;

(8) "mineral" means gas; oil; coal; other gaseous, liquid and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of New Mexico;

(9) "mineral proceeds" means amounts payable for the extraction, production or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:

(i) for the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties and delay rentals;

(ii) for the extraction, production or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments and production payments; and

(iii) under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement and farm-out agreement;

(10) "money order" includes an express money order and a personal money order, on which the remitter is the purchaser. The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee;

(11) "owner" means a person who has a legal or equitable interest in property subject to the Uniform Unclaimed Property Act (1995) or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in

the case of a trust other than a deposit in trust and a creditor, claimant or payee in the case of other property;

(12) "person" means an individual; business association; financial organization; estate; trust; government; governmental subdivision, agency, or instrumentality; or any other legal or commercial entity;

(13) "property" means tangible property described in Section 7-8A-3 NMSA 1978 or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments therefrom, but excludes child, spousal or medical support received by the child support enforcement division of the human services department [health care authority department], the New Mexico IV-D agency. The term includes property that is referred to as or evidenced by:

(i) money, a check, draft, deposit, interest or dividend;

(ii) credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds or unidentified remittance;

(iii) stock or other evidence of ownership of an interest in a business association or financial organization;

(iv) a bond, debenture, note or other evidence of indebtedness;

(v) money deposited to redeem stocks, bonds, coupons or other securities or to make distributions;

(vi) an amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance or health and disability insurance; and

(vii) an amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance or similar benefits;

(14) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(15) "state" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States; and

(16) "utility" means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam or gas.

History: Laws 1997, ch. 25, § 1; 2003, ch. 283, § 1.

7-8A-2. Presumptions of abandonment.

A. Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) traveler's check, fifteen years after issuance;

(2) money order, seven years after issuance;

(3) stock or other equity interest in a business association or financial organization, including a security entitlement under Article 8 [55-8-101 NMSA 1978] of the Uniform Commercial Code, five years after the earlier of:

(a) the date of the most recent dividend, stock split or other distribution unclaimed by the apparent owner; or

(b) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications or communications to the apparent owner;

(4) debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, five years after the date of the most recent interest payment unclaimed by the apparent owner;

(5) a demand, savings or time deposit, including a deposit that is automatically renewable, five years after the earlier of maturity or the date of the last indication by the owner of interest in the property; but a deposit that is automatically renewable is deemed matured for purposes of this section upon its initial date of maturity, unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;

(6) money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued;

(7) gift certificate, five years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be sixty percent of the certificate's face value;

(8) amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(9) property distributable by a business association or financial organization in a course of dissolution, one year after the property becomes distributable;

(10) property received by a court as proceeds of a class action and not distributed pursuant to the judgment, one year after the distribution date;

(11) property held by a court, government, governmental subdivision, agency or instrumentality, one year after the property becomes distributable;

(12) wages or other compensation for personal services, one year after the compensation becomes payable;

(13) deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable;

(14) property in an individual retirement account, defined benefit plan or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty; and

(15) all other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

B. At the time that an interest is presumed abandoned under Subsection A of this section, any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

C. Property is unclaimed if, for the applicable period set forth in Subsection A of this section, the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

D. An indication of an owner's interest in property includes:

(1) the presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(2) owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease or change the amount or type of property held in the account;

(3) the making of a deposit to or withdrawal from a bank account; and

(4) the payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

E. Property is payable or distributable for purposes of the Uniform Unclaimed Property Act (1995) notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

History: Laws 1997, ch. 25, § 2; 2007, ch. 125, § 2.

7-8A-3. Contents of safe deposit box or other safekeeping depository.

Tangible property held in a safe deposit box or other safekeeping depository in this state in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law, are presumed abandoned if the property remains unclaimed by the owner for more than five years after expiration of the lease or rental period on the box or other depository.

History: Laws 1997, ch. 25, § 3.

7-8A-4. Rules for taking custody.

Except as otherwise provided in the Uniform Unclaimed Property Act (1995) or by other statute of this state, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this state if:

(1) the last known address of the apparent owner, as shown on the records of the holder, is in this state;

(2) the records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this state;

(3) the records of the holder do not reflect the last known address of the apparent owner and it is established that:

(i) the last known address of the person entitled to the property is in this state; or

(ii) the holder is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) the last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property and the holder is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state;

(5) the last known address of the apparent owner, as shown on the records of the holder, is in a foreign country and the holder is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state;

(6) the transaction out of which the property arose occurred in this state, the holder is domiciled in a state that does not provide for the escheat or custodial taking of the property, and the last known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the escheat or custodial taking of the property; or

(7) the property is a traveler's check or money order purchased in this state, or the issuer of the traveler's check or money order has its principal place of business in this state and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property, or does not show the state in which the instrument was purchased.

History: Laws 1997, ch. 25, § 4.

7-8A-5. Dormancy charge.

A holder may deduct from property presumed abandoned a charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled. The amount of the deduction is limited to an amount that is not unconscionable.

History: Laws 1997, ch. 25, § 5.

7-8A-6. Burden of proof as to property evidenced by record of check or draft.

A record of the issuance of a check, draft or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the administrator's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge and want of consideration are affirmative defenses that must be established by the holder.

History: Laws 1997, ch. 25, § 6.

7-8A-7. Report of abandoned property.

A. A holder of property presumed abandoned shall make a report to the administrator concerning the property.

B. The report must be verified and must contain:

(1) a description of the property;

(2) except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of fifty dollars ($50.00) or more;

(3) an aggregated amount of items valued under fifty dollars ($50.00) each;

(4) in the case of an amount of fifty dollars ($50.00) or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;

(5) in the case of property held in a safe deposit box or other safekeeping depository, an indication of the place where it is held and where it may be inspected by the administrator and any amounts owing to the holder;

(6) the date, if any, on which the property became payable, demandable or returnable and the date of the last transaction with the apparent owner with respect to the property; and

(7) other information that the administrator by rule prescribes as necessary for the administration of the Uniform Unclaimed Property Act (1995).

C. If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

D. The report must be filed before November 1 of each year and cover the twelve months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding.

E. A holder of more than twenty-five properties presumed abandoned shall report the properties in an electronic media and in a format determined by the administrator to be compatible with computer programming and equipment used by the administrator for processing.

F. The holder of property presumed abandoned shall send written notice to the apparent owner, not more than one hundred twenty days or less than sixty days before filing the report, stating that the holder is in possession of property subject to the Uniform Unclaimed Property Act (1995), if:

(1) the holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(2) the claim of the apparent owner is not barred by a statute of limitations; and

(3) the value of the property is fifty dollars ($50.00) or more.

G. Before the date for filing the report, the holder of property presumed abandoned may request the administrator to extend the time for filing the report. The administrator may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

H. The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with Subsection F of this section.

History: Laws 1997, ch. 25, § 7; 2006, ch. 37, § 1.

7-8A-8. Payment or delivery of abandoned property.

(a) Except for property held in a safe deposit box or other safekeeping depository, upon filing the report required by Section 7 [7-8A-7 NMSA 1978] of the Uniform Unclaimed Property Act (1995), the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the administrator the property described in the report as unclaimed, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended until a penalty or forfeiture would no longer result. Tangible property held in a safe deposit box or other safekeeping depository may not be delivered to the administrator until one hundred twenty days after filing the report required by Section 7 of the Uniform Unclaimed Property Act (1995).

(b) If the property reported to the administrator is a security or security entitlement under Article 8 [55-8-101 NMSA 1978] of the Uniform Commercial Code, the administrator is an appropriate person to make an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with Article 8 of the Uniform Commercial Code.

(c) If the holder of property reported to the administrator is the issuer of a certificated security, the administrator has the right to obtain a replacement certificate pursuant to Section 55-8-405 NMSA 1978, but an indemnity bond is not required.

(d) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with Section 10 [7-8A-10 NMSA 1978] of the Uniform Unclaimed Property Act (1995).

History: Laws 1997, ch. 25, § 8.

7-8A-9. Notice and publication of lists of abandoned property.

The administrator shall publish a notice not later than November 30 of each year in which abandoned property has been paid or delivered to the administrator. The notice shall be published in a newspaper of general circulation in each county of this state. The advertisement must be in a form that, in the judgment of the administrator, is likely to attract the attention of the general public. The advertisement shall contain:

A. the website on which to search for information about abandoned properties;

B. the email address of the administrator;

C. the telephone number and physical mailing address of the administrator;

D. a statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the administrator; and

E. a statement providing information about the property and the return to the property's owner is available to a person having a legal or beneficial interest in the property, upon request to the administrator.

History: Laws 1997, ch. 25, § 9; 2021, ch. 65, § 10.

7-8A-10. Custody by state; recovery by holder; defense of holder.

(a) In this section, payment or delivery is made in "good faith" if:

(1) payment or delivery was made in a reasonable attempt to comply with the Uniform Unclaimed Property Act (1995);

(2) the holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned; and

(3) there is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(b) Upon payment or delivery of property to the administrator, the state assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the administrator in good faith is relieved of all liability arising thereafter with respect to the property.

(c) A holder who has paid money to the administrator pursuant to the Uniform Unclaimed Property Act (1995) may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under Section 19(a) [7-8A-19(a) NMSA 1978] of the Uniform Unclaimed Property Act (1995).

(d) A holder who has delivered property other than money to the administrator pursuant to the Uniform Unclaimed Property Act (1995) may reclaim the property if it is still in the possession of the administrator, without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(e) The administrator may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

(f) If a holder pays or delivers property to the administrator in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the administrator, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the administrator.

(g) Property removed from a safe deposit box or other safekeeping depository is received by the administrator subject to the holder's right to be reimbursed for the cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The administrator shall reimburse the holder out of the proceeds remaining after deducting the expense incurred by the administrator in selling the property.

History: Laws 1997, ch. 25, § 10.

7-8A-10.1. Exercise of due diligence; liability; notice.

A. Notwithstanding any other provisions of the Uniform Unclaimed Property Act (1995), the holder of unclaimed intangible property in the form of checks in payment of royalty interests, working interests or other interests payable out of oil and gas production with a value of fifty dollars ($50.00) or more who fails to exercise due diligence in attempting to locate the apparent owner of such property during the running of the period specified under Section 2 [7-8A-2 NMSA 1978] of the Uniform Unclaimed Property Act (1995) constituting a presumption of abandonment of such intangible property is subject to payment to the owner if such property is successfully claimed within the time specified by the Uniform Unclaimed Property Act (1995) or to the state of New Mexico upon payment or delivery of the property to the administrator, interest at the annual rate of interest computed as provided in Subsection B of Section 7-1-67 NMSA 1978 on the value of the intangible property, such interest running from the date commencing after the first year in which the property remained unclaimed to the date of payment or delivery.

B. Proof of the exercise of due diligence to locate the apparent owner shall be:

(1) evidence of written notice mailed to the last known address of the apparent owner; and

(2) proof of publication of notice to the apparent owner made between the end of the first year in which the property remained unclaimed and the end of the third year in which the property remained unclaimed. The publication of the notice required by this subsection for property presumed to be abandoned under the provisions of Section 7 [7-8A-7 NMSA 1978] of the Uniform Unclaimed Property Act (1995) shall be made at least thirty days, but not more than ninety days, prior to the due date on which the report of abandoned property is required to be filed.

C. Publication as required in Subsection B of this section consists of publication in a newspaper of general circulation in the county of this state in which is located the last known address of the apparent owner, or if no address is listed or the address is outside the state, in a newspaper published in the county in which the holder of the property has his principal place of business within the state. The notice shall be published at least once a week for two consecutive weeks and shall be entitled:

"NOTICE OF THE NAME OF A PERSON APPEARING TO BE THE OWNER OF ABANDONED PROPERTY".

D. The published notice shall contain:

(1) the name and last known address, if any, of the person entitled to notice as specified in this section;

(2) a statement that information concerning the unclaimed property may be obtained from the holder of the property;

(3) the name and address of the holder of the property; and

(4) a statement that if proof of claim is not presented by the owner to the holder and the owner's right to receive the property is not established to the holder's satisfaction before the expiration of the period specified by the Uniform Unclaimed Property Act (1995) for the presumption of abandonment, the intangible property will be placed in the custody of the state of New Mexico and subject to escheat to the general fund of the state.

E. The provisions of this section shall not apply to the United States or any agency or instrumentality of the United States or to the state of New Mexico or any agency or political subdivision of the state.

F. Any holder of property that has been presumed to be abandoned for more than three years as of January 1, 1990 shall not be presumed to be negligent by the failure to publish a notice in a newspaper of general circulation as required by this section.

History: Laws 1990, ch. 98, § 1; 1978 Comp., § 7-8-20.1, recompiled and amended as 1978 Comp., 7-8A-10.1 by Laws 1997, ch. 25, § 32.

7-8A-11. Crediting of dividends, interest and increments to owner's account.

If property other than money is delivered to the administrator under the Uniform Unclaimed Property Act (1995), the owner is entitled to receive from the administrator any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money. If the property was an interest-bearing demand, savings, or time deposit, including a deposit that is automatically renewable, the administrator shall pay interest at a rate of five percent a year or any lesser rate the property earned while in the possession of the holder. Interest begins to accrue when the property is delivered to the administrator and ceases on the earlier of the expiration of ten years after delivery or the date on which payment is made to the owner. Interest on interest-bearing property is not payable for any period before the effective date of the Uniform Unclaimed Property Act (1995), unless authorized by law superseded by that act.

History: Laws 1997, ch. 25, § 11.

7-8A-12. Public sale of abandoned property.

A. Except as otherwise provided in this section, the administrator, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in this state or by any reasonable method, which in the judgment of the administrator affords the most favorable market for the property. The administrator may decline the highest bid and re-offer the property for sale if the administrator considers the bid to be insufficient. The administrator need not offer the property for sale if the administrator considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold.

B. Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the administrator. If securities are sold by the administrator before the expiration of three years after their delivery to the administrator, a person making a claim under the Uniform Unclaimed Property Act (1995) before the end of the three-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, plus dividends, interest and other increments thereon up to the time the claim is made, less any deduction for expenses of sale. A person making a claim under the Uniform Unclaimed Property Act (1995) after the expiration of the three-year period is entitled to receive the securities delivered to the administrator by the holder, if they still remain in the custody of the administrator, or the net proceeds received from sale and is not entitled to receive any appreciation in the value of the property occurring after delivery to the administrator except in a case of intentional misconduct or malfeasance by the administrator.

C. A purchaser of property at a sale conducted by the administrator pursuant to the Uniform Unclaimed Property Act (1995) takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

History: Laws 1997, ch. 25, § 12; 2006, ch. 37, § 2.

7-8A-13. Deposit of funds.

A. Except as otherwise provided by this section, the administrator shall promptly deposit in the tax administration suspense fund for distribution pursuant to the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] all money received under the Uniform Unclaimed Property Act (1995), including the proceeds from the sale of abandoned property under Section 7-8A-12 NMSA 1978. The administrator shall retain in the unclaimed property fund at least one hundred thousand dollars ($100,000) for the purposes of the Uniform Unclaimed Property Act (1995), from which the administrator shall pay claims duly allowed. The administrator shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or annuity listed in the report of an insurance company, its number, the name of the company and the amount due.

B. Before making a deposit to the tax administration suspense fund, the administrator may deduct:

(1) expenses of sale of abandoned property;

(2) costs of mailing and publication in connection with abandoned property;

(3) reasonable service charges; and

(4) expenses incurred in examining records of holders of property and in collecting the property from those holders.

History: Laws 1997, ch. 25, § 13; 2007 (1st S.S.), ch. 2, § 10.

7-8A-14. Claim of another state to recover property.

(a) After property has been paid or delivered to the administrator under the Uniform Unclaimed Property Act (1995), another state may recover the property if:

(1) the property was paid or delivered to the custody of this state because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other state and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(2) the property was paid or delivered to the custody of this state because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state subsequently enacted the property has escheated or become subject to a claim of abandonment by that state;

(3) the records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(4) the property was subjected to custody by this state under Section 4(6) [7-8A-4(6) NMSA 1978] of the Uniform Unclaimed Property Act (1995), and under the laws

of the state of domicile of the holder the property has escheated or become subject to a claim of abandonment by that state; or

(5) the property is a sum payable on a traveler's check, money order or similar instrument that was purchased in the other state and delivered into the custody of this state under Section 4(7) [7-8A-4(7) NMSA 1978] of the Uniform Unclaimed Property Act (1995), and under the laws of the other state the property has escheated or become subject to a claim of abandonment by that state.

(b) A claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the administrator, who shall decide the claim within ninety days after it is presented. The administrator shall allow the claim upon determining that the other state is entitled to the abandoned property under Subsection (a) of this section.

(c) The administrator shall require another state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim to the property.

History: Laws 1997, ch. 25, § 14.

7-8A-15. Filing claim with administrator; handling of claims by administrator.

(a) A person, excluding another state, claiming property paid or delivered to the administrator may file a claim on a form prescribed by the administrator and verified by the claimant.

(b) Within ninety days after a claim is filed, the administrator shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the administrator shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the administrator or maintain an action under Section 16 of the Uniform Unclaimed Property Act (1995).

(c) Within thirty days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the administrator to the claimant, together with any dividend, interest or other increment to which the claimant is entitled under Sections 11 and 12 [7-8A-11 and 7-8A-12 NMSA 1978] of the Uniform Unclaimed Property Act (1995).

(d) A holder who pays the owner for property that has been delivered to the state and which, if claimed from the administrator by the owner would be subject to an increment under Sections 11 and 12 of the Uniform Unclaimed Property Act (1995), may recover from the administrator the amount of the increment.

History: Laws 1997, ch. 25, § 15.

7-8A-16. Appeal; action to establish claim.

A. A person aggrieved by a decision of the administrator may file an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. A person whose claim has not been acted upon within ninety days after its filing may maintain an original action to establish the claim in the district court for the first judicial district, naming the administrator as a defendant.

C. If the aggrieved person establishes the claim in an action against the administrator, the court may award the claimant reasonable attorney fees.

History: Laws 1997, ch. 25, § 16; 1998, ch. 55, § 18; 1999, ch. 265, § 18.

7-8A-17. Election to take payment or delivery.

(a) The administrator may decline to receive property reported under the Uniform Unclaimed Property Act (1995) which the administrator considers to have a value less than the expenses of notice and sale.

(b) A holder, with the written consent of the administrator and upon conditions and terms prescribed by the administrator, may report and deliver property before the property is presumed abandoned. Property so delivered must be held by the administrator and is not presumed abandoned until it otherwise would be presumed abandoned under the Uniform Unclaimed Property Act (1995).

History: Laws 1997, ch. 25, § 17.

7-8A-18. Destruction or disposition of property having no substantial commercial value; immunity from liability.

If the administrator determines after investigation that property delivered under the Uniform Unclaimed Property Act (1995) has no substantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the state or any officer or against the holder for or on account of an act of the administrator under this section, except for intentional misconduct or malfeasance.

History: Laws 1997, ch. 25, § 18.

7-8A-19. Periods of limitation.

(a) The expiration, before or after the effective date of the Uniform Unclaimed Property Act (1995), of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute or court order, does not preclude the property from being presumed abandoned or affect a duty to file a report or to pay or deliver or transfer property to the administrator as required by the Uniform Unclaimed Property Act (1995).

(b) An action or proceeding may not be maintained by the administrator to enforce the Uniform Unclaimed Property Act (1995) in regard to the reporting, delivery, or payment of property more than ten years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

History: Laws 1997, ch. 25, § 19.

7-8A-20. Requests for reports and examination of records.

(a) The administrator may require a person who has not filed a report, or a person whom the administrator believes has filed an inaccurate, incomplete or false report, to file a verified report in a form specified by the administrator. The report must state whether the person is holding property reportable under the Uniform Unclaimed Property Act (1995), describe property not previously reported or as to which the administrator has made inquiry, and specifically identify and state the amounts of property that may be in issue.

(b) The administrator, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with the Uniform Unclaimed Property Act (1995). The administrator may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid or delivered under the Uniform Unclaimed Property Act (1995). The administrator may contract with any other person to conduct the examination on behalf of the administrator.

(c) The administrator at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association or financial association that is the holder of property presumed abandoned if the administrator has given the notice required by Subsection (b) of this section to both the association or organization and the agent at least ninety days before the examination.

(d) Documents and working papers obtained or compiled by the administrator, or the administrator's agents, employees or designated representatives, in the course of conducting an examination are confidential and are not public records, but the documents and papers may be:

(1) used by the administrator in the course of an action to collect unclaimed property or otherwise enforce the Uniform Unclaimed Property Act (1995);

(2) used in joint examinations conducted with or pursuant to an agreement with another state, the federal government, or any other governmental subdivision, agency or instrumentality;

(3) produced pursuant to subpoena or court order; or

(4) disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this subsection, if the other state is bound to keep the documents and papers confidential.

(e) If an examination of the records of a person results in the disclosure of property reportable under the Uniform Unclaimed Property Act (1995), the administrator may assess the cost of the examination against the holder at the rate of two hundred dollars ($200) a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to Subsection (c) of this section may be assessed only against the business association or financial organization.

(f) If, after the effective date of the Uniform Unclaimed Property Act (1995), a holder does not maintain the records required by Section 21 [7-8A-21 NMSA 1978] of that act and the records of the holder available for the periods subject to that act are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay to the administrator the amount the administrator reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been but was not reported.

History: Laws 1997, ch. 25, § 20.

7-8A-21. Retention of records.

(a) Except as otherwise provided in Subsection (b) of this section, a holder required to file a report under Section 7 [7-8A-7 NMSA 1978] of the Uniform Unclaimed Property Act (1995) shall maintain the records containing the information required to be included in the report for ten years after the holder files the report, unless a shorter period is provided by rule of the administrator.

(b) A business association or financial organization that sells, issues, or provides to others for sale or issue in this state, traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association or financial organization is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for three years after the holder files the report.

History: Laws 1997, ch. 25, § 21.

7-8A-22. Enforcement.

The administrator may maintain an action in this or another state to enforce the Uniform Unclaimed Property Act (1995). The court may award reasonable attorney's fees to the prevailing party.

History: Laws 1997, ch. 25, § 22.

7-8A-23. Interstate agreements and cooperation; joint and reciprocal actions with other states.

(a) The administrator may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in Section 20 [7-8A-20 NMSA 1978] of the Uniform Unclaimed Property Act (1995). The administrator by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

(b) The administrator may join with another state to seek enforcement of the Uniform Unclaimed Property Act (1995) against any person who is or may be holding property reportable under that act.

(c) At the request of another state, the attorney general of this state may maintain an action on behalf of the other state to enforce, in this state, the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the attorney general in maintaining the action.

(d) The administrator may request that the attorney general of another state or another attorney commence an action in the other state on behalf of the administrator. With the approval of the attorney general of this state, the administrator may retain any other attorney to commence an action in this state on behalf of the administrator. This state shall pay all expenses, including attorney's fees, in maintaining an action under this subsection. With the administrator's approval, the expenses and attorney's fees may be paid from money received under the Uniform Unclaimed Property Act (1995). The administrator may agree to pay expenses and attorney's fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses or attorney's fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under the Uniform Unclaimed Property Act (1995).

History: Laws 1997, ch. 25, § 23.

7-8A-24. Interest and penalties.

(a) A holder who fails to report, pay or deliver property within the time prescribed by the Uniform Unclaimed Property Act (1995) shall pay to the administrator interest at the annual rate set forth in Section 7-1-67 NMSA 1978 on the property or value thereof from the date the property should have been reported, paid or delivered.

(b) Except as otherwise provided in Subsection (c) of this section, a holder who fails to report, pay or deliver property within the time prescribed by the Uniform Unclaimed Property Act (1995), or fails to perform other duties imposed by that act, shall pay to the administrator, in addition to interest as provided in Subsection (a) of this section, a civil penalty of one hundred dollars ($100) for each day the report, payment or delivery is withheld, or the duty is not performed, up to a maximum of five thousand dollars ($5,000).

(c) A holder who willfully fails to report, pay or deliver property within the time prescribed by the Uniform Unclaimed Property Act (1995), or willfully fails to perform other duties imposed by that act, shall pay to the administrator, in addition to interest as provided in Subsection (a) of this section, a civil penalty of two hundred fifty dollars ($250) for each day the report, payment or delivery is withheld, or the duty is not performed, up to a maximum of seven thousand five hundred dollars ($7,500), plus twenty-five percent of the value of any property that should have been but was not reported.

(d) A holder who makes a fraudulent report shall pay to the administrator, in addition to interest as provided in Subsection (a) of this section, a civil penalty of five hundred dollars ($500) for each day from the date a report under the Uniform Unclaimed Property Act (1995) was due, up to a maximum of twelve thousand five hundred dollars ($12,500), plus twenty-five percent of the value of any property that should have been but was not reported.

(e) The administrator for good cause may waive, in whole or in part, penalties under Subsections (b) and (c) of this section, and shall waive penalties if the holder acted in good faith and without negligence.

History: Laws 1997, ch. 25, § 24.

7-8A-25. Agreement to locate property.

A. An agreement by an owner, the primary purpose of which is to locate, deliver, recover or assist in the recovery of property that is presumed abandoned, is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is forty-eight months after the date the property is paid or delivered to the administrator. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the administrator's denial of a claim.

B. An agreement by an owner, the primary purpose of which is to locate, deliver, recover or assist in the recovery of property, is enforceable only if the agreement is in writing, clearly sets forth the nature of the property and the services to be rendered, is signed by the apparent owner and states the value of the property before and after the fee or other compensation has been deducted.

C. If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

D. An agreement covered by this section which provides for compensation that is unconscionable is unenforceable except by the owner. An owner who has agreed to pay compensation that is unconscionable or the administrator on behalf of the owner may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorney fees to an owner who prevails in the action.

E. This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than unconscionable compensation.

History: Laws 1997, ch. 25, § 25; 2006, ch. 37, § 3.

7-8A-26. Foreign transactions.

The Uniform Unclaimed Property Act (1995) does not apply to:

(1) property held, due and owing in a foreign country and arising out of a foreign transaction;

(2) funds in a member's share account in a credit union if the bylaws of the credit union provide for unclaimed funds to be used for educational or charitable uses; and

(3) patronage capital or other tangible ownership interest in a rural electric cooperative, a telephone cooperative, a water cooperative or an agricultural cooperative, if the bylaws of the cooperative provide for unclaimed patronage capital to be used for educational scholarships or other charitable uses.

History: Laws 1997, ch. 25, § 26.

7-8A-27. Transitional provisions.

(a) An initial report filed under the Uniform Unclaimed Property Act (1995) for property that was not required to be reported before the effective date of that act, but which is subject to that act, must include all items of property that would have been presumed abandoned during the ten-year period next preceding the effective date of the

Uniform Unclaimed Property Act (1995) as if that act had been in effect during that period.

(b) The Uniform Unclaimed Property Act (1995) does not relieve a holder of a duty that arose before the effective date of that act to report, pay or deliver property. Except as otherwise provided in Section 19(b) [7-8A-19(b) NMSA 1978] of the Uniform Unclaimed Property Act (1995), a holder who did not comply with the law in effect before the effective date of that act is subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section.

History: Laws 1997, ch. 25, § 27.

7-8A-28. Rules.

The administrator may adopt pursuant to the State Rules Act [Chapter 14, Article 4 NMSA 1978] rules necessary to carry out the Uniform Unclaimed Property Act (1995).

History: Laws 1997, ch. 25, § 28.

7-8A-29. Uniformity of application and construction.

The Uniform Unclaimed Property Act (1995) shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of that act among states enacting it.

History: Laws 1997, ch. 25, § 29.

7-8A-30. Short title.

Chapter 7, Article 8A NMSA 1978 may be cited as the "Uniform Unclaimed Property Act (1995)".

History: Laws 1997, ch. 25, § 30; 2006, ch. 37, § 4.

7-8A-31. Severability clause.

If any provision of the Uniform Unclaimed Property Act (1995) or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

History: Laws 1997, ch. 25, § 31.

ARTICLE 9
Gross Receipts and Compensating Tax

7-9-1. Short title.

Chapter 7, Article 9 NMSA 1978 may be cited as the "Gross Receipts and Compensating Tax Act".

History: 1953 Comp., § 72-16A-1, enacted by Laws 1966, ch. 47, § 1; 1979, ch. 90, § 1.

7-9-2. Purpose.

The purpose of the Gross Receipts and Compensating Tax Act is to provide revenue for public purposes by levying a tax on the privilege of engaging in certain activities within New Mexico and to protect New Mexico businessmen from the unfair competition that would otherwise result from the importation into the state of property without payment of a similar tax.

History: 1953 Comp., § 72-16A-2, enacted by Laws 1966, ch. 47, § 2.

7-9-3. Definitions.

As used in the Gross Receipts and Compensating Tax Act:

A. "buying" or "selling" means a transfer of property for consideration or the performance of service for consideration;

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

C. "digital good" means a digital product delivered electronically, including software, music, photography, video, reading material, an application and a ringtone;

D. "disclosed agency" means a person receiving money from a third party on behalf of another if the person receiving the money, or the person on whose behalf the money is received, disclosed the relationship to the third party from whom the person receives money, or if the third party otherwise has actual knowledge that the person to whom the money is paid receives the money on behalf of another;

E. "financial corporation" means a savings and loan association or an incorporated savings and loan company, trust company, mortgage banking company, consumer finance company or other financial corporation;

F. "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 services;

(4) inspection of preliminary prototypes developed by the performer of services; or

(5) similar activities;

G. "lease" or "leasing" means an arrangement whereby, for a consideration, the owner of property grants another person the exclusive right to possess and use the property for a definite term;

H. "licensing" or "license" means an arrangement whereby, for a consideration, the owner of property grants another person a revocable, non-exclusive right to use the property;

I. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon a 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;

J. "manufactured home" means a movable or portable housing structure for human occupancy that exceeds either a width of eight feet or a length of forty feet constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation;

K. "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 services; farming; electric power generation; processing of natural resources, including hydrocarbons; or the processing or preparation of meals for immediate consumption;

L. "manufacturing service" means the service of combining or processing components or materials owned by another, but does not include construction services; farming; electric power generation; processing of natural resources, including hydrocarbons; or the processing or preparation of meals for immediate consumption;

M. "marketplace provider" means a person who facilitates the sale, lease or license of tangible personal property or services or licenses for use of real property on a marketplace seller's behalf, or on the marketplace provider's own behalf, by:

(1) listing or advertising the sale, lease or license, by any means, whether physical or electronic, including by catalog, internet website or television or radio broadcast; and

(2) either directly or indirectly, through agreements or arrangements with third parties collecting payment from the customer and transmitting that payment to the seller, regardless of whether the marketplace provider receives compensation or other consideration in exchange for the marketplace provider's services;

N. "marketplace seller" means a person who sells, leases or licenses tangible personal property or services or who licenses the use of real property through a marketplace provider;

O. "person" means:

(1) an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other entity, including any gas, water or electric utility owned or operated by a county, municipality or other political subdivision of the state; or

(2) a national, federal, state, Indian or other governmental unit or subdivision, or an agency, department or instrumentality of any of the foregoing;

P. "property" means:

(1) real property;

(2) tangible personal property, including electricity and manufactured homes;

(3) licenses, including licenses of digital goods, but not including the licenses of copyrights, trademarks or patents; and

(4) franchises;

Q. "research and development services" means an activity engaged in for other persons for consideration, for one or more of the following purposes:

(1) advancing basic knowledge in a recognized field of natural science;

(2) advancing technology in a field of technical endeavor;

(3) developing a new or improved product, process or system with new or improved function, performance, reliability or quality, whether or not the new or improved product, process or system is offered for sale, lease or other transfer;

(4) developing new uses or applications for an existing product, process or system, whether or not the new use or application is offered as the rationale for purchase, lease or other transfer of the product, process or system;

(5) developing analytical or survey activities incorporating technology review, application, trade-off study, modeling, simulation, conceptual design or similar activities, whether or not offered for sale, lease or other transfer; or

(6) designing and developing prototypes or integrating systems incorporating the advances, developments or improvements included in Paragraphs (1) through (5) of this subsection;

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

S. "service" means all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a service as distinguished from selling or leasing property. "Service" includes activities performed by a person for its members or shareholders. In determining what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling. "Service" includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. That tangible personal property retains its character as tangible personal property until it is installed as an ingredient or component part of a construction project in New Mexico. Sales of tangible personal property that will become an ingredient or component part of a construction project to persons engaged in the construction business are sales of tangible personal property; and

T. "use" or "using" includes use, consumption or storage other than storage for subsequent sale in the ordinary course of business or for use solely outside this state.

History: Laws 1978, ch. 46, § 1; 1979, ch. 338, § 1; 1981, ch. 184, § 1; 1983, ch. 220, § 1; 1984, ch. 2, § 1; 1986, ch. 20, § 62; 1986, ch. 52, § 1; 1989, ch. 262, § 1; 1991, ch. 197, § 1; 1991, ch. 203, § 1; 1992, ch. 39, § 1; 1992, ch. 50, § 14; 1992, ch. 67, § 14; 1993, ch. 31, § 1; 1994, ch. 45, § 1; 1998, ch. 92, § 4; 1998, ch. 95, § 1; 1998, ch. 99, § 3; 1999, ch. 231, § 1; 2000, ch. 84, § 1; 2000, ch. 101, § 1; 2001, ch. 65, § 1; 2001, ch. 343, § 1; 2002, ch. 28, § 1; 2002, ch. 45, § 1; 2002, ch. 49, § 1; 2003, ch. 272, § 2 ; 2006, ch. 39, § 1; 2007, ch. 339, § 1; 2019, ch. 270, § 23; 2019, ch. 274, § 11; 2021, ch. 65, § 11; 2021, ch. 66, § 1; 2022, ch. 47, § 11; 2023, ch. 85, § 9.

7-9-3.1. Repealed.

7-9-3.2. Additional definition.

A. As used in the Gross Receipts and Compensating Tax Act, "governmental gross receipts" means receipts of the state or an agency, institution, instrumentality or political subdivision from:

(1) the sale of tangible personal property other than water from facilities open to the general public;

(2) the performance of or admissions to recreational, athletic or entertainment services or events in facilities open to the general public;

(3) refuse collection or refuse disposal or both;

(4) sewage services;

(5) the sale of water by a utility owned or operated by a county, municipality or other political subdivision of the state;

(6) the renting of parking, docking or tie-down spaces or the granting of permission to park vehicles, tie down aircraft or dock boats;

(7) the sale of tangible personal property handled on consignment when sold from facilities open to the general public; and

(8) a hospital licensed by the department of health.

B. "Governmental gross receipts" excludes receipts of the state or an agency, institution, instrumentality or political subdivision from:

(1) cash discounts taken and allowed;

(2) governmental gross receipts tax payable on transactions reportable for the period; and

(3) any type of time-price differential.

C. As used in this section, "facilities open to the general public" does not include point of sale registers or electronic devices at a bookstore owned or operated by a public post-secondary educational institution when the registers or devices are utilized in the sale of textbooks or other materials required for courses at the institution to a student enrolled at the institution who displays a valid student identification card.

History: 1978 Comp., § 7-9-3.2, enacted by Laws 1991, ch. 8, § 1; 1992, ch. 100, § 1; 2003, ch. 125, § 1; 2004, ch. 69, § 1; 2019, ch. 270, § 24.

7-9-3.3. Definition; engaging in business.

As used in the Gross Receipts and Compensating Tax Act, "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit. For a person who lacks physical presence in this state, including a marketplace provider, "engaging in business" means having, in the previous calendar year, total taxable gross receipts from sales, leases and licenses of tangible personal property, sales of licenses and sales of services and licenses for use of real property sourced to this state pursuant to Section 7-1-14 NMSA 1978, of at least one hundred thousand dollars ($100,000).

History: 1978 Comp., § 7-9-3.3, enacted by Laws 2003, ch. 272, § 4; 2019, ch. 270, § 25.

7-9-3.4. Definitions; construction, construction materials and construction-related services.

As used in the Gross Receipts and Compensating Tax Act:

A. "construction" means:

(1) the building, altering, repairing or demolishing in the ordinary course of business any:

(a) road, highway, bridge, parking area or related project;

(b) building, stadium or other structure;

(c) airport, subway or similar facility;

(d) park, trail, athletic field, golf course or similar facility;

(e) dam, reservoir, canal, ditch or similar facility;

(f) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station, gas processing plant, coal gasification plant, refinery, distillery or similar facility;

(g) sewerage, water, gas or other pipeline;

(h) transmission line;

(i) radio, television or other tower;

(j) water, oil or other storage tank;

(k) shaft, tunnel or other mining appurtenance;

(l) microwave station or similar facility;

(m) retaining wall, wall, fence, gate or similar structure; or

(n) similar work;

(2) the leveling or clearing of land;

(3) the excavating of earth;

(4) the drilling of wells of any type, including seismograph shot holes or core drilling; or

(5) similar work;

B. "construction material" means tangible personal property that becomes or is intended to become an ingredient or component part of a construction project, but "construction material" does not include a replacement fixture when the replacement is not construction or a replacement part for a fixture; and

C. "construction-related service" means a service directly contracted for or billed to a specific construction project, including design, architecture, drafting, surveying, engineering, environmental and structural testing, security, sanitation and services required to comply with governmental construction-related rules. "Construction-related service" does not include general business services, such as legal or accounting services, equipment maintenance or real estate sales commissions.

History: 1978 Comp., § 7-9-3.4, enacted by Laws 2003, ch. 272, § 5; 2020, ch. 80, § 4.

7-9-3.5. Definition; gross receipts.

A. As used in the Gross Receipts and Compensating Tax Act:

(1) "gross receipts" means the total amount of money or the value of other consideration received from selling property in New Mexico, from leasing or licensing property employed in New Mexico, from granting a right to use a franchise employed in New Mexico, from selling services performed outside New Mexico, the product of which is initially used in New Mexico, or from performing services in New Mexico. In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, "gross receipts" means the reasonable value of the property or service exchanged;

(2) "gross receipts" includes:

(a) any receipts from sales of tangible personal property handled on consignment;

(b) the total commissions or fees derived from the business of buying, selling or promoting the purchase, sale or lease, as an agent or broker on a commission or fee basis, of any property, service, stock, bond or security;

(c) amounts paid by members of any cooperative association or similar organization for sales or leases of personal property or performance of services by such organization;

(d) amounts received from transmitting messages or conversations by persons providing telephone or telegraph services;

(e) amounts received by a New Mexico florist from the sale of flowers, plants or other products that are customarily sold by florists where the sale is made pursuant to orders placed with the New Mexico florist that are filled and delivered outside New Mexico by an out-of-state florist;

(f) the receipts of a home service provider from providing mobile telecommunications services to customers whose place of primary use is in New Mexico if: 1) the mobile telecommunications services originate and terminate in the same state, regardless of where the services originate, terminate or pass through; and 2) the charges for mobile telecommunications services are billed by or for a customer's home service provider and are deemed provided by the home service provider. For the purposes of this section, "home service provider", "mobile telecommunications services", "customer" and "place of primary use" have the meanings given in the federal Mobile Telecommunications Sourcing Act; and

(g) receipts collected by a marketplace provider engaging in business in the state from sales, leases and licenses of tangible personal property, sales of licenses and sales of services or licenses for use of real property that are sourced to this state and are facilitated by the marketplace provider on behalf of marketplace sellers, regardless of whether the marketplace sellers are engaging in business in the state; and

(3) "gross receipts" excludes:

(a) cash discounts allowed and taken;

(b) New Mexico gross receipts tax, governmental gross receipts tax, leased vehicle gross receipts tax, and cannabis excise tax payable on transactions for the reporting period;

(c) taxes imposed pursuant to the provisions of any local option gross receipts tax that is payable on transactions for the reporting period;

(d) any gross receipts or sales taxes imposed by an Indian nation, tribe or pueblo; provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the interior of the United States; and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions;

(e) any type of time-price differential;

(f) amounts received solely on behalf of another in a disclosed agency capacity; and

(g) amounts received by a New Mexico florist from the sale of flowers, plants or other products that are customarily sold by florists where the sale is made pursuant to orders placed with an out-of-state florist for filling and delivery in New Mexico by a New Mexico florist.

B. When the sale of property or service is made under any type of charge, conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor may elect to treat all receipts, excluding any type of time-price differential, under such contracts as gross receipts as and when the payments are actually received. If the seller or lessor transfers the seller's or lessor's interest in any such contract to a third person, the seller or lessor shall pay the gross receipts tax upon the full sale or leasing contract amount, excluding any type of time-price differential.

History: 1978 Comp., § 7-9-3.5, enacted by Laws 2003, ch. 272, § 3; 2006, ch. 39, § 2; 2007, ch. 339, § 2; 2019, ch. 270, § 26; 2023, ch. 85, § 10.

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 the following percentages of gross receipts is imposed on any person engaging in business in New Mexico:

(1) prior to July 1, 2023, five percent; and

(2) beginning July 1, 2023, four and seven-eighths percent, except as provided in Subsection C of this section.

B. The tax imposed by this section shall be referred to as the "gross receipts tax".

C. If, for any single fiscal year occurring after fiscal year 2025 and prior to fiscal year 2030, gross receipts tax revenues are less than ninety-five percent of the gross receipts tax revenues for the previous fiscal year, as determined by the secretary of finance and administration, the rate of the gross receipts tax shall be five and one-eighth percent beginning on the July 1 following the determination made by the secretary of finance and administration.

D. On or before February 1 of each year, until the rate of the gross receipts tax is adjusted to five and one-eighth percent pursuant to Subsection C of this section, the secretary of finance and administration shall make a determination for the purposes of Subsection C of this section. If the rate of tax is adjusted pursuant to that subsection, the secretary shall certify to the secretary of taxation and revenue that the rate of the gross receipts tax shall be five and one-eighth percent, effective on the following July 1.

E. As used in this section, "gross receipts tax revenues" means the net receipts attributable to the gross receipts tax and distributed to the general fund.

History: 1953 Comp., § 72-16A-4, enacted by Laws 1966, ch. 47, § 4; 1969, ch. 144, § 2; 1978, ch. 151, § 2; 1981, ch. 37, § 9; 1983, ch. 213, § 15; 1986, ch. 20, § 63; 1990 (1st S.S.), ch. 1, § 2; 2010 (2nd S.S.), ch. 7, § 9; 2022, ch. 47, § 12.

7-9-4.1. Repealed.

7-9-4.2. Repealed.

7-9-4.3. Imposition and rate of tax; denomination as "governmental gross receipts tax".

For the privilege of engaging in certain activities by governments, there is imposed on every agency, institution, instrumentality or political subdivision of the state, except any school district and an entity licensed by the department of health, other than a hospital, that is principally engaged in providing health care services, an excise tax of five percent of governmental gross receipts. The tax imposed by this section shall be referred to as the "governmental gross receipts tax".

History: 1978 Comps., § 7-9-4.1, enacted by Laws 1991, ch. 8, § 2; 1992, ch. 49, § 1; 1992, ch. 100, § 2; 1993, ch. 332, § 1; 1993, ch. 352, § 1; 2019, ch. 270, § 27.

7-9-5. Presumption of taxability.

A. To prevent evasion of the gross receipts tax and to aid in its administration, it is presumed that all receipts of a person engaging in business are subject to the gross receipts tax. A person engaged solely in transactions specifically exempt under the provisions of the Gross Receipts and Compensating Tax Act shall not be required to register or file a return under that act.

B. If receipts from nontaxable charges for mobile telecommunications services are aggregated with and not separately stated from taxable charges for mobile telecommunications services, the charges for nontaxable mobile telecommunications services shall be subject to gross receipts tax unless the home service provider can reasonably identify nontaxable charges in its books and records that are kept in the regular course of business. For the purposes of this subsection, "charges for mobile telecommunications services", "home service provider" and "mobile telecommunications services" have the meanings given in the federal Mobile Telecommunications Sourcing Act.

C. A marketplace provider engaging in business in this state is not liable for amounts of gross receipts tax collected incorrectly due to the marketplace provider reasonably relying on erroneous information provided by the seller.

History: 1953 Comp., § 72-16A-5, enacted by Laws 1966, ch. 47, § 5; 2002, ch. 18, § 3; 2019, ch. 270, § 28.

7-9-6. Separately stating the gross receipts tax.

A. Taxpayers subject to the Gross Receipts and Compensating Tax Act, when billing a customer, shall separately state the amount of tax associated with the transaction or provide a statement affirmatively indicating that the gross receipts tax is included in the amount billed.

B. 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; 2019, ch. 270, § 29.

7-9-7. Imposition and rate of tax; denomination as "compensating tax".

A. For the privilege of making taxable use of tangible personal property in New Mexico, there is imposed on the person using the property an excise tax equal to five percent prior to July 1, 2023 and four and seven-eighths percent beginning July 1, 2023, except as provided in Subsection G of this section, of the value of tangible property that was:

(1) manufactured by the person using the property in the state; or

(2) acquired in a transaction for which the seller's receipts were not subject to the gross receipts tax.

B. For the purpose of Subsection A of this section, value of tangible personal property shall be the adjusted basis of the property for federal income tax purposes determined as of the time of acquisition or introduction into this state or of conversion of the property to taxable use, whichever is later. If no adjusted basis for federal income tax purposes is established for the property, a reasonable value of the property shall be used.

C. For the privilege of making taxable use of a license or franchise in New Mexico, there is imposed on the person using the license or franchise an excise tax equal to the rate provided in Subsection A or G of this section, as applicable, against the value of the license or franchise in its use in this state. The department by rule, ruling or instruction shall fairly apportion, where appropriate, the value of a license or franchise to its value in use in New Mexico. The tax shall apply only to the value of a license or franchise used in New Mexico where the license or franchise was acquired in a transaction the receipts from which were not subject to the gross receipts tax.

D. For the privilege of making taxable use of services in New Mexico, there is imposed on the person using the services an excise tax equal to the rate provided in Subsection A or G of this section, as applicable, against the value of the services at the time the services were performed or the product of the service was acquired. For use of services to be a taxable use pursuant to this subsection, the services shall have been acquired in a transaction the receipts from which were not subject to the gross receipts tax.

E. For purposes of this section, receipts are not subject to the gross receipts tax if the person responsible for the gross receipts tax on those receipts lacked nexus in New Mexico or the receipts were exempt or allowed to be deducted pursuant to the Gross Receipts and Compensating Tax Act.

F. The tax imposed by this section shall be referred to as the "compensating tax".

G. If the gross receipts tax is increased to five and one-eighth percent pursuant to Subsection C of Section 7-9-4 NMSA 1978, the rate of the compensating tax shall be five and one-eighth percent.

H. As used in this section, "taxable use" means use by a person who acquires tangible personal property, a license, a franchise or a service, and the use of which would not have qualified for an exemption or deduction pursuant to the Gross Receipts and Compensating Tax Act.

History: 1953 Comp., § 72-16A-7, enacted by Laws 1966, ch. 47, § 7; 1969, ch. 144, § 3; 1978, ch. 151, § 3; 1981, ch. 37, § 10; 1983, ch. 213, § 16; 1986, ch. 20, § 64; 1990 (1st S.S.), ch. 1, § 4; 1993, ch. 31, § 2; 1995, ch. 50, § 1; 2010 (2nd S.S.), ch. 7, § 10; 2011, ch. 175, § 1; 2019, ch. 270, § 30; 2021, ch. 65, § 12; 2022, ch. 47, § 13.

7-9-7.1. Department barred from taking collection actions with respect to certain tax liabilities.

The department shall take no action to enforce collection of gross receipts tax for a tax period prior to July 1, 2019 on persons engaging in business if that person:

A. lacked physical presence in the state; and

B. did not report taxable gross receipts prior to July 1, 2019.

History: 1978 Comp., § 7-9-7.1, enacted by Laws 1993, ch. 45, § 1; 1994, ch. 34, § 1; 1995, ch. 50, § 2; 2019, ch. 270, § 31.

7-9-7.2. Authority to establish standards for certified service providers.

A. The secretary is authorized to provide information, upon which taxpayers may rely, as to the taxability of gross receipts from particular transactions, including taxability matrices, and is further authorized to establish standards for the certification of certified service providers that offer software-based systems to enable taxpayers to properly determine the taxability of gross receipts from particular transactions.

B. As used in this section, "certified service provider" means "certified service provider" as defined in the Streamlined Sales and Use Tax Administration Act [7-5A-1 to 7-5A-9 NMSA 1978].

History: Laws 2019, ch. 270, § 37

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.

7-9-10. Agents for collection of compensating tax; duties.

A. Every person carrying on or causing to be carried on any activity within this state attempting to exploit New Mexico's markets who sells property or sells property and service for use in this state and who is not subject to the gross receipts tax on receipts from these sales shall collect the compensating tax from the buyer and pay the tax collected to the department. "Activity", for the purposes of this section, includes but is not limited to engaging in any of the following in New Mexico: maintaining an office or other place of business; soliciting orders through employees or independent contractors; soliciting orders through advertisements placed in newspapers or magazines published in New Mexico or advertisements broadcast by New Mexico radio or television stations, soliciting orders through programs broadcast by New Mexico radio or television stations or transmitted by cable systems in New Mexico; canvassing, demonstrating, collecting money, warehousing or storing merchandise or delivering or distributing products as a consequence of an advertising or other sales program directed at potential customers. "Activity", for the purposes of this section, does not include having a world wide web site as a third-party provider on a computer physically located in New Mexico but owned by another nonaffiliated person, and "activity" does not include using a nonaffiliated third-party call center to accept and process telephone or electronic orders of tangible personal property or licenses primarily from non-New Mexico buyers, which orders are forwarded to a location outside New Mexico for filling, or to provide services primarily to non-New Mexico customers.

B. To ensure orderly and efficient collection of the public revenue, if any application of this section is held invalid, the section's application to other situations or persons shall not be affected.

History: 1953 Comp., § 72-16A-10, enacted by Laws 1966, ch. 47, § 10; 1983, ch. 220, § 3; 1990, ch. 41, § 2; 1998, ch. 92, § 5; 2000, ch. 101, § 2; 2001, ch. 65, § 2.

7-9-11. Date payment due.

The taxes imposed by the Gross Receipts and Compensating Tax Act are to be paid on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

History: 1953 Comp., § 72-16A-11, enacted by Laws 1966, ch. 47, § 11; 1969, ch. 25, § 2.

7-9-12. Exemptions.

Exemptions from either the gross receipts tax or the compensating tax are not exemptions from both taxes unless explicitly stated otherwise by law.

History: 1978 Comp., § 7-9-12, enacted by Laws 1969, ch. 144, § 5; 1970, ch. 60, § 1; 1972, ch. 61, § 1; 1973, ch. 67, § 1; 1984, ch. 2, § 2; 2017 (1st S.S.), ch. 3, § 14.

7-9-12.1. Repealed.

7-9-13. Exemption; gross receipts tax; governmental agencies.

A. Except as otherwise provided in this section, exempted from the gross receipts tax are receipts of:

(1) the United States or any agency, department or instrumentality thereof;

(2) the state of New Mexico or any political subdivision thereof;

(3) any Indian nation, tribe or pueblo from activities or transactions occurring on its sovereign territory; or

(4) any foreign nation or agency, instrumentality or political subdivision thereof, but only when required by a treaty in force to which the United States is a party.

B. Receipts from the sale of gas or electricity by a utility owned or operated by a county, municipality or other political subdivision of a state are not exempted from the gross receipts tax.

C. Receipts from the operation of a cable television system owned or operated by a municipality are not exempted from the gross receipts tax.

History: 1953 Comp., § 72-16A-12.1, enacted by Laws 1969, ch. 144, § 6; 1991, ch. 8, § 4; 1993, ch. 31, § 3; 1993, ch. 208, § 7; 1994, ch. 45, § 2; 1998, ch. 89, § 1.

7-9-13.1. Exemption; gross receipts tax; certain services.

A. Exempted from the gross receipts tax are the receipts from selling research and development services performed outside New Mexico the product of which is initially used in New Mexico and that are sold:

(1) between affiliated corporations;

(2) 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) 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.

B. 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 that 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; 2019, ch. 270, § 32.

7-9-13.2. Exemption; governmental gross receipts tax; receipts subject to certain other taxes.

Exempted from the governmental gross receipts tax are receipts from transactions involving tangible personal property or services on which receipts or transactions the gross receipts tax, compensating tax, motor vehicle excise tax, gasoline tax, special fuel tax, special fuel excise tax, oil and gas emergency school tax, resources tax, processors tax, service tax or the excise tax imposed under Section 66-12-6.1 NMSA 1978 is imposed.

History: Laws 1992, ch. 100, § 3; 1993, ch. 31, § 4.

7-9-13.3. Exemption; gross receipts tax and governmental gross receipts tax; stadium surcharge.

Exempted from the gross receipts tax and from the governmental gross receipts tax are the receipts from selling tickets, parking, souvenirs, concessions, programs, advertising, merchandise, corporate suites or boxes, broadcast revenues and all other products, services or activities sold at, related to or occurring at a minor league baseball stadium on which a stadium surcharge is imposed pursuant to the Minor League Baseball Stadium Funding Act [3-65-1 to 3-65-10 NMSA 1978].

History: Laws 2001, ch. 231, § 12.

7-9-13.4. Exemption; gross receipts tax; sale of textbooks from certain bookstores to enrolled students.

Exempted from the gross receipts tax are the receipts from the sale of textbooks and other materials that are required for courses at a public post-secondary educational institution if the sale is by a bookstore located on the campus of the institution and operated pursuant to a contractual agreement with that institution and the sale is to a student enrolled at the institution who displays a valid student identification card.

History: Laws 2002, ch. 20, § 1.

7-9-13.5. Exemption; gross receipts tax and governmental gross receipts tax; event center surcharge.

Exempted from the gross receipts tax and from the governmental gross receipts tax are the receipts from selling tickets, parking, souvenirs, concessions, programs, advertising, merchandise, corporate suites or boxes, broadcast revenues and all other products or services sold at or related to a municipal event center or related to activities occurring at the event center on which an event center surcharge is imposed pursuant to the Municipal Event Center Funding Act [3-66-1 to 3-66-11 NMSA 1978].

History: Laws 2005, ch. 351, § 2.

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 and services by the United States or the state of New Mexico or any governmental unit or subdivision, agency, department or instrumentality thereof. The exemption provided by this subsection does not apply to:

(1) the use of property that is or will be incorporated into a metropolitan redevelopment project under the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978]; or

(2) the use of construction material.

B. Exempted from the compensating tax is the use of property by any Indian nation, tribe or pueblo or any governmental unit, subdivision, agency, department or instrumentality thereof on Indian reservations or pueblo grants.

History: 1953 Comp., § 72-16A-12.2, enacted by Laws 1969, ch. 144, § 7; 1985, ch. 225, § 3; 1990, ch. 41, § 3; 1993, ch. 31, § 5; 2001, ch. 343, § 2; 2023, ch. 85, § 11.

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.

7-9-16. Repealed.

History: 1953 Comp., § 72-16A-12.4, enacted by Laws 1969, ch. 144, § 9; 1970, ch. 12, § 2; 1975, ch. 54, § 1; repealed by Laws 2023, ch. 85, § 28.

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.

7-9-18. Exemption; gross receipts tax and governmental gross receipts tax; agricultural products.

A. Exempted from the gross receipts tax and from the governmental gross receipts tax are the receipts from selling livestock and receipts of growers, producers, trappers or nonprofit marketing associations from selling livestock, live poultry, unprocessed agricultural products, hides or pelts. Persons engaged in the business of buying and selling wool or mohair or of buying and selling livestock on their own account are producers for the purposes of this section.

B. Receipts from selling dairy products at retail are not exempted from the gross receipts tax.

C. As used in this section, "livestock" means all domestic or domesticated animals that are used or raised on a farm or ranch, including the carcasses thereof, and also includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae upon any land in New Mexico; provided that for the purposes of Chapter 77, Article 9 NMSA 1978, "animals" or "livestock" have the meaning defined in that article. "Animals" or "livestock" does not include canine or feline animals. For the purpose of the rules governing meat inspection, wild animals, poultry and birds used for human consumption shall also be included within the meaning of "animals" or "livestock".

History: 1953 Comp., § 72-16A-12.6, enacted by Laws 1969, ch. 144, § 11; 1991, ch. 9, § 27; 1992, ch. 48, § 1; 1993, ch. 31, § 6; 2011, ch. 81, § 1.

7-9-18.1. Exemption; gross receipts tax; food stamps.

Exempted from the gross receipts tax are the receipts of a taxpayer who is approved for participation in the food stamp program authorized by U.S.C. Title 7, Chapter 51, as that chapter may be amended or renumbered, from the lawful acceptance and deposit with a financial institution of food stamps issued by the United States department of agriculture pursuant to the food stamp program.

History: 1978 Comp., § 7-9-18.1, enacted by Laws 1987, ch. 264, § 13 and Laws 1987, ch. 304, § 1.

7-9-19. Exemption; gross receipts tax; livestock feeding.

A. Exempted from the gross receipts tax are the receipts of any person derived from feeding or pasturing livestock.

B. Receipts derived from penning or handling livestock prior to sale are receipts derived from feeding livestock for the purposes of this section.

C. Receipts derived from training livestock are receipts derived from feeding livestock for the purposes of this section.

History: 1953 Comp., § 72-16A-12.7, enacted by Laws 1969, ch. 144, § 12; 1974, ch. 19, § 1; 1991, ch. 9, § 28; 1992, ch. 48, § 2.

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.

7-9-21. Repealed.

7-9-22. Exemption; gross receipts tax; vehicles.

Exempted from the gross receipts tax are the receipts from selling vehicles on which a tax is imposed by the Motor Vehicle Excise Tax Act [Chapter 7, Article 14 NMSA 1978], vehicles subject to registration under Section 66-3-16 NMSA 1978 and vehicles exempt from the motor vehicle excise tax pursuant to Subsection F of Section 7-14-6 NMSA 1978.

History: 1953 Comp., § 72-16A-12.10, enacted by Laws 1969, ch. 144, § 15; 1976 (S.S.), ch. 36, § 2; 1981, ch. 184, § 2; 1988, ch. 73, § 8; 2004, ch. 66, § 1.

7-9-22.1. Exemption; gross receipts tax; boats.

Exempted from the gross receipts tax are the receipts from selling boats on which a tax is imposed by Section 66-12-6.1 NMSA 1978.

History: 1978 Comp., § 7-9-22.1, enacted by Laws 1987, ch. 247, § 1.

7-9-23. Exemption; compensating tax; vehicles.

Exempted from the compensating tax is the use of vehicles on which the tax imposed by the Motor Vehicle Excise Tax Act [Chapter 7, Article 14 NMSA 1978] has been paid, the use of vehicles subject to registration under Section 66-3-16 NMSA 1978 and the use of vehicles exempt from the motor vehicle excise tax pursuant to Subsection F of Section 7-14-6 NMSA 1978.

History: 1953 Comp., § 72-16A-12.11, enacted by Laws 1969, ch. 144, § 16; 1976 (S.S.), ch. 36, § 3; 1983, ch. 220, § 5; 1988, ch. 73, § 9; 2004, ch. 66, § 2.

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.

7-9-26. Exemption; gross receipts and compensating tax; fuel.

Exempted from the gross receipts and compensating tax are the receipts from selling and the use of gasoline, special fuel or alternative fuel on which the tax imposed by Section 7-13-3, 7-16A-3 or 7-16B-4 NMSA 1978 has been paid and not refunded.

History: 1953 Comp., § 72-16A-12.14, enacted by Laws 1969, ch. 144, § 19; 1971, ch. 176, § 1; 1980, ch. 105, § 2; 1981, ch. 175, § 1; 1983, ch. 225, § 1; 1993, ch. 31, § 7; 1995, ch. 16, § 12; 2023, ch. 85, § 12.

7-9-26.1. Exemption; gross receipts tax and compensating tax; fuel for space vehicles.

A. Exempted from the gross receipts tax are the receipts from selling fuel, oxidizer or a substance that combines fuel and oxidizer to propel space vehicles or to operate space vehicle launchers.

B. Exempted from the compensating tax is the use of fuel, oxidizer or a substance that combines fuel and oxidizer to propel space vehicles or to operate space vehicle launchers.

History: 1978 Comp., § 7-9-26.1, enacted by Laws 2003, ch. 62, § 1.

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.

7-9-29. Exemption; gross receipts tax; certain organizations; exceptions.

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 1986, as that section may be amended or renumbered, except for receipts of a hospital licensed by the department of health.

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 1986, as that section may be amended or renumbered.

C. This section does not apply to:

(1) receipts derived from an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1986, as that section may be amended or renumbered;

(2) receipts of a prime contractor that are derived from operating a facility in New Mexico designated as a national laboratory by an act of congress; or

(3) receipts of a prime contractor that are derived from operating a research facility in New Mexico that is owned by the state.

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; 2019, ch. 44, § 1; 2019, ch. 270, § 33.

7-9-30. Exemption; compensating tax; railroad equipment, aircraft and space vehicles.

A. Exempted from the compensating tax is the use of railroad locomotives, trailers, containers, tenders or cars procured or bought for use in railroad transportation.

B. Exempted from the compensating tax is the use of commercial aircraft bought or leased primarily for use in the transportation of passengers or property for hire in interstate commerce.

C. Exempted from the compensating tax is the use of space vehicles for transportation of persons or property in, to or from space.

History: 1953 Comp., § 72-16A-12.18, enacted by Laws 1969, ch. 144, § 23; 1988, ch. 148, § 1; 2003, ch. 62, § 2.

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.

7-9-33. Exemption; gross receipts tax; products subject to Oil and Gas Emergency School Tax Act.

A. Exempted from the gross receipts tax are receipts from the sale of products the severance of which is subject to the tax imposed by the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978] except that receipts from the sale of products other than for subsequent resale in the ordinary course of business, for consumption outside the state, or for use as an ingredient or component part of a manufactured product are subject to the Gross Receipts and Compensating Tax Act as well as to the Oil and Gas Emergency School Tax Act.

B. No gross receipts tax or compensating tax pursuant to the Gross Receipts and Compensating Tax Act shall apply to storing crude oil, natural gas or liquid hydrocarbons, individually or any combination, or to the use of such products for fuel in the operation of a "production unit" as defined by the Oil and Gas Emergency School Tax Act.

History: 1953 Comp., § 72-16A-12.21, enacted by Laws 1969, ch. 144, § 26; 1975, ch. 133, § 1; 1984, ch. 2, § 3; 1989, ch. 115, § 1.

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 33 NMSA 1978] except that receipts from the sale of products other than for subsequent resale in the ordinary course of business, for consumption outside the state, or for use as an ingredient or component part of a manufactured product are subject to the Gross Receipts and Compensating Tax Act as well as to the Natural Gas Processors Tax Act.

B. No gross receipts tax or compensating tax pursuant to the Gross Receipts and Compensating Tax Act shall apply to receipts from storing or using crude oil, natural gas or liquid hydrocarbons, individually or any combination, when stored or used in New Mexico by a "processor", as defined by the Natural Gas Processors Tax Act, or by a person engaged in the business of refining oil, natural gas or liquid hydrocarbons who stores or uses the crude oil, natural gas or liquid hydrocarbons in the regular course of his refining business.

History: 1953 Comp., § 72-16A-12.22, enacted by Laws 1969, ch. 144, § 27; 1970, ch. 13, § 1; 1975, ch. 133, § 2; 1984, ch. 2, § 4; 1989, ch. 115, § 2.

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.

7-9-36. Exemption; gross receipts tax; oil and gas consumed in the pipeline transportation of oil and gas products.

Exempted from the gross receipts tax are receipts from the sale of oil, natural gas, liquid hydrocarbon or any combination thereof consumed as fuel in the pipeline transportation of such products.

History: 1953 Comp., § 72-16A-12.24, enacted by Laws 1969, ch. 144, § 29.

7-9-37. Exemption; compensating tax; use of oil and gas in the pipeline transportation of oil and gas products.

Exempted from the compensating tax is the use of oil, natural gas, liquid hydrocarbon or any combination thereof as fuel in the pipeline transportation of such products.

History: 1953 Comp., § 72-16A-12.25, enacted by Laws 1969, ch. 144, § 30.

7-9-38. Exemption; compensating tax; use of electricity in the production, conversion and transmission of electricity.

Exempted from the compensating tax is electricity used in the production and transmission of electricity, including transmission using voltage source conversion technology.

History: 1953 Comp., § 72-16A-12.26, enacted by Laws 1969, ch. 144, § 31; 2012, ch. 12, § 1.

7-9-38.1. Exemption; gross receipts tax; interstate telecommunications services.

Exempted from the gross receipts tax are receipts from the sale or provision of interstate telecommunications services subject to the Interstate Telecommunications Gross Receipts Tax Act [Chapter 7, Article 9C NMSA 1978].

History: Laws 1992, ch. 50, § 12 and Laws 1992, ch. 67, § 12; 1993, ch. 31, § 8.

7-9-38.2. Exemption; gross receipts tax; sale of certain telecommunications services.

Exempted from the gross receipts tax are receipts of a home service provider from providing mobile telecommunications services to persons whose place of primary use is outside New Mexico, regardless of where the mobile telecommunications services originate, terminate or pass through. For the purposes of this section, "home service provider", "mobile telecommunications services" and "place of primary use" have the meanings given in the federal Mobile Telecommunications Sourcing Act.

History: Laws 2002, ch. 18, § 2.

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.

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 [repealed] 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.

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.

7-9-41.1. Exemption; gross receipts tax and governmental gross receipts tax; athletic facility surcharge.

Exempted from the gross receipts tax and from the governmental gross receipts tax are the receipts of a university from an athletic facility surcharge imposed pursuant to the University Athletic Facility Funding Act [21-30-1 to 21-30-10 NMSA 1978].

History: Laws 2007, ch. 117, § 1.

7-9-41.2. Deleted.

History: Laws 2007, ch. 172, § 13.

7-9-41.3. Exemption; receipts from sales by disabled street vendors.

A. Exempt from payment of the gross receipts tax are receipts from the sale of goods by a disabled street vendor.

B. As used in this section:

(1) "disabled" means to be blind or permanently disabled with medical improvement not expected pursuant to 42 USCA 421 for purposes of the federal Social Security Act or to have a permanent total disability pursuant to the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978]; and

(2) "street vendor" means a person licensed by a local government to sell items of tangible personal property by newly setting up a sales site daily or selling the items from a moveable cart, tray, blanket or other device.

History: Laws 2007, ch. 45, § 13 and 2007, ch. 237, § 1.

7-9-41.4. Exemption; officiating at New Mexico activities association-sanctioned school events.

Exempted from the gross receipts tax are the receipts from refereeing, umpiring, scoring or other officiating at school events sanctioned by the New Mexico activities association.

History: Laws 2009, ch. 62, § 1.

7-9-41.5. Exemption; nonprofit hospitals from local option gross receipts taxes.

A. Exempted from any local option gross receipts tax, but not the state gross receipts tax, are receipts of a nonprofit hospital licensed by the department of health.

B. As used in this section, "nonprofit hospital" means a hospital that has been granted exemption from federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code.

History: Laws 2019, ch. 270, § 34.

7-9-41.6. Exemption; gross receipts; certain health care providers from certain federal payments.

Exempted from the gross receipts tax are receipts of health care providers, other than hospitals licensed by the department of health, from payments by:

A. the United States department of health and human services from the federal public health and social services emergency fund to providers eligible to receive the payments pursuant to the federal Coronavirus Aid, Relief, and Economic Security Act; and

B. the medical assistance division of the human services department [health care authority department] from funds appropriated to New Mexico pursuant to the federal American Rescue Plan Act of 2021 for the state medicaid program to provide additional support for home and community-based services.

History: Laws 2020 (1st S.S.), ch. 4, § 3; 2023, ch. 85, § 13.

7-9-42. Repealed.

7-9-43. Nontaxable transaction certificates and other evidence required to entitle persons to deductions.

A. Except as provided in Subsection B of this section, a person may establish entitlement to a deduction from gross receipts allowed pursuant to the Gross Receipts and Compensating Tax Act by obtaining a properly executed nontaxable transaction certificate from the purchaser. Nontaxable transaction certificates shall contain the information and be in a form prescribed by the department. The department by regulation may deem to be nontaxable transaction certificates documents issued by other states or the multistate tax commission to taxpayers not required to be registered in New Mexico. Only buyers or lessees who have a registration number or have applied for a registration number and have not been refused one under Subsection C of Section 7-1-12 NMSA 1978 shall execute nontaxable transaction certificates issued by the department. If the seller or lessor has been given an identification number for tax purposes by the department, the seller or lessor shall disclose that identification number to the buyer or lessee prior to or upon acceptance of a nontaxable transaction certificate.

B. Except as provided in Subsection C of this section, a person who does not comply with Subsection A of this section may establish entitlement to a deduction from gross receipts by presenting alternative evidence that demonstrates the facts necessary to support entitlement to the deduction, but the burden of proof is on that person. Alternative evidence includes:

(1) invoices or contracts that identify the nature of the transaction;

(2) documentation as to the purchaser's use or disposition of the property or service;

(3) a statement from the purchaser indicating that the purchaser sold or intends to resell the property or service purchased from the seller, either by itself or in combination with other property or services, in the ordinary course of business. The statement from the purchaser shall include:

(a) the seller's name;

(b) the date of the invoice or date of the transaction;

(c) the invoice number or a copy of the invoice;

(d) a copy of the purchase order, if available;

(e) the amount of purchase; and

(f) a description of the property or service purchased or leased; or

(4) any other evidence that demonstrates the facts necessary to establish entitlement to the deduction.

C. Subsection B of this section does not apply to sellers of electricity or fuels that are parties to an agreement with the department pursuant to Section 7-1-21.1 NMSA 1978 regarding the deduction pursuant to Subsection B of Section 7-9-46 NMSA 1978.

D. When a person accepts in good faith a properly executed nontaxable transaction certificate from the purchaser, the properly executed nontaxable transaction certificate shall be conclusive evidence that the proceeds from the transaction are deductible from the person's gross receipts.

E. To exercise the privilege of executing appropriate nontaxable transaction certificates, a buyer or lessee shall apply to the department for permission to execute nontaxable transaction certificates, except with respect to documents issued by other states or the multistate tax commission that the department has deemed to be nontaxable transaction certificates.

F. If a person has accepted in good faith a properly executed nontaxable transaction certificate, but the purchaser has not employed the property or service purchased in the nontaxable manner or has provided materially false or inaccurate information on the nontaxable transaction certificate, the purchaser shall be liable for an amount equal to any tax, penalty and interest that the seller would have been required to pay if the seller had not complied with Subsection A of this section.

G. Any person who knowingly or willfully provides false or inaccurate information on a nontaxable transaction certificate or as alternative evidence provided in support of a claim for a deduction may be subject to prosecution under Sections 7-1-72 and 7-1-73 NMSA 1978.

History: 1953 Comp., § 72-16A-13, enacted by Laws 1966, ch. 47, § 13; 1969, ch. 144, § 33; 1973, ch. 219, § 1; 1983, ch. 220, § 7; 1990, ch. 41, § 6; 1991, ch. 9, § 29; 1992, ch. 39, § 3; 1993, ch. 31, § 9; 1994, ch. 94, § 1; 1994, ch. 98, § 1; 1997, ch. 72, § 1; 1998, ch. 89, § 3; 2001, ch. 332, § 1; 2003, ch. 330, § 1; 2005, ch. 12, § 1; 2011, ch. 148, § 1; 2018, ch. 56, § 1.

7-9-43.1. Nontaxable transaction certificates not required by liquor wholesalers.

Notwithstanding the provisions of Section 7-9-43 NMSA 1978, a liquor wholesaler licensed as a wholesaler by the superintendent of regulation and licensing pursuant to the Liquor Control Act [60-3A-1 NMSA 1978 et seq.] is not required to obtain a nontaxable transaction certificate from a person issued a retailer's, dispenser's, restaurant, public service or governmental license by the superintendent of regulation and licensing pursuant to the Liquor Control Act for the purpose of taking deductions under the Gross Receipts and Compensating Tax Act.

History: Laws 1981, ch. 333, § 1; 1992, ch. 39, § 4.

7-9-44. Repealed.

History: 1953 Comp., § 72-16A-13.1, enacted by Laws 1969, ch. 144, § 34; 1983, ch. 220, § 8; 1990, ch. 41, § 7; 1992, ch. 39, § 5; 1993, ch. 31, § 10; 2001, ch. 343, § 3; repealed by Laws 2018, ch. 56, § 2.

7-9-45. Deductions.

A. Receipts may only be deducted once from gross receipts or governmental gross receipts when computing the gross receipts tax or governmental gross receipts tax due.

B. The same receipts shall not be both exempt from the gross receipts tax and deducted from gross receipts.

C. The same receipts shall not be both exempt from the governmental gross receipts tax and deducted from governmental gross receipts.

History: 1978 Comp., § 7-9-45, enacted by Laws 1969, ch. 144, § 35; 1970, ch. 77, § 1; 1970, ch. 78, § 1; 1971, ch. 217, § 1; 1972, ch. 39, § 1; 1977, ch. 288, § 1; 1979, ch. 338, § 2; 1984, ch. 129, § 1; 1989, ch. 262, § 5; 1994, ch. 45, § 3; 1995, ch. 70, § 5; 1999, ch. 231, § 2; 2017 (1st S.S.), ch. 3, § 16.

7-9-46. Deduction; gross receipts; governmental gross receipts; sales to manufacturers and manufacturing service providers.

A. Receipts from selling tangible personal property may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person engaged in the business of manufacturing who delivers a nontaxable transaction certificate to the seller or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978. The buyer must incorporate the tangible personal property as an ingredient or component part of the product that the buyer is in the business of manufacturing.

B. Receipts from selling a manufacturing consumable to a manufacturer or a manufacturing service provider may be deducted from gross receipts or from governmental gross receipts if the buyer delivers a nontaxable transaction certificate to the seller or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978; provided that if the seller is a utility company, an agreement with the department pursuant to Section 7-1-21.1 NMSA 1978 and a nontaxable transaction certificate shall be required.

C. Receipts from selling or leasing qualified equipment may be deducted from gross receipts if the sale is made to, or the lease is entered into with, a person engaged in the business of manufacturing or a manufacturing service provider who delivers a nontaxable transaction certificate to the seller or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978; provided that a manufacturer or manufacturing service provider delivering a nontaxable transaction certificate or alternative evidence with respect to the qualified equipment shall not claim an investment credit pursuant to the Investment Credit Act [Chapter 7, Article 9A NMSA 1978] for that same equipment.

D. The purpose of the deductions provided in this section is to encourage manufacturing businesses to locate in New Mexico and to reduce the tax burden, including reducing pyramiding, on the tangible personal property that is consumed in the manufacturing process and that is purchased by manufacturing businesses in New Mexico.

E. The department shall annually report to the revenue stabilization and tax policy committee the aggregate amount of deductions taken pursuant to this section, the number of taxpayers claiming each of the deductions and any other information that is necessary to determine that the deductions are performing the purposes for which they are enacted.

F. A taxpayer deducting gross receipts pursuant to this section shall report the amount deducted separately for each deduction provided in this section and attribute the amount of the deduction to the appropriate authorization provided in this section in a manner required by the department that facilitates the evaluation by the legislature of the benefit to the state of these deductions.

G. As used in this section:

(1) "manufacturing consumable" means tangible personal property, other than qualified equipment or an ingredient or component part of a manufactured product, that is incorporated into, destroyed, depleted or transformed in the process of manufacturing a product, including electricity, fuels, water, manufacturing aids and supplies, chemicals, gases and other tangibles used to manufacture a product;

(2) "manufacturing operation" means a plant operated by a manufacturer or manufacturing service provider that employs personnel to perform production tasks to produce goods, in conjunction with machinery and equipment; and

(3) "qualified equipment" means machinery, equipment and tools, including component, repair, replacement and spare parts thereof, that are used directly in the manufacturing process of a manufacturing operation. "Qualified equipment" includes computer hardware and software used directly in the manufacturing process of a manufacturing operation but excludes any motor vehicle that is required to be registered in this state pursuant to the Motor Vehicle Code [66-1-1 NMSA 1978].

History: 1953 Comp., § 72-16A-14.1, enacted by Laws 1969, ch. 144, § 36; 1992, ch. 100, § 4; 2012, ch. 5, § 4; 2013, ch. 160, § 9; 2021, ch. 65, § 13; 2021, ch. 66, § 2; 2023, ch. 85, § 14.

7-9-46.1. Deduction; gross receipts; governmental gross receipts; sales of services to manufacturers.

A. Receipts from selling professional services may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person engaged in the business of manufacturing who delivers a nontaxable transaction certificate to the seller or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978. The professional services shall be related to the product that the buyer is in the business of manufacturing.

B. The purpose of the deductions provided in this section is to encourage manufacturing businesses to locate in New Mexico and to reduce the tax burden, including reducing pyramiding, on the professional services that are purchased by manufacturing businesses in New Mexico.

C. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

D. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deduction. The department shall compile and present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the deduction and whether the deduction is performing the purpose for which it was created.

E. As used in this section:

(1) "accounting services" means the systematic and comprehensive recording of financial transactions pertaining to a business entity and the process of summarizing, analyzing and reporting these transactions to oversight agencies or tax collection entities, including certified public auditing, attest services and preparing financial statements, bookkeeping, tax return preparation, advice and consulting and, where applicable, representing taxpayers before tax collection agencies. "Accounting services" does not include, except as provided with respect to financial management services, investment advice, wealth management advice or consulting or any tax return preparation, advice, counseling or representation for individuals, regardless of whether those individuals are owners of pass-through entities, such as partnerships, limited liability companies or S corporations;

(2) "architectural services" means services related to the art and science of designing and building structures for human habitation or use and includes planning, providing preliminary studies, designs, specifications and working drawings and providing for general administration of construction contracts;

(3) "engineering services" means consultation, the production of a creative work, investigation, evaluation, planning and design, the performance of studies and reviewing planning documents when performed by, or under the supervision of, a licensed engineer, including the design, development and testing of mechanical, electrical, hydraulic, chemical, pneumatic or thermal machinery or equipment, industrial or commercial work systems or processes and military equipment. "Engineering services" does not include medical or medical laboratory services, any engineering performed in connection with a construction service or the design and installation of computer or computer network infrastructure;

(4) "information technology services" means separately stated services for installing and maintaining a business's computers and computer network, including performing computer network design; installing, repairing, maintaining or restoring computer networks, hardware or software; and performing custom software programming or making custom modifications to existing software programming. "Information technology services" does not include:

(a) software maintenance and update agreements, unless made in conjunction with custom programming;

(b) computers, servers, chilling equipment and pre-programmed software;

(c) data processing services or the processing or storage of information to compile and produce records of transactions for retrieval or use, including data entry, data retrieval, data searches and information compilation; or

(d) access to telecommunications or internet;

(5) "legal services" means services performed by a licensed attorney or under the supervision of a licensed attorney for a client, regardless of the attorney's form of business entity or whether the services are prepaid, including legal representation before courts or administrative agencies; drafting legal documents, such as contracts or patent applications; legal research; advising and counseling; arbitration; mediation; and notary public and other ancillary legal services performed for a client in conjunction with and under the supervision of a licensed attorney. "Legal services" does not include lobbying or government relations services, title insurance agent services, licensing or selling legal software or legal document templates, insurance investigation services or any legal representation involving financial crimes or tax evasion in New Mexico; and

(6) "professional services" means accounting services, architectural services, engineering services, information technology services and legal services.

History: Laws 2022, ch. 47, § 14.

7-9-47. Deduction; gross receipts tax; governmental gross receipts tax; sale of tangible personal property or licenses for resale.

Receipts from selling tangible personal property or licenses may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978. The buyer must resell the tangible personal property or license either by itself or in combination with other tangible personal property or licenses in the ordinary course of business.

History: 1953 Comp., § 72-16A-14.2, enacted by Laws 1969, ch. 144, § 37; 1992, ch. 39, § 6; 1992, ch. 100, § 5; 1994, ch. 45, § 4; 2021, ch. 65, § 14.

7-9-48. Deduction; gross receipts tax; governmental gross receipts; sale of a service for resale.

Receipts from selling a service for resale may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978. The buyer must resell the service in the ordinary course of business and the resale must be subject to the gross receipts tax or governmental gross receipts tax.

History: 1953 Comp., § 72-16A-14.3, enacted by Laws 1969, ch. 144, § 38; 1992, ch. 100, § 6; 2000, ch. 84, § 2; 2021, ch. 65, § 15.

7-9-49. Deduction; gross receipts tax; sale of tangible personal property and licenses for leasing.

A. Except as otherwise provided by Subsection B of this section, receipts from selling tangible personal property and licenses may be deducted from gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978. The buyer shall be engaged in a business that derives a substantial portion of its receipts from leasing or selling tangible personal property or licenses of the type sold. The buyer may not utilize the tangible personal property or license in any manner other than holding it for lease or sale or leasing or selling it either by itself or in combination with other tangible personal property or licenses in the ordinary course of business.

B. The deduction provided by this section shall not apply to receipts from selling:

(1) furniture or appliances, the receipts from the rental or lease of which are deductible under Subsection C of Section 7-9-53 NMSA 1978;

(2) coin-operated machines; or

(3) manufactured homes.

History: 1953 Comp., § 72-16A-14.4, enacted by Laws 1969, ch. 144, § 39; 1972, ch. 80, § 1; 1975, ch. 160, § 1; 1979, ch. 338, § 3; 1983, ch. 220, § 9; 1989, ch. 115, § 4; 1991, ch. 203, § 3; 1992, ch. 39, § 7; 2021, ch. 65, § 16.

7-9-50. Deduction; gross receipts tax; lease for subsequent lease.

A. Except as provided otherwise in Subsection B of this section, receipts from leasing tangible personal property or licenses may be deducted from gross receipts if the lease is made to a lessee who delivers a nontaxable transaction certificate to the lessor or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978. The lessee may not use the tangible personal property or license in any manner other than for subsequent lease in the ordinary course of business.

B. The deduction provided by this section does not apply to receipts from leasing:

(1) furniture or appliances, the receipts from the rental or lease of which are deductible under Subsection C of Section 7-9-53 NMSA 1978;

(2) coin-operated machines; or

(3) manufactured homes.

History: 1953 Comp., § 72-16A-14.5, enacted by Laws 1969, ch. 144, § 40; 1972, ch. 80, § 2; 1975, ch. 160, § 2; 1979, ch. 338, § 4; 1983, ch. 220, § 10; 1991, ch. 203, § 4; 1992, ch. 39, § 8; 2021, ch. 65, § 17.

7-9-51. Deduction; gross receipts tax; sale of construction material to persons engaged in the construction business.

A. Receipts from selling construction material may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate to the seller or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978.

B. The buyer must incorporate the construction material as:

(1) an ingredient or component part of a construction project that is subject to the gross receipts tax upon its completion or upon the completion of the overall construction project of which it is a part;

(2) an ingredient or component part of a construction project that is subject to the gross receipts tax upon the sale in the ordinary course of business of the real property upon which it was constructed; or

(3) an ingredient or component part of a construction project that is located on the tribal territory of an Indian nation, tribe or pueblo.

History: 1953 Comp., § 72-16A-14.6, enacted by Laws 1969, ch. 144, § 41; 2000, ch. 84, § 3; 2000, ch. 98, § 1; 2001, ch. 343, § 4; 2021, ch. 65, § 18.

7-9-51.1. Repealed.

7-9-52. Deduction; gross receipts tax; sale of construction services and construction-related services to persons engaged in the construction business.

A. Receipts from selling a construction service or a construction-related service may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate to the person performing the construction service or a construction-related service or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978.

B. The buyer shall have the construction services or construction-related services directly contracted for or billed to:

(1) a construction project that is subject to the gross receipts tax upon its completion or upon the completion of the overall construction project of which it is a part;

(2) a construction project that is subject to the gross receipts tax upon the sale in the ordinary course of business of the real property upon which it was constructed; or

(3) a construction project that is located on the tribal territory of an Indian nation, tribe or pueblo.

History: 1953 Comp., § 72-16A-14.7, enacted by Laws 1969, ch. 144, § 42; 2000, ch. 84, § 4; 2000, ch. 98, § 2; 2012, ch. 5, § 5; 2020, ch. 80, § 5; 2021, ch. 65, § 19.

7-9-52.1. Deduction; gross receipts tax; lease of construction equipment to persons engaged in the construction business.

A. Receipts from leasing construction equipment may be deducted from gross receipts if the construction equipment is leased to a person engaged in the construction business who delivers a nontaxable transaction certificate to the person leasing the construction equipment or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978.

B. The lessee shall only use the construction equipment at the construction location of:

(1) a construction project that is subject to the gross receipts tax upon its completion or upon the completion of the overall construction project of which it is a part;

(2) a construction project that is subject to the gross receipts tax upon the sale in the ordinary course of business of the real property upon which it was constructed; or

(3) a construction project that is located on the tribal territory of an Indian nation, tribe or pueblo.

C. As used in this section, "construction equipment" means equipment used on a construction project, including trash containers, portable toilets, scaffolding and temporary fencing.

History: Laws 2012, ch. 5, § 6; 2021, ch. 65, § 20.

7-9-53. Deduction; gross receipts tax; sale or lease of real property and lease of manufactured homes.

A. Receipts from the sale or lease of real property and from the lease of a manufactured home as provided in Subsection B of this section, other than receipts from the sale or lease of oil, natural gas or mineral interests exempted by Section 7-9-32 NMSA 1978, may be deducted from gross receipts. However, that portion of the receipts from the sale of real property which is attributable to improvements constructed on the real property by the seller in the ordinary course of his construction business may not be deducted from gross receipts.

B. Receipts from the rental of a manufactured home for a period of at least one month may be deducted from gross receipts. Receipts received by hotels, motels, rooming houses, campgrounds, guest ranches, trailer parks or similar facilities, except receipts received by trailer parks from the rental of a space for a manufactured home or recreational vehicle for a period of at least one month, from lodgers, guests, roomers or occupants are not receipts from leasing real property for the purposes of this section.

C. Receipts attributable to the inclusion of furniture or appliances furnished as part of a leased or rented dwelling house, manufactured home or apartment by the landlord or lessor may be deducted from gross receipts.

History: 1953 Comp., § 72-16A-14.8, enacted by Laws 1969, ch. 144, § 43; 1972, ch. 80, § 3; 1973, ch. 205, § 1; 1975, ch. 160, § 3; 1979, ch. 338, § 5; 1983, ch. 220, § 11; 1991, ch. 203, § 5; 1998, ch. 94, § 1.

7-9-54. Deduction; gross receipts tax; governmental gross receipts tax; sales to governmental agencies.

A. Receipts from selling tangible personal property, or from selling licenses to use digital goods for the purpose of loaning those digital goods to the public, to the United States or to New Mexico or a governmental unit, subdivision, agency, department or instrumentality thereof may be deducted from gross receipts or from governmental gross receipts. Unless contrary to federal law, the deduction provided by this subsection does not apply to:

(1) receipts from selling metalliferous mineral ore;

(2) receipts from selling tangible personal property that is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code;

(3) receipts from selling construction material, excluding tangible personal property, whether removable or non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or

ten-year property, including indirect costs related to the asset basis, by Section 168 of the Internal Revenue Code of 1986, as that section may be amended or renumbered; or

(4) that portion of the receipts from performing a "service" that reflects the value of tangible personal property utilized or produced in performance of such service.

B. Receipts from selling tangible personal property, or from selling licenses to use digital goods for the purpose of loaning those digital goods to the public, for any purpose to an Indian tribe, nation or pueblo or a governmental unit, subdivision, agency, department or instrumentality thereof for use on Indian reservations or pueblo grants may be deducted from gross receipts or from governmental gross receipts.

C. When a seller, in good faith, deducts receipts for tangible personal property or licenses to use digital goods for the purpose of loaning those digital goods to the public sold to the state or a governmental unit, subdivision, agency, department or instrumentality thereof, after receiving written assurances from the buyer's representative that the property sold is not construction material, the department shall not assert in a later assessment or audit of the seller that the receipts are not deductible pursuant to Paragraph (3) of Subsection A of this section.

History: 1953 Comp., § 72-16A-14.9, enacted by Laws 1969, ch. 144, § 44; 1976, ch. 25, § 2; 1985, ch. 225, § 4; 1989, ch. 115, § 5; 1992, ch. 100, § 7; 1993, ch. 31, § 11; 1995, ch. 50, § 3; 2000, ch. 84, § 5; 2000, ch. 98, § 3; 2001, ch. 343, § 5; 2003, ch. 272, § 6; 2003, ch. 330, § 2; 2018, ch. 58, § 1; 2023, ch. 85, § 15.

7-9-54.1. Deduction; gross receipts from sale of aerospace services to certain organizations.

A. Receipts from performing or selling an aerospace service for resale may be deducted from gross receipts if the sale is made to a buyer who delivers a nontaxable transaction certificate or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978. The buyer shall separately state the value of the aerospace service purchased in the buyer's charge for the aerospace service on its subsequent sale to an organization or, if the buyer is an organization, on the organization's subsequent sale to the United States, and the subsequent sale shall be in the ordinary course of business of selling aerospace services to an organization or to the United States.

B. As used in this section:

(1) "aerospace services" means research and development services sold to or for resale to an organization for resale by the organization to the United States air force; and

(2) "organization" means an organization described in Subsection A of Section 7-9-29 NMSA 1978 other than a prime contractor operating facilities in New Mexico designated as a national laboratory by act of congress.

History: Laws 1992, ch. 40, § 1; 1993, ch. 310, § 1; 1994, ch. 45, § 5; 1995, ch. 183, § 1; 2021, ch. 65, § 21.

7-9-54.2. Gross receipts; deduction; spaceport operation; space operations; launching, operating and recovering space vehicles or payloads; payload services; operationally responsive space program services.

A. Receipts from launching, operating or recovering space vehicles or payloads in New Mexico may be deducted from gross receipts.

B. Receipts from preparing a payload in New Mexico are deductible from gross receipts.

C. Receipts from operating a spaceport in New Mexico are deductible from gross receipts.

D. Receipts from the provision of research, development, testing and evaluation services for the United States air force operationally responsive space program may be deducted from gross receipts.

E. As used in this section:

(1) "operationally responsive space program" means a program authorized pursuant to 10 U.S.C. 2273a;

(2) "payload" means a system, subsystem or other mechanical structure or material to be conveyed into space that is designed, constructed or intended to perform a function in space;

(3) "space" means any location beyond altitudes of sixty thousand feet above the earth's mean sea level;

(4) "space operations" means the process of commanding and controlling payloads in space; and

(5) "spaceport" means an installation and related facilities used for the launching, landing, operating, recovering, servicing and monitoring of vehicles capable of entering or returning from space.

F. Receipts from the sale of tangible personal property that will become an ingredient or component part of a construction project or from performing construction services may not be deducted under this section.

History: Laws 1995, ch. 183, § 2; 1997, ch. 73, § 1; 2001, ch. 18, § 1; 2003, ch. 62, § 3; 2007, ch. 172, § 5.

7-9-54.3. Deduction; gross receipts tax; wind and solar generation equipment; energy storage equipment; sales to governments.

A. Prior to July 1, 2034, receipts from selling wind generation equipment or solar generation equipment to a government for the purpose of installing a wind or solar electric generation facility may be deducted from gross receipts.

B. Prior to July 1, 2034, receipts from selling energy storage equipment or related equipment to a government for the purpose of installing an energy storage facility may be deducted from gross receipts.

C. As used in this section:

(1) "energy storage equipment" means equipment that is installed for the purpose of storing electric energy in an energy storage facility that uses mechanical, chemical, thermal, kinetic or other processes to store energy for release at a later time to integrate energy supply associated with renewable generation across the electric grid;

(2) "government" means the United States or the state or a governmental unit or a subdivision, agency, department or instrumentality of the federal government or the state;

(3) "related equipment" means transformers, power conversion equipment, circuit breakers and switching and metering equipment used to connect:

(a) a wind or solar electric generation plant to the electric grid; or

(b) an energy storage facility to the electric grid or to a wind or solar electric generation plant;

(4) "solar generation equipment" means solar thermal energy collection, concentration and heat transfer and conversion equipment; solar tracking hardware and software; photovoltaic panels and inverters; support structures; turbines and associated electrical generating equipment used to generate electricity from solar thermal energy; and related equipment; and

(5) "wind generation equipment" means wind generation turbines, blades, nacelles, rotors and supporting structures used to generate electricity from wind and related equipment.

History: Laws 2002, ch. 37, § 8; 2010, ch. 77, § 2; 2010, ch. 78, § 2; 2024, ch. 67, § 11.

7-9-54.4. Deduction; compensating tax; space-related test articles.

A. The value of space-related test articles used in New Mexico exclusively for research or testing, placing on public display after research or testing or storage for future research, testing or public display may be deducted in computing compensating tax due. This subsection does not apply to any other use of a space-related test article.

B. The value of equipment and materials used in New Mexico for research or testing, or for supporting the research or testing of, space-related test articles or for storage of such equipment or materials for research or testing, or supporting the research and testing of, space-related test articles may be deducted in computing compensating tax due. This subsection does not apply to any other use of such equipment and materials.

C. As used in this section, a "space-related test article" is a material or device intended to be used primarily in research or testing to determine properties and qualities of the material or properties, qualities or functioning of a device or technology when the principal use of the material, device or technology is intended to be in space or as part of, or associated with, a space vehicle.

History: 1978 Comp., § 7-9-54.4, enacted by Laws 2003, ch. 62, § 4.

7-9-54.5. Deduction; compensating tax; test articles.

A. The value of test articles upon which research or testing is conducted in New Mexico pursuant to a contract with the United States department of defense may be deducted in computing the compensating tax due.

B. As used in this section, "test article" means a material or device upon which research or testing is conducted to determine the properties and qualities of the material or the properties, qualities or functioning of the device or a technology used with the device.

C. The deduction provided by this section does not apply to the value of property purchased by a prime contractor operating a facility designated as a national laboratory by an act of congress.

History: Laws 2004, ch. 16, § 3.

7-9-55. Deduction; gross receipts tax; governmental gross receipts tax; transaction in interstate commerce.

A. Receipts from transactions in interstate commerce may be deducted from gross receipts to the extent that the imposition of the gross receipts tax would be unlawful under the United States constitution.

B. Receipts from transactions in interstate commerce may be deducted from governmental gross receipts.

C. Receipts from transmitting messages or conversations by radio other than from one point in this state to another point in this state and receipts from the sale of radio or television broadcast time when the advertising message is supplied by or on behalf of a national or regional seller or advertiser not having its principal place of business in or being incorporated under the laws of this state, may be deducted from gross receipts. Commissions of advertising agencies from performing services in this state may not be deducted from gross receipts under this section.

History: 1953 Comp., § 72-16A-14.10, enacted by Laws 1969, ch. 144, § 45; Laws 1986, ch. 20, § 65; Laws 1986, ch. 52, § 2; 1993, ch. 31, § 12.

7-9-56. Deduction; gross receipts tax; intrastate transportation and services in interstate commerce.

A. Receipts from transporting persons or property from one point to another in this state may be deducted from gross receipts when such persons or property, including any special or extra service reasonably necessary in connection therewith, is being transported in interstate or foreign commerce under a single contract.

B. Receipts from handling, storage, drayage or packing of property or any other accessorial services on property, which property has moved or will move in interstate or foreign commerce, when such services are performed by a local agent for a carrier or by a carrier and when such services are performed under a single contract in relation to transportation services, may be deducted from gross receipts.

C. Receipts from providing telephone or telegraph services in this state that will be used by other persons in providing telephone or telegraph services to the final user may be deducted from gross receipts.

History: 1978 Comp., § 7-9-56, enacted by Laws 1994, ch. 112, § 2.

7-9-56.1. Deduction; gross receipts tax; internet services.

On and after July 1, 1998, receipts from providing leased telephone lines, telecommunications services, internet services, internet access services or computer programming that will be used by other persons in providing internet access and related services to the final user may be deducted from gross receipts if the sale is made to a person who is subject to the gross receipts tax or the interstate telecommunications gross receipts tax.

History: Laws 1998, ch. 92, § 1; 2000, ch. 84, § 6.

7-9-56.2. Deduction; gross receipts tax; hosting world wide web sites.

Receipts from hosting world wide web sites may be deducted from gross receipts. For purposes of this section, "hosting" means storing information on computers attached to the internet.

History: Laws 1998, ch. 92, § 2.

7-9-56.3. Deduction; gross receipts; trade-support company in a border zone.

A. The receipts of a trade-support company may be deducted from gross receipts if:

(1) the trade-support company first locates in New Mexico within twenty miles of a port of entry on New Mexico's border with Mexico on or after July 1, 2003 but before July 1, 2013 or on or after January 1, 2016 but before January 1, 2021;

(2) the receipts are received by the company within a five-year period beginning on the date the trade-support company locates in New Mexico and the receipts are derived from its business activities and operations at its border zone location; and

(3) the trade-support company employs at least two employees in New Mexico.

B. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

C. The department shall compile an annual report on the deduction created pursuant to this section that shall include the number of taxpayers approved by the department to receive the deduction, the aggregate amount of deductions approved and any other information necessary to evaluate the effectiveness of the deduction. Beginning in 2016 and every four years thereafter that the deduction is in effect, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction.

D. As used in this section:

(1) "dependent" means "dependent" as defined in 26 U.S.C. 152(a), as that section may be amended or renumbered;

(2) "employee" means an individual, other than an individual who:

(a) is a dependent of the employer;

(b) if the employer is an estate or trust, is a grantor, beneficiary or fiduciary of the estate or trust or is a dependent of a grantor, beneficiary or fiduciary of the estate or trust;

(c) if the employer is a corporation, is a dependent of an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation; or

(d) if the employer is an entity other than a corporation, estate or trust, is a dependent of an individual who owns, directly or indirectly, more than fifty percent of the capital and profits interests in the entity;

(3) "port of entry" means an international port of entry in New Mexico at which customs services are provided by United States customs and border protection; and

(4) "trade-support company" means a customs brokerage firm or a freight forwarder.

History: Laws 2003, ch. 232, § 1; 2007, ch. 172, § 6; 2015 (1st S.S.), ch. 2, § 8; 2021, ch. 65, § 22.

7-9-57. Deduction; gross receipts tax; sale of certain services to an out-of-state buyer.

A. Receipts from performing a service may be deducted from gross receipts if the sale of the service is made to an out-of-state buyer who delivers to the seller either an appropriate nontaxable transaction certificate or other evidence acceptable to the secretary unless the buyer of the service or any of the buyer's employees or agents makes initial use of the product of the service in New Mexico or takes delivery of the product of the service in New Mexico.

B. Receipts from performing a service that initially qualified for the deduction provided in this section but that no longer meets the criteria set forth in Subsection A of this section shall be deductible for the period prior to the disqualification.

History: 1953 Comp., § 72-16A-14.12, enacted by Laws 1969, ch. 144, § 47; 1973, ch. 132, § 1; 1977, ch. 86, § 1; 1983, ch. 220, § 12; 1988, ch. 118, § 1; 1989, ch. 262, § 6; 1998, ch. 89, § 4; 2000, ch. 84, § 7.

7-9-57.1. Repealed.

History: Laws 1998, ch. 92, § 3; repealed by Laws 2020, ch. 80, § 14.

7-9-57.2. Deduction; gross receipts tax; sale of software development services.

A. To stimulate new business development, the receipts of an eligible software development company from the sale of software development services that are performed in a qualified area may be deducted from gross receipts.

B. As used in this section:

(1) "eligible software development company" means a taxpayer who is not a successor in business of another taxpayer and whose primary business in New Mexico is established after the effective date of this section, is providing software development services and who had no business location in New Mexico other than in a qualified area during the period for which a deduction under this section is sought;

(2) "qualified area" means the state of New Mexico except for an incorporated municipality with a population of more than fifty thousand according to the most recent federal decennial census; and

(3) "software development services" means custom software design and development and web site design and development but does not include software implementation or support services.

History: Laws 2002, ch. 10, § 1.

7-9-58. Deduction; gross receipts tax; feed; fertilizers.

A. Receipts from selling feed for livestock, including the baling wire or twine used to contain the feed, fish raised for human consumption, poultry or animals raised for their hides or pelts and from selling seeds, roots, bulbs, plants, soil conditioners, fertilizers, insecticides, germicides, insects used to control populations of other insects, fungicides or weedicides or water for irrigation purposes may be deducted from gross receipts if the sale is made to a person who states in writing that he is regularly engaged in the business of farming, ranching or raising animals for their hides or pelts.

B. Receipts of auctioneers from selling livestock or other agricultural products at auction may also be deducted from gross receipts.

History: 1953 Comp., § 72-16A-14.13, enacted by Laws 1969, ch. 144, § 48; 1977, ch. 231, § 1; 1983, ch. 220, § 13; 1991, ch. 9, § 30; 1991, ch. 203, § 6; 1992, ch. 48, § 3; 2002, ch. 29, § 1.

7-9-58.1. Credit; gross receipts tax; sale of dyed special fuel used for agricultural purposes.

A. Prior to July 1, 2029, a taxpayer who sells special fuel dyed in accordance with federal regulations may claim a tax credit against gross receipts taxes due in an amount equal to the amount of any gross receipts tax due on the receipt for sale; provided that:

(1) the taxpayer did not pass the amount of gross receipts tax on to the person purchasing the special fuel; and

(2) the special fuel is sold to a person who states in writing in a manner that the department may require that the person will use the special fuel primarily for agricultural purposes and the gross receipts tax was not passed on to the person.

B. A taxpayer may claim the tax credit for the taxable period in which the special fuel is sold. To receive the credit, the taxpayer shall apply to the department on forms and in a manner prescribed by the department. The maximum aggregate amount of tax credits that may be allowed in a fiscal year is ten million dollars ($10,000,000). Completed applications shall be considered in the order received. Applications received after the aggregate amount has been met shall not be approved.

C. That portion of the tax credit claimed by a taxpayer that exceeds the taxpayer's gross receipts tax liability in the taxable period in which the credit is claimed shall not be refunded to the taxpayer but may be carried forward for thirty-six consecutive taxable periods.

History: Laws 2024, ch. 67, § 15.

7-9-59. Deduction; gross receipts tax; warehousing, threshing, harvesting, growing, cultivating and processing agricultural products; testing or transporting milk.

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, may be deducted from gross receipts.

C. Receipts from testing or transporting milk for the producer or nonprofit marketing association from the farm to a milk processing or dairy product manufacturing plant may be deducted from gross receipts.

D. Receipts from processing for growers, producers or nonprofit marketing associations of agricultural products raised for food and fiber, including livestock, may be deducted from gross receipts.

History: 1953 Comp., § 72-16A-14.14, enacted by Laws 1969, ch. 144, § 49; 1970, ch. 27, § 1; 2000, ch. 26, § 1; 2000, ch. 87, § 1; 2019, ch. 49, § 1.

7-9-60. Deduction; gross receipts tax; governmental gross receipts tax; sales to certain organizations.

A. Except as provided otherwise in Subsection B of this section, receipts from selling tangible personal property to 501(c)(3) organizations may be deducted from gross receipts or from governmental gross receipts if the sale is made to an organization that delivers a nontaxable transaction certificate to the seller or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978. The buyer shall employ the tangible personal property in the conduct of functions described in Section 501(c)(3) and shall not employ the tangible personal property in the conduct of an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1986, as amended or renumbered.

B. The deduction provided by this section does not apply to receipts from selling construction material, excluding tangible personal property, whether removable or non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or ten-year property, including indirect costs related to the asset basis, by Section 168 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, or from selling metalliferous mineral ore; except that receipts from selling construction material or from selling metalliferous mineral ore to a 501(c)(3) organization that is organized for the purpose of providing homeownership opportunities to low-income families may be deducted from gross receipts. Receipts may be deducted under this subsection only if the buyer delivers a nontaxable transaction certificate to the seller or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978. The buyer shall use the property in the conduct of functions described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and shall not employ the tangible personal property in the conduct of an unrelated trade or business, as defined in Section 513 of that code.

C. For the purposes of this section, "501(c)(3) organization" means an organization that has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended or renumbered.

History: 1953 Comp., § 72-16A-14.15; Laws 1970, ch. 12, § 4; 1992, ch. 100, § 8; 1995, ch. 50, § 4; 2001, ch. 343, § 6; 2007, ch. 45, § 12; 2018, ch. 58, § 2; 2021, ch. 65, § 23.

7-9-61. Repealed.

7-9-61.1. Deduction; 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.

7-9-61.2. Deduction; receipts from sales to state-chartered credit unions.

Receipts from selling tangible personal property to credit unions chartered under the provisions of the Credit Union Act [Chapter 58, Article 11 NMSA 1978] are deductible to the same extent that receipts from the sale of tangible personal property to federal credit unions may be deducted pursuant to the provisions of Section 7-9-54 NMSA 1978.

History: 1978 Comp., § 7-9-61.2, enacted by Laws 2000, ch. 48, § 1.

7-9-62. Deduction; gross receipts tax; agricultural implements; aircraft manufacturers; vehicles that are not required to be registered; aircraft parts and maintenance services; reporting requirements.

A. Except for receipts deductible under Subsection B of this section, fifty percent of the receipts from selling agricultural implements, farm tractors, aircraft or vehicles that are not required to be registered under the Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978] may be deducted from gross receipts; provided that, with respect to agricultural implements, the sale is made to a person who states in writing that the person is regularly engaged in the business of farming or ranching. Any deduction allowed under Section 7-9-71 NMSA 1978 must be taken before the deduction allowed by this subsection is computed.

B. Receipts of an aircraft manufacturer or affiliate from selling aircraft or from selling aircraft flight support, pilot training or maintenance training services may be deducted from gross receipts. Any deduction allowed under Section 7-9-71 NMSA 1978 must be taken before the deduction allowed by this subsection is computed.

C. Receipts from selling aircraft parts or maintenance services for aircraft or aircraft parts may be deducted from gross receipts. Any deduction allowed under Section 7-9-71 NMSA 1978 must be taken before the deduction allowed by this subsection is computed.

D. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

E. The department shall compile an annual report on the deductions provided by this section that shall include the number of taxpayers approved by the department to receive the deductions, the aggregate amount of deductions approved and any other information necessary to evaluate the effectiveness of the deductions. Beginning in 2019 and every five years thereafter that the deductions are in effect, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deductions.

F. As used in this section:

(1) "affiliate" means a business entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the aircraft manufacturer;

(2) "agricultural implement" means a tool, utensil or instrument that is depreciable for federal income tax purposes and that is:

(a) designed to irrigate agricultural crops above ground or below ground at the place where the crop is grown; or

(b) designed primarily for use with a source of motive power, such as a tractor, in planting, growing, cultivating, harvesting or processing agricultural crops at the place where the crop is grown; in raising poultry or livestock; or in obtaining or processing food or fiber, such as eggs, milk, wool or mohair, from living poultry or livestock at the place where the poultry or livestock are kept for this purpose;

(3) "aircraft manufacturer" means a business entity that in the ordinary course of business designs and builds private or commercial aircraft certified by the federal aviation administration;

(4) "business entity" means a corporation, limited liability company, partnership, limited partnership, limited liability partnership or real estate investment trust, but does not mean an individual or a joint venture;

(5) "control" means equity ownership in a business entity that:

(a) represents at least fifty percent of the total voting power of that business entity; and

(b) has a value equal to at least fifty percent of the total equity of that business entity; and

(6) "flight support" means providing navigation data, charts, weather information, online maintenance records and other aircraft or flight-related information and the software needed to access the information.

History: 1953 Comp., § 72-16A-14.17, enacted by Laws 1969, ch. 144, § 52; 1975, ch. 159, § 1; 1998, ch. 89, § 5; 2000 (2nd S.S.), ch. 4, § 1; 2007, ch. 172, § 7; 2014, ch. 19, § 1.

7-9-62.1. Deduction; gross receipts tax; aircraft sales and services; reporting requirements.

A. Receipts from the sale of or from maintaining, refurbishing, remodeling or otherwise modifying a commercial or military carrier over ten thousand pounds gross landing weight may be deducted from gross receipts.

B. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

C. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers approved by the department to receive the deduction, the aggregate amount of deductions approved and any other information necessary to evaluate the effectiveness of the deduction. Beginning in 2019 and every five years thereafter that the deduction is in effect, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction.

History: Laws 2000 (2nd S.S.), ch. 4, § 2; 2005, ch. 104, § 24; 2014, ch. 8, § 1.

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.

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.

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 to any hard-rock mining or milling company for use in any combination of extracting, leaching, milling, smelting, refining or processing ore at a mine site, 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; 2019, ch. 172, § 1.

7-9-66. Deduction; gross receipts tax; commissions.

A. Receipts derived from commissions on sales of tangible personal property which are not subject to the gross receipts tax may be deducted from gross receipts.

B. Receipts of the owner of a dealer store derived from commissions received for performing the service of selling from the owner's dealer store a principal's tangible personal property may be deducted from gross receipts.

C. As used in this section, "dealer store" means a merchandise facility open to the public that is owned and operated by a person who contracts with a principal to act as an agent for the sale from that facility of merchandise owned by the principal.

History: 1953 Comp., § 72-16A-14.22, enacted by Laws 1969, ch. 144, § 57; 1999, ch. 169, § 1.

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.

7-9-67. Deduction; gross receipts tax; governmental gross receipts tax; refunds; uncollectible debts.

A. Refunds and allowances made to buyers or amounts written off the books as an uncollectible debt by a person reporting gross receipts tax on an accrual basis may be deducted from gross receipts. If debts reported uncollectible are subsequently collected, such receipts shall be included in gross receipts in the month of collection.

B. Refunds and allowances made to buyers or amounts written off the books as an uncollectible debt by a person reporting governmental gross receipts tax on an accrual basis may be deducted from governmental gross receipts. If debts reported uncollectible are subsequently collected, such receipts shall be included in governmental gross receipts in the month of collection.

History: 1953 Comp., § 72-16A-14.23, enacted by Laws 1969, ch. 144, § 58; 1994, ch. 45, § 6.

7-9-68. Deduction; gross receipts tax; warranty obligations.

Receipts of a dealer from furnishing goods or services to the purchaser of tangible personal property to fulfill a warranty obligation of the manufacturer of the property may be deducted from gross receipts.

History: 1953 Comp., § 72-16A-14.25, enacted by Laws 1969, ch. 144, § 60.

7-9-69. Deduction; gross receipts tax; administrative and accounting services.

A. Receipts of a business entity for administrative, managerial, accounting and customer services performed by it for an affiliate upon a nonprofit or cost basis and receipts of a business entity from an affiliate for the joint use or sharing of office machines and facilities upon a nonprofit or cost basis may be deducted from gross receipts.

B. For the purposes of this section:

(1) "affiliate" means a business entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with another business entity;

(2) "business entity" means a corporation, limited liability company, partnership, limited partnership, limited liability partnership or real estate investment trust, but does not mean an individual or a joint venture; and

(3) "control" means equity ownership in a business entity that:

(a) represents at least fifty percent of the total voting power of that business entity; or

(b) has a value equal to at least fifty percent of the total equity of that business entity.

History: 1953 Comp., § 72-16A-14.26, enacted by Laws 1969, ch. 144, § 61; 1990, ch. 43, § 1; 1993, ch. 149, § 1; 1998, ch. 112, § 1; 2002, ch. 21, § 1; 2015, ch. 38, § 1.

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.

7-9-72. Repealed.

7-9-73. Deduction; gross receipts tax; governmental gross receipts; sale of prosthetic devices.

Receipts from selling prosthetic devices may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person who is licensed to practice medicine, osteopathic medicine, dentistry, podiatry, optometry, chiropractic or professional nursing and who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must deliver the prosthetic device incidental to the performance of a service and must include the value of the prosthetic device in his charge for the service.

History: 1953 Comp., § 72-16A-14.30, enacted by Laws 1970, ch. 78, § 2; 1992, ch. 100, § 10.

7-9-73.1. Deduction; gross receipts; governmental gross receipts; hospitals.

A. Sixty percent of the receipts of hospitals licensed by the department of health may be deducted from gross receipts; provided that this deduction may be applied only to the taxable gross receipts remaining after all other appropriate deductions have been taken.

B. Sixty percent of the receipts of a hospital licensed by the department of health may be deducted from governmental gross receipts.

History: Laws 1991, ch. 8, § 3; 1993, ch. 56, § 1; 1995, ch. 50, § 5; 2019, ch. 270, § 35.

7-9-73.2. Deduction; gross receipts tax and governmental gross receipts tax; prescription drugs; oxygen; cannabis.

A. Receipts from the sale of prescription drugs and oxygen and oxygen services provided by a licensed medicare durable medical equipment provider and cannabis products that are sold in accordance with the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978] may be deducted from gross receipts and governmental gross receipts.

B. For the purposes of this section, "prescription drugs" means insulin and substances that are:

(1) dispensed by or under the supervision of a licensed pharmacist or by a physician or other person authorized under state law to do so;

(2) prescribed for a specified person by a person authorized under state law to prescribe the substance; and

(3) subject to the restrictions on sale contained in Subparagraph 1 of Subsection (b) of 21 USCA 353.

History: Laws 1998, ch. 95, § 2; Laws 1998, ch. 99, § 4; 2003, ch. 272, § 7; 2007, ch. 361, § 3; 2021 (1st S.S.), ch. 4, § 53.

7-9-73.3. Deduction; gross receipts tax and governmental gross receipts tax; durable medical equipment; medical supplies.

A. Prior to July 1, 2030, receipts from the sale or rental of durable medical equipment and medical supplies may be deducted from gross receipts and governmental gross receipts.

B. The purpose of the deduction provided in this section is to help protect jobs and retain businesses in New Mexico that sell or rent durable medical equipment and medical supplies.

C. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

D. The deduction provided in this section shall be taken only by a taxpayer participating in the New Mexico medicaid program whose gross receipts are no less than ninety percent derived from the sale or rental of durable medical equipment, medical supplies or infusion therapy services, including the medications used in infusion therapy services.

E. Acceptance of a deduction provided by this section is authorization by the taxpayer receiving the deduction for the department to reveal information to the revenue stabilization and tax policy committee and the legislative finance committee necessary to analyze the effectiveness and cost of the deduction and whether the deduction is performing the purpose for which it was created.

F. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers approved by the department to receive the deduction, the aggregate amount of deductions approved and any other information necessary to evaluate the effectiveness of the deduction. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction and whether the deduction is performing the purpose for which it was created.

G. As used in this section:

(1) "durable medical equipment" means a medical assistive device or other equipment that:

(a) can withstand repeated use;

(b) is primarily and customarily used to serve a medical purpose and is not useful to an individual in the absence of an illness, injury or other medical necessity, including improved functioning of a body part;

(c) is appropriate for use at home exclusively by the eligible recipient for whom the durable medical equipment is prescribed; and

(d) is prescribed by a physician or other person licensed by the state to prescribe durable medical equipment;

(2) "infusion therapy services" means the administration of prescribed medication through a needle or catheter;

(3) "medical supplies" means items for a course of medical treatment, including nutritional products, that are:

(a) necessary for an ongoing course of medical treatment;

(b) disposable and cannot be reused; and

(c) prescribed by a physician or other person licensed by the state to prescribe medical supplies; and

(4) "prescribe" means to authorize the use of an item or substance for a course of medical treatment.

History: Laws 2014, ch. 26, § 1; 2020, ch. 18, § 1.

7-9-73.4. Deduction; gross receipts tax; environmental modifications for medicaid recipients.

A. Prior to July 1, 2034, receipts of an eligible provider for environmental modifications reimbursed by the medical assistance division may be deducted from gross receipts.

B. As used in this section:

(1) "eligible provider" means a provider who meets requirements of the medical assistance division to provide environmental modifications pursuant to a waiver granted by the federal department of health and human services to provide home and community-based services to recipients;

(2) "environmental modifications" include the purchasing and installing of equipment or making physical adaptions to a recipient's residence that are necessary to ensure the health, welfare and safety of the recipient or enhance the recipient's access to the home environment and increase the recipient's ability to act independently;

(3) "medicaid" means the medical assistance program established pursuant to Title 19 of the federal Social Security Act and regulations issued pursuant to that act;

(4) "medical assistance division" means the medical assistance division of the health care authority department; and

(5) "recipient" means a person whom the medical assistance division has determined to be eligible to receive medicaid-related services and who meets the financial and medical level of care criteria to receive medical assistance division services through one of the division's waiver programs granted by the federal department of health and human services.

History: Laws 2024, ch. 67, § 12.

7-9-74. Deduction; gross receipts tax; sale of property used in the manufacture of jewelry.

Receipts from selling tangible personal property may be deducted from gross receipts if the sale is made to a person who states in writing that he will use the property so purchased in manufacturing jewelry. The buyer must incorporate the tangible personal property as an ingredient or component part of the jewelry that he is in the business of manufacturing. The deduction allowed a seller under this section shall not exceed five thousand dollars ($5,000) during any twelve-month period attributable to purchases by a single purchaser.

History: 1953 Comp., § 72-16A-14.31, enacted by Laws 1971, ch. 217, § 2; 1975, ch. 322, § 1; 1994, ch. 94, § 2.

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.

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.

7-9-77. Deductions; compensating tax.

A. Fifty percent of the value of agricultural implements, farm tractors, aircraft not exempted under Section 7-9-30 NMSA 1978 or vehicles that are not required to be registered under the Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978] may be deducted from the value in computing the compensating tax due; provided that, with respect to use of agricultural implements, the person using the property is regularly engaged in the business of farming or ranching. Any deduction allowed under Subsection B of this section is to be taken before the deduction allowed by this subsection is computed. As used in this subsection, "agricultural implement" means a tool, utensil or instrument that is:

(1) designed primarily for use with a source of motive power, such as a tractor, in planting, growing, cultivating, harvesting or processing agricultural produce at the place where the produce is grown; in raising poultry or livestock; or in obtaining or processing food or fiber, such as eggs, milk, wool or mohair, from living poultry or livestock at the place where the poultry or livestock are kept for this purpose; and

(2) depreciable for federal income tax purposes.

B. That portion of the value of tangible personal property on which an allowance was granted to the buyer for a trade-in of tangible personal property of the same type that was bought may be deducted from the value in computing the compensating tax due.

History: 1953 Comp., § 72-16A-15, enacted by Laws 1966, ch. 47, § 15; 1969, ch. 144, § 64; 1975, ch. 159, § 2; 1988, ch. 148, § 2; 1998, ch. 89, § 6.

7-9-77.1. Deduction; gross receipts tax; certain medical and health care services.

A. Receipts of a health care practitioner or an association of health care practitioners from payments by the United States government, or any agency thereof, or from a medicare administrative contractor for medical and other health services provided by a health care practitioner to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

B. Receipts of a hospice or nursing home from payments by the United States government, or any agency thereof, or from a medicare administrative contractor for medical and other health and palliative services provided by the hospice or nursing home to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

C. Receipts of a health care practitioner or an association of health care practitioners from payments by a third-party administrator of the federal TRICARE program for medical and other health services provided by physicians and osteopathic physicians to covered beneficiaries may be deducted from gross receipts.

D. Receipts of a health care practitioner or an association of health care practitioners from payments by or on behalf of the Indian health service of the United States department of health and human services for medical and other health services provided by physicians and osteopathic physicians to covered beneficiaries may be deducted from gross receipts.

E. Receipts of a clinical laboratory from payments by the United States government, or any agency thereof, or from a medicare administrative contractor for medical services provided by the clinical laboratory to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

F. Receipts of a home health agency from payments by the United States government, or any agency thereof, or from a medicare administrative contractor for medical, other health and palliative services provided by the home health agency to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

G. Prior to July 1, 2032, receipts of a dialysis facility from payments by the United States government, or any agency thereof, or from a medicare administrative contractor for medical and other health services provided by the dialysis facility to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

H. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department. A taxpayer who has receipts that are deductible pursuant to this section and Section 7-9-93 NMSA 1978 shall deduct the receipts under this section prior to calculating the receipts that may be deducted pursuant to Section 7-9-93 NMSA 1978.

I. The department shall compile an annual report on the deductions created pursuant to this section that shall include the number of taxpayers that claimed each deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deductions. The department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deductions and whether the deductions are providing a benefit to the state.

J. For the purposes of this section:

(1) "association of health care practitioners" means a corporation, unincorporated business entity or other legal entity organized by, owned by or employing one or more health care practitioners; provided that the entity is not:

(a) an organization granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as that section may be amended or renumbered; or

(b) a health maintenance organization, hospital, hospice, nursing home or an entity that is solely an outpatient facility or intermediate care facility licensed pursuant to the Public Health Act [Chapter 24, Article 1 NMSA 1978];

(2) "clinical laboratory" means a laboratory accredited pursuant to 42 USCA 263a;

(3) "dialysis facility" means a facility that provides outpatient maintenance dialysis services or home dialysis training and support services, including a facility considered by the federal centers for medicare and medicaid services to be an independent or hospital-based facility that includes a self-care dialysis unit that furnishes only self-dialysis services;

(4) "health care practitioner" means:

(a) an athletic trainer licensed pursuant to the Athletic Trainer Practice Act [Chapter 61, Article 14D NMSA 1978];

(b) an audiologist licensed pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act [Chapter 61, Article 14B NMSA 1978];

(c) a chiropractic physician licensed pursuant to the Chiropractic Physician Practice Act [Chapter 61, Article 4 NMSA 1978];

(d) a counselor or therapist practitioner licensed pursuant to the Counseling and Therapy Practice Act [Chapter 61, Article 9A NMSA 1978];

(e) a dentist licensed pursuant to the Dental Health Care Act [Chapter 61, Article 5A NMSA 1978];

(f) a doctor of oriental medicine licensed pursuant to the Acupuncture and Oriental Medicine Practice Act [Chapter 61, Article 14A NMSA 1978];

(g) an independent social worker licensed pursuant to the Social Work Practice Act [Chapter 61, Article 31 NMSA 1978];

(h) a massage therapist licensed pursuant to the Massage Therapy Practice Act [Chapter 61, Article 12C NMSA 1978];

(i) a naprapath licensed pursuant to the Naprapathic Practice Act [61-12F-1 to 61-12F-11 NMSA 1978];

(j) a nutritionist or dietitian licensed pursuant to the Nutrition and Dietetics Practice Act [61-7A-1 to 61-7A-15 NMSA 1978];

(k) an occupational therapist licensed pursuant to the Occupational Therapy Act [Chapter 61, Article 12A NMSA 1978];

(l) an optometrist licensed pursuant to the Optometry Act [Chapter 61, Article 2 NMSA 1978];

(m) an osteopathic physician licensed pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978];

(n) a pharmacist licensed pursuant to the Pharmacy Act [Chapter 61, Article 11 NMSA 1978];

(o) a physical therapist licensed pursuant to the Physical Therapy Act [61-12D-1 to 61-12D-19 NMSA 1978];

(p) a physician licensed pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978];

(q) a podiatrist licensed pursuant to the Podiatry Act [Chapter 61, Article 8 NMSA 1978];

(r) a psychologist licensed pursuant to the Professional Psychologist Act [Chapter 61, Article 9 NMSA 1978];

(s) a radiologic technologist licensed pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act [Chapter 61, Article 14E NMSA 1978];

(t) a registered nurse licensed pursuant to the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978];

(u) a respiratory care practitioner licensed pursuant to the Respiratory Care Act [Chapter 61, Article 12B NMSA 1978]; and

(v) a speech-language pathologist licensed pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act [Chapter 61, Article 14B NMSA 1978];

(5) "home health agency" means a for-profit entity that is licensed by the department of health and certified by the federal centers for medicare and medicaid services as a home health agency and certified to provide medicare services;

(6) "hospice" means a for-profit entity licensed by the department of health as a hospice and certified to provide medicare services;

(7) "medicare administrative contractor" means a third-party administrator operating under contract with the federal centers for medicare and medicaid services to process medicare claims and make medicare fee-for-service payments for medicare fee-for-service beneficiaries;

(8) "nursing home" means a for-profit entity licensed by the department of health as a nursing home and certified to provide medicare services; and

(9) "TRICARE program" means the program defined in 10 U.S.C. 1072(7).

History: 1978 Comp., § 7-9-77.1, enacted by Laws 1998, ch. 96, § 1; 2000 (2nd S.S.), ch. 16, § 1; 2003, ch. 350, § 1; 2003, ch. 351, § 1; 2005, ch. 91, § 1; 2007, ch. 361, § 4; 2014, ch. 56, § 1; 2016 (2nd S.S.), ch. 3, § 4; 2021, ch. 54, § 1; 2021, ch. 65, § 24; 2022, ch. 43, § 1; 2022, ch. 49, § 1.

7-9-77.2. Deductions; gross receipts; child care assistance through a licensed child care assistance program; pre-kindergarten services by for-profit pre-kindergarten providers.

A. Receipts from the sale of child care assistance services by a taxpayer pursuant to a contract or grant with the early childhood education and care department to provide such services through a licensed child care assistance program may be deducted from gross receipts.

B. Receipts of for-profit pre-kindergarten providers for the sale of pre-kindergarten services pursuant to the Pre-Kindergarten Act [Chapter 32A, Article 23 NMSA 1978] may be deducted from gross receipts.

C. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

D. The department shall compile an annual report on the deductions provided by this section that shall include the number of taxpayers that claimed each deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deductions. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the deductions.

E. As used in this section:

(1) "child care assistance" means "child care assistance" or "early childhood care assistance", as those terms are defined in the Early Childhood Care Accountability Act [32A-23C-1 to 32A-23C-5 NMSA 1978]; and

(2) "licensed child care assistance program" means "licensed child care program", "licensed early childhood care program" or "licensed exempt child care program", as those terms are defined in the Early Childhood Care Accountability Act.

History: Laws 2024, ch. 67, § 13.

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.

7-9-78.1. Deduction; compensating tax; uranium enrichment plant equipment.

The value of equipment and replacement parts for that equipment may be deducted in computing the compensating tax due if the person uses the equipment and replacement parts to enrich uranium in a uranium enrichment plant.

History: Laws 1999, ch. 231, § 4.

7-9-79. Credit; compensating tax.

A. If, on property or services 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 or services 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 or services 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. The credit allowed pursuant to this subsection shall not exceed the compensating tax due on the property or services used in New Mexico.

B. When the receipts from the sale of real property constructed by a person in the ordinary course of the person's construction business are subject to the gross receipts tax, the amount of compensating tax previously paid by the person on materials that 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; 2021, ch. 65, § 25.

7-9-79.1. Credit; gross receipts tax; services.

If on services performed outside the state a gross receipts sales or similar tax has been levied by another state or a political subdivision thereof and such tax has been paid, the amount of the tax paid may be credited against any gross receipts tax due this state on the receipts after July 1, 1989 from the sale in New Mexico of the product of the services performed outside this state. The amount of credit shall not exceed an amount equal to the rate of tax imposed under Section 7-9-4 NMSA 1978 multiplied by the amount subject to tax by both New Mexico and the other state or political subdivision of that state.

History: 1978 Comp., § 7-9-79.1, enacted by Laws 1989, ch. 262, § 8; 1994, ch. 45, § 7.

7-9-79.2. Gross receipts tax; compensating tax; biodiesel blending facility tax credit.

A. A taxpayer who is a rack operator as defined in the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978] and who installs biodiesel blending equipment in property owned by the taxpayer for the purpose of establishing or expanding a facility to produce blended biodiesel fuel is eligible to claim a credit against gross receipts tax or compensating tax. The credit shall be an amount equal to thirty percent of the purchase cost of the equipment plus thirty percent of the cost of installing that equipment. The credit provided by this section may be referred to as the "biodiesel blending facility tax credit".

B. The biodiesel blending facility tax credit shall not exceed fifty thousand dollars ($50,000) with respect to equipment installed at any one facility.

C. Upon application from a taxpayer wishing to claim the biodiesel blending facility tax credit, the energy, minerals and natural resources department shall determine if the equipment for which the tax credit will be claimed meets the requirements of this section and if purchase and installation costs reported by the taxpayer are legitimate. Upon these determinations being made in favor of the taxpayer, the energy, minerals and natural resources department shall issue a dated certificate of eligibility containing this information and an estimate of the amount of the biodiesel blending facility tax credit for which the taxpayer is eligible.

D. To claim the biodiesel blending facility tax credit, the taxpayer shall provide to the taxation and revenue department the certificate of eligibility from the energy, minerals and natural resources department. Upon receipt of the certificate, the taxation and revenue department shall approve the claim for the credit if the total cumulative amount of approved claims for the credit for all taxpayers for the calendar year does not exceed one million dollars ($1,000,000). The department shall maintain a record of the cumulative amount of claims for the credit that have been approved and when it determines that this cumulative amount has reached one million dollars ($1,000,000), it shall cease approving any additional claims for the biodiesel blending facility tax credit.

E. If a taxpayer who has received the biodiesel blending facility tax credit ceases biodiesel blending without completing at least one hundred eighty days of availability of the facility within the first three hundred sixty-five days after the issuance of the certificate of eligibility from the energy, minerals and natural resources department, any amount of approved credit not applied against the taxpayer's gross receipts tax or compensating tax liability shall be extinguished. The taxpayer must amend the taxpayer's return, self-assess the tax owed and return any biodiesel blending facility tax credit received within four hundred twenty-five days of the date of issuance of the certificate of eligibility.

F. The tax credit provided by this section may only be applied against the taxpayer's gross receipts tax liability or compensating tax liability. If the credit exceeds the taxpayer's tax liability in the reporting period for which it is granted, the credit may be carried forward for four years from the date of the certificate of eligibility.

G. For the purposes of this section:

(1) "biodiesel" means renewable, biodegradable, monoalkyl ester combustible liquid fuel that is derived from agricultural plant oils or animal fats and that meets American society for testing and materials D 6751 standard specification for biodiesel B100 blend stock for distillate fuels;

(2) "biodiesel blending equipment" means equipment necessary for the process of blending biodiesel with diesel fuel to produce blended biodiesel fuel;

(3) "blended biodiesel fuel" means a diesel fuel that contains at least two percent biodiesel; and

(4) "diesel fuel" means any diesel-engine fuel used for the generation of power to propel a motor vehicle."

History: Laws 2007, ch. 204, § 9.

7-9-80. Repealed.

7-9-80.1. Repealed.

7-9-81. Repealed.

7-9-82. Repealed.

7-9-83. Deduction; gross receipts tax; jet fuel.

A. From July 1, 2003 through June 30, 2017, fifty-five percent of the receipts from the sale of fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted from gross receipts.

B. After June 30, 2017, forty percent of the receipts from the sale of fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted from gross receipts.

History: Laws 1993, ch. 364, § 1; 2003, ch. 214, § 2; 2006, ch. 51, § 1; 2011, ch. 74, § 1.

7-9-84. Deduction; compensating tax; jet fuel.

A. From July 1, 2003 through June 30, 2017, fifty-five percent of the value of the fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted in computing the compensating tax due.

B. After June 30, 2017, forty percent of the value of the fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted in computing the compensating tax due.

History: Laws 1993, ch. 364, § 2; 2003, ch. 214, § 3; 2006, ch. 51, § 2; 2011, ch. 74, § 2.

7-9-85. Deduction; gross receipts tax; certain organization fundraisers.

Receipts from not more than two fundraising events annually conducted by an organization that is exempt from the federal income tax as an organization described in Section 501(c), other than an organization described in Section 501(c)(3), of the United States Internal Revenue Code of 1986, as amended may be deducted from gross receipts.

History: Laws 1994, ch. 43, § 1.

7-9-86. Repealed.

History: Laws 1995, ch. 80, § 1; 2003, ch. 127, § 3; repealed by Laws 2023, ch. 85, § 28.

7-9-87. Deduction; gross receipts tax; lottery retailer receipts.

Receipts of a lottery game retailer from selling lottery tickets pursuant to the New Mexico Lottery Act [Chapter 6, Article 24 NMSA 1978] may be deducted from gross receipts.

History: Laws 1995, ch. 155, § 35.

7-9-88. Repealed.

7-9-88.1. Credit; gross receipts tax; tax paid to certain tribes.

A. If on a taxable transaction taking place on tribal land a qualifying gross receipts, sales or similar tax has been levied by the tribe, the amount of the tribe's tax may be credited against gross receipts tax due this state or its political subdivisions pursuant to the Gross Receipts and Compensating Tax Act and a local option gross receipts tax on the same transaction. The amount of the credit shall be equal to the lesser of seventy-five percent of the tax imposed by the tribe on the receipts from the transaction or seventy-five percent of the revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of local option gross receipts taxes imposed on the receipts from the same transaction. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied proportionately against the amount of the gross receipts tax and local option gross receipts taxes and against the amount of distribution of those taxes pursuant to Section 7-1-6.1 NMSA 1978.

B. A qualifying gross receipts, sales or similar tax levied by the tribe shall be limited to a tax that:

(1) is substantially similar to the gross receipts tax imposed by the Gross Receipts and Compensating Tax Act;

(2) does not unlawfully discriminate among persons or transactions based on membership in the tribe;

(3) provides a credit against the tribe's tax equal to the lesser of twenty-five percent of the tax imposed by the tribe on the receipts from the transactions or twenty-five percent of the tax revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of the local option gross receipts taxes imposed on the receipts from the same transactions; and

(4) is subject to a cooperative agreement between the tribe and the secretary entered into pursuant to Section 9-11-12.1 NMSA 1978 and in effect at the time of the taxable transaction.

C. For purposes of the tax credit allowed by this section:

(1) "pueblo" means the Pueblo of Acoma, Cochiti, Isleta, Jemez, Laguna, Nambe, Picuris, Pojoaque, Sandia, San Felipe, San Ildefonso, San Juan, Santa Ana, Santa Clara, Santo Domingo, Taos, Tesuque, Zia or Zuni or the nineteen New Mexico pueblos acting collectively;

(2) "tribal land" means all land that is owned by a tribe located within the exterior boundaries of a tribe's reservation or grant and all land held by the United States in trust for that tribe; and

(3) "tribe" means a pueblo, the Jicarilla Apache Nation or the Mescalero Apache Tribe.

History: Laws 1999, ch. 223, § 2; 2000, ch. 62, § 1; 2001, ch. 42, § 1; 2003, ch. 414, § 1; 2023, ch. 85, § 16.

7-9-88.2. Credit; gross receipts tax; tax paid to Navajo Nation on receipts from selling coal.

A. If on receipts from selling coal severed from Navajo Nation land a qualifying gross receipts, sales, business activity or similar tax has been levied by the Navajo Nation, the amount of the Navajo Nation tax paid and not refunded may be credited against any gross receipts tax due this state or its political subdivisions pursuant to the Gross Receipts and Compensating Tax Act and any local option gross receipts tax on the same receipts. The amount of the credit shall be equal to:

(1) for the period from July 1, 2001 through June 30, 2002, the lesser of thirty-seven and one-half percent of the tax imposed by the Navajo Nation on the receipts or thirty-seven and one-half percent of the revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of local option gross receipts taxes imposed on the same receipts; and

(2) after June 30, 2002, the lesser of seventy-five percent of the tax imposed by the Navajo Nation on the receipts or seventy-five percent of the revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of local option gross receipts taxes imposed on the same receipts.

B. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied proportionately against the amounts of the distributions made pursuant to Section 7-1-6.1 NMSA 1978 of the gross receipts tax and local option gross receipts taxes imposed on those receipts.

C. A qualifying gross receipts, sales, business activity or similar tax levied by the Navajo Nation shall be limited to a tax that:

(1) is substantially similar to the gross receipts tax imposed by the Gross Receipts and Compensating Tax Act;

(2) does not unlawfully discriminate among persons or transactions based on membership in the Navajo Nation;

(3) is levied on the receipts from selling coal at a rate not greater than the total of the gross receipts tax rate and local option gross receipts tax rates imposed by this state and its political subdivisions located within the exterior boundaries of the Navajo Nation;

(4) provides a credit against the Navajo Nation tax equal to:

(a) for the period from July 1, 2001 through June 30, 2002, the lesser of twelve and one-half percent of the tax imposed by the Navajo Nation on the receipts from selling coal severed from Navajo Nation land or twelve and one-half percent of the tax revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of the local option gross receipts taxes imposed on the same receipts; and

(b) after June 30, 2002, the lesser of twenty-five percent of the tax imposed by the Navajo Nation on the receipts from selling coal severed from Navajo Nation land or twenty-five percent of the tax revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of the local option gross receipts taxes imposed on the same receipts;

(5) is not used to calculate an intergovernmental coal severance tax credit with respect to the same receipts or time period; and

(6) is subject to a cooperative agreement between the Navajo Nation and the secretary entered into pursuant to Section 9-11-12.2 NMSA 1978 and in effect at the time of the taxable transaction.

D. For purposes of the tax credit allowed by this section, "Navajo Nation land" means all land in New Mexico that, on March 1, 2001, was located within the exterior boundaries of the Navajo Nation reservation or within a dependent community of the Navajo Nation or was land held by the United States in trust for the Navajo Nation.

History: 1978 Comp., § 7-9-88.2, enacted by Laws 2001, ch. 134, § 1.

7-9-89. Deduction; [gross receipts tax;] sales to certain accredited diplomats and missions.

Receipts from selling or leasing property to, or from performing services for, an accredited foreign mission or an accredited member of a foreign mission may be deducted from gross receipts when a treaty in force to which the United States is a party requires forbearance of tax when the legal incidence is upon the buyer or when the tax is customarily passed on to the buyer.

History: Laws 1998, ch. 89, § 2.

7-9-90. Deductions; gross receipts tax; sales of uranium hexafluoride and enrichment of uranium.

A. Receipts from selling uranium hexafluoride and from providing the service of enriching uranium may be deducted from gross receipts.

B. The department shall annually report to the revenue stabilization and tax policy committee aggregate amounts of deductions taken pursuant to this section, the number of taxpayers claiming the deduction and any other information that is necessary to determine that the deduction is performing a purpose that is beneficial to the state.

C. A taxpayer deducting gross receipts pursuant to this section shall report the amount deducted separately and attribute the amount of the deduction to the authorization provided in this section in a manner required by the department that facilitates the evaluation by the legislature for the benefit to the state of this deduction.

History: Laws 1999, ch. 231, § 3; 2012, ch. 13, § 1.

7-9-91. Deduction; compensating tax; contributions of inventory to certain organizations and governmental agencies.

A. Except as provided otherwise in Subsection D of this section, the value of tangible personal property that is removed from inventory and contributed to organizations that have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, may be deducted in computing the compensating tax due, provided that the contribution is deductible for federal income tax purposes by the person from whose inventory the property was withdrawn or, if the person from whose inventory the property was withdrawn is a pass-through entity as that term is defined in Section 7-3-2 NMSA 1978, the contribution is deductible by the owner or owners of the pass-through entity.

B. Except as provided otherwise in Subsection D of this section, the value of tangible personal property that is removed from inventory and contributed to the United States or New Mexico or any governmental unit or subdivision, agency, department or instrumentality thereof may be deducted in computing the compensating tax due.

C. Except as provided otherwise in Subsection D of this section, the value of tangible personal property that is removed from inventory and contributed to an Indian tribe, nation or pueblo or any governmental subdivision, agency, department or instrumentality thereof for use on that Indian reservation or pueblo grant may be deducted in computing the compensating tax due.

D. Unless contrary to federal law, the deduction provided by this section does not apply to:

(1) a contribution of metalliferous mineral ore;

(2) a contribution of tangible personal property that is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978];

(3) a contribution of tangible personal property that will become an ingredient or component part of a construction project; or

(4) a contribution of tangible personal property utilized or produced in the performance of a service.

E. For purposes of this section:

(1) "inventory" means tangible personal property held for sale or lease in the ordinary course of business; and

(2) "contributed" or "contribution" means a transfer of ownership without consideration. Public acknowledgment of the contribution does not constitute consideration for the purpose of this section.

History: Laws 2001, ch. 135, § 1.

7-9-92. Deduction; gross receipts; sale of food at retail food store.

A. Receipts from the sale of food by a retail food store that are not exempt from gross receipts taxation and are not deductible pursuant to another provision of the Gross Receipts and Compensating Tax Act may be deducted from gross receipts. The deduction provided by this section shall be separately stated by the taxpayer.

B. For the purposes of this section:

(1) "food" means any food or food product for home consumption that meets the definition of food in 7 USCA 2012(k)(1) for purposes of the federal supplemental nutrition assistance program; and

(2) "retail food store" means an establishment that sells food for home preparation and consumption and that meets the definition of retail food store in 7 USCA 2012(o)(1) for purposes of the federal supplemental nutrition assistance program, whether or not the establishment participates in the supplemental nutrition assistance program.

History: Laws 2004, ch. 116, § 5; 2021, ch. 65, § 26.

7-9-93. Deduction; gross receipts; certain receipts for services provided by health care practitioner or association of health care practitioners.

A. Receipts of a health care practitioner or an association of health care practitioners for commercial contract services or medicare part C services paid by a managed care organization or health care insurer may be deducted from gross receipts if the services are within the scope of practice of the health care practitioner providing the service. Receipts from fee-for-service payments by a health care insurer may not be deducted from gross receipts.

B. Prior to July 1, 2028, receipts from a copayment or deductible paid by an insured or enrollee to a health care practitioner or an association of health care practitioners for commercial contract services pursuant to the terms of the insured's health insurance plan or enrollee's managed care health plan may be deducted from gross receipts if the services are within the scope of practice of the health care practitioner providing the service.

C. The deductions provided by this section shall be applied only to gross receipts remaining after all other allowable deductions available under the Gross Receipts and Compensating Tax Act have been taken.

D. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

E. The department shall compile an annual report on the deductions provided by this section that shall include the number of taxpayers that claimed the deductions, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deductions. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the deductions.

F. As used in this section:

(1) "association of health care practitioners" means a corporation, unincorporated business entity or other legal entity organized by, owned by or employing one or more health care practitioners; provided that the entity is not:

(a) an organization granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as that section may be amended or renumbered; or

(b) a health maintenance organization, hospital, hospice, nursing home or an entity that is solely an outpatient facility or intermediate care facility licensed pursuant to the Public Health Act [Chapter 24, Article 1 NMSA 1978];

(2) "commercial contract services" means health care services performed by a health care practitioner pursuant to a contract with a managed care organization or health care insurer other than those health care services provided for medicare patients pursuant to Title 18 of the federal Social Security Act or for medicaid patients pursuant to Title 19 or Title 21 of the federal Social Security Act;

(3) "copayment" means a fixed dollar amount that a health care insurer or managed care health plan requires an insured or enrollee to pay upon incurring an expense for receiving medical services;

(4) "deductible" means the amount of covered charges an insured or enrollee is required to pay in a plan year for commercial contract services before the insured's health insurance plan or enrollee's managed care health plan begins to pay for applicable covered charges;

(5) "fee-for-service" means payment for health care services by a health care insurer for covered charges under an indemnity insurance plan;

(6) "health care insurer" means a person that:

(a) has a valid certificate of authority in good standing pursuant to the New Mexico Insurance Code [59A-1-1 NMSA 1978] to act as an insurer, health maintenance organization or nonprofit health care plan or prepaid dental plan; and

(b) contracts to reimburse licensed health care practitioners for providing basic health services to enrollees at negotiated fee rates;

(7) "health care practitioner" means:

(a) a chiropractic physician licensed pursuant to the provisions of the Chiropractic Physician Practice Act [Chapter 61, Article 4 NMSA 1978];

(b) a dentist or dental hygienist licensed pursuant to the Dental Health Care Act [Chapter 61, Article 5A NMSA 1978];

(c) a doctor of oriental medicine licensed pursuant to the provisions of the Acupuncture and Oriental Medicine Practice Act [Chapter 61, Article 14A NMSA 1978];

(d) an optometrist licensed pursuant to the provisions of the Optometry Act [Chapter 61, Article 2 NMSA 1978];

(e) an osteopathic physician licensed pursuant to the provisions of the Medical Practice Act [Chapter 41, Article 5 NMSA 1978];

(f) a physical therapist licensed pursuant to the provisions of the Physical Therapy Act [61-12D-1 to 61-12D-19 NMSA 1978];

(g) a physician or physician assistant licensed pursuant to the provisions of the Medical Practice Act;

(h) a podiatric physician licensed pursuant to the provisions of the Podiatry Act [Chapter 61, Article 8 NMSA 1978];

(i) a psychologist licensed pursuant to the provisions of the Professional Psychologist Act [Chapter 61, Article 9 NMSA 1978];

(j) a registered lay midwife registered by the department of health;

(k) a registered nurse or licensed practical nurse licensed pursuant to the provisions of the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978];

(l) a registered occupational therapist licensed pursuant to the provisions of the Occupational Therapy Act [Chapter 61, Article 12A NMSA 1978];

(m)a respiratory care practitioner licensed pursuant to the provisions of the Respiratory Care Act [Chapter 61, Article 12B NMSA 1978];

(n) a speech-language pathologist or audiologist licensed pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act [Chapter 61, Article 14B NMSA 1978];

(o) a professional clinical mental health counselor, marriage and family therapist or professional art therapist licensed pursuant to the provisions of the Counseling and Therapy Practice Act [Chapter 61, Article 9A NMSA 1978] who has obtained a master's degree or a doctorate;

(p) an independent social worker licensed pursuant to the provisions of the Social Work Practice Act [Chapter 61, Article 31 NMSA 1978]; and

(q) a clinical laboratory that is accredited pursuant to 42 U.S.C. Section 263a but that is not a laboratory in a physician's office or in a hospital defined pursuant to 42 U.S.C. Section 1395x;

(8) "managed care health plan" means a health care plan offered by a managed care organization that provides for the delivery of comprehensive basic health care services and medically necessary services to individuals enrolled in the plan other than those services provided to medicare patients pursuant to Title 18 of the federal Social Security Act or to medicaid patients pursuant to Title 19 or Title 21 of the federal Social Security Act;

(9) "managed care organization" means a person that provides for the delivery of comprehensive basic health care services and medically necessary services to individuals enrolled in a plan through its own employed health care providers or by contracting with selected or participating health care providers. "Managed care organization" includes only those persons that provide comprehensive basic health care services to enrollees on a contract basis, including the following:

(a) health maintenance organizations;

(b) preferred provider organizations;

(c) individual practice associations;

(d) competitive medical plans;

(e) exclusive provider organizations;

(f) integrated delivery systems;

(g) independent physician-provider organizations;

(h) physician hospital-provider organizations; and

(i) managed care services organizations; and

(10) "medicare part C services" means services performed pursuant to a contract with a managed health care provider for medicare patients pursuant to Title 18 of the federal Social Security Act.

History: Laws 2004, ch. 116, § 6; 2006, ch. 36, § 1; 2007, ch. 361, § 5; 2016 (2nd S.S.), ch. 3, § 5; 2021, ch. 65, § 27; 2023, ch. 211, § 36; 2024, ch. 67, § 40.

7-9-94. Deduction; gross receipts; military transformational acquisition programs.

A. Receipts from transformational acquisition programs performing research and development, test and evaluation at New Mexico major range and test facility bases pursuant to contracts entered into with the United States department of defense may be deducted from gross receipts through June 30, 2025.

B. As used in this section, "transformational acquisition program" means a military acquisition program authorized by the office of the secretary of defense force transformation and not physically tested in New Mexico on or before July 1, 2005.

C. The deduction provided in this section does not apply to receipts of a prime contractor operating facilities designated as a national laboratory by act of congress and is not applicable to current force programs as of July 1, 2005.

D. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deduction. No later than December 1 of each year that the deduction is in effect, the department shall compile and present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost and benefit to the state of the deduction.

History: Laws 2005, ch. 104, § 23; 2006, ch. 72, § 1; 2015, ch. 18, § 1.

7-9-95. Deduction; gross receipts tax; sales of certain tangible personal property; limited period.

Receipts from the sale at retail of the following types of tangible personal property may be deducted if the sale of the property occurs during the period beginning at 12:01 a.m. on the first Friday in August and ending at midnight on the following Sunday:

A. an article of clothing or footwear designed to be worn on or about the human body if the sales price of the article is less than one hundred dollars ($100) except:

(1) any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed; and

(2) accessories, including jewelry, handbags, luggage, umbrellas, wallets, watches and similar items worn or carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing;

B. a desktop, laptop or notebook computer if the sales price of the computer does not exceed one thousand dollars ($1,000) and any associated monitor, speaker or set of speakers, printer, keyboard, microphone or mouse if the sales price of the device does not exceed five hundred dollars ($500); and

C. school supplies that are items normally used by students in a standard classroom for educational purposes, including notebooks, paper, writing instruments, crayons, art supplies, rulers, book bags, backpacks, handheld calculators, maps and globes, but not including watches, radios, compact disc players, headphones, sporting equipment, portable or desktop telephones, copiers, office equipment, furniture or fixtures.

History: Laws 2005, ch. 104, § 25.

7-9-96. Repealed.

History: Laws 2005, ch. 104, § 26; repealed by Laws 2020, ch. 80, § 14.

7-9-96.1. Repealed.

History: Laws 2007, ch. 361, § 7; repealed by Laws 2019, ch. 270, § 56.

7-9-96.2. Credit; gross receipts tax; unpaid charges for services provided in a hospital.

A. A licensed medical doctor, licensed osteopathic physician or association of licensed medical doctors or osteopathic physicians may claim a credit against gross receipts taxes due in an amount equal to the value of unpaid qualified health care services.

B. As used in this section:

(1) "association of licensed medical doctors or osteopathic physicians" means a corporation, unincorporated business entity or other legal entity organized by, owned by or employing one or more licensed medical doctors or osteopathic physicians; provided that the entity is not:

(a) an organization granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as that section may be amended or renumbered; or

(b) a health maintenance organization, hospital, hospice, nursing home or an entity that is solely an outpatient facility or intermediate care facility licensed pursuant to the Public Health Act [Chapter 24, Article 1 NMSA 1978];

(2) "qualified health care services" means medical care services provided by a licensed medical doctor or licensed osteopathic physician while on call to a hospital; and

(3) "value of unpaid qualified health care services" means the amount that is charged for qualified health care services, not to exceed one hundred thirty percent of the reimbursement rate for the services under the medicaid program administered by the human services department [health care authority department], that remains unpaid one year after the date of billing and that the licensed medical doctor or licensed osteopathic physician has reason to believe will not be paid because:

(a) at the time the services were provided, the person receiving the services had no health insurance or had health insurance that did not cover the services provided;

(b) at the time the services were provided, the person receiving the services was not eligible for medicaid; and

(c) the charges are not reimbursable under a program established pursuant to the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978].

History: Laws 2007, ch. 361, § 8; 2021, ch. 65, § 28.

7-9-96.3. Technology readiness gross receipts tax credit.

A. Prior to July 1, 2027, a taxpayer that is a national laboratory that provides technology readiness assistance to a business that is registered to do business in New Mexico and has licensed a technology from the national laboratory or is a participant in a cooperative research and development agreement with the national laboratory may claim a tax credit against the taxpayer's gross receipts tax liability imposed pursuant to the Gross Receipts and Compensating Tax Act, excluding any local option gross receipts tax liability. The tax credit provided by this section may be referred to as the "technology readiness gross receipts tax credit".

B. The purpose of the technology readiness gross receipts tax credit is to help businesses in New Mexico achieve technology maturation of the businesses' technologies developed at New Mexico national laboratories and increase economic development in the state.

C. The amount of a technology readiness gross receipts tax credit shall equal the amount of qualified expenditures incurred by a national laboratory to provide technology readiness assistance to a business, not to exceed one hundred fifty thousand dollars ($150,000) in a fiscal year per business; provided that the annual aggregate amount of credits allowed per national laboratory per fiscal year shall be limited to one million dollars ($1,000,000).

D. A taxpayer may claim a technology readiness gross receipts tax credit for the taxable period in which the taxpayer provides technology assistance pursuant to this section. That portion of a technology readiness gross receipts tax credit that exceeds a taxpayer's tax liability in the taxable period in which the credit is claimed may be carried forward to succeeding taxable periods.

E. To receive a technology readiness gross receipts tax credit, a taxpayer shall apply to the department on forms and in the manner required by the department. The application shall include the following:

(1) certification from each business that received technology readiness assistance that:

(a) the assistance was made in good faith to help the business demonstrate the feasibility of real-world application of the business's technology; and

(b) the assistance was not otherwise available to the business at a reasonable cost through private industry;

(2) evidence that the business that received the technology readiness assistance is registered to do business in New Mexico; and

(3) evidence that the business's technology is a licensed technology from the national laboratory or the business is a participant in a cooperative research and development agreement with the national laboratory.

F. In addition to the requirements in Subsection E of this section, a national laboratory shall:

(1) create forms for technology readiness assistance requests and completion of technology maturation;

(2) establish a technology readiness assistance program that will assist businesses to reach technology maturation;

(3) consult with the secretary of economic development to seek advice on improvements in the operation of the technology readiness assistance program; and

(4) establish a methodology to use state educational institutions that have demonstrated the capability to provide technology readiness assistance.

G. A taxpayer shall not claim both a technology readiness gross receipts tax credit and a credit pursuant to the Laboratory Partnership with Small Business Tax Credit Act [Chapter 7, Article 9E NMSA 1978] for assistance provided to the same business in the same taxable period.

H. If more than one national laboratory provides technology readiness assistance to a business, the national laboratories shall not claim a technology readiness gross receipts tax credit until coordination is developed between the national laboratories providing the assistance that generates a joint operational plan to ensure that:

(1) the assistance provided by each national laboratory suits the business's needs and challenges; and

(2) the combined claims for a technology readiness gross receipts tax credit will not exceed the limitations provided in Subsection C of this section.

I. A national laboratory that claims a technology readiness gross receipts tax credit shall submit an annual report in writing to the department, the economic development department and an appropriate legislative interim committee. If more than one national laboratory claims a technology readiness gross receipts tax credit, those laboratories shall jointly submit an annual report. The annual report shall summarize activities related to and the results of the technology readiness assistance programs created by the national laboratories and shall include:

(1) a description of each business's technology that has received technology readiness assistance, including progress toward technology maturation and whether, and to what extent, the business is still doing business in New Mexico;

(2) results of surveys of businesses to which technology readiness assistance is provided;

(3) the total amount of the technology readiness gross receipts tax credits received in the previous fiscal year; and

(4) an economic impact study performed by an uninterested third party.

J. At any time after receipt of an annual report required pursuant to this section, the department or the economic development department may provide written instructions to a national laboratory identifying future improvements in the national laboratory's technology readiness assistance program for which it receives a technology readiness gross receipts tax credit.

K. As used in this section:

(1) "cooperative research and development agreement" means any agreement between a national laboratory and a non-federal party under which the laboratory provides personnel, services, facilities, equipment, intellectual property or other resources and a non-federal party provides funds, personnel, services, facilities, equipment, intellectual property or other resources toward the conduct of specified research or development efforts that are consistent with the missions of the laboratory;

(2) "national laboratory" means a prime contractor designated as a national laboratory by act of congress that is operating a facility in New Mexico;

(3) "qualified expenditure" means an expenditure by a national laboratory in providing technology readiness assistance and is limited to the following:

(a) employee salaries, wages, benefits and employer payroll taxes;

(b) administrative costs related directly to the provision of technology readiness assistance;

(c) in-state travel expenses, including per diem and mileage at the internal revenue service standard rate; and

(d) supplies and services of contractors that are related to the provision of technology readiness assistance;

(4) "state educational institution" means a state educational institution named in Article 12, Section 11 of the constitution of New Mexico;

(5) "technology maturation" means technology that has been developed to a stage that results in a prototype or demonstration of the feasibility of real-world application of the technology; and

(6) "technology readiness assistance" means assistance provided to a business by a national laboratory with the intent to help the business's technology achieve technology maturation.

History: Laws 2020, ch. 22, § 1; 2022, ch. 45, § 1.

7-9-97. Deduction; gross receipts tax; receipts from certain purchases by or on behalf of the state.

Receipts from the sale of property or services purchased by or on behalf of the state from funds obtained from the forfeiture of financial assurance pursuant to the New Mexico Mining Act [Chapter 69, Article 36 NMSA 1978] or the forfeiture of financial responsibility pursuant to the Water Quality Act [Chapter 74, Article 6 NMSA 1978] may be deducted from gross receipts.

History: Laws 2005, ch. 169, § 1.

7-9-98. Deduction; compensating tax; biomass-related equipment; biomass materials.

A. The value of a biomass boiler, gasifier, furnace, turbine-generator, storage facility, feedstock processing or drying equipment, feedstock trailer or interconnection transformer may be deducted in computing the compensating tax due.

B. The value of biomass materials used for processing into biopower, biofuels or biobased products may be deducted in computing the compensating tax due.

C. As used in this section:

(1) "biobased products" means products created from plant- or crop-based resources such as agricultural crops and crop residues, forestry, pastures and rangelands that are normally made from petroleum

(2) "biofuels" means biomass converted to liquid or gaseous fuels such as ethanol, methanol, methane and hydrogen;

(3) "biomass material" means organic material that is available on a renewable or recurring basis, including:

(a) forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low commercial value materials or undesirable species, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;

(b) agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws and stover, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey and lactose;

(c) animal waste, including manure and slaughterhouse and other processing waste;

(d) solid woody waste materials, including landscape or right-of-way tree trimmings, range land maintenance residues, waste pallets, crates and manufacturing, construction and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;

(e) crops and trees planted for the purpose of being used to produce energy;

(f) landfill gas, wastewater treatment gas and biosolids, including organic waste byproducts generated during the wastewater treatment process; and

(g) segregated municipal solid waste, excluding tires and medical and hazardous waste; and

(4) "biopower" means biomass converted to produce electrical and thermal energy.

History: Laws 2005, ch. 179, § 1.

7-9-99. Deduction; gross receipts tax; sale of engineering, architectural and new facility construction services used in construction of certain public health care facilities.

Receipts from selling an engineering, architectural or construction service used in the new facility construction of a sole community provider hospital [qualifying hospital] that is located in a federally designated health professional shortage area may be deducted from gross receipts if the sale of the engineering, architectural or construction service is made to a foundation or a nonprofit organization that:

A. has entered into a written agreement with a county to pay at least ninety-five percent of the costs of new facility construction of that sole community provider hospital [qualifying hospital]; and

B. delivers to the seller of the engineering, architectural or construction service either an appropriate nontaxable transaction certificate or other evidence acceptable to the secretary of a written agreement made in accordance with Subsection A of this section.

History: Laws 2006, ch. 35, § 1.

7-9-100. Deduction; gross receipts tax; sale of construction equipment and construction materials used in new facility construction of a sole community provider hospital [qualifying hospital] that is located in a federally designated health professional shortage area.

Receipts from selling construction equipment or construction materials used in the new facility construction of a sole community provider hospital [qualifying hospital] that is located in a federally designated health professional shortage area may be deducted from gross receipts if the sale of the construction equipment or construction materials is made to a foundation or a nonprofit organization that:

A. has entered into a written agreement with a county to pay at least ninety-five percent of the costs of new facility construction of that sole community provider hospital [qualifying hospital]; and

B. delivers to the seller either an appropriate nontaxable transaction certificate or other evidence acceptable to the secretary of a written agreement made in accordance with Subsection A of this section.

History: Laws 2006, ch. 35, § 2.

7-9-101. Deduction; gross receipts; equipment for certain electric transmission or storage facilities.

Receipts from selling equipment to the New Mexico renewable energy transmission authority or an agent or lessee of the authority may be deducted from gross receipts if the equipment is installed as part of an electric transmission facility or an interconnected storage facility acquired by the authority pursuant to the New Mexico Renewable Energy Transmission Authority Act [Chapter 62, Article 16A NMSA 1978].

History: Laws 2007, ch. 3, § 16.

7-9-102. Deduction; compensating tax; equipment for certain electric transmission or storage facilities.

The value of equipment installed as part of an electric transmission facility or an interconnected storage facility acquired by the New Mexico renewable energy transmission authority pursuant to the New Mexico Renewable Energy Transmission Authority Act [Chapter 62, Article 16A NMSA 1978] may be deducted in computing compensating tax due.

History: Laws 2007, ch. 3, § 17.

7-9-103. Deduction; gross receipts; services provided for certain electric transmission and storage facilities.

Receipts from providing services to the New Mexico renewable energy transmission authority or an agent or lessee of the authority for the planning, installation, repair, maintenance or operation of an electric transmission facility or an interconnected storage facility acquired by the authority pursuant to the New Mexico Renewable

Energy Transmission Authority Act [Chapter 62, Article 16A NMSA 1978] may be deducted from gross receipts.

History: Laws 2007, ch. 3, § 18.

7-9-103.1. Deduction; gross receipts tax; converting electricity.

A. Receipts from the transmission of electricity where voltage source conversion technology is employed to provide such services and from ancillary services may be deducted from gross receipts.

B. The department shall report annually to the interim revenue stabilization and tax policy committee on the expansion of voltage source conversion technology use in the transmission of electricity in New Mexico and the use of the deduction provided in this section.

C. As used in this section, "ancillary services" means services that are supplied from or in connection with facilities employing voltage source conversion technology and that are used to support or enhance the efficient and reliable operation of the electric system.

History: Laws 2012, ch. 12, § 2.

7-9-103.2. Deduction; gross receipts; electricity exchange.

A. Receipts from operating a market or exchange for the sale or trading of electricity, rights to electricity and derivative products and from providing ancillary services may be deducted from gross receipts.

B. The department shall report annually to the interim revenue stabilization and tax policy committee on use of the deduction provided in this section.

C. As used in this section, "ancillary services" means services that are supplied from or in connection with facilities employing voltage source conversion technology and that are used to support or enhance the efficient and reliable operation of the electric system.

History: Laws 2012, ch. 12, § 3.

7-9-104. Deduction; gross receipts; nonathletic special event at post-secondary educational institution.

Prior to July 1, 2027, receipts from admissions to a nonathletic special event held at a venue that is located on the campus of a post-secondary educational institution within fifty miles of the New Mexico border and that accommodates at least ten thousand persons may be deducted from gross receipts or from governmental gross receipts.

History: Laws 2007, ch. 33, § 1; 2012, ch. 22, § 1; 2017, ch. 46, § 1; 2022, ch. 50, § 1.

7-9-105. Repealed.

History: Laws 2007, ch. 45, § 6; repealed by Laws 2023, ch. 85, § 28.

7-9-106. Repealed.

History: Laws 2007, ch. 172, § 8; repealed and reenacted by Laws 2018, ch. 62, § 1; repealed by Laws 2023, ch. 85, § 28.

7-9-107. Deduction; gross receipts tax; production or staging of professional contests.

Receipts from producing or staging a professional boxing, wrestling or martial arts contest that occurs in New Mexico, including receipts from ticket sales and broadcasting, may be deducted from gross receipts.

History: Laws 2007, ch. 172, § 9.

7-9-108. Deduction; gross receipts; receipts from performing management or investment advisory services for mutual funds, hedge funds or real estate investment trusts.

A. Receipts from fees received for performing management or investment advisory services for a mutual fund, hedge fund or real estate investment trust may be deducted from gross receipts.

B. As used in this section:

(1) "hedge fund" means a private investment fund or pool, the assets of which are managed by a professional management firm, that:

(a) trades or invests, through public market or private transactions, in securities, commodities, currency, derivatives or similar classes of financial assets; or

(b) is not an investment company pursuant to the provisions of 15 U.S.C. 80a-3(c)(1) or 15 U.S.C. 80a-3(c)(7);

(2) "mutual fund" means an entity registered pursuant to the federal Investment Company Act of 1940, as amended; and

(3) "real estate investment trust" means an entity described in Section 856(a) of the Internal Revenue Code of 1986, as amended, the investments of which are limited to interests in mortgages on real property and shares of or transferable certificates of beneficial interest in an entity described in Section 856(a) of the Internal Revenue Code of 1986, as amended.

History: Laws 2007, ch. 172, § 10.

7-9-109. Deduction; gross receipts tax; veterinary medical services, medicine or medical supplies used in medical treatment of cattle.

A. Receipts from sales of veterinary medical services, medicine or medical supplies used in the medical treatment of cattle may be deducted from gross receipts if the sale is made to a person who states in writing that the person is regularly engaged in the business of ranching or farming, including dairy farming, in New Mexico or if the sale is made to a veterinarian who holds a valid license pursuant to the Veterinary Practice Act [Chapter 61, Article 14 NMSA 1978] and who is providing veterinary medical services, medicine or medical supplies in the treatment of cattle owned by that person.

B. As used in this section, "cattle" means animals of the genus bos, including dairy cattle, and does not include any other kind of livestock.

History: Laws 2007, ch. 172, § 11.

7-9-110. Deleted.

History: Laws 2007, ch. 172, § 12.

7-9-110.1. Deduction; gross receipts tax; locomotive engine fuel.

Receipts from the sale of fuel to a common carrier to be loaded or used in a locomotive engine may be deducted from gross receipts. For the purposes of this section, "locomotive engine" means a wheeled vehicle consisting of a self-propelled engine that is used to draw trains along railway tracks.

History: Laws 2011, ch. 60, § 1 and Laws 2011, ch. 61, § 1.

7-9-110.2. Deduction; compensating tax; locomotive engine fuel.

The value of fuel to be loaded or used by a common carrier in a locomotive engine may be deducted in computing the compensating tax due. For the purposes of this section, "locomotive engine" means a wheeled vehicle consisting of a self-propelled engine that is used to draw trains along railway tracks.

History: Laws 2011, ch. 60, § 2 and Laws 2011, ch. 61, § 2.

7-9-110.3. Purpose and requirements of locomotive fuel deduction.

A. The purpose of the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax is to encourage the construction, renovation, maintenance and operation of railroad locomotive refueling facilities and other railroad capital investments in New Mexico.

B. To be eligible for the deduction on fuel loaded or used by a common carrier in a locomotive engine from compensating tax, the fuel shall be used or loaded by a common carrier that:

(1) after July 1, 2011, made a capital investment of one hundred million dollars ($100,000,000) or more in new construction or renovations at the railroad locomotive refueling facility in which the fuel is loaded or used; or

(2) on or after July 1, 2012, made a capital investment of fifty million dollars ($50,000,000) or more in new railroad infrastructure improvements, including railroad facilities, track, signals and supporting railroad network, located in New Mexico; provided that the new railroad infrastructure improvements are not required by a regulatory agency to correct problems, such as regular or preventive maintenance, specifically identified by that agency as requiring necessary corrective action.

C. To be eligible for the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts, a common carrier shall deliver an appropriate nontaxable transaction certificate to the seller and the sale shall be made to a common carrier that:

(1) after July 1, 2011, made a capital investment of one hundred million dollars ($100,000,000) or more in new construction or renovations at the railroad locomotive refueling facility in which the fuel is sold; or

(2) on or after July 1, 2012, made a capital investment of fifty million dollars ($50,000,000) or more in new railroad infrastructure improvements, including railroad facilities, track, signals and supporting railroad network, located in New Mexico; provided that the new railroad infrastructure improvements are not required by a regulatory agency to correct problems, such as regular or preventative maintenance, specifically identified by that agency as requiring necessary corrective action.

D. The economic development department shall promulgate rules for the issuance of a certificate of eligibility for the purposes of claiming a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or compensating tax. A common carrier may request a certificate of eligibility from the economic development department to provide to the taxation and revenue department to establish eligibility for a nontaxable transaction certificate for the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts. The taxation and revenue department shall issue nontaxable transaction certificates to a common carrier upon the presentation of a certificate of eligibility obtained from the economic development department pursuant to this subsection.

E. The economic development department shall keep a record of temporary and permanent jobs from all railroad activity where a capital investment is made by a common carrier that claims a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or from compensating tax. The economic development department and the taxation and revenue department shall estimate the amount of state revenue that is attributable to all railroad activity where a capital investment is made by a common carrier that claims a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or from compensating tax.

F. The economic development department and the taxation and revenue department shall compile an annual report with the number of taxpayers who claim the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax, the number of jobs created as a result of that deduction, the amount of that deduction approved, the net revenue to the state as a result of that deduction and any other information required by the legislature to aid in evaluating the effectiveness of that deduction. A taxpayer who claims a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or from compensating tax shall provide the economic development department and the taxation and revenue department with the information required to compile that report. The economic development department and the taxation and revenue department shall present that report before the legislative interim revenue stabilization and tax policy committee and the legislative finance committee by November of each year. Notwithstanding any other section of law to the contrary, the economic development department and the taxation and revenue department may disclose the number of applicants for the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax, the amount of the deduction approved, the number of employees of the taxpayer and any other information required by the legislature or the taxation and revenue department to aid in evaluating the effectiveness of that deduction.

G. An appropriate legislative committee shall review the effectiveness of the deduction for each taxpayer who claims the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax every six years beginning in 2019.

History: Laws 2011, ch. 60, § 3; 2011, ch. 61, § 3; 2013, ch. 123, § 1.

7-9-111. Deduction; gross receipts; hearing aids and vision aids and related services.

A. Receipts that are not exempt from gross receipts taxation and are not deductible pursuant to another provision of the Gross Receipts and Compensating Tax Act that are from the sale of vision aids or hearing aids or related services may be deducted from gross receipts.

B. As used in this section:

(1) "hearing aid" means a small electronic prescription device that amplifies sound and is usually worn in or behind the ear of a person that compensates for impaired hearing, including cochlear implants, amplification systems or other devices that are:

(a) specifically designed for use by and marketed to persons with hearing loss; and

(b) not normally used by a person who does not have a hearing loss;

(2) "low vision" means impaired vision with a significant reduction in visual function that cannot be corrected with conventional glasses or contact lenses;

(3) "related services" means services required to fit or dispense hearing aids or vision aids;

(4) "vision aid" means closed circuit television systems, monoculars, magnification systems, speech output devices or other systems that are:

(a) specifically designed for use by and marketed to persons with low vision or visual impairments; and

(b) not normally used by a person who does not have low vision or a visual impairment; and

(5) "visual impairment" means a central visual acuity of 20/200 or less in the better eye with the use of a correcting lens or a limitation in the fields of vision so that the widest diameter of the visual field subtends an angle of twenty degrees or less.

History: Laws 2007, ch. 361, § 6.

7-9-112. Deduction; gross receipts; solar energy systems.

A. Receipts from the sale and installation of solar energy systems may be deducted from gross receipts.

B. As used in this section, "solar energy system" means an installation that is used to provide space heat, hot water or electricity to the property in which it is installed and is:

(1) an installation that utilizes solar panels that are not also windows, including the solar panels and all equipment necessary for the installation and operation of the solar panels;

(2) a dark-colored water tank exposed to sunlight, including all equipment necessary for the installation and operation of the water tank as a part of the overall water system of the property; or

(3) a non-vented trombe wall, including all equipment necessary for the installation and operation of the trombe wall.

History: Laws 2007, ch. 204, § 10.

7-9-112.1. Deductions; gross receipts tax; compensating tax; geothermal electricity generation-related sales and use.

A. Prior to July 1, 2032, receipts from the following sales may be deducted from gross receipts; provided that the sale is made to a person who holds an interest in a geothermal electricity generation facility and the person delivers an appropriate nontaxable transaction certificate to the seller or lessor or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978:

(1) selling tangible personal property installed as part of, or services rendered in connection with, constructing and equipping a geothermal electricity generation facility;

(2) selling tangible personal property installed as part of a system used for the distribution of electricity generated from a geothermal electricity generation facility; and

(3) selling or leasing tangible personal property or selling services that are construction plant costs.

B. Prior to July 1, 2032, the value of:

(1) tangible personal property installed as part of, or services rendered in connection with, constructing and equipping a geothermal electricity generation facility may be deducted in computing compensating tax due;

(2) tangible personal property installed as part of a system used for the distribution of electricity generated from a geothermal electricity generation facility may be deducted in computing compensating tax due; and

(3) construction plant costs purchased by a person who holds an interest in a geothermal electricity generation facility may be deducted in computing compensating tax due.

C. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

D. The department shall compile an annual report on the deductions provided by this section that shall include the number of taxpayers that claimed the deductions, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deductions. The department shall present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deductions.

E. As used in this section:

(1) "construction plant costs" means actual expenditures for the development and construction of a geothermal electricity generation facility, including the drilling of wells to at least twelve thousand feet; permitting; site characterization and assessment; engineering; design; site and equipment acquisition; raw materials; and fuel supply development used directly and exclusively in the facility;

(2) "geothermal electricity generation facility" means a facility located in New Mexico that generates electricity from geothermal resources and:

(a) for a new facility, begins construction on or after January 1, 2025; or

(b) for an existing facility, on or after January 1, 2025, increases the amount of electricity generated from geothermal resources the facility generated prior to that date by at least one hundred percent;

(3) "geothermal resources" means the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit or the energy, in whatever form, below the surface of the earth present in, resulting from, created by or that may be extracted from this natural heat in excess of two hundred fifty degrees Fahrenheit and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases and steam, in whatever form, found below the surface of the earth, but excluding oil, hydrocarbon gas and other hydrocarbon substances and excluding the heating and cooling capacity of the earth not resulting from the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit as may be used for the heating and cooling of buildings through an on-site geoexchange heat pump or similar on-site system; and

(4) "interest in a geothermal electricity generation facility" means title to a geothermal electricity generation facility; a leasehold interest in such facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in such facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in such facility.

History: Laws 2024, ch. 67, § 39.

7-9-113. Repealed.

History: Laws 2009, ch. 99, § 1; repealed by Laws 2009, ch. 99, § 4.

7-9-114. Repealed.

History: Laws 2010, ch. 77, § 1; 2010, ch. 78, § 1; 2011, ch. 115, § 1; repealed by Laws 2023, ch. 85, § 28.

7-9-115. Deduction; gross receipts tax; goods and services for the department of defense related to directed energy and satellites.

A. Prior to January 1, 2031, receipts from the sale by a qualified contractor of qualified research and development services and qualified directed energy and satellite-related inputs may be deducted from gross receipts when sold pursuant to a contract with the United States department of defense.

B. The purposes of the deduction allowed in this section are to promote new and sophisticated technology, enhance the viability of directed energy and satellite projects, attract new projects and employers to New Mexico and increase high-technology employment opportunities in New Mexico.

C. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

D. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deduction. Beginning in 2017 and each year thereafter that the deduction is in effect, the department and the economic development department shall present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction and whether the deduction is performing the purpose for which it was created.

E. As used in this section:

(1) "directed energy" means a system, including related services, that enables the use of the frequency spectrum, including radio waves, light and x-rays;

(2) "inputs" means systems, subsystems, components, prototypes and demonstrators or products and services involving optics, photonics, electronics, advanced materials, nanoelectromechanical and microelectromechanical systems,

fabrication materials and test evaluation and computer control systems related to directed energy or satellites;

(3) "qualified contractor" means a person other than an organization designated as a national laboratory by act of congress or an operator of national laboratory facilities in New Mexico; provided that the operator may be a qualified contractor with respect to the operator's receipts not connected with operating the national laboratory;

(4) "qualified directed energy and satellite-related inputs" means inputs supplied to the department of defense pursuant to a contract with that department entered into on or after January 1, 2016;

(5) "qualified research and development services" means research and development services related to directed energy or satellites provided to the department of defense pursuant to a contract with that department entered into on or after January 1, 2016; and

(6) "satellite" means composite systems assembled and packaged for use in space, including launch vehicles and related products and services.

History: Laws 2015 (1st S.S.), ch. 2, § 9; 2019, ch. 186, § 1.

7-9-116. Deduction; gross receipts tax; retail sales by certain businesses.

A. Prior to July 1, 2025, receipts from the sale at retail of the following types of tangible personal property may be deducted if the sales price of the property is less than five hundred dollars ($500) and:

(1) the sale occurs during the period beginning at 12:01 a.m. on the first Saturday after Thanksgiving and ending at midnight on the same Saturday;

(2) the sale is for:

(a) an article of clothing or footwear designed to be worn on or about the human body;

(b) accessories, including jewelry, handbags, book bags, backpacks, luggage, wallets, watches and similar items worn or carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing;

(c) sporting goods and camping equipment;

(d) tools used for home improvement, gardening and automotive maintenance and repair;

(e) books, journals, paper, writing instruments, art supplies, greeting cards and postcards;

(f) works of art, including any painting, drawing, print, photograph, sculpture, pottery or ceramics, carving, textile, basketry, artifact, natural specimen, rare book, authors' papers, objects of historical or technical interest or other article of intrinsic cultural value;

(g) floral arrangements and indoor plants;

(h) cosmetics and personal grooming items;

(i) musical instruments;

(j) cookware and small home appliances for residential use;

(k) bedding, towels and bath accessories;

(l) furniture;

(m)a toy or game that is a physical item, product or object clearly intended and designed to be used by children or families in play;

(n) a video game or video game console and any associated accessories for the video game console; or

(o) home electronics such as computers, phones, tablets, stereo equipment and related electronics accessories; and

(3) the sale is made by a seller that carries on a trade or business in New Mexico, maintains its primary place of business in New Mexico, as determined by the department, and employed no more than ten employees at any one time during the previous fiscal year.

B. Receipts for sales made by a business that operates under a franchise agreement may not be deducted pursuant to this section.

C. The purpose of the deduction provided by this section is to increase sales at small local businesses.

D. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

E. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deduction. The department shall present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction and whether the deduction is performing the purpose for which it was created.

History: Laws 2018, ch. 46, § 1; 2020, ch. 29, § 1.

7-9-117. Deduction; gross receipts; governmental gross receipts; marketplace seller.

A. A marketplace seller may deduct receipts for sales, leases and licenses of tangible personal property, sales of licenses and sales of services or licenses for use of real property that are facilitated by a marketplace provider from gross receipts and governmental gross receipts; provided that the marketplace seller obtains documentation from the marketplace provider indicating that the marketplace provider is registered with the department and has remitted or will remit the taxes due on the gross receipts from those transactions.

B. The deduction provided by this section shall not apply if the marketplace provider is determined not to owe the tax due to the marketplace provider's reliance on information provided by the seller as determined pursuant to Subsection C of Section 7-9-5 NMSA 1978.

History: Laws 2019, ch.270, § 36; 2020, ch. 80, § 6.

7-9-118. Deduction; gross receipts; food or beverage establishments.

A. Beginning March 1, 2021 and prior to July 1, 2021, receipts of a food or beverage establishment from the sale of prepared food or non-packaged beverages that are served or picked up at the food or beverage establishment by or delivered to customers for immediate consumption may be deducted from gross receipts.

B. The deduction provided by this section shall be applied only to gross receipts remaining after all other allowable deductions available under the Gross Receipts and Compensating Tax Act have been taken and shall be separately stated by the taxpayer.

C. As used in this section:

(1) "craft distiller" means an establishment owned or managed by person issued a craft distiller's license pursuant to Section 60-6A-6.1 NMSA 1978 that is in good standing;

(2) "dispenser" means an establishment that is held out to the public as a place where alcoholic beverages are prepared and served for on-premises consumption

to the general public in consideration of payment and that has the facilities and employees necessary for preparing and serving alcoholic beverages; provided that the dispenser has been issued a license pursuant to the Liquor Control Act [60-3A-1 NMSA 1978] as a dispenser;

(3) "food or beverage establishment" means a craft distiller; dispenser; mobile food service establishment; restaurant; small brewer; or winegrower;

(4) "mobile food service establishment" means a mobile establishment where meals are prepared for sale to or consumption by the general public either on or off the premises and has been issued a permit pursuant to Section 25-1-7 NMSA 1978 that is in good standing;

(5) "restaurant" means an establishment that is held out to the public as a place where meals and beverages are prepared and primarily intended to be served for on-premises consumption to the general public in consideration of payment and that has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals; provided the restaurant has been issued a permit pursuant to Section 25-1-7 NMSA 1978 that is in good standing and, if the restaurant serves alcoholic beverages, has been issued a license pursuant to Section 60-6A-4 NMSA 1978. "Restaurant" does not include an establishment commonly known as a fast food restaurant that dispenses food intended to be ordered, prepared and served quickly, with minimal or no table service, and prepared in quantity by a standardized method for consumption on and off premises, and that tends to have any of the following characteristics:

(a) a menu consisting primarily of pre-cooked items or items prepared in advance and heated quickly;

(b) placement of orders at a fast serve drive-through or walk-up window;

(c) service of food solely in disposable wrapping or containers; or

(d) a menu that exclusively sells hamburgers, sandwiches, salads and other fast foods;

(6) "small brewer" means an establishment owned or managed by a person issued a small brewer's license pursuant to Section 60-6A-26.1 NMSA 1978 that is in good standing; and

(7) "winegrower" means an establishment owned or managed by a person issued a winegrower's license pursuant to Section 60-6A-11 NMSA 1978 that is in good standing.

History: Laws 2021, ch. 4, § 3.

7-9-119. Deduction; sales made by dispenser's license holder.

A. Prior to January 1, 2026, a liquor license holder who held the license on June 30, 2021 may deduct from gross receipts the following receipts, for each dispenser's license for which sales of alcoholic beverages for consumption off premises are less than fifty percent of total alcoholic beverage sales, up to fifty thousand dollars ($50,000) of receipts from the sale of alcoholic beverages for taxable years 2022 through 2025.

B. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

C. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deduction. The department shall compile and present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the deduction.

D. As used in this section:

(1) "alcoholic beverage" means alcoholic beverage as defined in the Liquor Control Act;

(2) "dispenser's license" means a license issued pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] allowing the licensee to sell, offer for sale or have in the person's possession with the intent to sell alcoholic beverages both by the drink for consumption on the licensed premises and in unbroken packages, including growlers, for consumption and not for resale off the licensed premises;

(3) "growler" means a clean, refillable, resealable container that has a liquid capacity that does not exceed one gallon and that is intended and used for the sale of beer, wine or cider; and

(4) "liquor license holder" means a person that holds a retailer's license issued pursuant to Section 60-6A-2 NMSA 1978, a dispenser's license issued pursuant to Section 60-6A-3 NMSA 1978 or a dispenser's license issued pursuant to Section 60-6A-12 NMSA 1978 issued prior to July 1, 2021.

History: Laws 2021, ch. 7, § 3.

7-9-120. Deduction; gross receipts and governmental gross receipts; feminine hygiene products.

A. Receipts from the sale of feminine hygiene products may be deducted from gross receipts and governmental gross receipts.

B. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

C. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deduction. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the deduction.

D. As used in this section, "feminine hygiene products" means tampons, menstrual pads and sanitary napkins, pantiliners, menstrual sponges and menstrual cups.

History: Laws 2022, ch. 47, § 15.

7-9-121. Credit; gross receipts tax; legal services for wildfire compensation recovery.

A. A taxpayer who sells legal services to and at the request of a person eligible to receive compensation pursuant to the federal Hermit's Peak/Calf Canyon Fire Assistance Act may claim a tax credit against gross receipts taxes due in an amount equal to the amount of gross receipts tax due on the receipt for the sale; provided that:

(1) the legal services are directly related to recovering the compensation;

(2) the taxpayer did not pass the amount of gross receipts tax on to the person eligible to receive the federal compensation; and

(3) the legal services were sold to a person who states in writing in a manner that the department may require that the person is eligible to receive the federal compensation, the services were directly related to recovering the compensation and the gross receipts tax was not passed on to the person.

B. A taxpayer may claim the tax credit for the taxable period in which the legal services are provided. To receive the credit, the taxpayer shall apply to the department on forms and in a manner prescribed by the department. The maximum aggregate amount of tax credits that may be allowed in a fiscal year is five million dollars ($5,000,000). Completed applications shall be considered in the order received. Applications received after the aggregate amount has been met shall not be approved.

C. That portion of the tax credit claimed by a taxpayer that exceeds the taxpayer's gross receipts tax liability in the taxable period in which the credit is claimed shall not be refunded to the taxpayer but may be carried forward for thirty-six consecutive taxable periods.

D. As used in this section, "legal services" means services performed by a licensed attorney for a client, regardless of the attorney's form of business entity or whether the services are prepaid, including legal representation before courts or administrative agencies; drafting legal documents, such as contracts or patent applications; legal research; advising and counseling; arbitration; mediation; and notary public and other ancillary legal services performed for a client in conjunction with a licensed attorney. "Legal services" does not include lobbying or government relations services, title insurance agent services, licensing or selling legal software or legal document templates, insurance investigation services or any legal representation involving financial crimes or tax evasion in New Mexico.

History: Laws 2024, ch. 67, § 14.

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.

7-9A-2. Purpose of act.

It is the purpose of the Investment Credit Act to provide a favorable tax climate for manufacturing businesses and to promote increased employment in New Mexico.

History: Laws 1979, ch. 347, § 2; 1983, ch. 206, § 1.

7-9A-2.1. Legislative oversight.

The interim revenue stabilization and tax policy committee during the 2005 interim shall conduct a review of the use of the investment credit and the effectiveness of the credit in meeting the state's economic development and tax policy objectives. Following the study, the committee shall determine whether changes are necessary in the Investment Credit Act and report its findings and recommendations to the second session of the forty-seventh legislature.

History: Laws 2001, ch. 57, § 2 and Laws 2001, ch. 337, § 2.

7-9A-3. Definitions.

As used in the Investment Credit Act:

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

B. "equipment" means an essential machine, mechanism or tool, or a component or fitting thereof, used directly and exclusively in a manufacturing operation and subject to depreciation for purposes of the Internal Revenue Code by the taxpayer carrying on the manufacturing operation. "Equipment" does not include any vehicle that leaves the site of the manufacturing operation for purposes of transporting persons or property or any property for which the taxpayer claims the credit pursuant to Section 7-9-79 NMSA 1978;

C. "manufacturing" means combining or processing components or materials, including recyclable materials, to increase their value for sale in the ordinary course of business, including genetic testing and production, but not including:

(1) construction;

(2) farming;

(3) power generation, except for electricity generation at a facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978] and the Electric Utility Industry Restructuring Act of 1999 [repealed]; or

(4) processing natural resources, including hydrocarbons;

D. "manufacturing operation" means a plant, including a genetic testing and production facility, employing personnel to perform production tasks, in conjunction with equipment not previously existing at the site, to produce goods;

E. "recyclable materials" means materials that would otherwise become solid waste if not recycled and that can be collected, separated or processed and placed in use in the form of raw materials or products; and

F. "taxpayer" means a person liable for payment of any tax, a person responsible for withholding and payment over or for collection and payment over of any tax or a person to whom an assessment has been made, if the assessment remains unabated or the amount thereof has not been paid.

History: Laws 1979, ch. 347, § 3; 1983, ch. 206, § 2; 1986, ch. 20, § 69; 1990, ch. 3, § 1; 1991, ch. 159, § 2; 1991, ch. 162, § 2; 2001, ch. 284, § 4; 2002, ch. 37, § 7.

7-9A-4. Administration of the act.

The department is charged with the administration of the Investment Credit Act.

History: Laws 1979, ch. 347, § 4; 1991, ch. 159, § 3; 1991, ch. 162, § 3.

7-9A-5. Investment credit; amount; claimant.

A. The investment credit provided for in the Investment Credit Act may be claimed by a taxpayer carrying on a manufacturing operation in New Mexico in an amount equal to:

(1) the product of the sum of the compensating tax rate and, beginning July 1, 2021, any municipal or county compensating tax rate multiplied by the value of the qualified equipment; or

(2) if the sale is subject to the gross receipts tax, the product of the sum of the gross receipts tax rate and, beginning July 1, 2021, any municipal or county local option gross receipts tax rates multiplied by the seller's gross receipts from the sale of the qualified equipment.

B. If the purchase or the introduction into New Mexico of the qualified equipment is not subject to the gross receipts tax or compensating tax, the rate to determine the amount of the credit shall be equal to a rate of five and one-eighth percent.

History: Laws 1979, ch. 347, § 5; 1983, ch. 206, § 3; 1990, ch. 3, § 2; 1991, ch. 159, § 4; 1991, ch. 162, § 4; 2020, ch. 80, § 7.

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.

7-9A-7. Value of qualified equipment.

Prior to July 1, 2030, the value of qualified equipment shall be the adjusted basis established for the equipment under the applicable provisions of the Internal Revenue Code of 1986.

History: Laws 1979, ch. 347, § 7; 1983, ch. 206, § 5; 1990, ch. 3, § 5; 1991, ch. 159, § 5; 1991, ch. 162, § 5; 2001, ch. 57, § 3; 2001, ch. 337, § 3; 2009, ch. 147, § 2; 2020, ch. 80, § 8.

7-9A-7.1. Employment requirements.

A. Prior to July 1, 2030, to be eligible to claim a credit pursuant to the Investment Credit Act, the taxpayer shall employ the equivalent of one full-time employee who has not been counted to meet this employment requirement for any prior claim in addition to the number of full-time employees employed on the day one year prior to the day on which the taxpayer applies for the credit for every:

(1) seven hundred fifty thousand dollars ($750,000), or portion of that amount, in value of qualified equipment claimed by the taxpayer in a taxable year in the same claim, up to a value of thirty million dollars ($30,000,000); and

(2) one million dollars ($1,000,000), or portion of that amount, in value of qualified equipment over thirty million dollars ($30,000,000) claimed by the taxpayer in a taxable year in the same claim.

B. The department may require evidence showing compliance with this section. The department may find that an additional employee meets the requirements of this section, although employed earlier than one year prior to the day on which the taxpayer applies for the credit, if the employee was only being trained prior to that date or the employee's employment was necessitated by the use of the qualified equipment.

History: 1978 Comp., § 7-9A-7.1, as enacted by Laws 1983, ch. 206, § 6; 1990, ch. 3, § 7; 1991, ch. 159, § 6; 1991, ch. 162, § 6; 2001, ch. 57, § 4; 2001, ch. 337, § 4; 2003, ch. 402, § 1; 2009, ch. 147, § 3; 2020, ch. 80, § 9.

7-9A-8. Claiming the credit for certain taxes.

A. A taxpayer shall apply for approval for a credit within one year following the end of the calendar year in which the qualified equipment for the manufacturing operation is purchased or introduced into New Mexico.

B. A taxpayer having applied for and been granted approval for a credit by the department pursuant to the Investment Credit Act may claim an amount of available credit against the taxpayer's tax liabilities; provided that the credit shall be claimed against the taxpayer's tax liabilities pursuant to the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978], the Municipal Local Option Gross Receipts and Compensating Taxes Act [Chapter 7, Article 19D NMSA 1978] and the County Local Option Gross Receipts and Compensating Taxes Act [Chapter 7, Article 20E NMSA 1978] before being claimed against the taxpayer's tax liabilities pursuant to the Withholding Tax Act [Chapter 7, Article 3 NMSA 1978]; provided further that no taxpayer may claim, except as provided in Subsection C of this section, an amount of available credit for any reporting period that exceeds eighty-five percent of the sum of the taxpayer's tax liabilities for that reporting period. Any amount of available credit not claimed against the taxpayer's tax liabilities for a reporting period may be claimed in subsequent reporting periods.

C. A taxpayer may apply by September 30 of the current calendar year for a refund of the unclaimed balance of the available credit up to a maximum of two hundred fifty thousand dollars ($250,000) if on January 1 of the current calendar year:

(1) the taxpayer's available credit is less than five hundred thousand dollars ($500,000); and

(2) the sum of the taxpayer's tax liabilities for the previous calendar year was less than thirty-five percent of the taxpayer's available credit but more than ten thousand dollars ($10,000).

D. As used in this section, "tax liabilities" means any tax liability a taxpayer incurs pursuant to the Withholding Tax Act, the Gross Receipts and Compensating Tax Act, the Municipal Local Option Gross Receipts and Compensating Taxes Act or the County Local Option Gross Receipts and Compensating Taxes Act.

History: Laws 1979, ch. 347, § 8; 1983, ch. 206, § 7; 1988, ch. 123, § 1; 1990, ch. 3, § 9; 1997, ch. 62, § 1; 2000, ch. 45, § 1; 2020, ch. 80, § 10.

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.

7-9A-10. Repealed.

7-9A-11. Transition provisions.

A. The provisions of this section apply on the date that changes to the provisions in the Investment Credit Act become effective limiting the amount of qualified equipment that may be claimed and increasing the employment requirements with respect to qualified equipment.

B. The amount of any available credit unclaimed on the effective date of the changes described in Subsection A of this section may be claimed, until exhausted, in accordance with the provisions of Section 7-9A-8 NMSA 1978 immediately prior to the effective date of the changes described in Subsection A of this section.

C. After the effective date described in Subsection A of this section, the department shall approve claims submitted prior to that effective date but not approved by that effective date if the claim meets the requirements of the Investment Credit Act in effect immediately prior to that effective date. The claimant may claim the amount of any available credit so approved in accordance with the provisions of Section 7-9A-8 NMSA

1978 immediately prior to the effective date of the event described in Subsection A of this section.

D. After the effective date of the changes described in Subsection A of this section, a claimant may submit and the department shall approve claims submitted on or after that effective date if the claim is with respect to qualified equipment located in the state prior to that effective date that otherwise meets the requirements of the Investment Credit Act in effect immediately prior to that effective date. The claimant may claim the amount of any available credit so approved in accordance with the provisions of Section 7-9A-8 NMSA 1978 immediately prior to the effective date of the changes described in Subsection A of this section.

E. After the effective date of the changes described in Subsection A of this section, the department may approve claims submitted on or after that effective date with respect to equipment not located in the state until after that effective date only in accordance with the provisions of the Investment Credit Act in effect after that effective date.

History: Laws 1997, ch. 62, § 2.

ARTICLE 9B
Filmmaker's Credit (Repealed.)

7-9B-1. Repealed.

7-9B-2. Repealed.

7-9B-3. Repealed.

7-9B-4. Repealed.

7-9B-5. Repealed.

7-9B-6. Repealed.

7-9B-7. Repealed.

ARTICLE 9C
Interstate Telecommunications Gross Receipts Tax

7-9C-1. Short title.

Chapter 7, Article 9C NMSA 1978 may be cited as the "Interstate Telecommunications Gross Receipts Tax Act".

History: Laws 1992, ch. 50, § 1 and Laws 1992, ch. 67, § 1; 1993, ch. 30, § 15.

7-9C-2. Definitions.

As used in the Interstate Telecommunications Gross Receipts Tax Act:

A. "charges for mobile telecommunications services" has the meaning given in the federal Mobile Telecommunications Sourcing Act;

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

C. "engaging in interstate telecommunications business" means carrying on or causing to be carried on the business of providing interstate telecommunications service;

D. "home service provider" has the meaning given in the federal Mobile Telecommunications Sourcing Act;

E. "interstate telecommunications gross receipts" means the total amount of money or the value of other consideration received from providing:

(1) interstate telecommunications services, other than mobile telecommunications services, that either originate or terminate in New Mexico and are charged to a telephone number or account in New Mexico, regardless of where the bill for such services is actually delivered; and

(2) mobile telecommunications services that originate in one state and terminate in any location outside that state, whether within or outside the United States, to a customer with a place of primary use in New Mexico. "Interstate telecommunications gross receipts" excludes mobile telecommunications services provided to a customer with a place of primary use outside of New Mexico, cash discounts allowed and taken and interstate telecommunications gross receipts tax payable for the reporting period. Also excluded from "interstate telecommunications gross receipts" are any gross receipts or sales taxes imposed by any Indian nation, tribe or pueblo; provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the interior of the United States; and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions;

F. "interstate telecommunications service" means the service of originating or receiving in New Mexico interstate and international telephone and telegraph service, including but not limited to the transmission of voice, messages and data by way of electronic or similar means between or among points by wire, cable, fiber-optic, laser, microwave, radio, satellite or similar facilities;

G. "mobile telecommunications services" has the meaning given in the federal Mobile Telecommunications Sourcing Act;

H. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, joint venture, syndicate or other entity; the United States or any agency or instrumentality of the United States; or the state of New Mexico or any political subdivision of the state;

I. "place of primary use" has the meaning given in the federal Mobile Telecommunications Sourcing Act;

J. "private communications service" means a dedicated service for a single customer that entitles the customer to exclusive or priority use of a communications channel or group of channels between a location within New Mexico and one or more specified locations outside New Mexico; and

K. "wide-area telephone service" means a telephone service that entitles the subscriber, upon payment of a flat rate charge dependent on the total duration of all such calls and the geographic area selected by the subscriber, to either make or receive a large volume of telephonic communications to or from persons located in specified geographical areas.

History: Laws 1992, ch. 50, § 2 and Laws 1992, ch. 67, § 2; 1993, ch. 30, § 16; 2002, ch. 18, § 4.

7-9C-3. Imposition and rate of tax; denomination as interstate telecommunications gross receipts tax.

A. For the privilege of engaging in interstate telecommunications business, an excise tax equal to four and one-fourth percent of interstate telecommunications gross receipts is imposed upon any person engaging in interstate telecommunications business in New Mexico.

B. The tax imposed by this section shall be referred to as the "interstate telecommunications gross receipts tax".

History: Laws 1992, ch. 50, § 3 and Laws 1992, ch. 67, § 3.

7-9C-4. Presumption of taxability.

A. To prevent evasion of the interstate telecommunications gross receipts tax and to aid in its administration, it is presumed that all receipts of a person engaging in interstate telecommunications business are subject to the interstate telecommunications gross receipts tax.

B. If receipts from nontaxable charges for mobile telecommunications services are aggregated with and not separately stated from taxable charges for mobile telecommunications services, then the charges for nontaxable mobile telecommunications services shall be subject to interstate telecommunications gross receipts tax unless the home service provider can reasonably identify nontaxable charges in its books and records that are kept in the regular course of business.

History: Laws 1992, ch. 50, § 4 and Laws 1992, ch. 67, § 4; 2002, ch. 18, § 5.

7-9C-5. Date payment due.

The interstate telecommunications gross receipts tax is to be paid to the department on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

History: Laws 1992 ch. 50, § 5 and Laws 1992, ch. 67, § 5.

7-9C-6. Deduction; certain telephone services.

Receipts from the provision of wide-area telephone service and private communications service in this state may be deducted from interstate telecommunications gross receipts.

History: Laws 1992, ch. 50, § 6 and Laws 1992, ch. 67, § 6; 1993, ch. 30, § 17.

7-9C-7. Deduction; sale of a service for resale.

A. Receipts from providing an interstate telecommunications service in this state that will be used by other persons in providing telephone or telegraph services to the final user may be deducted from interstate telecommunications gross receipts if the sale is made to a person who is subject to the interstate telecommunications gross receipts tax or to the gross receipts tax or the compensating tax.

B. Receipts during the period July 1, 1998 through June 30, 2000 from providing leased telephone lines, telecommunications services, internet access services or computer programming that will be used by other persons in providing internet access and related services to the final user may be deducted from interstate telecommunications gross receipts if the sale is made to a person who is subject to the interstate telecommunications gross receipts tax, the gross receipts tax or the compensating tax.

History: Laws 1992, ch. 50, § 7 and Laws 1992, ch. 67, § 7; 1998, ch. 92, § 6.

7-9C-8. Deductions; telecommunications providers.

A. Receipts from interstate telecommunications services that are provided by a corporation to itself or to an affiliated corporation may be deducted from interstate telecommunications gross receipts.

B. For the purposes of this section:

(1) "affiliated corporation" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the subject corporation; and

(2) "control" means ownership of stock in a corporation that represents at least eighty percent of the total voting power of the corporation and has a value equal to at least eighty percent of the total value of the stock of that corporation.

History: Laws 1992, ch. 50, § 8 and Laws 1992, ch. 67, § 8; 1993, ch. 30, § 18.

7-9C-9. Deduction; bad debts.

Refunds and allowances made to buyers of interstate telecommunications services or amounts written off the books as an uncollectible debt by a person reporting interstate telecommunications gross receipts tax on an accrual basis may be deducted from interstate telecommunications gross receipts. If debts reported as uncollectible are subsequently collected, such receipts shall be included in interstate telecommunications gross receipts in the month of collection.

History: Laws 1992, ch. 50, § 9 and Laws 1992, ch. 67, § 9.

7-9C-10. Credit; services performed outside the state.

To prevent actual multi-jurisdictional taxation of the privilege of engaging in business of providing interstate telecommunications services, any taxpayer, upon proof that the taxpayer has paid a sales, use, gross receipts or similar tax on the same interstate telecommunications gross receipts subject to the interstate telecommunications gross receipts tax, shall be allowed a credit against the interstate telecommunications gross receipts tax to the extent of the amount of sales, use, gross receipts or similar tax properly due and paid to such other state or political subdivision of that state.

History: Laws 1992, ch. 50, § 10 and Laws 1992, ch. 67, § 10.

7-9C-11. Administration.

A. The department shall interpret the provisions of the interstate telecommunications gross receipts tax.

B. The department shall administer and enforce the collection of the interstate telecommunications gross receipts tax, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of the tax.

History: Laws 1992, ch. 50, § 11 and Laws 1992, ch. 67, § 11.

ARTICLE 9D
Capital Equipment Tax Credit (Repealed.)

7-9D-1. Repealed.

History: Laws 1999, ch. 178, § 1.

7-9D-2. Repealed.

History: Laws 1999, ch. 178, § 2.

7-9D-3. Repealed.

History: Laws 1999, ch. 178, § 3.

7-9D-4. Repealed.

History: Laws 1999, ch. 178, § 4.

7-9D-5. Repealed.

History: Laws 1999, ch. 178, § 5.

7-9D-6. Repealed.

History: Laws 1999, ch. 178, § 6.

7-9D-7. Repealed.

History: Laws 1999, ch. 178, § 7.

7-9D-8. Repealed.

History: Laws 1999, ch. 178, § 8.

7-9D-9. Repealed.

History: Laws 1999, ch. 178, § 9.

ARTICLE 9E
Laboratory Partnership with Small Business Tax Credit

7-9E-1. Short title.

Chapter 7, Article 9E NMSA 1978 may be cited as the "Laboratory Partnership with Small Business Tax Credit Act".

History: Laws 2000 (2nd S.S.), ch. 20, § 1; 2007, ch. 172, § 14.

7-9E-2. Purpose of act.

It is the purpose of the Laboratory Partnership with Small Business Tax Credit Act to bring the technology and expertise of the national laboratories to small businesses in New Mexico to promote economic development in the state, with an emphasis on rural areas.

History: Laws 2000 (2nd S.S.), ch. 20, § 2.

7-9E-3. Definitions.

As used in the Laboratory Partnership with Small Business Tax Credit Act:

A. "contractor":

(1) means a person that:

(a) has the capability to provide small business assistance; and

(b) may enter into a contract with a national laboratory to provide small business assistance; and

(2) includes:

(a) a gas, water or electric utility owned or operated by a county, municipality or other political subdivision of the state;

(b) a national, federal, state, Indian or other governmental unit or subdivision, or an agency, department or instrumentality of any of the foregoing; or

(c) an organization that: 1) demonstrates to the department that the organization has been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as that section may be amended or renumbered; and 2) has a place of business in New Mexico;

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

C. "national laboratory" means a prime contractor designated as a national laboratory by act of congress that is operating a facility in New Mexico;

D. "qualified expenditure" means an expenditure by a national laboratory in providing small business assistance, limited to the following expenditures incurred in providing the assistance:

(1) employee salaries, wages, fringe benefits and employer payroll taxes;

(2) administrative costs related directly to the provision of small business assistance, the total of which is limited to forty-nine percent of employee salaries, wages, fringe benefits and employer payroll taxes;

(3) in-state travel expenses, including per diem and mileage at the internal revenue service standard rates; and

(4) supplies and services of contractors related to the provision of small business assistance;

E. "rural area" means an area of the state outside of the exterior boundaries of a class A county that has a net taxable value for rate-setting purposes for any property tax year of more than seven billion dollars ($7,000,000,000);

F. "small business" means a business in New Mexico that conforms to the definition of small business found in the federal Small Business Act; and

G. "small business assistance" means assistance rendered by a national laboratory related to the transfer of technology, including software, manufacturing, mining, oil and gas, environmental, agricultural, information and solar and other alternative energy source technologies. "Small business assistance" includes nontechnical assistance related to expanding the New Mexico base of suppliers, including training and mentoring individual small businesses; assistance in developing business systems to meet audit, reporting and quality assurance requirements; and other supplier development initiatives for individual small businesses.

History: Laws 2000 (2nd S.S.), ch. 20, § 3; 2007, ch. 172, § 15; 2019, ch. 64, § 1.

7-9E-4. Administration of act.

The department shall administer the Laboratory Partnership with Small Business Tax Credit Act pursuant to the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

History: Laws 2000 (2nd S.S.), ch. 20, § 4.

7-9E-5. Eligibility requirements.

A national laboratory is eligible for a tax credit in an amount equal to qualified expenditures if:

A. the small business assistance is rendered to a small business located in New Mexico;

B. the small business assistance is completed;

C. the small business certifies to the national laboratory that the small business assistance provided is not otherwise available to the small business at a reasonable cost through private industry;

D. the national laboratory provides written notice to each small business to which the laboratory or a contractor of the laboratory is providing small business assistance that the small business is entitled to license intangible property developed from the small business assistance or can obtain ownership of tangible or intangible property developed from the small business assistance;

E. the national laboratory requires small businesses to which it is providing small business assistance to acknowledge only after the small business assistance is completed that the small business assistance has been rendered; and

F. the national laboratory provides forms for small business requests and for completion of small business assistance that are in accordance with the Laboratory Partnership with Small Business Tax Credit Act and other applicable state and federal laws.

History: Laws 2000 (2nd S.S.), ch. 20, § 5; 2007, ch. 172, § 16; 2019, ch. 64, § 2.

7-9E-6. Administration by the national laboratory.

To qualify for tax credits pursuant to the Laboratory Partnership with Small Business Tax Credit Act, a national laboratory shall:

A. establish a small business assistance program;

B. establish a revolving fund with initial funding from a source other than tax credits. Money from the revolving fund shall be used to pay for qualified expenditures, and the fund shall be replenished with an amount equal to the tax credits taken pursuant to the Laboratory Partnership with Small Business Tax Credit Act;

C. consult with the secretary of economic development to seek advice on improvements in the operation of the small business assistance program; and

D. establish a methodology to utilize contractors who have demonstrated the capability to provide small business assistance.

History: Laws 2000 (2nd S.S.), ch. 20, § 6.

7-9E-7. Tax credits; amounts.

A tax credit provided pursuant to the Laboratory Partnership with Small Business Tax Credit Act shall be in an amount equal to the qualified expenditure incurred by the national laboratory to provide small business assistance to a specific small business, not to exceed twenty thousand dollars ($20,000) for each small business for which small business assistance is rendered in a calendar year or forty thousand dollars ($40,000) if the small business assistance was provided to a small business located in a rural area.

History: Laws 2000 (2nd S.S.), ch. 20, § 7; 2007, ch. 172, § 17; 2019, ch. 64, § 3.

7-9E-8. Claiming the tax credit; limitation.

A. A national laboratory eligible for the tax credit pursuant to the Laboratory Partnership with Small Business Tax Credit Act may claim the amount of each tax credit by crediting that amount against gross receipts taxes otherwise due pursuant to the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978]. The tax credit shall be taken on each monthly gross receipts tax return filed by the laboratory against gross receipts taxes due the state and shall not impact any local government tax distribution. In no event shall the tax credits taken by an individual national laboratory exceed two million four hundred thousand dollars ($2,400,000) in a given calendar year.

B. Tax credits claimed pursuant to the Laboratory Partnership with Small Business Tax Credit Act by all national laboratories in the aggregate for qualified expenditures for a specific small business not located in a rural area shall not exceed twenty thousand dollars ($20,000).

C. Tax credits claimed pursuant to the Laboratory Partnership with Small Business Tax Credit Act by all national laboratories in the aggregate for qualified expenditures for a specific small business located in a rural area shall not exceed forty thousand dollars ($40,000).

History: Laws 2000 (2nd S.S.), ch. 20, § 8; 2007, ch. 172, § 18; 2019, ch. 64, § 4.

7-9E-9. Termination of the revolving fund.

Should the revolving fund established pursuant to Section 6 [7-9E-6 NMSA 1978] of the Laboratory Partnership with Small Business Tax Credit Act cease to be used for the purposes stated in that act, any amounts remaining in the revolving fund, excluding initial funding from nontax credit sources, shall be paid over to the department as additional gross receipts taxes due. Such payment of additional gross receipts taxes due shall be made in the second month following the month a determination is made that the revolving fund ceases to be used for the purposes stated in that act.

History: Laws 2000 (2nd S.S.), ch. 20, § 9.

7-9E-10. Coordination between national laboratories.

If more than one national laboratory is eligible for a tax credit pursuant to the Laboratory Partnership with Small Business Tax Credit Act, a national laboratory shall not file a tax credit claim pursuant to the Laboratory Partnership with Small Business Tax Credit Act until:

A. coordination is developed between the national laboratories providing small business assistance pursuant to the Laboratory Partnership with Small Business Tax Credit Act that generates a joint small business assistance operational plan and a plan to ensure that the small business assistance provided by a national laboratory suits the small business's needs and challenges; and

B. a written copy of each plan formed pursuant to this section is provided to the department.

History: Laws 2007, ch. 172, § 19.

7-9E-11. Reporting.

A. By October 15 of each year, a national laboratory that has claimed a tax credit pursuant to the Laboratory Partnership with Small Business Tax Credit Act for the previous calendar year shall submit an annual report in writing to the department, the economic development department and an appropriate legislative interim committee.

B. If more than one national laboratory claims a tax credit pursuant to the Laboratory Partnership with Small Business Tax Credit Act for the previous calendar year, those laboratories shall jointly submit an annual report to the department, the economic development department and an appropriate legislative interim committee no later than October 15 following the calendar year in which the small business assistance was provided.

C. An annual report shall summarize activities related to and the results of the small business assistance programs that were provided by one or more national laboratories and shall include:

(1) a summary of the program results and the number of small businesses assisted in each county;

(2) a description of the projects involving multiple small businesses;

(3) results of surveys of small businesses to which small business assistance is provided;

(4) the total amount of the tax credits claimed pursuant to the Laboratory Partnership with Small Business Tax Credit Act for the year on which the report is based; and

(5) an economic impact study of jobs created, jobs retained, cost savings and increased sales generated by small businesses for which small business assistance is provided.

D. At any time after receipt of an annual report required pursuant to this section from one or more national laboratories eligible for tax credits authorized pursuant to the Laboratory Partnership with Small Business Tax Credit Act, the department or the economic development department may provide written instructions to a national laboratory identifying future improvements in the laboratory's small business assistance program for which it receives that tax credit.

History: Laws 2007, ch. 172, § 20.

ARTICLE 9F
Technology Jobs and Research and Development Tax Credit

7-9F-1. Short title.

Chapter 7, Article 9F NMSA 1978 may be cited as the "Technology Jobs and Research and Development Tax Credit Act".

History: Laws 2000 (2nd S.S.), ch. 22, § 1; 2015 (1st S.S.), ch. 2, § 10.

7-9F-2. Purpose of act.

It is the purpose of the Technology Jobs and Research and Development Tax Credit Act to provide a favorable tax climate for technology-based businesses engaging in research, development and experimentation and to promote increased employment and higher wages in those fields in New Mexico.

History: Laws 2000 (2nd S.S.), ch. 22, § 2; 2015 (1st S.S.), ch. 2, § 11.

7-9F-3. Definitions.

As used in the Technology Jobs and Research and Development Tax Credit Act:

A. "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by or is under common ownership or control with another person through ownership of voting securities or other ownership interests representing a majority of the total voting power of the entity;

B. "annual payroll expense" means the wages paid or payable to employees in the state by the taxpayer in the taxable year for which the taxpayer applies for an additional credit pursuant to the Technology Jobs and Research and Development Tax Credit Act;

C. "base payroll expense" means the wages paid or payable by the taxpayer in the taxable year prior to the taxable year for which the taxpayer applies for an additional credit pursuant to the Technology Jobs and Research and Development Tax Credit Act, adjusted for any increase from the preceding taxable year in the consumer price index for the United States for all items as published by the United States department of labor in the taxable year for which the additional credit is claimed. In a taxable year during which a taxpayer has been part of a business merger or acquisition or other change in business organization, the taxpayer's base payroll expense shall include the payroll expense of all entities included in the reorganization for all positions that are included in the business entity resulting from the reorganization;

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

E. "facility" means a factory, mill, plant, refinery, warehouse, dairy, feedlot, building or complex of buildings located within the state, including the land on which it is located and all machinery, equipment and other real and tangible personal property located at or within it and used in connection with its operation;

F. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon a taxpayer's gross receipts, as that term is defined in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978], and required to be collected by the department at the same time and in the same manner as the gross receipts tax;

G. "qualified expenditure" means an expenditure or an allocated portion of an expenditure by a taxpayer in connection with qualified research at a qualified facility, including expenditures for depletable land and rent paid or incurred for land, improvements, the allowable amount paid or incurred to operate or maintain a facility, buildings, equipment, computer software, computer software upgrades, consultants and contractors performing work in New Mexico, payroll, technical books and manuals and test materials, but not including any expenditure on property that is owned by a municipality or county in connection with an industrial revenue bond project, property for which the taxpayer has received any credit pursuant to the Investment Credit Act, property that was owned by the taxpayer or an affiliate before July 3, 2000 or research and development expenditures reimbursed by a person who is not an affiliate of the taxpayer. If a "qualified expenditure" is an allocation of an expenditure, the cost accounting methodology used for the allocation of the expenditure shall be the same cost accounting methodology used by the taxpayer in its other business activities;

H. "qualified facility" means a facility in New Mexico at which qualified research is conducted other than a facility operated by a taxpayer for the United States or any agency, department or instrumentality thereof;

I. "qualified research" means research:

(1) that is undertaken for the purpose of discovering information:

(a) that is technological in nature; and

(b) the application of which is intended to be useful in the development of a new or improved business component of the taxpayer; and

(2) substantially all of the activities of which constitute elements of a process of experimentation related to a new or improved function, performance, reliability or quality, but not related to style, taste or cosmetic or seasonal design factors;

J. "qualified research and development small business" means a taxpayer that:

(1) employed no more than fifty employees as determined by the number of employees for which the taxpayer was liable for unemployment insurance coverage in the taxable year for which an additional credit is claimed;

(2) had total qualified expenditures of no more than five million dollars ($5,000,000) in the taxable year for which an additional credit is claimed; and

(3) did not have more than fifty percent of its voting securities or other equity interest with the right to designate or elect the board of directors or other governing body of the business owned directly or indirectly by another business;

K. "rural area" means any area of the state other than the state fairgrounds, an incorporated municipality with a population of thirty thousand or more according to the most recent federal decennial census and any area within three miles of the external boundaries of an incorporated municipality with a population of thirty thousand or more according to the most recent federal decennial census;

L. "taxpayer" means any of the following persons, other than a federal, state or other governmental unit or subdivision or an agency, department, institution or instrumentality thereof:

(1) a person liable for payment of any tax;

(2) a person responsible for withholding and payment or collection and payment of any tax;

(3) a person to whom an assessment has been made if the assessment remains unabated or the assessed amount has not been paid; or

(4) for purposes of the additional credit against the taxpayer's income tax pursuant to the Technology Jobs and Research and Development Tax Credit Act and to the extent of their respective interest in that entity, the shareholders, members, partners or other owners of:

(a) a small business corporation that has elected to be treated as an S corporation for federal income tax purposes; or

(b) an entity treated as a partnership or disregarded entity for federal income tax purposes; and

M. "wages" means remuneration for services performed by an employee in New Mexico for an employer.

History: Laws 2000 (2nd S.S.), ch. 22, § 3; 2015 (1st S.S.), ch. 2, § 12; 2019, ch. 270, § 38; 2019, ch. 274, § 12.

7-9F-4. Administration of act.

The department shall administer the Technology Jobs and Research and Development Tax Credit Act pursuant to the Tax Administration Act.

History: Laws 2000 (2nd S.S.), ch. 22, § 4; 2015 (1st S.S.), ch. 2, § 13.

7-9F-5. Basic credit; additional credit; amounts; claimant.

A. The basic credit provided for in the Technology Jobs and Research and Development Tax Credit Act is an amount equal to five percent of the amount of qualified expenditures made by a taxpayer conducting qualified research at a qualified facility.

B. The additional credit provided for in the Technology Jobs and Research and Development Tax Credit Act is an amount equal to five percent of the amount of qualified expenditures made by a taxpayer conducting qualified research at a qualified facility.

History: Laws 2000 (2nd S.S.), ch. 22, § 5; 2015 (1st S.S.), ch. 2, § 14.

7-9F-6. Eligibility requirements.

A. A taxpayer conducting qualified research at a qualified facility and making qualified expenditures is eligible to claim the basic credit pursuant to the Technology Jobs and Research and Development Tax Credit Act.

B. A taxpayer conducting qualified research at a qualified facility and making qualified expenditures is eligible to claim the additional credit pursuant to the Technology Jobs and Research and Development Tax Credit Act if:

(1) the taxpayer increases the taxpayer's annual payroll expense at the qualified facility by at least seventy-five thousand dollars ($75,000) over the base payroll expense of the taxpayer;

(2) the increase in Paragraph (1) of this subsection has not previously been used to meet the requirements of this subsection; and

(3) there is at least a seventy-five-thousand-dollar ($75,000) increase in the taxpayer's annual payroll expense for every one million dollars ($1,000,000) in qualified expenditures claimed by the taxpayer in a taxable year in the same claim.

History: Laws 2000 (2nd S.S.), ch. 22, § 6; 2015 (1st S.S.), ch. 2, § 15.

7-9F-7. Repealed.

History: Laws 2000 (2nd S.S.), ch. 22, § 7.

7-9F-8. Rural areas.

The amount of the basic and additional credit for which a taxpayer is otherwise eligible shall be doubled if the qualified expenditures were incurred with respect to a qualified facility in a rural area.

History: Laws 2000 (2nd S.S.), ch. 22, § 8.

7-9F-9. Claiming the basic credit.

A. A taxpayer may apply for approval of a credit within one year following the end of the reporting period in which the qualified expenditure was made.

B. A taxpayer having applied for and been granted approval for a basic credit by the department pursuant to the Technology Jobs and Research and Development Tax Credit Act may claim the amount of the approved basic credit against the taxpayer's compensating tax, withholding tax or gross receipts tax, excluding local option gross receipts tax, due to the state of New Mexico; provided that no taxpayer may claim an amount of approved basic credit for a reporting period in which the basic credit is being claimed that exceeds the sum of the taxpayer's compensating tax, withholding tax and gross receipts tax, excluding local option gross receipts tax, due for that reporting period.

C. Any amount of approved basic credit not claimed against the taxpayer's compensating tax, withholding tax or gross receipts tax, excluding local option gross receipts tax, due may be claimed in subsequent reporting periods for a period of up to three years from the date of the original claim.

History: Laws 2000 (2nd S.S.), ch. 22, § 9; 2015 (1st S.S.), ch. 2, § 16.

7-9F-9.1. Claiming the additional credit.

A. A taxpayer may apply for approval of an additional credit pursuant to the Technology Jobs and Research and Development Tax Credit Act within one year following the end of the taxable year in which the qualified expenditure was made.

B. A taxpayer that has applied for and been granted approval for an additional credit by the department pursuant to the Technology Jobs and Research and Development Tax Credit Act may claim the amount of the approved additional credit against the taxpayer's income tax or corporate income tax liability. Except as provided in Subsection C of this section, no taxpayer may claim an amount of approved additional credit for a taxable year in which the additional credit is being claimed that exceeds the amount of the taxpayer's income tax or corporate income tax due for that taxable year.

C. If a taxpayer is a qualified research and development small business and the amount of approved additional credit for the taxable year in which the additional credit is being claimed exceeds the taxpayer's income tax liability or corporate income tax liability, the excess shall be refunded to the taxpayer pursuant to Paragraphs (1) through (3) of this subsection. If the taxpayer's total qualified expenditures for the taxable year for which the claim is made is:

(1) less than three million dollars ($3,000,000), the excess additional credit shall be refunded to the taxpayer;

(2) greater than or equal to three million dollars ($3,000,000) and less than four million dollars ($4,000,000), two-thirds of the excess additional credit shall be refunded to the taxpayer; and

(3) greater than or equal to four million dollars ($4,000,000) and less than or equal to five million dollars ($5,000,000), one-third of the excess additional credit shall be refunded to the taxpayer.

D. Any amount of approved additional credit not claimed against the taxpayer's income tax or corporate income tax due for a taxable year or refunded to the taxpayer may be claimed in subsequent reporting periods for a period of up to three years from the date of the original claim.

E. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the additional credit that would have been claimed on a joint return.

History: 1978 Comp., § 7-9F-9.1, enacted by Laws 2015 (1st S.S.) ch. 2, § 17.

7-9F-10. Credit claim forms.

The department shall provide credit claim forms. A credit claim shall accompany any return in which the taxpayer wishes to apply for an approved basic or additional credit, and the claim shall specify the amount and type of credit intended to apply to each return.

History: Laws 2000 (2nd S.S.), ch. 22, § 10.

7-9F-11. Recapture.

If the taxpayer or a successor in business of the taxpayer ceases operations in New Mexico for at least one hundred eighty consecutive days within a two-year period after the taxpayer has claimed a basic credit or an additional credit at a facility with respect to which the taxpayer has claimed the basic credit or the additional credit, the department shall grant no further basic credit or additional credit to the taxpayer with respect to that facility. In addition, any amount of approved basic credit not claimed against the taxpayer's gross receipts tax, compensating tax or withholding tax and any amount of approved additional credit not claimed against the taxpayer's income tax or corporate income tax shall be extinguished, and within thirty days after the one hundred eightieth day of the cessation of operations, the taxpayer shall pay the amount of any gross receipts tax, compensating tax or withholding tax for which an approved basic credit was taken and any income tax or corporate income tax against which an approved additional credit was taken. For purposes of this section, a taxpayer shall not be deemed to have ceased operations during reasonable periods for maintenance or retooling or for the repair or replacement of facilities damaged or destroyed or during the continuance of labor disputes.

History: Laws 2000 (2nd S.S.), ch. 22, § 11.

7-9F-12. Department report.

In October 2003 and each year thereafter, the department shall report to the legislative finance committee and the revenue stabilization and tax policy committee on the fiscal and economic impacts of the Technology Jobs Tax Credit Act [Technology Jobs and Research and Development Tax Credit Act] using the most recently available data for the two prior fiscal years. The report shall include the number of taxpayers who have received basic credits or additional credits under the Technology Jobs Tax Credit Act [Technology Jobs and Research and Development Tax Credit Act], the amounts of the basic credits and additional credits, the geographic locations of the qualified facilities and the payroll increases of taxpayers related to additional credits, subject to the confidentiality provisions of Section 7-1-8 NMSA 1978.

History: Laws 2000 (2nd S.S.), ch. 22, § 12.

7-9F-13. Taxpayer reporting requirement.

A taxpayer claiming a credit pursuant to the Technology Jobs and Research and Development Tax Credit Act shall file reports with the department. The reports shall be submitted on or before June 30 of the year following a calendar year in which the taxpayer claims a basic or additional credit and by June 30 of each of the two succeeding years. The reports shall contain information describing the taxpayer's business operations in New Mexico that is sufficient for the department to enforce the recapture provision pursuant to Section 7-9F-11 NMSA 1978. If a taxpayer fails to submit a required report, the amount of any basic or additional credit claimed for that year shall be subject to the recapture provision.

History: Laws 2015 (1st S.S.), ch. 2, § 18.

ARTICLE 9G
Other Tax Credits

7-9G-1. High-wage jobs tax credit; qualifying high-wage jobs.

A. A taxpayer that is an eligible employer may apply for, and the department may allow, a tax credit for each new high-wage job. The credit provided in this section may be referred to as the "high-wage jobs tax credit".

B. The purpose of the high-wage jobs tax credit is to provide an incentive for urban and rural businesses to create and fill new high-wage jobs in New Mexico.

C. The high-wage jobs tax credit may be claimed and allowed in an amount equal to eight and one-half percent of the wages distributed to an eligible employee in a new high-wage job but shall not exceed twelve thousand seven hundred fifty dollars ($12,750) per job per qualifying period. The high-wage jobs tax credit may be claimed by an eligible employer for each new high-wage job performed for the year in which the new high-wage job is created and for consecutive qualifying periods.

D. To receive a high-wage jobs tax credit, a taxpayer shall file an application for approval of the credit with the department once per calendar year on forms and in the manner prescribed by the department. The annual application shall contain the certification required by Subsection K of this section and shall contain all qualifying periods that closed during the calendar year for which the application is made. Any qualifying period that did not close in the calendar year for which the application is made shall be denied by the department. The application for a calendar year shall be filed no later than December 31 of the following calendar year. If a taxpayer fails to file the annual application within the time limits provided in this section, the application shall be denied by the department. The department shall make a determination on the application within one hundred eighty days of the date on which the application was filed.

E. A new high-wage job shall not be eligible for a credit pursuant to this section for the initial qualifying period unless the eligible employer's total number of employees with threshold jobs on the last day of the initial qualifying period at the location at which the job is performed or based is at least one more than the number of threshold jobs on the day prior to the date the new high-wage job was created. A new high-wage job shall not be eligible for a credit pursuant to this section for a consecutive qualifying period unless the total number of threshold jobs at a location at which the job is performed or based on the last day of that qualifying period is greater than or equal to the number of threshold jobs at that same location on the last day of the initial qualifying period for the new high-wage job.

F. If a consecutive qualifying period for a new high-wage job does not meet the wage, occupancy and residency requirements, then the qualifying period is ineligible.

G. Except as provided in Subsection H of this section, a new high-wage job shall not be eligible for a credit pursuant to this section if:

(1) the new high-wage job is created due to a business merger or acquisition or other change in business organization;

(2) the eligible employee was terminated from employment in New Mexico by another employer involved in the business merger or acquisition or other change in business organization with the taxpayer; and

(3) the new high-wage job is performed by:

(a) the person who performed the job or its functional equivalent prior to the business merger or acquisition or other change in business organization; or

(b) a person replacing the person who performed the job or its functional equivalent prior to a business merger or acquisition or other change in business organization.

H. A new high-wage job that was created by another employer and for which an application for the high-wage jobs tax credit was received and is under review by the department prior to the time of the business merger or acquisition or other change in business organization shall remain eligible for the high-wage jobs tax credit for the balance of the consecutive qualifying periods. The new employer that results from a business merger or acquisition or other change in business organization may only claim the high-wage jobs tax credit for the balance of the consecutive qualifying periods for which the new high-wage job is otherwise eligible.

I. A new high-wage job shall not be eligible for a credit pursuant to this section if the job is created due to an eligible employer entering into a contract or becoming a subcontractor to a contract with a governmental entity that replaces one or more entities performing functionally equivalent services for the governmental entity unless the job is a new high-wage job that was not being performed by an employee of the replaced entity.

J. A new high-wage job shall not be eligible for a credit pursuant to this section if the eligible employer has more than one business location in New Mexico from which it conducts business and the requirements of Subsection E of this section are satisfied solely by moving the job from one business location of the eligible employer in New Mexico to another business location of the eligible employer in New Mexico.

K. With respect to each annual application for a high-wage jobs tax credit, the employer shall certify and include:

(1) the amount of wages paid to each eligible employee in a new high-wage job during the qualifying period;

(2) the number of weeks each position was occupied during the qualifying period;

(3) whether the new high-wage job was in a municipality with a population of sixty thousand or more or with a population of less than sixty thousand according to the most recent federal decennial census and whether the job was in the unincorporated area of a county;

(4) which qualifying period the application pertains to for each eligible employee;

(5) the total number of employees employed by the employer at the job location on the day prior to the qualifying period and on the last day of the qualifying period;

(6) the total number of threshold jobs performed or based at the eligible employer's location on the day prior to the qualifying period and on the last day of the qualifying period;

(7) for an eligible employer that has more than one business location in New Mexico from which it conducts business, the total number of threshold jobs performed or based at each business location of the eligible employer in New Mexico on the day prior to the qualifying period and on the last day of the qualifying period;

(8) whether the eligible employer is receiving or is eligible to receive development training program assistance pursuant to Section 21-19-7 NMSA 1978;

(9) whether the eligible employer has ceased business operations at any of its business locations in New Mexico; and

(10) whether the application is precluded by Subsection O of this section.

L. Any person who willfully submits a false, incorrect or fraudulent certification required pursuant to Subsection K of this section shall be subject to all applicable penalties under the Tax Administration Act [Chapter 7, Article 1 NMSA 1978], except that the amount on which the penalty is based shall be the total amount of credit requested on the application for approval.

M. Except as provided in Subsection N of this section, an approved high-wage jobs tax credit shall be claimed against the taxpayer's modified combined tax liability and shall be filed with the return due immediately following the date of the credit approval. If the credit exceeds the taxpayer's modified combined tax liability, the excess shall be refunded to the taxpayer.

N. If the taxpayer ceases business operations in New Mexico while an application for credit approval is pending or after an application for credit has been approved for any qualifying period for a new high-wage job, the department shall not grant an additional high-wage jobs tax credit to that taxpayer except as provided in Subsection O of this section and shall extinguish any amount of credit approved for that taxpayer that has not already been claimed against the taxpayer's modified combined tax liability.

O. A taxpayer that has received a high-wage jobs tax credit shall not submit a new application for the credit for a minimum of two calendar years from the closing date of the last qualifying period for which the taxpayer received the credit if the taxpayer lost eligibility to claim the credit from a previous application pursuant to Subsection N of this section.

P. The economic development department and the taxation and revenue department shall report to the appropriate interim legislative committee each year the cost of the high-wage jobs tax credit to the state and its impact on company recruitment and job creation.

Q. As used in this section:

(1) "benefits" means all remuneration for work performed that is provided to an employee in whole or in part by the employer, other than wages, including the employer's contributions to insurance programs, health care, medical, dental and vision plans, life insurance, employer contributions to pensions, such as a 401(k), and employer-provided services, such as child care, offered by an employer to the employee;

(2) "consecutive qualifying period" means each of the three qualifying periods successively following the qualifying period in which the new high-wage job was created;

(3) "department" means the taxation and revenue department;

(4) "dependent" means "dependent" as defined in 26 U.S.C. 152(a), as that section may be amended or renumbered;

(5) "domicile" means the sole place where an individual has a true, fixed, permanent home. It is the place where the individual has a voluntary, fixed habitation of self and family with the intention of making a permanent home;

(6) "eligible employee" means an individual who is employed in New Mexico by an eligible employer and who is a resident of New Mexico; "eligible employee" does not include an individual who:

(a) is a dependent of the employer;

(b) if the employer is an estate or trust, is a grantor, beneficiary or fiduciary of the estate or trust or is a dependent of a grantor, beneficiary or fiduciary of the estate or trust;

(c) if the employer is a corporation, is a dependent of an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation; or

(d) if the employer is an entity other than a corporation, estate or trust, is a dependent of an individual who owns, directly or indirectly, more than fifty percent of the capital and profits interests in the entity;

(7) "eligible employer" means an employer that, during the applicable qualifying period, would be eligible for development training program assistance under the fiscal year 2019 policies defining development training program eligibility developed by the industrial training board in accordance with Section 21-19-7 NMSA 1978;

(8) "modified combined tax liability" means the total liability for the reporting period for the gross receipts tax imposed by Section 7-9-4 NMSA 1978 together with any tax collected at the same time and in the same manner as the gross receipts tax, such as the compensating tax, the withholding tax, the interstate telecommunications gross receipts tax, the surcharges imposed by Section 63-9D-5 NMSA 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978, minus the amount of any credit other than the high-wage jobs tax credit applied against any or all of these taxes or surcharges; but "modified combined tax liability" excludes all amounts collected with respect to local option gross receipts taxes;

(9) "new high-wage job" means a new job created in New Mexico by an eligible employer on or after July 1, 2004 and prior to July 1, 2026 that is occupied for at least forty-four weeks of a qualifying period by an eligible employee who is paid wages calculated for the qualifying period to be at least:

(a) for a new high-wage job created prior to July 1, 2015: 1) forty thousand dollars ($40,000) if the job is performed or based in or within ten miles of the external boundaries of a municipality with a population of sixty thousand or more according to the most recent federal decennial census or in a class H county; and 2) twenty-eight thousand dollars ($28,000) if the job is performed or based in a municipality with a population of less than sixty thousand according to the most recent federal decennial census or in the unincorporated area, that is not within ten miles of the external boundaries of a municipality with a population of sixty thousand or more, of a county other than a class H county; and

(b) for a new high-wage job created on or after July 1, 2015: 1) sixty thousand dollars ($60,000) if the job is performed or based in or within ten miles of the external boundaries of a municipality with a population of sixty thousand or more according to the most recent federal decennial census or in a class H county; and 2) forty thousand dollars ($40,000) if the job is performed or based in a municipality with a population of less than sixty thousand according to the most recent federal decennial census or in the unincorporated area, that is not within ten miles of the external boundaries of a municipality with a population of sixty thousand or more, of a county other than a class H county;

(10) "new job" means a job that is occupied by an employee who has not been employed in New Mexico by the eligible employer in the three years prior to the date of hire;

(11) "qualifying period" means the period of twelve months beginning on the day an eligible employee begins working in a new high-wage job or the period of twelve months beginning on the anniversary of the day an eligible employee began working in a new high-wage job;

(12) "resident" means a natural person whose domicile is in New Mexico at the time of hire or within one hundred eighty days of the date of hire;

(13) "threshold job" means a job that is occupied for at least forty-four weeks of a calendar year by an eligible employee and that meets the wage requirements for a "new high-wage job"; and

(14) "wages" means all compensation paid by an eligible employer to an eligible employee through the employer's payroll system, including those wages that the employee elects to defer or redirect or the employee's contribution to a 401(k) or cafeteria plan program, but "wages" does not include benefits or the employer's share of payroll taxes, social security or medicare contributions, federal or state unemployment insurance contributions or workers' compensation.

History: Laws 2004, ch. 15, § 1; 2007, ch. 172, § 21; 2008, ch. 27, § 1; 2013, ch. 160, § 10; 2016 (2nd S.S.), ch. 3, § 6; 2019, ch. 233, § 1; 2021, ch. 65, § 29.

7-9G-2. Repealed.

History: Laws 2007, ch. 229, § 1; 2009, ch. 279, § 3; repealed by Laws 2023, ch. 85, § 28.

ARTICLE 9H
Research and Development Small Business Tax Credit (Repealed.)

7-9H-1. Repealed.

History: Laws 2005, ch. 104, § 11; 2011, ch. 67, § 1.

7-9H-2. Repealed.

History: Laws 2005, ch. 104, § 12.

7-9H-3. Repealed.

History: Laws 2005, ch. 104, § 13; 2011, ch. 67, § 2.

7-9H-4. Repealed.

History: Laws 2005, ch. 104, § 14.

7-9H-5. Repealed.

History: Laws 2005, ch. 104, § 15.

7-9H-6. Repealed.

History: Laws 2005, ch. 104, § 16.

ARTICLE 9I
Affordable Housing Tax Credit Act

7-9I-1. Short title.

Chapter 7, Article 9I NMSA 1978 may be cited as the "Affordable Housing Tax Credit Act".

History: Laws 2005, ch. 104, § 17; 2010, ch. 17, § 1.

7-9I-2. Definitions.

As used in the Affordable Housing Tax Credit Act:

A. "affordable housing project" means land acquisition, construction, building acquisition, remodeling, improvement, rehabilitation, conversion or weatherization for residential housing that is approved by the authority and that includes single-family housing or multifamily housing;

B. "authority" means the New Mexico mortgage finance authority;

C. "department" means the taxation and revenue department;

D. "modified combined tax liability" means the total liability for the reporting period for the gross receipts tax imposed by Section 7-9-4 NMSA 1978 together with any tax collected at the same time and in the same manner as the gross receipts tax, such as the compensating tax, the withholding tax, the interstate telecommunications gross receipts tax, the surcharges imposed by Section 63-9D-5 NMSA 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978, minus the amount of any credit other than the affordable housing tax credit applied against any or all of these taxes or surcharges; but "modified combined tax liability" excludes all amounts collected with respect to local option gross receipts taxes and governmental gross receipts taxes; and

E. "person" means an individual, tribal government, housing authority, corporation, limited liability company, partnership, joint venture, syndicate, association or nonprofit organization.

History: Laws 2005, ch. 104, § 18; 2010, ch. 17, § 2; 2015, ch. 17, § 1.

7-9I-3. Investment vouchers; issuance; transfer.

A. The authority may issue an investment voucher to a person who has made an investment of land, buildings, materials, cash or services for an affordable housing project approved by the authority or for a trust fund administered by the authority. The value of the voucher shall equal fifty percent of the amount of cash invested or the fair market value of the land, buildings, materials or services invested by that person. The authority may approve an investment voucher for any affordable housing project in accordance with Subsection B of this section and in accordance with rules adopted by the authority. An investment voucher that is approved for an affordable housing project shall equal fifty percent of the amount of cash invested or the fair market value of land, buildings, materials or services invested in that affordable housing project by a person upon issuance of that investment voucher.

B. During the calendar year:

(1) beginning on January 1, 2006, the authority may issue or approve investment vouchers in an amount that shall not exceed two hundred thousand dollars ($200,000) in aggregate value;

(2) beginning on January 1, 2007, the authority may issue or approve investment vouchers in an amount that shall not exceed five hundred thousand dollars ($500,000) in aggregate value; and

(3) beginning on January 1, 2008 and during each subsequent calendar year, the authority may issue or approve investment vouchers for each calendar year in an amount that shall not exceed an aggregate value of a base rate of one dollar eighty-five cents ($1.85) adjusted annually to account for inflation, multiplied by the state population during the calendar year as determined by the United States census bureau.

C. Any limitation on the issuance or approval of investment vouchers for a calendar year pursuant to Subsection B of this section shall not apply to an investment voucher issued by the authority during that calendar year that was approved by the authority during a previous calendar year.

D. At the beginning of each calendar year that begins on or after January 1, 2009, the department shall make an adjustment for inflation pursuant to Paragraph (3) of Subsection B of this section by multiplying the base rate by a fraction, the numerator of which is the consumer price index for the previous calendar year and the denominator of which is the same index for the 2007 calendar year prior to the calendar year for which a maximum aggregate value is determined for the issuance of investment vouchers pursuant to Paragraph (3) of Subsection B of this section.

E. An investment voucher issued by the authority shall be numbered for identification and may be sold, exchanged or otherwise transferred once in whole or in part to one or more persons. The parties to such a transaction shall notify the department and the authority of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

F. The authority shall adopt rules for the approval, issuance and administration of investment vouchers pursuant to this section.

History: Laws 2005, ch. 104, § 19; 2010, ch. 17, § 3.

7-9I-4. Affordable housing project completion notice.

The authority shall certify to the department approval of an affordable housing project for which an investment voucher is issued pursuant to the Affordable Housing Tax Credit Act within twenty days of issuance of that voucher.

History: Laws 2005, ch. 104, § 20.

7-9I-5. Affordable housing tax credit.

A. The tax credit provided in this section may be referred to as the "affordable housing tax credit". Except as otherwise provided by the Affordable Housing Tax Credit Act, a holder of an investment voucher that submits the investment voucher to the department may apply for, and the department may allow, a tax credit in an amount not to exceed the value of the investment voucher during the tax year in which the authority certifies to the department:

(1) completion of a service for which an investment voucher has been issued pursuant to the Affordable Housing Tax Credit Act; or

(2) approval by the authority or completion of an affordable housing project for which a land, building or cash donation has been made and for which an investment voucher has been issued pursuant to the Affordable Housing Tax Credit Act.

B. A holder of an investment voucher may apply all or a portion of the affordable housing tax credit against the holder's modified combined tax liability, personal income tax liability or corporate income tax liability. Any balance of the affordable housing tax credit claimed may be carried forward for up to five years from the calendar year during which the authority certifies to the department approval of the affordable housing project for which the investment voucher used to claim the affordable housing tax credit is issued. No amount of the affordable housing tax credit may be applied against a local option gross receipts tax imposed by a municipality or county or against the government gross receipts tax.

C. Notwithstanding the provisions of Section 7-1-8 NMSA 1978, the department may disclose to a person the balance of the affordable housing tax credit remaining with respect to any investment voucher submitted by that person.

History: Laws 2005, ch. 104, § 21.

7-9I-6. Administration of the act.

Unless otherwise provided by the Affordable Housing Tax Credit Act, the department shall administer the Affordable Housing Tax Credit Act pursuant to the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

History: Laws 2005, ch. 104, § 22.

ARTICLE 9J Alternative Energy Product Manufacturers Tax Credit Act

7-9J-1. Short title.

Sections 11 through 18 of this act [7-9J-1 to 7-9J-8 NMSA 1978] may be cited as the "Alternative Energy Product Manufacturers Tax Credit Act".

History: Laws 2007, ch. 204, § 11.

7-9J-2. Definitions.

As used in the Alternative Energy Product Manufacturers Tax Credit Act:

A. "alternative energy product" means an alternative energy vehicle, fuel cell system, renewable energy system or any component of an alternative energy vehicle, fuel cell system or renewable energy system; components for integrated gasification combined cycle coal facilities and equipment related to the sequestration of carbon from integrated gasification combined cycle plants; or, beginning in taxable year 2011 and ending in taxable year 2019, a product extracted from or secreted by a single cell photosynthetic organism;

B. "alternative energy vehicle" means a motor vehicle manufactured by an original equipment manufacturer that fully warrants and certifies that the motor vehicle meets the federal motor vehicle safety standards and is designed to be propelled in whole or in part by electricity; "alternative energy vehicle" includes a gasoline-electric hybrid motor vehicle exempt from the motor vehicle excise tax pursuant to Subsection G of Section 7-14-6 NMSA 1978;

C. "component" means a part, assembly of parts, material, ingredient or supply that is incorporated directly into an end product;

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

E. "fuel cell system" means a system that converts hydrogen, natural gas or waste gas to electricity without combustion, including:

(1) a fuel cell or a system used to generate or reform hydrogen for use in a fuel cell; or

(2) a system used to generate or reform hydrogen for use in a fuel cell, including:

(a) electrolyzers that use renewable energy; and

(b) reformers that use natural gas as the feedstock;

F. "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but "manufacturing" does not include construction, farming, power generation or processing natural resources;

G. "manufacturing equipment" means an essential machine, mechanism or tool or a component of an essential machine, mechanism or tool used directly and exclusively in a taxpayer's manufacturing operation and that is subject to depreciation pursuant to the Internal Revenue Code of 1986 by the taxpayer carrying on the manufacturing; provided that "manufacturing equipment" does not include a vehicle that leaves the site of a manufacturing operation for the purpose of transporting persons or property, including property for which the taxpayer claims a credit pursuant to Section 7-9-79 NMSA 1978;

H. "manufacturing operation" means a plant employing personnel to perform production tasks, in conjunction with manufacturing equipment not previously existing at the site, to produce alternative energy products;

I. "modified combined tax liability" means the total liability for the reporting period for the gross receipts tax imposed by Section 7-9-4 NMSA 1978 together with any tax collected at the same time and in the same manner as that gross receipts tax, such as the compensating tax, the withholding tax, the interstate telecommunications gross receipts tax, the surcharge imposed by Section 63-9D-5 NMSA 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978, minus the amount of any credit other than the alternative energy product manufacturers tax credit applied against any or all of those taxes or surcharges; provided that "modified combined tax liability" excludes all amounts collected with respect to local option gross receipts taxes;

J. "pass-through entity" means a business association other than:

(1) a sole proprietorship;

(2) an estate or trust;

(3) a corporation, limited liability company, partnership or other entity that is not a sole proprietorship taxed as a corporation for federal income tax purposes for the taxable year; or

(4) a partnership that is organized as an investment partnership in which the partner's income is derived solely from interest, dividends and sales of securities;

K. "qualified expenditure" means an expenditure for the purchase of manufacturing equipment made after July 1, 2006 by a taxpayer approved by the department;

L. "renewable energy" means energy from solar heat, solar light, wind, geothermal energy, landfill gas or biomass either singly or in combination that produces low or zero emissions and has substantial long-term production potential;

M. "renewable energy system" means a system using only renewable energy to produce hydrogen or to generate electricity, including related cogeneration systems that create mechanical energy or that produce heat or steam for space or water heating and agricultural or small industrial processes and includes a:

(1) photovoltaic energy system;

(2) solar-thermal energy system;

(3) biomass energy system;

(4) wind energy system;

(5) hydrogen production system; or

(6) battery cell energy system; and

N. "taxpayer" means a person, including a shareholder, member, partner or other owner of a pass-through entity, that is liable for payment of a tax or to whom an assessment has been made if the assessment remains unabated or the amount thereof has not been paid.

History: Laws 2007, ch. 204, § 12; 2011, ch. 108, § 1.

7-9J-3. Administration.

The department shall administer the Alternative Energy Product Manufacturers Tax Credit Act pursuant to the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

History: Laws 2007, ch. 204, § 13.

7-9J-4. Alternative energy product manufacturers tax credit.

A. A tax credit to be known as the "alternative energy product manufacturers tax credit" may be claimed by a taxpayer in an amount:

(1) for which the taxpayer has been granted approval by the department pursuant to the Alternative Energy Product Manufacturers Tax Credit Act; and

(2) not to exceed five percent of the taxpayer's qualified expenditures.

B. The alternative energy product manufacturers tax credit may only be deducted from the taxpayer's modified combined tax liability. Any portion of the alternative energy product manufacturers tax credit that remains unused at the end of the taxpayer's reporting period may be carried forward for five years.

History: Laws 2007, ch. 204, § 14.

7-9J-5. Eligibility requirements; employment.

To be eligible to claim a credit pursuant to the Alternative Energy Product Manufacturers Tax Credit Act, the taxpayer shall employ a number of full-time employees equal to one full-time employee in addition to the number of full-time employees employed one year prior to the day on which the taxpayer applies for the credit for every:

A. five hundred thousand dollars ($500,000), or a portion of that amount, of qualified expenditures claimed by the taxpayer in a taxable year in the same claim, up to a value of thirty million dollars ($30,000,000); and

B. one million dollars ($1,000,000), or a portion of that amount, in value of qualified expenditures over thirty million dollars ($30,000,000) claimed by the taxpayer in a taxable year in the same claim.

History: Laws 2007, ch. 204, § 15.

7-9J-6. Approval of credit; issuance and denial; application; deadlines.

A. The department shall issue or deny approval for an alternative energy product manufacturers tax credit in response to a taxpayer's application for approval for the credit. The department shall issue approval for a credit claimed by a taxpayer who satisfies the requirements of the Alternative Energy Product Manufacturers Tax Credit Act.

B. The department may require a taxpayer who claims an alternative energy product manufacturers tax credit to produce evidence of the taxpayer's compliance with the Alternative Energy Product Manufacturers Tax Credit Act.

C. A taxpayer may apply for approval of an alternative energy product manufacturers tax credit on or before the last day of the year following the end of the calendar year in which the qualified expenditure is made. The department shall not issue approval for the alternative energy product manufacturers tax credit if the taxpayer applies for approval after the last day of the year following the end of the calendar year in which the qualified expenditure is made.

History: Laws 2007, ch. 204, § 16.

7-9J-7. Recapture.

If the taxpayer or a successor in the business of the taxpayer ceases operations at a facility in New Mexico for at least one hundred eighty consecutive days within a two-year period after the taxpayer has claimed an alternative energy product manufacturers tax credit, the department shall not grant additional alternative energy product manufacturers tax credits with respect to that facility. Any amount of the approved credit with respect to that facility that is not claimed against the taxpayer's modified combined tax liability shall be extinguished, and within thirty days after the one hundred eightieth day of cessation of operations, the taxpayer shall pay the modified income tax liability against which an approved credit was taken. For the purposes of this section, a taxpayer shall not be deemed to have ceased operations during reasonable periods for maintenance or retooling, for the repair or replacement of facilities damaged or destroyed or during labor disputes.

History: Laws 2007, ch. 204, § 17.

7-9J-8. Credit claim forms.

The department shall provide credit claim forms and instructions. A credit claim form shall accompany any return in which the taxpayer claims a credit, and the claim shall specify the amount of credit intended to apply to each return.

History: Laws 2007, ch. 204, § 18.

ARTICLE 10
Gross Receipts Tax Registration

7-10-1. Short title.

Chapter 7, Article 10 NMSA 1978 may be cited as the "Gross Receipts Tax Registration Act".

History: 1953 Comp., § 72-16A-30, enacted by Laws 1970, ch. 26, § 1; 1995, ch. 70, § 7.

7-10-2. Purpose of act.

The purpose of the Gross Receipts Tax Registration Act is to ensure that all persons doing business with the state, whether leasing property employed in New Mexico, performing services in New Mexico or selling property in New Mexico, are registered with the department for payment of the gross receipts tax.

History: 1953 Comp., § 72-16A-31, enacted by Laws 1970, ch. 26, § 2; 1995, ch. 70, § 8.

7-10-3. Definitions.

As used in the Gross Receipts Tax Registration Act:

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

B. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity; and

C. "state" means any state agency, department or office that has authority to contract in the name of the state or to make payments from state funds.

History: 1953 Comp., § 72-16A-32, enacted by Laws 1970, ch. 26, § 3; 1977, ch. 249, § 51; 1986, ch. 20, § 70; 1995, ch. 70, § 9.

7-10-4. Persons doing business with the state; registration to pay the gross receipts tax required.

Any person leasing or selling property to the state or performing services for the state, as those terms are used in the Gross Receipts and Compensating Tax Act, shall be registered with the department to pay the gross receipts tax unless that person has no business location, employees or property in New Mexico and does not conduct business in New Mexico through agents or contractors.

History: 1953 Comp., § 72-16A-33, enacted by Laws 1970, ch. 26, § 4; 1995, ch. 70, § 10.

7-10-5. Penalty for noncompliance.

If any person required to register under the provisions of Section 7-10-4 NMSA 1978 is not registered to pay the gross receipts tax, the state shall withhold payment of the amount due until the person has presented evidence of registration with the department to pay the gross receipts tax.

History: 1953 Comp., § 72-16A-34, enacted by Laws 1970, ch. 26, § 5; 1995, ch. 70, § 11.

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.

7-11-2. Definitions.

As used in the Railroad Car Company Tax Act:

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

B. "gross earnings" means the total income received from all sources by an organization from the use or operation of railway cars within the state;

C. "organization" means every foreign or domestic car or car line company, every foreign or domestic joint-stock company, every foreign or domestic mercantile company, every foreign or domestic corporation of any other class, every foreign organization classed as a New England, Massachusetts or business trust, every association for profit, every partnership and every individual who owns one or more railway cars other than a railroad company operating its own or leased lines; and

D. "railway car" means any passenger, sleeping, parlor, refrigerator, tank, observation, dining, freight or coal car.

History: 1978 Comp., § 7-11-1; reenacted as 1978 Comp., § 7-11-2, enacted by Laws 1982, ch. 18, § 18; 1986, ch. 20, § 71; 1988, ch. 95, § 1.

7-11-3. Imposition of tax; tax rate; tax in lieu of property taxes.

A. There is imposed on the gross earnings of each organization for the 1996 and subsequent calendar years a tax of one and one-half percent.

B. The tax imposed in Subsection A of this section is in lieu of all property taxes on railway cars owned by an organization.

History: 1978 Comp., § 7-11-3, enacted by Laws 1982, ch. 18, § 19; 1987, ch. 108, § 1; 1997, ch. 92, § 1.

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.

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.

7-11-7 to 7-11-12. Repealed.

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.

7-12-2. Definitions.

As used in the Cigarette Tax Act:

A. "cigarette" means:

(1) any roll of tobacco or any substitute for tobacco wrapped in paper or in any substance not containing tobacco;

(2) any roll of tobacco that is wrapped in any substance containing tobacco, other than one hundred percent natural leaf tobacco, which, because of its appearance, the type of tobacco used in the filler, its packaging and labeling, or its marketing and advertising, is likely to be offered to, or purchased by, consumers as a cigarette, as described in Paragraph (1) of this subsection;

(3) bidis and kreteks; or

(4) any other roll of tobacco that is defined as a "cigarette" in Subsection D of Section 6-4-12 NMSA 1978;

B. "close of business" means that time when a business ceases to operate for the remainder of the day or 12:00 a.m., if the business is open and conducting business at 12:00 a.m.;

C. "contraband cigarettes" means cigarette packages with counterfeit stamps, counterfeit cigarettes, cigarettes that have false or fraudulent manufacturing labels, cigarettes not sold in packages of five, ten, twenty or twenty-five, cigarette packages without the tax, tax-credit or tax-exempt stamps required by the Cigarette Tax Act and cigarettes produced by a manufacturer or in a brand family not included in the directory;

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

E. "directory" means a listing of tobacco product manufacturers and brand families that is developed, maintained and published by the attorney general under the Tobacco Escrow Fund Act [6-4-14 to 6-4-24 NMSA 1978];

F. "distributor" means a person licensed pursuant to the Cigarette Tax Act to sell or distribute cigarettes in New Mexico. "Distributor" does not include:

(1) a retailer;

(2) a cigarette manufacturer, export warehouse proprietor or importer with a valid permit pursuant to 26 U.S.C. 5713, if that person sells cigarettes in New Mexico only to distributors that hold valid licenses under the laws of a state or sells to an export warehouse proprietor or to another manufacturer; or

(3) a common or contract carrier transporting cigarettes pursuant to a bill of lading or freight bill, or a person who ships cigarettes through the state by a common or contract carrier pursuant to a bill of lading or freight bill;

G. "license" means a license granted pursuant to the Cigarette Tax Act that authorizes the holder to conduct business as a manufacturer or distributor of cigarettes;

H. "manufacturer" means a person that manufactures, fabricates, assembles, processes or labels a cigarette or that imports from outside the United States, directly or indirectly, a finished cigarette for sale or distribution in the United States;

I. "master settlement agreement" means the settlement agreement and related documents entered into on November 23, 1998 by the state and leading United States tobacco product manufacturers;

J. "package" means an individual pack, box or other container; "package" does not include a container that itself contains other containers, such as a carton of cigarettes;

K. "qualifying tribal cigarette tax" means an excise, privilege or similar tax at a minimum rate of:

(1) three and seventy-five hundredths cents ($.0375) per cigarette if the cigarettes are packaged in lots of twenty or twenty-five;

(2) seven and one-half cents ($.075) per cigarette if the cigarettes are packaged in lots of ten; or

(3) fifteen cents ($.15) per cigarette if the cigarettes are packaged in lots of five;

L. "retailer" means a person, whether located within or outside of New Mexico, that sells cigarettes at retail to a consumer in New Mexico and the sale is not for resale;

M. "stamp" means an adhesive label issued and authorized by the department to be affixed to cigarette packages for excise tax purposes and upon which is printed a serial number and the words "State of New Mexico" and "tobacco tax";

N. "tax stamp" means a stamp that has a specific cigarette tax value pursuant to the Cigarette Tax Act;

O. "tax-credit stamp" means a stamp that indicates the cigarette package bearing the stamp is to be or has been sold by a retailer located on land of a tribe that has imposed a qualifying tribal cigarette tax;

P. "tax-exempt stamp" means a stamp that indicates a tax-exempt status pursuant to the Cigarette Tax Act;

Q. "tribal member" means a person who is recognized by the governing body of an Indian tribe to be an enrolled member of that Indian tribe;

R. "tribe" means a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico, including:

(1) a political subdivision, agency or department of a tribe;

(2) an incorporated or unincorporated enterprise of a tribe, one or more tribes or a political subdivision of a tribe; or

(3) a corporation considered to be an Indian or a tribe by the federal government or the state; and

S. "tribe's land" means the reservation, pueblo grant or trust land of a tribe and property held by the United States in trust jointly for the nineteen New Mexico Indian pueblos pursuant to Public Law 95-232.

History: Laws 1943, ch. 95, § 1; 1941 Comp. Supp., § 76-1601; Laws 1947, ch. 84, § 1; 1949, ch. 180, § 1; 1953 Comp., § 72-14-1; Laws 1957, ch. 28, § 1; 1970, ch. 70, § 1; reenacted as 1953 Comp., § 72-14-2 by Laws 1971, ch. 77, § 2; 1977, ch. 249, § 43; 1984, ch. 51, § 1; 1986, ch. 20, § 72; 1995, ch. 70, § 12; 2006, ch. 91, § 1; 2007, ch. 182, § 1; 2009, ch. 197, § 11; 2010 (2nd S.S.), ch. 5, § 2.

7-12-3. Excise tax on cigarettes; reduction of rate for certain cigarettes.

A. For the privilege of selling, giving or consuming cigarettes in New Mexico, there is levied an excise tax at a rate of ten cents ($.10) for each cigarette sold, given or consumed in this state.

B. The tax imposed by this section shall be referred to as the "cigarette tax".

C. The tax imposed by this section shall be reduced by fifty percent for a cigarette for which a modified risk tobacco product order has been issued by the United States secretary of health and human services pursuant to Section 21 U.S.C. 387k(g)(1).

D. The tax imposed by this section shall be reduced by twenty-five percent for a cigarette for which a modified risk tobacco product order has been issued by the United States secretary of health and human services pursuant to Section 21 U.S.C. 387k(g)(2).

History: Laws 1943, ch. 95, § 2; 1941 Comp. Supp., § 76-1602; Laws 1947, ch. 111, § 1; 1949, ch. 180, § 2; 1953 Comp., § 72-14-2; Laws 1955, ch. 263, § 1; 1961, ch. 244, § 1; 1962 (S.S.), ch. 5, § 1; 1968, ch. 50, § 2; reenacted as 1953 Comp., § 72-14-3 by Laws 1971, ch. 77, § 3; 1984, ch. 52, § 1; 1985, ch. 25, §§ 1, 2, 5; 1986, ch. 13, § 2; 1993, ch. 30, § 19; 1993, ch. 358, § 2; 1995, ch. 70, § 13; 2003, ch. 341, § 2; 2007, ch. 182, § 2; 2010 (2nd S.S.), ch. 5, § 3; 2019, ch. 270, § 39.

7-12-3.1. Cigarette inventory tax; imposition of tax; date payment of tax due.

A. A tax that may be identified as the "cigarette inventory tax" is imposed on a distributor that has in its possession tax-exempt stamps, tax-credit stamps or tax stamps, not affixed to packages of cigarettes, at the close of business on the day prior to the date on which an increase in the cigarette tax imposed by Section 7-12-3 NMSA 1978 is effective.

B. The cigarette inventory tax due from the distributor is calculated by multiplying the number of tax stamps not affixed to packages of cigarettes in the distributor's possession by the increase in the excise tax. Tax-exempt stamps and tax-credit stamps are not included in the calculation to determine the amount of cigarette inventory tax to be paid by a distributor.

C. The cigarette inventory tax is to be paid to the department on or before the twenty-fifth day of the month following the month in which the increase in the cigarette tax is effective.

History: 1978 Comp., § 7-12-3.1, enacted by Laws 1986, ch. 13, § 3; 1995, ch. 70, § 14; 2006, ch. 91, § 2; 2010 (2nd S.S.), ch. 5, § 4; 2019, ch. 270, § 40.

7-12-3.2. Cigarette inventories.

A. At the close of business on the day prior to any date on which the cigarette tax imposed by Section 7-12-3 NMSA 1978 is increased, each distributor shall take inventory of tax-exempt stamps, tax-credit stamps and tax stamps on hand, including stamps affixed to packages of cigarettes.

B. Each distributor shall report the total number of tax-exempt stamps, tax-credit stamps and tax stamps in inventory at the close of business on the day prior to the date on which the cigarette tax increases and pay the cigarette inventory tax due.

History: 1978 Comp., § 7-12-3.2, enacted by Laws 1986, ch. 13, § 4; 2006, ch. 91, § 3; 2010 (2nd S.S.), ch. 5, § 5.

7-12-4. Exemption.

A. Exempted from the cigarette tax are sales of cigarettes:

(1) to the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof;

(2) to a tribe, or to a tribal member licensed by the governing body of a tribe for use or sale on that tribe's land, if the tribe has in place a qualifying tribal cigarette tax; and

(3) sales that the state is prohibited from taxing by a provision of the United States constitution or the constitution of the state of New Mexico.

B. As used in this section, the term "agency or instrumentality" does not include persons who are agents or instrumentalities of the United States for a particular purpose or only when acting in a particular capacity or corporate agencies or instrumentalities.

History: Laws 1943, ch. 95, § 13; 1941 Comp. Supp., § 76-1613; reenacted as 1953 Comp., § 72-14-4 by Laws 1971, ch. 77, § 4; 1992, ch. 37, § 1; 2010 (2nd S.S.), ch. 5, § 6.

7-12-4.1. Cigarette tax; tribal sales; tax-credit stamps.

A. A distributor shall obtain from the department tax-credit stamps to affix to packages of cigarettes sold to a tribe or a tribal member licensed or otherwise approved by a tribe to sell cigarettes under the authority of the tribe on that tribe's land; provided that the tribe has certified to the department that the tribe has in effect a qualifying tribal cigarette tax.

B. Cigarettes sold by a tribe or tribal member bearing a tax-credit stamp shall be sold for use or sale on that tribe's land or on the land of another tribe or for use but not for resale in the state or at a location off any tribe's land.

History: Laws 2010 (2nd S.S.), ch. 5, § 7.

7-12-5. Affixing stamps.

A. Except as provided in Section 7-12-6 NMSA 1978, all cigarettes shall be placed in packages or containers to which a stamp shall be affixed. Only a distributor with a valid license issued pursuant to the Cigarette Tax Act may purchase or obtain unaffixed tax-exempt stamps, tax-credit stamps or tax stamps. A distributor shall not sell or provide unaffixed stamps to another distributor, manufacturer, export warehouse proprietor or importer with a valid permit pursuant to 26 U.S.C. 5713 or any other person.

B. Stamps shall be affixed by the distributor to each package of cigarettes to be sold or distributed in New Mexico within thirty days of receipt of those packages.

C. A distributor shall apply stamps only to packages of cigarettes that the distributor has received directly from another distributor or from a manufacturer or importer of cigarettes that possesses a valid and current permit pursuant to 26 U.S.C. 5713.

D. A distributor shall not affix a stamp to a package of cigarettes of a manufacturer or a brand family that is not included in the directory or sell, offer or possess for sale cigarettes of a manufacturer or brand family that is not included in the directory.

E. Packages shall contain cigarettes in lots of five, ten, twenty or twenty-five.

F. Unless the requirements of this section are waived pursuant to Section 7-12-6 NMSA 1978, a tax stamp shall be affixed to each package of cigarettes subject to the cigarette tax, a tax-credit stamp shall be affixed to each package of cigarettes subject to a qualifying tribal cigarette tax, and a tax-exempt stamp shall be affixed to each package of cigarettes not subject to the cigarette tax pursuant to Section 7-12-4 NMSA 1978.

G. A tax-exempt stamp or tax-credit stamp is not an excise tax stamp for purposes of determining units sold pursuant to Section 6-4-12 NMSA 1978.

H. Stamps shall be affixed inside the boundaries of New Mexico, unless the department has granted a license allowing a person to affix stamps outside New Mexico.

History: Laws 1943, ch. 95, § 3; 1941 Comp. Supp., § 76-1603; Laws 1949, ch. 180, § 3; 1953 Comp., § 72-14-3; reenacted as 1953 Comp., § 72-14-5 by Laws 1971, ch. 77, § 5; 1984, ch. 51, § 2; 1988, ch. 95, § 4; 2001, ch. 175, § 1; 2006, ch. 91, § 4; 2007, ch. 182, § 3; 2009, ch. 197, § 12; 2010 (2nd S.S.), ch. 5, § 8.

7-12-6. Waiver of requirement that stamps be affixed.

The requirement imposed in Section 7-12-5 NMSA 1978 that stamps be affixed to packages or containers of cigarettes is waived if the cigarettes are:

A. distributed by a manufacturer pursuant to federal regulations and are exempt from tax pursuant to 26 U.S.C. 5704; and

B. not subsequently imported into New Mexico.

History: Laws 1943, ch. 95, § 6; 1947, ch. 84, § 4; 1949, ch. 180, § 6; 1941 Comp. Supp., § 76-1606; 1953 Comp., § 72-14-6; Laws 1955, ch. 263, § 2; 1957, ch. 166, § 1; 1962 (S.S.), ch. 14, § 1; 1970, ch. 70, § 4; reenacted by Laws 1971, ch. 77, § 6; 1984, chs. 51, 63; 1995, ch. 70, § 15; 2006, ch. 91, § 5; 2009, ch. 197, § 13.

7-12-7. Sale of stamps; prices.

A. Only the department shall sell stamps. Stamps may be sold by the department only to a distributor.

B. Stamps shall display a serial number. Stamps bearing the same serial number shall not be sold to more than one distributor. The department shall keep records of the serial numbers of the stamps provided to each distributor.

C. A stamp shall be affixed to a package of cigarettes in such a manner as to clearly display the serial number at the point of sale.

D. Tax stamps shall be sold at their face value with the following discounts:

(1) forty-six hundredths percent less than the face value of the first thirty thousand dollars ($30,000) of stamps purchased in one calendar month;

(2) thirty-six hundredths percent less than the face value of the second thirty thousand dollars ($30,000) of stamps purchased in one calendar month; and

(3) twenty-two hundredths percent less than the face value of stamps purchased in excess of sixty thousand dollars ($60,000) in one calendar month.

E. Tax-credit stamps shall be provided only to distributors and shall be provided free of charge; provided that the distributor is in full compliance with the reporting requirements of the Cigarette Tax Act and rules adopted pursuant to that act.

F. If the face value of tax stamps sold in a single sale is less than one thousand dollars ($1,000), the discount provided for in this section shall not be allowed.

G. Payment for tax stamps shall be made on or before the twenty-fifth day of the month following the month in which the sale of stamps by the department is made.

H. Tax-exempt stamps shall be provided only to distributors and shall be free of charge; provided that the distributor is in full compliance with the reporting requirements of the Cigarette Tax Act and rules adopted pursuant to that act.

History: Laws 1943, ch. 95, § 5; 1941 Comp. Supp., § 76-1605; Laws 1947, ch. 84, § 3; 1949, ch. 180, § 5; 1953 Comp., § 72-14-5; Laws 1963, ch. 106, § 1; 1968, ch. 50, § 3; 1970, ch. 70, § 3; reenacted as 1953 Comp., § 72-14-7 by Laws 1971, ch. 77, § 7; 1988, ch. 95, § 5; 2006, ch. 89, § 3; 2006, ch. 91, § 6; 2010 (2nd S.S.), ch. 5, § 9; 2019, ch. 270, § 41.

7-12-8. Redemption of stamps.

The department shall redeem unused or destroyed stamps at the price paid by the buyer, provided acceptable proof of such destruction is provided the department. It is presumed that the stamps presented for redemption were the last stamps bought in the month in which the sale of the stamps was made. If the month in which the sale was made is unknown, the amount to be paid by the department upon redemption shall be computed as if the stamps presented for redemption were the last stamps bought in the average monthly number of stamps bought during the preceding calendar year.

History: Laws 1943, ch. 95, § 12; 1941 Comp. Supp., § 76-1612; 1953 Comp., § 72-14-12; Laws 1970, ch. 70, § 6; reenacted as 1953 Comp., § 72-14-8 by Laws 1971, ch. 77, § 8; 1988, ch. 95, § 6.

7-12-9. Repealed.

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; 2006, ch. 91, § 18.

7-12-9.1. Licensing; general licensing provisions.

A. A person shall not engage in the manufacture or distribution of cigarettes in New Mexico without a license issued by the department.

B. The department shall issue or renew a license for a term not to exceed one year.

C. The department may charge a license fee of up to one hundred dollars ($100) for each manufacturer's or distributor's license issued or renewed.

D. An application for a license or renewal of a license shall be submitted on a form determined by the department and shall include:

(1) the name and address of the applicant and:

(a) if the applicant is a firm, partnership or association, the name and address of each of its members; or

(b) if the applicant is a corporation, the name and address of each of its officers;

(2) the address of the applicant's principal place of business and every location where the applicant's business is conducted; and

(3) any other information the department may require.

E. The department may issue a distributor's license and a manufacturer's license to the same person.

F. Persons licensed as manufacturers or distributors may sell stamped cigarettes at retail.

G. A license may not be granted, maintained or renewed if one or more of the following conditions applies to an applicant:

(1) the applicant is a delinquent taxpayer pursuant to Section 7-1-16 NMSA 1978 only with respect to the cigarette tax or the gross receipts tax or has unfiled tax returns due with respect to the cigarette tax or the gross receipts tax;

(2) the applicant has had a manufacturer's or distributor's license revoked by the department or any other state within the past two years;

(3) the applicant is convicted of a crime related to contraband cigarettes, stolen cigarettes or counterfeit stamps;

(4) the applicant is a manufacturer but not a participating manufacturer as defined in Section II(jj) of the master settlement agreement and the applicant is not in compliance with the provisions of Section 6-4-13 NMSA 1978 or the Tobacco Escrow Fund Act [6-4-14 through 6-4-24 NMSA 1978]; or

(5) the applicant is a manufacturer and imports cigarettes into the United States that are in violation of 19 U.S.C. 1681a or manufactures cigarettes that do not comply with the Federal Cigarette Labeling and Advertising Act.

H. In addition to a civil or criminal penalty provided by law, upon a finding that a licensee has violated a provision of the Cigarette Tax Act or the Tobacco Escrow Fund Act or a rule adopted pursuant to either act, the department may revoke or suspend the license or licenses of the licensee.

I. As used in this section, "applicant" includes a person or persons owning, directly or indirectly, in the aggregate, more than ten percent of the ownership interest in the business holding or applying for a license pursuant to the Cigarette Tax Act.

History: Laws 2006, ch. 91, § 7; 2009, ch. 197, § 15; 2023, ch. 85, § 17.

7-12-9.2. Distributor's license.

A. A person shall not distribute stamped packages of cigarettes for resale or sell stamped packages of cigarettes at wholesale without first obtaining a distributor's license from the department.

B. A person licensed to distribute cigarettes is authorized to:

(1) receive unstamped packages of cigarettes from a manufacturer or a distributor;

(2) purchase tax stamps and receive tax-exempt stamps and tax-credit stamps from the department;

(3) affix tax stamps, tax-credit stamps or tax-exempt stamps to unstamped packages of cigarettes;

(4) sell stamped packages of cigarettes to a retailer for resale or to a distributor; and

(5) sell unstamped packages of cigarettes to a person licensed to distribute cigarettes outside of New Mexico or to a distributor.

History: Laws 2006, ch. 91, § 8; 2009, ch. 197, § 15; 2010 (2nd S.S.), ch. 5, § 10.

7-12-9.3. Manufacturer's license.

A. A person shall not manufacture cigarettes in New Mexico unless licensed by the department.

B. A person licensed to manufacture cigarettes in New Mexico is authorized to:

(1) manufacture, produce and package cigarettes;

(2) receive imported cigarettes;

(3) sell unstamped cigarettes to a distributor, another manufacturer or an export warehouse proprietor; and

(4) sell unstamped cigarettes outside of New Mexico.

History: Laws 2006, ch. 91, § 9.

7-12-9.4. Retail sale of cigarettes.

A retailer of cigarettes shall:

A. only obtain cigarettes for resale from a distributor;

B. only obtain stamped cigarettes;

C. not sell cigarettes at wholesale or for resale unless the retailer is also a distributor; and

D. comply with the provisions of the Cigarette Tax Act or any law or rule that applies to retailers of cigarettes.

History: Laws 2006, ch. 91, § 10.

7-12-10. Repealed.

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; 2006, ch. 91, § 18.

7-12-10.1. Retention of invoices and records; inspection by department.

A. A manufacturer, distributor or retailer shall maintain copies of invoices for each of its facilities for every transaction involving a cigarette sale, purchase, transfer, receipt or consignment, except that a retailer need not retain copies of invoices for sales of cigarettes to consumers. An invoice shall show:

(1) the names and addresses of all persons involved in the transaction, including the seller, purchaser, consignor and consignee. If a transaction involves an additional facility of the same manufacturer, distributor or retailer, the invoice shall also show the address of the additional facility;

(2) the date;

(3) the price; and

(4) the quantity of each brand of cigarettes involved in each transaction.

B. Records required to be maintained pursuant to Subsection A of this section shall be preserved on the premises described in the license in a manner that ensures permanency and accessibility for inspection at reasonable hours by the department.

C. The records required to be maintained pursuant to Subsection A of this section shall be retained for a period of three years from the end of the year in which the transaction occurred, unless otherwise required by law to be retained for a longer period of time.

D. The department and the secretary of the United States department of the treasury, or a designee, may inspect the reports and records required pursuant to the

Cigarette Tax Act along with any stock of cigarettes in the possession of the manufacturer, distributor or retailer. The department, at its sole discretion, may share those records and reports with law enforcement officials of the federal government, other states and international authorities.

History: Laws 2006, ch. 91, § 11; 2009, ch. 197, § 16.

7-12-11. Export sellers; physical segregation of cigarettes to be exported.

A. A distributor selling and shipping cigarettes outside New Mexico may maintain unstamped packages of cigarettes on the distributor's premises if the unstamped packages to be shipped outside the state are kept in a separate part of the distributor's place of business, physically segregated from packages of cigarettes to be sold inside New Mexico and clearly identified as packages of cigarettes for shipment outside the state. If packages of cigarettes to be sold outside New Mexico are intermingled with packages of cigarettes to be sold inside New Mexico, they shall be stamped and treated for purposes of the Cigarette Tax Act as packages of cigarettes to be sold inside New Mexico.

B. Unstamped packages of cigarettes shall not be transferred by a distributor to another facility of the distributor's or to another person within New Mexico.

C. A person doing business as both a distributor and a retailer or both a distributor and a manufacturer shall maintain separate areas for stamped and unstamped packages of cigarettes.

History: 1953 Comp., § 72-14-11, enacted by Laws 1971, ch. 77, § 11; 2006, ch. 91, § 12.

7-12-12. Shipment of unstamped cigarettes in New Mexico.

A. A person that ships unstamped packages of cigarettes into New Mexico other than to a distributor shall first file a notice of the shipment with the department.

B. A person that transports unstamped packages of cigarettes into or within New Mexico shall carry, in the transporting vehicle, invoices or equivalent documents applicable to all cigarettes in the shipment. The invoices or documents shall show:

(1) the name and address of the consignor or seller;

(2) the name and address of the consignee or purchaser; and

(3) the quantity of each brand of cigarettes transported.

C. The provisions of Subsections A and B of this section shall not apply to a common or contract carrier transporting cigarettes through New Mexico to another location pursuant to a proper bill of lading or freight bill that states the quantity, source and destination of the cigarettes.

D. The department may, by regulation, require and prescribe the contents of reports to be filed with the department by persons transporting unstamped packages of cigarettes in New Mexico.

History: 1953 Comp., § 72-14-12, enacted by Laws 1971, ch. 77, § 12; 1988, ch. 95, § 9; 2006, ch. 91, § 13.

7-12-13. Repealed.

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; 2006, ch. 91, § 18.

7-12-13.1. Civil penalties.

A. Whoever knowingly fails, neglects or refuses to comply with the provisions of the Cigarette Tax Act shall be liable for, in addition to any other penalty provided in that act:

(1) for a first offense, a penalty of up to one thousand dollars ($1,000);

(2) for a second offense, a penalty of not less than one thousand five hundred dollars ($1,500) and no more than two thousand five hundred dollars ($2,500); and

(3) for a third or subsequent offense, a penalty of not less than five thousand dollars ($5,000).

B. Whoever fails to pay a tax imposed pursuant to the Cigarette Tax Act at the time the tax is due shall, in addition to any other penalty provided in that act, be liable for a penalty of five hundred percent of the tax due but unpaid.

C. Contraband cigarettes in New Mexico and the equipment used to manufacture, package or stamp them are subject to seizure, forfeiture and destruction by the department, its revenue officers or its agents or by other state or local peace officers.

D. Counterfeit stamps for use in New Mexico in the possession of any person and the equipment used to produce them are subject to seizure by the department, its revenue officers or its agents or by other state or local peace officers.

History: Laws 2006, ch. 91, § 16.

7-12-13.2. Criminal offenses; criminal penalties; seizure and destruction of evidence.

A. Whoever violates a provision of the Cigarette Tax Act or a rule adopted pursuant to that act is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

B. Whoever, with intent to defraud, fails to comply with a licensing, reporting or stamping requirement of the Cigarette Tax Act or with a licensing, reporting or stamping rule adopted pursuant to that act is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Whoever packages cigarettes for sale in New Mexico or whoever sells cigarettes in New Mexico, in packages of other than five, ten, twenty or twenty-five cigarettes is:

(1) for the first offense, guilty of a misdemeanor and when convicted shall be sentenced pursuant to Section 31-19-1 NMSA 1978; and

(2) for the second or subsequent offense, guilty of a fourth degree felony and when convicted shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

D. Whoever purchases or otherwise knowingly obtains counterfeit stamps or whoever produces, uses or causes counterfeit stamps to be used is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. Whoever sells or possesses for the purpose of sale contraband cigarettes is in violation of the Cigarette Tax Act and shall have the product and related equipment seized. If convicted of selling or possessing for sale contraband cigarettes, the person shall be sentenced as follows:

(1) a violation with a quantity of fewer than two cartons of contraband cigarettes, or the equivalent, is a petty misdemeanor and is punishable in accordance with the provisions of Section 31-19-1 NMSA 1978;

(2) a first violation with a quantity of two cartons or more of contraband cigarettes, or the equivalent, is a misdemeanor and is punishable in accordance with the provisions of Section 31-19-1 NMSA 1978; and

(3) a second or subsequent violation with a quantity of two cartons or more of contraband cigarettes, or the equivalent, is a fourth degree felony and is punishable by a fine not to exceed fifty thousand dollars ($50,000) or imprisonment for a definite term not to exceed eighteen months, or both, and shall also result in the revocation by the department of the manufacturer's or distributor's license, if any.

F. Contraband cigarettes or counterfeit stamps seized by the department or by a law enforcement agency shall be retained as evidence to the extent necessary. Contraband cigarettes or counterfeit stamps no longer needed as evidence shall be destroyed.

G. Prosecution for a violation of a provision of this section does not preclude prosecution under other applicable laws.

History: Laws 2006, ch. 91, § 17; 2009, ch. 197, § 17.

7-12-14. Repealed.

7-12-15. County and municipality recreational fund; distribution.

A. There is created in the state treasury a fund to be known as the "county and municipality recreational fund." At the end of each month the state treasurer shall distribute all sums remaining in the county and municipality recreational fund to each county and municipality in the state as follows:

(1) to each county in the proportion that the sales of cigarettes made within the county borders, exclusive of sales within any municipality in that county, bears to the total sales of cigarettes in the state during such month; and

(2) to each municipality in the proportion that the sales of cigarettes made within the municipality during such month bears to the total sales of cigarettes in the state for such month.

B. The funds distributed to the counties and municipalities under this section shall be used for recreational facilities and salaries of instructors and other employees necessary to the operation of such facilities. Such recreational facilities shall be for the use of all persons, and juveniles and elderly persons shall not be excluded. Each county or municipality shall establish a fund to be known as the "recreational fund" into which all moneys received from the county and municipality recreational fund shall be deposited. As used in this section, "juvenile" means every person under the age of majority and "elderly person" means every person over the age of sixty years.

History: 1953 Comp., § 72-14-14.1, enacted by Laws 1968, ch. 50, § 5; 1969, ch. 23, § 2; 1973, ch. 138, § 28.

7-12-16. County and municipal cigarette tax fund; distribution.

A. There is created in the state treasury a fund to be known as the "county and municipal cigarette tax fund." At the end of each month the state treasurer shall distribute all sums remaining in the county and municipal cigarette tax fund to each county and municipality in the state as follows:

(1) to each county in the proportion that the sales of cigarettes made within the county borders, exclusive of the sales within any municipality in that county, bears to the total sales of cigarettes in the state during such month; and

(2) to each municipality in the proportion that the sales of cigarettes made within the municipality during such month bears to the total sales of cigarettes in the state for such month.

B. The funds so distributed to the counties and municipalities under this section shall be deposited in the general fund of such counties and municipalities; provided, the cigarette tax revenues distributed under the provision of this section shall not be earmarked or otherwise obligated under the terms or provisions of any prior law, prior local ordinance or prior bond agreement which pledges cigarette tax revenues to the payment of any principal or interest of revenue bonds issued pursuant to such prior law, prior local ordinance or prior bond agreement.

History: 1953 Comp., § 72-14-14.2, enacted by Laws 1968, ch. 50, § 6.

7-12-17. Reporting requirements; penalty.

A. Each person who sells in New Mexico cigarettes manufactured by that person or who receives on consignment or buys cigarettes either directly from the manufacturer or from any out-of-state person for resale in New Mexico shall report to the department by the twenty-fifth day of each month that person's sales of cigarettes during the preceding month in each municipality and within that portion of each county outside of the municipalities located in that county. The department shall then advise the state treasurer of the proportion of the total sales of cigarettes for the month within each municipality and within that portion of each county outside of municipalities, including sales of cigarettes to tribes or tribal members in a county or municipality. The reports of such persons shall, upon receipt by the department, become public records.

B. Any person who sells in New Mexico cigarettes manufactured by that person or who receives on consignment or buys cigarettes for resale in New Mexico who willfully fails to render accurately the reports required by this section and any municipal or county officer who approves any expenditure or expends funds distributed from the county and municipality recreational fund for any purposes other than permitted by Section 7-12-15 NMSA 1978 is guilty of a petty misdemeanor.

C. Any tobacco product manufacturer, stamping agent or importer of cigarettes, or any officer, employee or agent of any such entity, who knowingly makes a materially false statement in any record required to be kept by the Cigarette Tax Act, or in any report or return required to be filed with the department by the Cigarette Tax Act, is guilty of a fourth degree felony.

History: Laws 1971, ch. 77, § 14; 1988, ch. 95, § 11; 2009, ch. 197, § 18; 2010 (2nd S.S.), ch. 5, § 11.

7-12-18. Reports.

A. A distributor shall submit periodic reports to the department, in the manner and on the form prescribed by the department. A distributor shall submit a separate report for each of its facilities. The information in the report shall be itemized and shall clearly disclose cigarette brands, quantities and the type of stamp applied to the packages of cigarettes. A report shall include:

(1) an inventory of stamped and unstamped packages of cigarettes held for sale or distribution within New Mexico at the beginning of the reporting period;

(2) the quantity of stamped packages of cigarettes held for sale or distribution within New Mexico that were received from another person during the reporting period and the name and address of each person from whom each quantity was received;

(3) the quantity of New Mexico stamped packages of cigarettes that were distributed or shipped to another distributor or retailer within New Mexico during the reporting period and the name and address of each person to whom each quantity was distributed or shipped;

(4) the quantity of unstamped packages of cigarettes that were distributed or shipped to another distributor within New Mexico during the reporting period and the name and address of each person to whom each quantity was distributed or shipped;

(5) the quantity of New Mexico stamped packages of cigarettes that were distributed or shipped to another facility of the same distributor within New Mexico during the reporting period and the address of that facility;

(6) the quantity of stamped cigarette packages that were distributed or shipped within New Mexico to a tribe or tribal member or to instrumentalities of the federal government during the reporting period and the name and address of each person, entity or instrumentality to whom each quantity was distributed or shipped;

(7) an inventory of stamped and unstamped packages of cigarettes held for sale or distribution within New Mexico at the end of the reporting period;

(8) an inventory of stamped and unstamped packages of cigarettes for sale or distribution outside of New Mexico at the beginning of the reporting period;

(9) the quantity of packages of cigarettes held for sale or distribution outside of New Mexico that were received from another person during the reporting period and the name and address of each person from whom each quantity was received;

(10) the quantity of packages of cigarettes that were distributed or shipped outside New Mexico during the reporting period;

(11) an inventory of packages of cigarettes held for sale or distribution outside of New Mexico at the end of the reporting period;

(12) the number of each type of stamp on hand at the beginning of the reporting period;

(13) the number of each type of stamp purchased or received during the reporting period;

(14) the number of each type of stamp applied during the reporting period; and

(15) the number of each type of stamp on hand at the end of the reporting period.

B. A manufacturer shall submit periodic reports in the manner and on the form prescribed by the department. The information in the report shall be itemized to clearly disclose cigarette brands and quantities. The reports shall be provided separately with respect to each of the facilities operated by the manufacturer. A report shall contain the quantity of packages of cigarettes that were distributed or shipped:

(1) to a manufacturer, distributor or retailer within New Mexico during the reporting period and the name and address of each person to whom each quantity was distributed or shipped;

(2) to another facility within New Mexico of the same manufacturer during the reporting period and the address of the facility; and

(3) within New Mexico to a tribe or tribal member or to instrumentalities of the federal government during the reporting period and the name and address of each person, entity or instrumentality to whom each quantity was distributed or shipped.

C. The department may require additional information to be submitted. The department shall establish the reporting period, which shall be no longer than three calendar months and no shorter than one calendar month.

History: Laws 2006, ch. 91, § 14; 2009, ch. 197, § 19; 2010 (2nd S.S.), ch. 5, § 12.

7-12-19. Intergovernmental agreements; no waiver of sovereign immunity.

A. The department may enter into an intergovernmental agreement with a tribe to:

(1) enforce, administer or otherwise implement the provisions of the Cigarette Tax Act;

(2) increase the ability of the department to account for packages of cigarettes imported into, sold or transferred within and exported from the state; and

(3) provide for cooperative tax collection or tax administration of the cigarette tax.

B. Nothing in the Cigarette Tax Act shall be construed to waive or restrict the sovereign immunity of a tribe or the state.

History: Laws 2006, ch. 91, § 15; 2010 (2nd S.S.), ch. 5, § 13.

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.

7-12A-2. Definitions.

As used in the Tobacco Products Tax Act:

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

B. "cigar" means a roll for smoking made wholly or in part of tobacco and weighing greater than four and one-half pounds per thousand;

C. "distribute" means to sell or to give;

D. "closed system cartridge" means a single-use, pre-filled disposable cartridge containing five milliliters or less of e-liquid for use in an e-cigarette;

E. "e-cigarette" means any electronic oral device, whether composed of a heating element and battery or an electronic circuit, that provides a vapor of nicotine or any other substance the use or inhalation of which simulates smoking and includes any such device, or any part thereof, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe or any other product, name or descriptor. "E-cigarette" does not include any product regulated as a drug or device by the United States food and drug administration under the Federal Food, Drug, and Cosmetic Act;

F. "e-liquid" means liquid or other substance intended for use in an e-cigarette, not including any substance containing cannabis or oil derived from cannabis;

G. "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit;

H. "first purchaser" means a person engaging in business in New Mexico that manufactures tobacco products or that purchases or receives on consignment tobacco products from any person outside of New Mexico, which tobacco products are to be distributed in New Mexico in the ordinary course of business;

I. "little cigar" means a roll for smoking made wholly or in part of tobacco, using an integrated cellulose acetate or other similar filter, and weighing not more than four and one-half pounds per thousand;

J. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, limited liability company, limited liability partnership, other association or gas, water or electric utility owned or operated by a county or municipality or other entity of the state; "person" also means, to the extent permitted by law, a federal, state or other governmental unit or subdivision or an agency, department or instrumentality;

K. "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

L. "tobacco product" means:

(1) any product, other than cigarettes, cigars and little cigars, made from or containing tobacco;

(2) e-liquid;

(3) e-cigarettes; and

(4) closed system cartridges.

History: 1978 Comp., § 7-12A-2, enacted by Laws 1986, ch. 112, § 3; 1988, ch. 95, § 12; 2009, ch. 197, § 20; 2019, ch. 270, § 42.

7-12A-3. Imposition and rates of tax; reduction of rate for certain tobacco products; denomination as "tobacco products tax"; date payment of tax due.

A. For the manufacture or acquisition of tobacco products in New Mexico, not including cigars, little cigars, e-liquid, e-cigarettes or closed system cartridges, to be distributed in the ordinary course of business and for the consumption of tobacco products in New Mexico, there is imposed an excise tax at the rate of twenty-five percent of the product value of the tobacco products.

B. For the manufacture or acquisition of cigars in New Mexico to be distributed in the ordinary course of business and for the consumption of cigars in New Mexico, there is imposed an excise tax at a rate equal to twenty-five percent of the product value of the cigar, not to exceed fifty cents ($.50) per cigar.

C. For the manufacture or acquisition of little cigars in New Mexico to be distributed in the ordinary course of business and for the consumption of little cigars in New Mexico, there is imposed an excise tax at a rate equal to the rate imposed on cigarettes pursuant to Section 7-12-3 NMSA 1978 per package of little cigars.

D. For the manufacture or acquisition of e-liquid in New Mexico to be distributed in the ordinary course of business and for the consumption of e-liquid in New Mexico, there is imposed an excise tax at a rate equal to twelve and one-half percent of the product value of the e-liquid.

E. For the manufacture or acquisition of closed system cartridges in New Mexico to be distributed in the ordinary course of business, there is imposed an excise tax at a rate of fifty cents ($.50) per closed system cartridge.

H[F]. The taxes imposed by this section may be referred to as the "tobacco products tax".

I[G]. The tobacco products tax shall be paid by the first purchaser on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

History: 1978 Comp., § 7-12A-3, enacted by Laws 1986, ch. 112, § 4; 1988, ch. 95, § 13; 2009, ch. 197, § 21; 2019, ch. 270, § 43.

7-12A-4. Exemption; tobacco products tax.

A. Exempted from the tobacco products tax is the product value of tobacco products sold:

(1) to or by the United States or any agency or instrumentality thereof;

(2) to the governing body or any enrolled tribal member licensed by the governing body of an Indian nation, tribe or pueblo to be distributed on the reservation or pueblo grant of that Indian nation, tribe or pueblo; or

(3) the state of New Mexico or any political subdivision thereof.

B. As used in this section, the term "agency or instrumentality" does not include persons who are agents or instrumentalities of the United States for a particular purpose or only when acting in a particular capacity or corporate agencies or instrumentalities.

History: 1978 Comp., § 7-12A-4, enacted by Laws 1986, ch. 112, § 5; 2009, ch. 197, § 22.

7-12A-5. Deduction; interstate sales.

The product value of tobacco products sold and shipped or given and shipped to a person in another state may be deducted from the product value subject to the tax imposed by the Tobacco Products Tax Act; provided that the department may require the person to submit proof satisfactory to the department that the tobacco products have been sold and shipped or given and shipped to a person in another state.

History: 1978 Comp., § 7-12A-5, enacted by Laws 1986, ch. 112, § 6.

7-12A-6. Refund or credit of tax.

The department shall allow a claim for refund or credit, as provided in Sections 7-1-26 and 7-1-29 NMSA 1978, for tobacco products tax paid on tobacco products destroyed or returned to the seller by the first purchaser as spoiled or otherwise unfit for sale or consumption; provided that the department may require proof satisfactory to the department that the tobacco products have been destroyed or returned and that the person claiming the refund is the person who paid the tobacco products tax on the destroyed or returned tobacco products.

History: 1978 Comp., § 7-12A-6, enacted by Laws 1986, ch. 112, § 7; 1988, ch. 95, § 14.

7-12A-7. Registration necessary to engage in business of selling tobacco products in New Mexico.

Each person engaged in the business of selling tobacco products in New Mexico shall register and comply with the provisions of Section 7-1-12 NMSA 1978. Every person selling tobacco products in New Mexico shall furnish such information as may be requested by the department concerning the person's vending machines or other places of business where tobacco products are sold.

History: 1978 Comp., § 7-12A-7, enacted by Laws 1986, ch. 112, § 8.

7-12A-8. Retention of invoices and records; inspection by department.

A. Each person who sells tobacco products in New Mexico for resale in New Mexico shall maintain a file of copies of the invoices of sale for three years from the end of the year the sale was made. The invoices shall indicate the date of sale of the tobacco products, quantity of tobacco products sold, the price received and the name and address of the purchaser.

B. Each person who sells tobacco products in New Mexico shall maintain a file of copies of invoices under which the person purchased tobacco products for three years from the end of the year during which tobacco products were purchased. The invoices shall indicate the date of purchase, the quantity of tobacco products purchased, the price paid and the name and address of the seller.

C. All invoices required to be kept under this section may be inspected by the department along with any stock of tobacco products in the possession of the purchaser or seller.

History: 1978 Comp., § 7-12A-8, enacted by Laws 1986, ch. 112, § 9; 1988, ch. 95, § 15.

7-12A-9. Penalties.

Any person selling tobacco products in New Mexico and required by the provisions of Section 7-12A-8 NMSA 1978 to retain invoices who willfully fails to retain the invoices shall, upon conviction thereof, be fined not less than fifty dollars ($50.00) or more than five hundred dollars ($500). Jurisdiction over such actions is hereby granted to the magistrate courts.

History: 1978 Comp., § 7-12A-9, enacted by Laws 1986, ch. 112, § 10.

7-12A-10. Prohibition.

The provisions of the Tobacco Products Tax Act shall not apply in any case in which New Mexico is prohibited from taxing under the constitution of New Mexico or the constitution or laws of the United States.

History: 1978 Comp., § 7-12A-10, enacted by Laws 1986, ch. 112, § 11.

ARTICLE 13
Gasoline Tax

7-13-1. Gasoline tax; short title.

Chapter 7, Article 13 NMSA 1978 may be cited as the "Gasoline Tax Act".

History: 1953 Comp., § 72-27-1, enacted by Laws 1971, ch. 207, § 1; 1983, ch. 204, § 1.

7-13-2. Definitions.

As used in the Gasoline Tax Act:

A. "aviation gasoline" means gasoline sold for use in aircraft propelled by engines other than turbo-prop or jet-type engines;

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

C. "distributor" means any person, not including the United States of America or any of its agencies except to the extent now or hereafter permitted by the constitution and laws thereof, who receives gasoline in this state. "Distributor" shall be construed so that a person simultaneously may be both a distributor and a retailer or importer;

D. "drip gasoline" means a combustible hydrocarbon liquid formed as a product of condensation from either associated or nonassociated natural or casing head gas and that remains a liquid at room temperature and pressure;

E. "ethanol blended fuel" means gasoline containing a minimum of ten percent by volume of denatured ethanol, of at least one hundred ninety-nine proof, exclusive of denaturants;

F. "fuel supply tank" means any tank or other receptacle in which or by which fuel may be carried and supplied to the fuel-furnishing device or apparatus of the propulsion mechanism of a motor vehicle when the tank or receptacle either contains gasoline or gasoline is delivered into it;

G. "gallon" means the quantity of liquid necessary to fill a standard United States gallon liquid measure or that same quantity adjusted to a temperature of sixty degrees fahrenheit at the election of any distributor, but a distributor shall report on the same basis for a period of at least one year;

H. "gasoline" means any flammable liquid hydrocarbon used primarily as fuel for the propulsion of motor vehicles, motorboats or aircraft except for diesel engine fuel, kerosene, liquefied petroleum gas, compressed or liquefied natural gas and products specially prepared and sold for use in aircraft propelled by turbo-prop or jet-type engines;

I. "government-licensed vehicle" means a motor vehicle lawfully displaying a registration plate, as defined in the Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978], issued by the United States or any state, identifying the motor vehicle as belonging to the United States or any of its agencies or instrumentalities or an Indian nation, tribe or pueblo or any of its political subdivisions, agencies or instrumentalities;

J. "highway" means every road, highway, thoroughfare, street or way, including toll roads, generally open to the use of the public as a matter of right for the purpose of motor vehicle travel regardless of whether it is temporarily closed for the purpose of construction, reconstruction, maintenance or repair;

K. "motor vehicle" means any self-propelled vehicle or device that is either subject to registration under Section 66-3-1 NMSA 1978 or used or that may be used on the public highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semitrailer;

L. "person" means an individual or any other entity, including, to the extent permitted by law, any federal, state or other government or any department, agency, instrumentality or political subdivision of any federal, state or other government;

M. "rack operator" means the operator of a refinery in this state or the owner of gasoline stored at a pipeline terminal in this state;

N. "registered Indian tribal distributor" means an Indian nation, tribe or pueblo recognized by the United States whose reservation or pueblo grant lies wholly or partly in this state, a corporation or other enterprise wholly owned by that Indian nation, tribe or pueblo or a corporation or other enterprise wholly owned by one or more members of that Indian nation, tribe or pueblo that is registered with the department as a distributor pursuant to the Gasoline Tax Act; provided that the department shall register a corporation or other enterprise as an Indian tribal distributor only upon certification by the Indian nation, tribe or pueblo that the corporation or other enterprise is wholly owned by that nation, tribe or pueblo or wholly owned by one or more of its members;

O. "retailer" means a person who sells gasoline generally in quantities of thirty-five gallons or less and delivers such gasoline into the fuel supply tanks of motor vehicles. "Retailer" shall be construed so that a person simultaneously may be both a retailer and a distributor or wholesaler;

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

Q. "taxpayer" means a person required to pay gasoline tax;

R. "unloaded" means removal of gasoline from tank cars, tank trucks, tank wagons or other types of transportation equipment into a nonmobile container at the place at which the unloading takes place; and

S. "wholesaler" means a person who is not a distributor and who sells gasoline in quantities of thirty-five gallons or more and does not deliver such gasoline into the fuel supply tanks of motor vehicles. "Wholesaler" shall be construed so that a person simultaneously may be a wholesaler and a retailer.

History: 1953 Comp., § 72-27-2, enacted by Laws 1971, ch. 207, § 2; 1977, ch. 249, § 59; 1979, ch. 166, § 5; 1983, ch. 204, § 2; 1986, ch. 20, § 73; 1987, ch. 46, § 1; 1993, ch. 32, § 1; 1997, ch. 192, § 1; 1999, ch. 190, § 1.

7-13-2.1. When gasoline received and by whom.

A. Gasoline that is produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state by a person is received by that person when it is loaded there into tank cars, tank trucks, tank wagons or other types of transportation equipment, or when it is placed there into a tank or other container from which sales or deliveries not involving transportation are made; however:

(1) when gasoline is delivered at the refinery or pipeline terminal to a person registered as a distributor pursuant to the Gasoline Tax Act, then it is received there by the distributor to whom it is delivered at the time of the delivery;

(2) when gasoline is delivered at the refinery or pipeline terminal to a person not registered as a distributor pursuant to the Gasoline Tax Act for the account of a person that is registered as a distributor, it is received there by the distributor for whose account it is delivered at the time of delivery; and

(3) gasoline is not received when it is shipped from one refinery or pipeline terminal to another refinery or pipeline terminal.

B. Gasoline imported into New Mexico by any means other than in the fuel supply tank of a motor vehicle or by pipeline is received at the time and place it is imported into this state. The person who owns the gasoline at the time of importation receives the gasoline at the time and place of importation unless the gasoline is delivered to a person who is registered as a distributor pursuant to the Gasoline Tax Act, in which case the distributor is deemed to have received the gasoline at the time and place of importation.

C. Any product other than gasoline that is blended in this state to produce gasoline other than at a refinery or pipeline terminal is received by the person who is the owner of the gasoline at the time and place the blending is completed.

D. If gasoline is received within the exterior boundaries of an Indian reservation or pueblo grant and the gasoline tax is not paid with respect to the gasoline by the person receiving the gasoline within the exterior boundaries of the Indian reservation or pueblo grant, the gasoline is also received when the gasoline is transported off the reservation or pueblo grant by any means other than in the fuel supply tank of a motor vehicle. In such a case, the person who owns the gasoline immediately after the time of transportation off the reservation or pueblo grant or, if the gasoline is delivered to a person registered as a distributor pursuant to the Gasoline Tax Act, the distributor receives the gasoline at the time and place the gasoline is transported off the reservation or pueblo grant.

History: 1978 Comp., § 7-13-2.1, enacted by Laws 1999, ch. 190, § 2.

7-13-3. Imposition and rate of tax; denomination as "gasoline tax".

A. For the privilege of receiving gasoline in this state, there is imposed an excise tax at a rate provided in Subsection B of this section on each gallon of gasoline received in New Mexico.

B. The tax imposed by Subsection A of this section shall be seventeen cents ($.17) per gallon received in New Mexico.

C. The tax imposed by this section may be called the "gasoline tax".

History: 1953 Comp., § 72-27-3, enacted by Laws 1971, ch. 207, § 3; 1978, ch. 182, § 23; 1979, ch. 166, § 6; 1985, ch. 35, § 1; 1987, ch. 347, § 12; 1989, ch. 356, § 9; 1993, ch. 32, § 2; 1993, ch. 357, § 9; 1994, ch. 5, § 22; 1995, ch. 6, § 10.

7-13-3.1. Gasoline inventory tax; imposition of tax; date payment of tax due.

A. A gasoline inventory tax is imposed measured by the quantity of gallons of gasoline in the possession of a distributor or wholesaler on the day in which an increase in the excise tax imposed by Section 7-13-3 NMSA 1978 is effective. The taxable event is the existence of an inventory in the possession of a distributor or wholesaler on the day prior to the day in which an increase in the excise tax imposed by Section 7-13-3 NMSA 1978 is effective. The rate of the gasoline inventory tax to apply on each gallon of gasoline held in inventory by a distributor or wholesaler, as provided in Section 7-13-3.2 NMSA 1978, shall be the difference between the gasoline excise tax rate imposed on the day prior to the day in which the gasoline excise tax is increased subtracted from the gasoline excise tax rate imposed on the day that the gasoline excise tax rate increase is effective, expressed in cents per gallon.

B. The gasoline inventory tax is to be paid to the department on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

History: 1978 Comp., § 7-13-3.1, enacted by Laws 1979, ch. 166, § 7; 1993, ch. 32, § 3.

7-13-3.2. Gasoline inventories.

A. On the day prior to the day that the excise tax imposed by Section 7-13-3 NMSA 1978 is increased, each distributor, wholesaler and retailer shall take inventory of the gallons of gasoline on hand.

B. Distributors and wholesalers shall report total gallons of gasoline in inventory on the day prior to the day that an increase in the gasoline tax rate is effective and pay any tax due imposed by Section 7-13-3.1 NMSA 1978.

C. Retailers shall maintain a record of the total gallons of gasoline in inventory on the day prior to the day that an increase in the gasoline tax rate is effective and shall not increase the price of the gasoline sold until the inventory is disposed of in the ordinary course of business.

History: 1978 Comp., § 7-13-3.2, enacted by Laws 1979, ch. 166, § 8; 1985, ch. 35, § 2; 1993, ch. 32, § 4; 1994, ch. 5, § 24; 1995, ch. 70, § 16.

7-13-3.3. Repealed.

7-13-3.4. Repealed.

7-13-3.5. Bond required of taxpayers.

A. Except as provided in Subsection H of this section, every taxpayer shall file with the department a bond on a form approved by the attorney general with a surety company authorized by the state corporation commission [public regulation commission] to transact business in this state as a surety and upon which bond the taxpayer is the principal obligor and the state the obligee. The bond shall be conditioned upon the prompt filing of true reports and the payment by the taxpayer to the department of all taxes levied by the Gasoline Tax Act, together with all applicable penalties and interest thereon.

B. In lieu of the bond, the taxpayer may elect to file with the department cash or bonds of the United States or New Mexico or of any political subdivision of the state.

C. The total amount of the bond, cash or securities required of any taxpayer shall be fixed by the department and may be increased or reduced by the department at any time, subject to the limitations provided in this section.

D. In fixing the total amount of the bond, cash or securities required of any taxpayer required to post bond, the department shall require an equivalent in total amount to at least two times the amount of the department's estimate of the taxpayer's monthly gasoline tax, determined in such manner as the secretary may deem proper; provided, however, the total amount of bond, cash or securities required of a taxpayer shall never be less than one thousand dollars ($1,000).

E. In the event the department decides that the amount of the existing bond, cash or securities is insufficient to insure payment to this state of the amount of the gasoline tax and any penalties and interest for which the taxpayer is or may at any time become liable, then the taxpayer, upon written demand of the department mailed to the last known address of the taxpayer as shown on the records of the department, shall file an additional bond, cash or securities in the manner, form and amount determined by the department to be necessary to secure at all times the payment by the taxpayer of all taxes, penalties and interest due under the Gasoline Tax Act.

F. A surety on a bond furnished by a taxpayer as required by this section shall be released and discharged from all liability accruing on the bond after the expiration of ninety days from the date upon which the surety files with the department a written request to be released and discharged; provided, however, that such request shall not operate to release or discharge the surety from any liability already accrued or that shall accrue before the expiration of the ninety-day period, unless a new bond is filed during the ninety-day period, in which case the previous bond may be canceled as of the effective date of the new bond. On receipt of notice of such request, the department promptly shall notify the taxpayer who furnished the bond that the taxpayer, on or before the expiration of the ninety-day period, shall file with the department a new bond with a surety satisfactory to the department in the amount and form required in this section.

G. The taxpayer required to file bond with or provide cash or securities to the department in accordance with this section and who is required by another state law to file another bond with or provide cash or securities to the department may elect to file a combined bond or provide cash or securities applicable to the provisions of both this section and the other law, with the approval of the secretary. The amount of the combined bond, cash or securities shall be determined by the department, and the form of the combined bond shall be approved by the attorney general.

H. Every taxpayer who, for the twenty-four month period immediately preceding July 1, 1994, has not been a delinquent taxpayer pursuant to the Gasoline Tax Act is exempt from the requirement pursuant to this section to file a bond. A taxpayer required to file a bond pursuant to the provisions of this section who, for a twenty-four consecutive month period ending after July 1, 1994, has not been a delinquent taxpayer pursuant to the Gasoline Tax Act may request to be exempt from the requirement to file a bond beginning with the first day of the first month following the end of the twenty-four month period. If a taxpayer exempted pursuant to this subsection subsequently becomes a delinquent taxpayer under the Gasoline Tax Act, the department may terminate the exemption and require the filing of a bond in accordance with this section. If the department terminates the exemption, the termination shall not be effective any earlier than ten days after the date the department notifies the taxpayer in writing of the termination.

History: Laws 1997, ch. 192, § 3.

7-13-4. Deductions; gasoline tax.

In computing the gasoline tax due, the following amounts of gasoline may be deducted from the total amount of gasoline received in New Mexico during the tax period, provided satisfactory proof thereof is furnished to the department:

A. gasoline received in New Mexico, but exported from this state by a rack operator, distributor or wholesaler other than in the fuel supply tank of a motor vehicle or sold for export by a rack operator or distributor; provided that, in either case:

(1) the person exporting the gasoline is registered in or licensed by the destination state to pay that state's gasoline or equivalent fuel tax;

(2) proof is submitted that the destination state's gasoline or equivalent fuel tax has been paid or is not due with respect to the gasoline; or

(3) the destination state's gasoline or equivalent fuel tax is paid to New Mexico in accordance with the terms of an agreement entered into pursuant to Section 9-11-12 NMSA 1978 with the destination state;

B. gasoline received in New Mexico sold to the United States or an agency or instrumentality thereof for the exclusive use of the United States or an agency or instrumentality thereof. Gasoline sold to the United States includes gasoline delivered into the supply tank of a government-licensed vehicle of the United States;

C. gasoline received in New Mexico sold to an Indian nation, tribe or pueblo or a political subdivision, agency or instrumentality of that Indian nation, tribe or pueblo for the exclusive use of the Indian nation, tribe or pueblo or a political subdivision, agency or instrumentality thereof. Gasoline sold to an Indian nation, tribe or pueblo includes gasoline delivered into the supply tank of a government-licensed vehicle of the Indian nation, tribe or pueblo;

D. gasoline received in New Mexico, dyed in accordance with department regulations and used in a manner other than for propulsion of motor vehicles on the highways of this state or motorboats or activities ancillary to that propulsion;

E. gasoline received in New Mexico and sold at retail by a registered Indian tribal distributor if:

(1) the sale occurs on the Indian reservation, pueblo grant or trust land of the distributor's Indian nation, tribe or pueblo;

(2) the gasoline is placed into the fuel supply tank of a motor vehicle on that reservation, pueblo grant or trust land; and

(3) the Indian nation, tribe or pueblo has certified to the department that it has in effect an excise, privilege or similar tax on the gasoline; provided that the volume of gasoline deducted pursuant to this subsection shall be the total gallons sold in

accordance with the provisions of this subsection multiplied by a fraction the numerator of which is the rate of the tribal tax certified to the department by the Indian nation, tribe or pueblo and the denominator of which is the rate of the gasoline tax imposed pursuant to the Gasoline Tax Act, but if the fraction exceeds one, it shall be one for purposes of determining the deduction;

F. gasoline received in New Mexico and sold by a registered Indian tribal distributor from a nonmobile storage container located within that distributor's Indian reservation, pueblo grant or trust land for resale outside that distributor's Indian reservation, pueblo grant or trust land; provided the department certifies that the distributor claiming the deduction sold no less than one million gallons of gasoline from a nonmobile storage container located within that distributor's Indian reservation, pueblo grant or trust land for resale outside that distributor's Indian reservation, pueblo grant or trust land during the period of May through August 1998; and provided further that the amount of gasoline deducted by a registered Indian tribal distributor pursuant to this subsection shall not exceed two million five hundred thousand gallons per month, calculated as a monthly average during the calendar year. Volumes deducted pursuant to Subsection E of this section shall not be deducted pursuant to this subsection; and

G. gasoline received in New Mexico on which New Mexico gasoline tax was paid by the out-of-state terminal at which the gasoline was loaded, provided that documentation that the gasoline was to be imported into New Mexico was provided to the terminal operator by the person receiving the fuel.

History: 1978 Comp., § 7-13-4, enacted by Laws 1991, ch. 9, § 32; 1997, ch. 192, § 2; 1998, ch. 44, § 1; 1999, ch. 190, § 3; 2007, ch. 110, § 1.

7-13-4.1. Repealed.

7-13-4.2. Repealed.

7-13-4.3. Repealed.

7-13-4.4. Additional deduction; certain retail sales on an Indian reservation, pueblo grant or trust land.

In computing the gasoline tax due, a person other than a registered Indian tribal distributor may deduct from the total amount of gasoline received in New Mexico during the tax period, provided satisfactory proof is provided to the department, gasoline received in New Mexico and sold at retail in New Mexico if:

A. the sale occurs on an Indian reservation, pueblo grant or trust land;

B. the gasoline is placed into the fuel supply tank of a motor vehicle on that reservation, pueblo grant or trust land;

C. the Indian nation, tribe or pueblo has certified to the department that it has in effect an excise, privilege or similar tax on gasoline; provided that the gallons of gasoline deducted pursuant to this section shall be the total gallons sold in accordance with the provisions of this section multiplied by a fraction, the numerator of which is the rate of the tribal tax certified to the department by the Indian nation, tribe or pueblo and the denominator of which is the rate of the gasoline tax imposed pursuant to the Gasoline Tax Act, but, if the fraction exceeds one, the fraction shall be deemed to be one for purposes of determining the deduction; and

D. the person is subject to and in compliance with the tax on gasoline imposed by the Indian nation, tribe or pueblo where the sale occurs.

History: 1978 Comp., § 7-13-4.4, enacted by Laws 2000, ch. 50, § 1.

7-13-5. Tax returns; payment of tax.

Distributors shall file gasoline tax returns in form and content as prescribed by the secretary on or before the twenty-fifth day of the month following the month in which gasoline is received in New Mexico. Such returns shall be accompanied by payment of the amount of gasoline tax due. The department may require that the tax returns be provided through electronic means as long as an exception is provided for distributors with limited amounts of fuel distributed.

History: 1953 Comp., § 72-27-5, enacted by Laws 1971, ch. 207, § 5; 1983, ch. 204, § 5; 1993, ch. 32, § 6; 2005, ch. 109, § 6.

7-13-6. Returns by wholesalers; exception.

Wholesalers shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which gasoline is sold in New Mexico. The department may require that the information returns be provided through electronic means as long as an exception is provided for wholesalers with limited amounts of fuel sold. Sales of gasoline in quantities of thirty-five gallons or more delivered into the fuel tanks of aircraft are not wholesale sales for the purposes of this section, and information returns on such sales need not be filed with the department.

History: 1953 Comp., § 72-27-6, enacted by Laws 1971, ch. 207, § 6; 1977, ch. 154, § 1; 1983, ch. 204, § 6; 1993, ch. 32, § 7; 2005, ch. 109, § 7.

7-13-6.1. Returns by retailers; requirements; exception.

Retailers shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which gasoline is sold in New Mexico. The department may require that the information returns be provided through electronic means if the department provides an exception from that requirement for retailers that purchase limited amounts of fuel.

History: Laws 2005, ch. 109, § 4.

7-13-6.2. Returns by rack operators; requirements.

Rack operators shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which gasoline is sold in New Mexico. The department may require that an information return be provided through electronic means if the department provides an exception from that requirement for rack operators that distribute limited amounts of fuel.

History: Laws 2005, ch. 109, § 5.

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.

7-13-10. Validation of pledges.

All prior pledges of any amounts distributed to municipalities and counties pursuant to Section 64-26-19 NMSA 1953 (being Laws 1967, Chapter 170, Section 8 repealed by Laws 1971, Chapter 207, Section 16) which heretofore have been made to the payment of bonds of municipalities and counties pursuant to Sections 3-31-1, 3-33-24, 3-34-1 through 3-34-4 or 3-39-12 NMSA 1978 or any other statute, and all action of the governing bodies of such municipalities and counties preliminary to and in the authorization of such pledges are validated, ratified, approved and confirmed.

History: 1953 Comp., § 72-27-9.1, enacted by Laws 1977, ch. 342, § 5; 1983, ch. 204, § 8.

7-13-11. Claim for refund or credit of gasoline tax paid; on gasoline destroyed by fire, accident or acts of God before retail sale; on gasoline previously received from a source other than a refiner or pipeline terminal.

A. Upon the submission of proof satisfactory to the department, the department shall allow a claim for refund or credit as provided in Sections 7-1-26 and 7-1-29 NMSA 1978 for tax paid on gasoline destroyed by fire, accident or acts of God while in the possession of a distributor, wholesaler or retailer.

B. Upon the submission of proof satisfactory to the department, a rack operator may submit, and the department may allow, a claim for refund of a New Mexico tax paid on gasoline previously received in New Mexico from a source other than a refiner or pipeline terminal in this state and placed in a terminal from which it will be loaded into tank cars, tank trucks, tank wagons or other types of transportation equipment.

C. No person may submit claims for refund pursuant to the provisions of this section more frequently than quarterly. No claim for refund may be submitted or allowed on less than one hundred gallons.

D. The department may prescribe the documents necessary to support a claim for refund pursuant to the provisions of this section.

History: 1953 Comp., § 72-27-10, enacted by Laws 1971, ch. 207, § 10; 1983, ch. 204, § 9; 1993, ch. 32, § 8; 2015 (1st S.S.), ch. 2, § 19.

7-13-12. Manifest or bill of lading required when transporting gasoline.

Every person transporting gasoline from a refinery or pipeline terminal in this state, importing gasoline into this state or exporting gasoline from this state, other than by pipeline or in the fuel supply tanks of motor vehicles, shall carry a manifest or bill of lading in form and content as prescribed by or acceptable to the department. The manifest or bill of lading shall be signed by the consignor and by every person accepting the gasoline or any part of it, with a notation as to the amount accepted. If a manifest or bill of lading is not required to be carried by the terms of this section, any person transporting gasoline without such a manifest or bill of lading shall, upon demand, furnish proof acceptable to the department that the gasoline so transported was legally acquired by a registered distributor who assumed liability for payment of the tax imposed by the Gasoline Tax Act.

History: 1953 Comp., § 72-27-11, enacted by Laws 1971, ch. 207, § 11; 1983, ch. 204, § 10; 1993, ch. 32, § 9.

7-13-13. Repealed.

7-13-14. Repealed.

7-13-15. Repealed.

7-13-16. Repealed.

7-13-17. Permit to purchase undyed gasoline for certain off-road use and to claim refund of tax.

A. Any person using gasoline in the operation of a clothes cleaning establishment, in stoves or other appliances burning gasoline, or operators of aircraft using aviation gasoline exclusively in the operation of aircraft, upon proper showing of the permit provided for in this section, may purchase gasoline to which dye has not been added and may claim a refund thereon under the provisions of this section.

B. Upon submission of proof satisfactory to the department that the requirements of this subsection have been met, the department shall allow a claim for refund of gasoline tax paid on gasoline purchased and used in the manner described in Subsection A of this section by holders of permits issued under this section. The individual purchases of gasoline, other than that used for aviation fuel, must have been made in quantities of fifty gallons or more. Purchasers of aviation fuel may accumulate invoices to reach the fifty gallon minimum. No claim for refund may be presented or allowed on less than one hundred gallons so purchased. The secretary may prescribe by regulation or instruction the documents necessary to support a claim for refund made pursuant to the provisions of this subsection.

C. The department shall create permits, in form and content as the secretary may prescribe, that will allow persons to purchase gasoline to which dye has not been added for the uses specified in Subsection A of this section. The secretary shall prescribe the method by which a person may apply for a permit.

D. The secretary, upon notice and after hearing, may suspend for a period of up to one year or revoke the gasoline tax refund permit of any person who makes any false statement on an application for a permit or on a claim for refund made pursuant to the provisions of this section, who uses the gasoline in a motor boat or in a vehicle registered to operate on the highways of this state or who violates any other provision of the Gasoline Tax Act.

History: Laws 1998, ch. 44, § 2.

7-13-18. Dyed gasoline; permissible uses; penalties for misuse.

A. Gasoline distributors and wholesalers who are registered as distributors or wholesalers with the department may sell gasoline to be used other than in motor boats or in vehicles licensed to operate on the highways. These distributors and wholesalers shall mix with the gasoline an identifying dye in a manner consistent with state and federal law and regulations. The department shall furnish without charge the dye upon request. Such dyed gasoline may not be used in motor boats or in vehicles registered to be operated upon the highways of this state.

B. Any person who uses dyed gasoline in a motor boat or in a vehicle registered to be operated upon the highways of this state is liable for a civil penalty for each occurrence in an amount equal to the greater of one hundred dollars ($100) or the rate of the gasoline tax multiplied by the capacity in gallons of the fuel supply tank or tanks of the motor boat or vehicle.

History: Laws 1998, ch. 44, § 3.

ARTICLE 13A
Petroleum Products Loading Fee

7-13A-1. Short title.

Chapter 7, Article 13A NMSA 1978 may be cited as the "Petroleum Products Loading Fee Act".

History: 1978 Comp., § 7-13A-1, enacted by Laws 1990, ch. 124, § 14.

7-13A-2. Definitions.

As used in the Petroleum Products Loading Fee Act :

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

B. "distributor" means any person registered or required to be registered as a rack operator or distributor for purposes of the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978] and any person registered or required to be registered as a rack operator or special fuel supplier for purposes of the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978];

C. "gallon" means the quantity of liquid necessary to fill a standard United States gallon liquid measure, which is approximately 3.785 liters, or that same quantity adjusted to a temperature of sixty degrees fahrenheit at the election of any distributor, but a distributor shall report on the same basis for a period of at least one year;

D. "load" means eight thousand gallons of petroleum product;

E. "loading" means the act of placing or causing to be placed any petroleum product that is produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state into tank cars, tank trucks, tank wagons or other types of transportation equipment or into any tank or other container from which sales or deliveries not involving transportation are made;

F. "person" means an individual or any other legal entity, including any gas, water or electric utility owned or operated by a county, municipality or other political subdivision of the state. "Person" also means, to the extent permitted by law, any federal, state or other government or any department, agency or instrumentality of the state, county, municipality or any political subdivision thereof;

G. "petroleum product" means gasoline as defined in the Gasoline Tax Act and special fuel as defined in the Special Fuels Supplier Tax Act; and

H. "secretary" means, unless the context indicates another meaning, the secretary of taxation and revenue or the secretary's delegate; and

I. "unobligated balance of the corrective action fund" means corrective action fund equity less all known or anticipated liabilities against the fund.

History: 1978 Comp., § 7-13A-2, enacted by Laws 1990, ch. 124, § 15; 1995, ch. 16, § 13; 1997, ch. 192, § 4.

7-13A-3. Imposition and rate of fee; denomination as "petroleum products loading fee".

A. For the privilege of loading gasoline or special fuel from a rack at a refinery or pipeline terminal in this state into a cargo tank, there is imposed a fee on the distributor at a rate provided in Subsection C of this section on each gallon of gasoline or special fuel loaded in New Mexico on which the petroleum products loading fee has not been previously paid.

B. For the privilege of importing gasoline or special fuel into this state for resale or consumption in this state there is imposed a fee determined as provided in Subsection C of this section on each load of gasoline or special fuel imported into New Mexico for resale or consumption on which the petroleum products loading fee has not been previously paid. For the purposes of this section, "load" means eight thousand gallons of gasoline or special fuel. To determine how many loads a person is to report under the provisions of this section, the person shall divide by eight thousand the total gallons of gasoline reported for the purposes of Section 7-13-3 NMSA 1978 as adjusted under the provisions of Section 7-13-4 NMSA 1978 and the total gallons of special fuels received in New Mexico less any gallons exempted under Section 7-13A-4 NMSA 1978. Loads shall be calculated to the nearest one-hundredth of a load.

C. The fee imposed by this section is and may be referred to as the "petroleum products loading fee" and shall be one hundred fifty dollars ($150) per load or whichever of the following applies:

(1) in the event the secretary of environment certifies that the unobligated balance of the corrective action fund at the end of the prior fiscal year equals or exceeds eighteen million dollars ($18,000,000) the fee shall be set at forty dollars ($40.00) per load;

(2) in the event the secretary of environment certifies that the unobligated balance of the corrective action fund at the end of the prior fiscal year exceeds twelve million dollars ($12,000,000) but is less than eighteen million dollars ($18,000,000) the fee shall be set at eighty dollars ($80.00) per load;

(3) in the event the secretary of environment certifies that the unobligated balance of the corrective action fund at the end of the prior fiscal year exceeds six million dollars ($6,000,000) but is less than twelve million dollars ($12,000,000) the fee shall be set at one hundred twenty dollars ($120) per load; and

(4) in the event the secretary of environment certifies that the unobligated balance of the corrective action fund at the end of the prior fiscal year is less than six million dollars ($6,000,000) the fee shall be set at one hundred fifty dollars ($150) per load.

D. The amount of the petroleum products loading fee set pursuant to Paragraph (1), (2), (3) or (4) of Subsection C of this section shall be imposed on the first day of the month following expiration of ninety days after the end of the fiscal year for which the certification was made.

E. As used in this section, "unobligated balance of the corrective action fund" means corrective action fund equity less all known or anticipated liabilities against the fund."

History: 1978 Comp., § 7-13A-3, enacted by Laws 1990, ch. 124, § 16; 1996, ch. 82, § 2.

7-13A-4. Exemptions.

A. Petroleum products that are either loaded into cargo tanks in New Mexico and exported for resale and consumption outside of New Mexico or are imported into New Mexico and subsequently exported for resale and consumption outside of New Mexico are exempt from the imposition of the petroleum products loading fee.

B. Petroleum products sold to the United States or any agency or instrumentality thereof for the exclusive use of the United States or any agency or instrumentality thereof are exempt from the imposition of the petroleum products loading fee.

History: 1978 Comp., § 7-13A-4, enacted by Laws 1991, ch. 9, § 34.

7-13A-5. Deduction; gasoline or special fuels returned; biodiesel for subsequent blending or resale by a rack operator.

A. Refunds and allowances made to buyers for gasoline or special fuels returned to the refiner, pipeline terminal operator or distributor or amounts of gasoline or special fuels, the payment for which has not been collected and has been determined to be uncollectible pursuant to provisions of regulations issued by the secretary may be deducted from gallons used to determine loads for the purposes of calculating the petroleum products loading fee. If such a payment is subsequently collected, the gallons represented shall be included in determining loads. The deduction under the provisions of this section shall not be allowed if the petroleum products loading fee has not been paid previously on the petroleum products that were returned to the seller or the sale of which created an uncollectible debt.

B. Biodiesel, as defined in the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978], loaded in or imported into New Mexico and delivered to a rack operator for subsequent blending or resale by a rack operator may be deducted from gallons used to determine loads for the purposes of calculating the petroleum products loading fee.

C. A taxpayer that deducts an amount of biodiesel pursuant to Subsection B of this section shall report the deducted amount separately with the taxpayer's return in a manner prescribed by the department.

D. The department shall calculate the aggregate amount, in dollars, of the difference between the amount of the petroleum products loading fee that would have been collected in a fiscal year if not for the deduction allowed pursuant to Subsection B of this section and the amount of the petroleum products loading fee actually collected. The department shall compile an annual report that includes the aggregate amount, the number of taxpayers that deducted an amount of biodiesel pursuant to Subsection B of this section and any other information necessary to evaluate the deduction. Beginning in 2019 and every five years thereafter, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the costs and benefits to the state of the deduction.

E. For purposes of this section, "rack operator" means the operator of a refinery in this state or the owner of special fuel stored at a pipeline terminal in this state.

History: 1978 Comp., § 7-13A-5, enacted by Laws 1990, ch. 124, § 18; 2014, ch. 18, § 1.

7-13A-6. Fee returns; payment of fee.

Any person who either loads gasoline or special fuel in New Mexico and any person who imports gasoline or special fuel into New Mexico for resale or consumption in New Mexico shall file petroleum products loading fee returns in form and content as prescribed by the secretary on or before the twenty-fifth day of the month following the month in which petroleum products are either loaded in New Mexico or imported into New Mexico. Such returns shall be accompanied by payment of the amount of the petroleum products loading fee due.

History: 1978 Comp., § 7-13A-6, enacted by Laws 1990, ch. 124, § 19.

7-13A-7. Claim for refund of petroleum products loading fee on products previously loaded from a source other than a refiner or pipeline terminal.

A. Upon the submission of proof satisfactory to the department, a distributor may claim, and the department may allow, a claim for refund of the petroleum products loading fee paid on petroleum products previously loaded in New Mexico from a source other than a refiner or pipeline terminal in this state and placed in a terminal from which it will be loaded into tank cars, tank trucks, tank wagons or other types of transportation equipment.

B. No person may submit claims for refund pursuant to this section more frequently than quarterly. No claim for refund may be submitted or allowed on less than one hundred gallons.

C. The department may prescribe the documents necessary to support a claim for refund pursuant to the provisions of this section.

History: Laws 2015 (1st S.S.), ch. 2, § 20.

ARTICLE 14
Motor Vehicle Excise Tax

7-14-1. Short title.

Chapter 7, Article 14 NMSA 1978 may be cited as the "Motor Vehicle Excise Tax Act".

History: 1978 Comp., § 7-14-1, enacted by Laws 1988, ch. 73, § 11.

7-14-2. Definitions.

As used in the Motor Vehicle Excise Tax Act:

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

B. "manufactured home" means a structure that exceeds either a width of eight feet or a length of thirty-two feet, when equipped for the road;

C. "motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from batteries or from overhead trolley wires but not operated upon rails;

D. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture or syndicate; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or an agency, department or instrumentality thereof;

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

F. "tax" means the motor vehicle excise tax imposed under the Motor Vehicle Excise Tax Act; and

G. "vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including any frame, chassis or body of any vehicle or motor vehicle, except devices moved by human power or used exclusively upon stationary rails or tracks.

History: 1978 Comp., § 7-14-2, enacted by Laws 1988, ch. 73, § 12.

7-14-3. Imposition of motor vehicle excise tax.

An excise tax, subject to the credit provided by Section 7-14-7.1, is imposed upon the sale in this state of every vehicle, except as otherwise provided in Section 7-14-7.1 NMSA 1978 and manufactured homes, required under the Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978] to be registered in this state. To prevent evasion of the excise tax imposed by the Motor Vehicle Excise Tax Act and the duty to collect it, it is presumed that the issuance of every original and subsequent certificate of title for vehicles of a type required to be registered under the provisions of the Motor Vehicle Code constitutes a sale for tax purposes, unless specifically exempted by the Motor Vehicle Excise Tax Act or unless there is shown proof satisfactory to the department that the vehicle for which the certificate of title is sought came into the possession of the applicant as a voluntary transfer without consideration or as a transfer by operation of law. The excise tax imposed by this section shall be known as the "motor vehicle excise tax".

History: 1978 Comp., § 7-14-3, enacted by Laws 1988, ch. 73, § 13; 1991, ch. 197, § 3.

7-14-4. Determination of amount of motor vehicle excise tax.

The rate of the motor vehicle excise tax is four 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; 2019, ch. 270, § 44.

7-14-5. Time of payment of tax.

The tax shall be paid to the department by the applicant for the certificate of title at the time of application for issuance of the certificate.

History: 1978 Comp., § 7-14-5, enacted by Laws 1988, ch. 73, § 15.

7-14-6. Exemptions from tax.

A. A person who acquires a vehicle out of state thirty or more days before establishing a domicile in this state is exempt from the tax if the vehicle was acquired for personal use.

B. A person applying for a certificate of title for a vehicle registered in another state is exempt from the tax if the person has previously registered and titled the vehicle in New Mexico and has owned the vehicle continuously since that time.

C. A vehicle with a certificate of title owned by this state or any political subdivision is exempt from the tax.

D. A person is exempt from the tax if the person has a disability at the time the person purchases a vehicle and can prove to the motor vehicle division of the department or its agent that modifications have been made to the vehicle that are:

(1) due to that person's disability; and

(2) necessary to enable that person to drive that vehicle or be transported in that vehicle.

E. A person is exempt from the tax if the person is a bona fide resident of New Mexico who served in the armed forces of the United States and who suffered, while serving in the armed forces or from a service-connected cause, the loss or complete and total loss of use of:

(1) one or both legs at or above the ankle; or

(2) one or both arms at or above the wrist.

F. A person who acquires a vehicle for subsequent lease shall be exempt from the tax if:

(1) the person does not use the vehicle in any manner other than holding it for lease or sale or leasing or selling it in the ordinary course of business;

(2) the lease is for a term of more than six months;

(3) the receipts from the subsequent lease are subject to the gross receipts tax; and

(4) the vehicle does not have a gross vehicle weight of over twenty-six thousand pounds.

History: 1978 Comp., § 7-14-6, enacted by Laws 1988, ch. 73, § 16; 1990, ch. 24, § 1; 1994, ch. 139, § 1; 2004, ch. 66, § 3; 2007, ch. 319, § 1; 2023, ch. 85, § 18.

7-14-7. Credit against tax.

A. 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.

B. If a vehicle has been acquired through a transaction on reservation or trust land within an Indian nation, tribe or pueblo, located wholly or partly in New Mexico, upon which a gross receipts, sales, compensating or similar tax was levied by the Indian nation, tribe or pueblo, 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; 2022, ch. 48, § 1.

7-14-7.1. Credit; vehicles used for short-term leasing; requirements; reports.

A. Upon application of the owner, the secretary shall suspend payment of the tax and issue a certificate of title without payment of the tax for any vehicle the leasing of which is subject to the Leased Vehicle Gross Receipts Tax Act [Chapter 7, Article 14A NMSA 1978], if:

(1) the vehicle is acquired by the owner on or after July 1, 1991;

(2) the vehicle is required to be registered in this state;

(3) the owner presents proof satisfactory to the secretary that the owner is registered with the department to pay the leased vehicle gross receipts tax; and

(4) the owner declares that the vehicle for which issuance of a certificate of title is being applied will be part of a vehicle fleet of at least five vehicles, will be used primarily as a short-term rental vehicle and that each period of rental or lease will not exceed six months.

B. If an owner has paid the motor vehicle excise tax after July 1, 1991 with respect to a vehicle that qualifies for suspension of the motor vehicle excise tax pursuant to Subsection A of this section, the owner may apply for a refund of the motor vehicle excise tax paid, but the application for refund must be made within one year of the date certificate of title was issued to the owner for the vehicle. If application is made after that time, the claim for refund is not timely and the motor vehicle excise tax paid shall not be refunded.

C. On or before the twenty-fifth day of the month following the close of the calendar year, the owner shall submit to the department in a form prescribed by the secretary a report indicating the total collections of leased vehicle gross receipts tax collected in lieu of the tax. The report shall also indicate the amount of tax that would have been paid in the state of New Mexico for the preceding calendar year.

D. If the total amount of leased vehicle gross receipts tax is less than the amount of tax that would have been collected, the owner shall pay the difference to the department at the time of filing the report required by Subsection B of this section.

E. Once the total amount of leased vehicle gross receipts tax credited with respect to a vehicle for which payment of the motor vehicle excise tax is suspended pursuant to Subsection A of this section equals or exceeds the amount of motor vehicle excise tax due on that vehicle, or the owner has paid the difference pursuant to Subsection D of this section, the secretary shall cause the records of the department to indicate that the motor vehicle excise tax due with respect to that vehicle is paid in full and that payment is no longer suspended.

History: 1978 Comp., § 7-14-7.1, enacted by Laws 1991, ch. 197, § 4; 1993, ch. 347, § 1; 1994, ch. 104, § 1.

7-14-8. Imposition of penalty for failure to make timely application.

A penalty of fifty percent of the tax is imposed on any person who is:

A. domiciled in this state and accepts transfer in this state, but fails to apply for a certificate of title within ninety days of the date on which ownership of the vehicle was transferred to the person; or

B. domiciled in this state but accepts transfer outside this state and fails to apply for a certificate of title within ninety days of the date on which the vehicle is brought into this state.

History: 1978 Comp., § 7-14-8, enacted by Laws 1988, ch. 73, § 18.

7-14-9. Refunds; procedures.

A. If any person believes that the person has made payment of any motor vehicle excise tax in excess of that for which the person was liable or has been denied any credit against motor vehicle excise tax, that person may claim a refund by directing to the secretary a claim for refund in accordance with the provisions of Section 7-1-26 NMSA 1978.

B. The department may authorize refunds of the motor vehicle excise tax in accordance with the provisions of Section 7-1-29 NMSA 1978.

History: 1978 Comp., § 7-14-9, enacted by Laws 1988, ch. 73, § 19; 1993, ch. 347, § 2.

7-14-9.1. Protests.

A. Any person upon whom a penalty is imposed by the Motor Vehicle Excise Tax Act may protest the imposition of the penalty in accordance with the provisions of Sections 7-1-24 and 7-1-25 NMSA 1978.

B. Any person whose claim for refund of motor vehicle excise tax is denied in whole or in part may protest the denial in accordance with the provisions of Sections 7-1-24 and 7-1-25 NMSA 1978.

History: Laws 1993, ch. 347, § 4.

7-14-9.2. Penalties for failure to submit report or to pay; interest.

A. Any person required to submit the report required by Subsection C of Section 7-14-7.1 NMSA 1978 who does not file the report in the manner and by the date required shall pay a penalty in an amount equal to five percent of the total amount of tax suspended pursuant to Subsection A of Section 7-14-7.1 NMSA 1978 for vehicles required to be included in the report.

B. Any person required to pay any amount pursuant to Subsection D of Section 7-14-7.1 NMSA 1978 who fails to pay the amount by the date required is liable for penalty in an amount equal to the greater of five dollars ($5.00) or two percent per month or any fraction of a month from the date the amount was due multiplied by the amount of tax due but not paid, not to exceed a maximum of ten percent of the tax due but not paid.

C. If any person required to pay any amount pursuant to Subsection D of Section 7-14-7.1 NMSA 1978 fails to pay the amount by the date required, interest shall be paid to the state on such amount in accordance with the provisions of Section 7-1-67 NMSA 1978.

History: Laws 1993, ch. 347, § 5; 1994, ch. 104, § 2.

7-14-10. Distribution of proceeds.

The receipts from the tax and any associated interest and penalties shall be deposited in the "motor vehicle suspense fund", hereby created in the state treasury. As of the end of each month, the net receipts attributable to the tax and associated penalties and interest shall be distributed as follows:

A. fifty-nine and thirty-nine hundredths percent to the general fund;

B. twenty-one and eighty-six hundredths percent to the state road fund; and

C. eighteen and seventy-five hundredths percent to the transportation project fund.

History: 1978 Comp., § 7-14-10, enacted by Laws 1988, ch. 73, § 20; 1991, ch. 9, § 35; 1993, ch. 347, § 3; 1994, ch. 5, § 25; 2018, ch. 3, § 1; 2019, ch. 270, § 45; 2021, ch. 22, § 1.

7-14-11. Administration by department; authority of department.

A. The department has the authority and duty to administer the Motor Vehicle Excise Tax Act and to impose, collect and enforce the motor vehicle excise tax.

B. The department has the authority to interpret the provisions of the Motor Vehicle Excise Tax Act and to promulgate regulations with respect to that act. The extent to which regulations will have retroactive effect shall be stated and, if no such statement is made, they will be applied prospectively only.

History: 1978 Comp., § 7-14-11, enacted by Laws 1988, ch. 73, § 21.

ARTICLE 14A
Leased Vehicle Gross Receipts Tax

7-14A-1. Short title.

Chapter 7, Article 14A NMSA 1978 may be cited as the "Leased Vehicle Gross Receipts Tax Act".

History: Laws 1991, ch. 197, § 5; 1993, ch. 30, § 20.

7-14A-2. Definitions.

As used in the Leased Vehicle Gross Receipts Tax Act:

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

B. "engaging in business" means carrying on or causing to be carried on the leasing of vehicles with the purpose of direct or indirect benefit;

C. "gross receipts" means the total amount of money or the value of other consideration received from leasing vehicles used in New Mexico, but excludes cash discounts allowed and taken, leased vehicle gross receipts tax payable on transactions for the reporting period, gross receipts tax payable pursuant to the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] on transactions for the reporting period and taxes imposed pursuant to the provisions of any local option gross receipts tax, as that term is defined in the Tax Administration Act [Chapter 7, Article 1 NMSA 1978], that is payable on transactions for the reporting period and any type of time-price differential. Also excluded from "gross receipts" are any gross receipts or sales taxes imposed by an Indian nation, tribe or pueblo, provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the interior of the United States, and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions. In an exchange in which the money or other consideration received does not represent the value of the lease of the vehicle, "gross receipts" means the reasonable value of the lease of the vehicle. When the leasing of vehicles is made under a leasing contract, the seller or lessor may elect to treat all receipts under those contracts as gross receipts as and when the payments are actually received. "Gross receipts" also includes amounts paid by members of any cooperative association or similar organization for the lease of vehicles by that organization;

D. "leasing" means any arrangement whereby, for a consideration, a vehicle without a driver furnished by the lessor or owner is employed for or by any person other than the owner of the vehicle for a period of not more than six months;

E. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity; and

F. "vehicle" means a passenger automobile designed to accommodate six or fewer adlt [adult] human beings that is part of a fleet of five or more passenger automobiles owned by the same person.

History: Laws 1991, ch. 197, § 6; 1995, ch. 70, § 17.

7-14A-3. Imposition and rate of tax; denomination as "leased vehicle gross receipts tax".

A. For the privilege of engaging in business, an excise tax equal to five percent of gross receipts is imposed on any person engaging in business in New Mexico.

B. The tax imposed by this section shall be referred to as the "leased vehicle gross receipts tax".

History: Laws 1991, ch. 197, § 7.

7-14A-3.1. Imposition and rate; leased vehicle surcharge.

A. Except as provided in Subsection B of this section, there is imposed a surcharge on the leasing of a vehicle to another person by a person engaging in business in New Mexico if the lease is subject to the leased vehicle gross receipts tax. The amount of this surcharge is two dollars ($2.00) for each day the vehicle is leased by the person. The surcharge may be referred to as the "leased vehicle surcharge".

B. The leased vehicle surcharge imposed in Subsection A of this section shall not apply to the lease of a temporary replacement vehicle if the lessee signs a statement that the temporary replacement vehicle is to be used as a replacement for another vehicle that is being repaired, serviced or replaced. For the purposes of this section, "temporary replacement vehicle" means a vehicle that is:

(1) used by an individual in place of another vehicle that is unavailable for use by the individual due to loss, damage, mechanical breakdown or need for servicing; and

(2) leased temporarily by or on behalf of the individual or loaned temporarily to the individual by a vehicle repair facility or dealer while the other vehicle is being repaired, serviced or replaced.

History: Laws 1993, ch. 359, § 1; 2007, ch. 172, § 22.

7-14A-4. Presumption of taxability.

To prevent evasion of the leased vehicle gross receipts tax and the leased vehicle surcharge and to aid in their administration, it is presumed that all receipts of a person engaging in business are subject to the leased vehicle gross receipts tax and that all vehicles leased by that person are subject to the leased vehicle surcharge.

History: Laws 1991, ch. 197, § 8; 1993, ch. 359, § 2.

7-14A-5. Separately stating the leased vehicle gross receipts tax.

When the leased vehicle gross receipts tax is stated separately on the books of the lessor and if the total amount of tax that is stated separately on transactions reportable within one reporting period is in excess of the amount of leased vehicle gross receipts tax otherwise payable on the transactions on which the tax was separately stated, the excess amount of tax stated on the transactions within that reporting period shall be included in gross receipts.

History: Laws 1991, ch. 197, § 9.

7-14A-6. Date payment due.

The tax and the surcharge imposed by the Leased Vehicle Gross Receipts Tax Act are to be paid on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

History: Laws 1991, ch. 197, § 10; 1993, ch. 359, § 3.

7-14A-7. Deduction; transactions in interstate commerce.

Receipts from transactions in interstate commerce may be deducted from gross receipts to the extent that the imposition of the leased vehicle gross receipts tax would be unlawful under the United States constitution.

History: Laws 1991, ch. 197, § 11.

7-14A-8. Deduction; trade-in allowance.

Receipts represented by allowances granted for vehicle trade-ins may be deducted from gross receipts.

History: Laws 1991, ch. 197, § 12.

7-14A-9. Repealed.

History: Laws 1991, ch. 197, § 13; repealed by Laws 2023, ch. 85, § 28.

7-14A-10. Distribution of proceeds.

At the end of each month, the net receipts attributable to the leased vehicle gross receipts tax and any associated penalties and interest shall be distributed as follows:

A. one-fourth to the local governments road fund; and

B. three-fourths to the highway infrastructure fund.

History: Laws 1991, ch. 197, § 14; 1999 (1st S.S.), ch. 9, § 1.

7-14A-11. Administration.

A. The department shall interpret the provisions of the Leased Vehicle Gross Receipts Tax Act.

B. The department shall administer and enforce the collection of the leased vehicle gross receipts tax and the leased vehicle surcharge, and the Tax Administration Act applies to the administration and enforcement of the tax and the surcharge.

History: Laws 1991, ch. 197, § 15; 1993, ch. 359, § 4.

ARTICLE 15
Trip Tax

7-15-1. Recompiled.

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.

7-15-2.1. Definitions.

As used in the Trip Tax Act:

A. "combination gross vehicle weight" means the sum total of the gross vehicle weights of all units of a combination;

B. "commercial motor carrier vehicle" means any motor vehicle with a gross weight of twelve thousand pounds or more used or reserved for use in the transportation of persons, property or merchandise for hire, compensation or profit or in the furtherance of a commercial enterprise or any vehicle used or maintained primarily for the transportation of property or merchandise or for drawing other vehicles so used or maintained;

C. "department" means the department of transportation, the secretary of transportation and any employee of the department of transportation 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;

E. "motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from batteries or from overhead trolley wires, but not operated upon rails;

F. "registrant" means the person who has registered the vehicle pursuant to the laws of this state or another state;

G. "trip tax" means the use fee imposed under the Trip Tax Act; and

H. "vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including any frame, chassis or body of any vehicle or motor vehicle, except devices moved by human power or used exclusively upon stationary rails or tracks.

History: 1978 Comp., § 7-15-2.1, enacted by Laws 1988, ch. 73, § 23; 1998 (1st S.S.), ch. 10, § 1; 2021, ch. 59, § 1.

7-15-3. Repealed.

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 on each trip made in this state by the registrant, owner or operator of a foreign-based commercial motor carrier vehicle and is in lieu of registration fees and the weight distance tax that would otherwise be imposed on the trip on a registrant, owner or operator of any foreign-based commercial motor carrier vehicle that is:

(1) not registered in this state under interstate registration;

(2) not registered in this state under proportional registration;

(3) not subject to a valid reciprocity agreement;

(4) not registered as a foreign commercial motor carrier vehicle under short-term registration;

(5) not registered under an allocation of one-way rental fleet vehicles; and

(6) not exempted from registration and the payment of any registration fees and not exempted from the payment of the trip tax under Section 65-5-3 NMSA 1978.

B. Except as provided otherwise in Subsections C and D of this section, the trip tax shall be computed as follows:

(1) when the gross vehicle weight or combination gross vehicle weight exceeds twelve thousand pounds but does not exceed twenty-six thousand pounds, seven cents ($.07) a mile for mileage to be traveled on the public highways within New Mexico, measured from the point of entering the state to the point of destination or place of leaving the state;

(2) when the gross vehicle weight or combination gross vehicle weight exceeds twenty-six thousand pounds and does not exceed fifty-four thousand pounds, twelve cents ($.12) a mile for mileage to be traveled on the public highways within New Mexico, measured from the point of entering the state to the point of destination or place of leaving the state;

(3) when the gross vehicle weight or combination gross vehicle weight exceeds fifty-four thousand pounds and does not exceed seventy-two thousand pounds, fifteen cents ($.15) a mile for mileage to be traveled on the public highways within New Mexico, measured from the point of entering the state to the point of destination or place of leaving the state; and

(4) when the gross vehicle weight or combination gross vehicle weight exceeds seventy-two thousand pounds, sixteen cents ($.16) a mile for mileage to be traveled on the public highways within New Mexico, measured from the point of entering the state to the point of destination or place of leaving the state.

C. The department, by regulation, shall establish a procedure for the issuance of prepaid trip permits for:

(1) trips by a single vehicle or a fleet of vehicles for the purpose of:

(a) custom harvesting operations; or

(b) the transportation of goods or passengers between the state and Mexico; or

(2) any vehicle that is unable to declare at the time of entering the state the point of destination or place of leaving the state.

D. Prepaid trip permits established pursuant to Subsection C of this section shall be sold in increments of no less than fifty dollars ($50.00). Any portion not used prior to one year from the date of issuance shall not be refundable. Prepaid trip permits shall not be transferable between a registrant, owner or operator and another registrant, owner or operator. Charges against the prepaid trip permit shall be based on the computations specified in Subsection B of this section.

History: 1941 Comp., § 68-1531, enacted by Laws 1943, ch. 125, § 12; 1953 Comp., § 64-30-12; Laws 1972, ch. 7, § 30; 1980, ch. 59, § 1; 1987, ch. 347, § 13; 1978 Comp., § 7-15-1, recompiled as 1978 Comp., § 7-15-3.1 by Laws 1988, ch. 73, § 24; 1993, ch. 30, § 21; 1994, ch. 49, § 1; 2005, ch. 258, § 1; 2023, ch. 85, § 19.

7-15-3.2. Exemption from tax.

Exempted from imposition of the trip tax is the use of the highways of this state by commercial motor carrier vehicles while operating exclusively within ten miles of a border with Mexico in conjunction with crossing the border with Mexico.

History: Laws 2006, ch. 44, § 1.

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.

7-15-5. Distribution of proceeds.

The receipts from permit fees established pursuant to Subsection C of Section 7-15-3.1 NMSA 1978, the trip tax and any associated interest and penalties shall be deposited into the "motor vehicle suspense fund", hereby created in the state treasury. As of the end of each month, the net receipts attributable to the permit fees established pursuant to Subsection C of Section 7-15-3.1 NMSA 1978, trip tax and penalties and interest associated with the trip tax shall be distributed to the state road fund.

History: 1978 Comp., § 7-15-5, enacted by Laws 1988, ch. 73, § 26.

7-15-6. Administration by department; authority of department.

A. The department has the authority and duty to administer the Trip Tax Act and to impose, collect and enforce the trip tax.

B. The department has the authority to interpret the provisions of the Trip Tax Act and to promulgate regulations with respect to the Trip Tax Act. The extent to which regulations will have retroactive effect shall be stated and, if no such statement is made, they will be applied prospectively only.

History: 1978 Comp., § 7-15-6, enacted by Laws 1988, ch. 73, § 27.

ARTICLE 15A
Weight Distance Tax

7-15A-1. Short title.

Chapter 7, Article 15A NMSA 1978 may be cited as the "Weight Distance Tax Act".

History: 1978 Comp., § 7-15A-1, enacted by Laws 1988, ch. 73, § 28.

7-15A-2. Definitions.

As used in the Weight Distance Tax Act:

A. "bus" means a motor vehicle designed and used for the transportation of a person and a motor vehicle, other than a taxicab, designed and used for the transportation of a person for compensation;

B. "declared gross weight" means the declared gross weight for purposes of the Motor Transportation Act [Chapter 65, Articles 1, 3 and 5 NMSA 1978];

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

D. "gross vehicle weight" means the weight of a vehicle without load, plus the weight of a load upon the vehicle;

E. "motor vehicle" means a vehicle that is self-propelled and a vehicle that is propelled by electric power obtained from batteries or from overhead trolley wires, but not operated upon rails;

F. "person" means:

(1) an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other association; and

(2) to the extent permitted by law, a federal, state or other governmental unit or subdivision or an agency, department or instrumentality of the federal, state or other governmental unit;

G. "registrant" means a person who has registered the vehicle pursuant to the laws of this state or another state;

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

I. "tax" means the weight distance tax imposed by the Weight Distance Tax Act;

J. "vehicle" means a device in, upon or by which a person or property is or may be transported or drawn upon a highway, including a frame, chassis or body of a vehicle or motor vehicle, except a device moved by human power or used exclusively upon stationary rails or tracks; and

K. "weight distance tax identification permit" means an administrative certificate that is issued by the department and that identifies a specific vehicle as subject to the tax imposed pursuant to the Weight Distance Tax Act.

History: 1978 Comp., § 7-15A-2, enacted by Laws 1988, ch. 73, § 29; 2003 (1st S.S.), ch. 3, § 3.

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;

C. buses operated by religious or nonprofit charitable organizations; and

D. commercial motor carrier vehicles as defined in Subsection B of Section 7-15-2.1 NMSA 1978 while operating exclusively within ten miles of a border with Mexico in conjunction with crossing the border with Mexico.

History: 1978 Comp., § 7-15A-5, enacted by Laws 1988, ch. 73, § 32; 2006, ch. 44, § 2.

7-15A-6. Tax rate for motor vehicles other than buses; reduction of rate for one-way hauls.

A. For on-highway operations of motor vehicles other than buses, the weight distance tax shall be computed in accordance with the following schedule:

Declared Gross Weight (Gross Vehicle Weight)	Tax Rate (Mills per Mile)
26,001 to 28,000	11.01
28,001 to 30,000	11.88
30,001 to 32,000	12.77
32,001 to 34,000	13.64
34,001 to 36,000	14.52
36,001 to 38,000	15.39
38,001 to 40,000	16.73
40,001 to 42,000	18.05
42,001 to 44,000	19.36
44,001 to 46,000	20.69
46,001 to 48,000	22.01
48,001 to 50,000	23.33
50,001 to 52,000	24.65
52,001 to 54,000	25.96
54,001 to 56,000	27.29
56,001 to 58,000	28.62
58,001 to 60,000	29.93
60,001 to 62,000	31.24
62,001 to 64,000	32.58
64,001 to 66,000	33.90
66,001 to 68,000	35.21
68,001 to 70,000	36.52
70,001 to 72,000	37.86
72,001 to 74,000	39.26
74,001 to 76,000	40.71
76,001 to 78,000	42.21
78,001 and over	43.78.

B. All motor vehicles for which the tax is computed under Subsection A of this section shall pay a tax that is two-thirds of the tax computed under Subsection A of this section if:

(1) the motor vehicle is customarily used for one-way haul;

(2) forty-five percent or more of the mileage traveled by the motor vehicle for a registration year is mileage that is traveled empty of all load; and

(3) the registrant, owner or operator of the vehicle attempting to qualify under this subsection has made a sworn application to the department to be classified under this subsection for a registration year and has given whatever information is required by the department to determine the eligibility of the vehicle to be classified under this subsection and the vehicle has been so classified.

History: 1978 Comp., § 7-15A-6, enacted by Laws 1988, ch. 73, § 33; 2003 (1st S.S.), ch. 3, § 4; 2004, ch. 59, § 1.

7-15A-7. Tax rate for buses.

For all buses, the weight distance tax shall be computed in accordance with the following schedule:

Declared Gross Weight (Gross Vehicle Weight)	Tax Rate (Mills per Mile)
26,001 to 28,000	11.01
28,001 to 30,000	11.88
30,001 to 32,000	12.77
32,001 to 34,000	13.64
34,001 to 36,000	14.52
36,001 to 38,000	15.39
38,001 to 40,000	16.73
40,001 to 42,000	18.05
42,001 to 44,000	19.36
44,001 to 46,000	20.69
46,001 to 48,000	22.01
48,001 to 50,000	23.33
50,001 to 52,000	24.65
52,001 to 54,000	25.96
54,001 and over	27.29.

History: 1978 Comp., § 7-15A-7, enacted by Laws 1988, ch. 73, § 34; 2003 (1st S.S.), ch. 3, § 5; 2004, ch. 59, § 2.

7-15A-8. Mileage and weights to be used for computing tax.

A. The total number of miles traveled on New Mexico highways during the tax payment period by the motor vehicle subject to the tax shall be used in computing the tax.

B. Registrants, owners and operators of all motor vehicles to which the tax applies shall report to the department, in the manner required by the department, the total mileage traveled in New Mexico and the total mileage traveled in all states during the tax payment period applicable to that registrant, owner or operator.

C. All motor vehicles subject to the tax shall be registered in accordance with law at the highest gross vehicle weight or combined gross vehicle weight at which the vehicle will be operated for that registration year in this state.

D. It is unlawful and a violation of the Weight Distance Tax Act for any motor vehicle to be operated on New Mexico highways at a gross vehicle weight higher than that at which the registrant declared for registration purposes pursuant to either the Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978] or the Motor Transportation Act [Chapter 65, Articles 1, 3 and 5 NMSA 1978]. The operator of a motor vehicle operated on highways of this state at a gross weight or combination gross weight higher than that declared for registration purposes shall be subject to the penalty provisions of Section 66-7-411 NMSA 1978.

History: 1978 Comp., § 7-15A-8, enacted by Laws 1988, ch. 73, § 35.

7-15A-9. Weight distance tax; payment to department; record-keeping requirements.

A. Except as provided in Subsection B of this section, the weight distance tax shall be paid to the department by April 30 for the first quarterly period of January 1 through March 31, by July 31 for the second quarterly period of April 1 through June 30, by October 31 for the third quarterly period of July 1 through September 30 and by January 31 for the fourth quarterly period of October 1 through December 31 of each year.

B. Any registrant, owner or operator not liable for the special fuel tax whose total weight distance tax for the previous calendar year was less than five hundred dollars ($500) may elect to pay the tax on an annual basis. Any registrant, owner or operator liable for the special fuel tax whose total combined liability for the weight distance tax and the special fuel tax for the previous calendar year was less than five hundred dollars ($500) may elect to pay the weight distance tax on an annual basis. Election shall be made by filing a written statement of such election with the department on or before April 1 of the first year in which the election is made. Upon filing the written election with the department, the total weight distance tax due for the current calendar year shall be paid to the department by January 31 of the following year. If, however, any registrant, owner or operator is or becomes delinquent in excess of thirty days in any payment of the weight distance tax, that person shall make all future payments according to the schedule of Subsection A of this section. If any person who has made an election under this subsection has a liability for total weight distance tax or total combined weight distance tax and special fuel tax, as applicable, of five hundred dollars ($500) or more for any calendar year, that person shall make the succeeding year's payments pursuant to Subsection A of this section.

C. Any registrant, owner or operator not liable for the special fuel tax who has not previously been liable for the weight distance tax and whose liability for the weight distance tax is expected to be less than five hundred dollars ($500) annually may, with the approval of the secretary, pay the weight distance tax as provided in Subsection B of this section. Any registrant, owner or operator liable for the special fuel tax who has not previously been liable for the weight distance tax and whose total combined liability for the special fuel tax and weight distance tax is expected to be less than five hundred dollars ($500) annually may, with the approval of the secretary, pay the weight distance tax as provided in Subsection B of this section. If, however, the total annual liability or combined liability, as applicable, is expected to be five hundred dollars ($500) or more, the registrant, owner or operator shall make payments pursuant to Subsection A of this section.

D. All registrants, owners or operators required to pay the weight distance tax shall preserve the records upon which the periodic payments required by Subsections A and B of this section are based for four years following the period for which a payment is made. Upon request of the department, the registrant, owner or operator shall make the records available to the department at the owner's office for audit as to accuracy of computations and payments. If the registrant, owner or operator keeps the records at any place outside this state, the department or the department's authorized agent may examine them at the place where they are kept. The department may make arrangements with agencies of other jurisdictions administering motor vehicle laws for joint audits of any such registrants, owners or operators.

History: 1953 Comp., § 64-6-30, enacted by Laws 1978, ch. 35, § 365; 1987 Comp., § 66-6-30, recompiled as 1978 Comp., § 7-15A-9 by Laws 1988, ch. 73, § 36; 1989, ch. 148, § 1; 1999, ch. 200, § 1.

7-15A-10. Repealed.

History: Laws 1988, ch. 24, § 9; 1993, ch. 272, § 2; 2003 (1st S.S.), ch. 3, § 30.

7-15A-11. Repealed.

7-15A-12. Weight distance tax identification permits; suspension and renewal.

A. An operator of a motor vehicle registered in this state and subject to the weight distance tax shall display a weight distance tax identification permit issued for that vehicle to an enforcement officer of the department of public safety upon demand of that employee and when the vehicle passes through a port of entry.

B. The department may suspend or decline to renew a weight distance tax identification permit for a motor vehicle if the owner or operator of the vehicle does not comply with the provisions of the Weight Distance Tax Act or if the owner or operator is a delinquent taxpayer as provided in Section 7-1-16 NMSA 1978 only with respect to the weight distance tax or the gross receipts tax or if there are unfiled tax returns due with respect to the weight distance tax or the gross receipts tax.

C. The department of transportation may collect delinquent weight distance tax on behalf of the taxation and revenue department at ports of entry operated by the department of transportation.

History: Laws 2003 (1st S.S.), ch. 3, § 6; 2021, ch. 59, § 2; 2023, ch. 85, § 20.

7-15A-13. Weight distance tax identification permit administrative fee.

A. A person that obtains a weight distance tax identification permit shall pay an administrative fee to the department for the reasonable and necessary expense that the department incurs for processing and issuing a weight distance tax identification permit. The fee shall be paid in addition to a weight distance tax, special fuel excise tax and other use fee imposed for the use of public highways of this state. The department shall determine the amount of the fee pursuant to regulation. The fee shall not exceed ten dollars ($10.00).

B. The department shall deposit to the weight distance tax identification permit administration fund all proceeds from administrative fees collected by the department pursuant to this section.

History: Laws 2003 (1st S.S.), ch. 3, § 7.

7-15A-14. Weight distance tax identification permit fund.

The "weight distance tax identification permit fund" is created in the state treasury. The purpose of the fund is to provide an account from which the department and the department of transportation may pay the costs of issuing and administering weight distance tax identification permits and of enforcing weight distance tax compliance. The fund shall consist of administrative fees collected pursuant to the Weight Distance Tax Act. Money in the fund shall be appropriated to the department and the department of transportation to pay for the cost of issuance and administration of weight distance tax identification permits and of enforcement by the department and the department of transportation of weight distance tax compliance for motor carriers with the provisions of the Weight Distance Tax Act. Disbursements from the fund shall be by warrant of the secretary of finance and administration upon vouchers signed by the secretary or the secretary's authorized representative. Money in the fund shall not revert to the general fund at the end of a fiscal year.

History: Laws 2003 (1st S.S.), ch. 3, § 8; 2006, ch. 33, § 1; 2017, ch. 60, § 1; 2021, ch. 59, § 3.

7-15A-15. Taxpayers of weight distance tax; surety bond required; exceptions.

A. Except as required in Subsection H of this section, every taxpayer with a commercial domicile not located in an International Fuel Tax Agreement jurisdiction shall file with the department a bond on a form approved by the attorney general with a surety company authorized by the public regulation commission to transact business in New Mexico as a surety and upon which bond the taxpayer is the principal obligor and the state the obligee. The bond shall be conditioned upon the prompt filing of true reports and the payment by the taxpayer to the department of all taxes levied by the Weight Distance Tax Act, together with all applicable penalties and interest on the taxes.

B. In lieu of the bond, the taxpayer may elect to file with the department cash or bonds of the United States or New Mexico or of any political subdivision of the state.

C. The total amount of the bond, cash or securities required of a taxpayer shall be fixed by the department and may be increased or reduced by the department at any time, subject to the limitations provided in this section.

D. In fixing the total amount of the bond, cash or securities required of a taxpayer required to post a bond, the department shall require an amount equivalent to the total estimated tax due for two quarters; provided, however, that the total amount of bond, cash or securities required of a taxpayer shall never be less than five hundred dollars ($500) per motor vehicle on which the weight distance tax is imposed.

E. In the event the department determines that the amount of the existing bond, cash or securities is insufficient to ensure payment to New Mexico of the amount of the weight distance tax and penalties and interest for which a taxpayer is or may at any time become liable, the taxpayer, upon written demand from the department mailed to the last known address of the taxpayer as shown on the records of the department, shall file an additional bond, cash or securities in the manner, form and amount determined by the department to be necessary to secure at all times the payment by the taxpayer of all taxes, penalties and interest due pursuant to the Weight Distance Tax Act.

F. A surety on a bond furnished by a taxpayer as required by this section shall be released and discharged from all liability accruing on the bond after the expiration of ninety days from the date upon which the surety files with the department a written request to be released and discharged; provided, however, that the request shall not operate to release or discharge the surety from liability already accrued or that shall accrue before the expiration of the ninety-day period, unless a new bond is filed during the ninety-day period, in which case the previous bond may be canceled as of the effective date of the new bond. On receipt of notice of the request to cancel the bond due to filing of a new bond, the department shall promptly notify the taxpayer who furnished the bond that the taxpayer, on or before the expiration of the ninety-day period, shall file with the department a new bond with a surety satisfactory to the department in the amount and form required in this section.

G. A taxpayer who is required to file a bond with or provide cash or securities to the department in accordance with this section and who is required by another state law to file another bond with or provide cash or securities to the department may elect to file a combined bond or provide cash or securities applicable to the provision of both this section and the other law, with the approval of the secretary. The amount of the combined bond, cash or securities shall be determined by the department, and the form of the combined bond shall be approved by the attorney general.

H. A taxpayer who is required to file a bond pursuant to the provisions of this section and who for the eight consecutive quarters preceding the date of request has not been a delinquent taxpayer pursuant to the Weight Distance Tax Act may request to be exempt from the requirement to file a bond beginning with the first day of the first quarter following the end of the eight-quarter period. If a taxpayer exempted pursuant to this subsection subsequently becomes a delinquent taxpayer, the department may terminate the exemption and require the filing of a bond in accordance with this section. If the department terminates the exemption, the termination shall not be effective any earlier than ten days after the date the department notifies the taxpayer in writing of the termination.

I. As used in this section, "taxpayer" means a registrant, owner or operator of a motor vehicle on whom the weight distance tax is imposed.

History: Laws 2007, ch. 110, § 2.

7-15A-16. Civil penalties; under-mileage reporters; under-weight reporters.

Any person required to file a report pursuant to Subsection B of Section 7-15A-8 NMSA 1978 that is determined to have reported less than the mileage actually traveled on New Mexico highways during a tax payment period or less than the actual gross vehicle weight traveled during a tax payment period shall, in addition to any other applicable fees, penalties and interest, pay an additional penalty computed in accordance with the following schedule:

Weight Distance Tax Owed Per Period	Penalty
$1 to $99	$ 100
$100 to $499	$ 500
$500 to $999	$1,000
$1,000 to $1,499	$1,500

$1,500 to $1,999	$2,000
$2,000 to $2,499	$2,500
$2,500 to $2,999	$3,000
$3,000 and over	$4,000.

History: Laws 2009, ch. 196, § 1.

ARTICLE 16
Special Fuels Tax (Repealed.)

7-16-1 to 7-16-26. Repealed.

ARTICLE 16A
Special Fuels Supplier Tax

7-16A-1. Short title.

Chapter 7, Article 16A NMSA 1978 may be cited as the "Special Fuels Supplier Tax Act".

History: Laws 1992, ch. 51, § 1; 1993, ch. 272, § 3.

7-16A-2. Definitions.

As used in the Special Fuels Supplier Tax Act:

A. "biodiesel" means a renewable, biodegradable, mono alkyl ester combustible liquid fuel that is derived from agricultural plant oils or animal fats and that meets the American society for testing and materials specifications for biodiesel fuel, B100 or B99 blend stock for distillate fuels;

B. "blended biodiesel" means a diesel engine fuel that contains at least two percent biodiesel;

C. "bulk storage" means the storage of special fuels in any tank or receptacle, other than a supply tank, for the purpose of sale by a dealer or for use by a user or for any other purpose;

D. "bulk storage user" means a user who operates, owns or maintains bulk storage in this state from which the user places special fuel into the supply tanks of motor vehicles owned or operated by that user;

E. "dealer" means any person who sells and delivers special fuel to a user;

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

G. "government-licensed vehicle" means a motor vehicle lawfully displaying a registration plate, as defined in the Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978] issued by:

(1) the United States or any state, identifying the motor vehicle as belonging to the United States or any of its agencies or instrumentalities;

(2) the state of New Mexico, identifying the vehicle as belonging to the state of New Mexico or any of its political subdivisions, agencies or instrumentalities; or

(3) any state, identifying the motor vehicle as belonging to an Indian nation, tribe or pueblo or an agency or instrumentality thereof;

H. "gross vehicle weight" means the weight of a motor vehicle or combination motor vehicle without load, plus the weight of any load on the vehicle;

I. "highway" means every road, highway, thoroughfare, street or way, including toll roads, generally open to the use of the public as a matter of right for the purpose of motor vehicle travel and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair;

J. "motor vehicle" means any self-propelled vehicle or device that is either subject to registration pursuant to Section 66-3-1 NMSA 1978 or is used or may be used on the public highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semitrailer;

K. "person" means an individual or any other entity, including, to the extent permitted by law, any federal, state or other government or any department, agency, instrumentality or political subdivision of any federal, state or other government;

L. "rack operator" means the operator of a refinery in this state, any person who blends special fuel in this state or the owner of special fuel stored at a pipeline terminal in this state;

M. "registrant" means any person who has registered a motor vehicle pursuant to the laws of this state or of another state;

N. "retailer" means a person who sells special fuel generally in quantities of less than two hundred fifty gallons and delivers the special fuel into the supply tanks of motor vehicles;

O. "sale" means any delivery, exchange, gift or other disposition;

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

Q. "special fuel" means any diesel-engine fuel, biodiesel, blended biodiesel or kerosene used for the generation of power to propel a motor vehicle, except for gasoline, liquefied petroleum gas, compressed or liquefied natural gas and products specially prepared and sold for use in aircraft propelled by turbo-prop or jet engines;

R. "special fuel user" means any user who is a registrant, owner or operator of a motor vehicle using special fuel and having a gross vehicle weight in excess of twenty-six thousand pounds;

S. "state" or "jurisdiction" means a state, territory or possession of the United States, the District of Columbia, the commonwealth of Puerto Rico, a foreign country or a state or province of a foreign country;

T. "supplier" means any person, but not including a rack operator or the United States or any of its agencies except to the extent now or hereafter permitted by the constitution of the United States and laws thereof, who receives special fuel;

U. "supply tank" means any tank or other receptacle in which or by which fuel may be carried and supplied to the fuel-furnishing device or apparatus of the propulsion mechanism of a motor vehicle when the tank or receptacle either contains special fuel or special fuel is delivered into it;

V. "tax" means the special fuel excise tax imposed pursuant to the Special Fuels Supplier Tax Act, and, with respect to a special fuel user, "tax" includes any special fuel tax paid to another jurisdiction pursuant to a cooperative agreement to which the state is a party pursuant to Section 9-11-12 NMSA 1978;

W. "user" means any person other than the United States government or any of its agencies or instrumentalities; the state of New Mexico or any of its political subdivisions, agencies or instrumentalities; or an Indian nation, tribe or pueblo or any agency or instrumentality of an Indian nation, tribe or pueblo, who uses special fuel to propel a motor vehicle on the highways; and

X. "wholesaler" means a person who is not a supplier and who sells special fuel in quantities of two hundred fifty gallons or more and does not deliver special fuel into the supply tanks of motor vehicles.

History: 1978 Comp., § 7-16A-2, enacted by Laws 1992, ch. 51, § 2; 1993, ch. 272, § 4; 1995, ch. 16, § 14; 1997, ch. 192, § 5; 2005, ch. 109, § 8; 2013, ch. 109, § 1.

7-16A-2.1. When special fuel received or used; who is required to pay tax.

A. A rack operator receives special fuel at the time and place when the rack operator first loads the special fuel at the refinery or pipeline terminal into tank cars, tank trucks, tank wagons or any other type of transportation equipment or when the rack operator places the special fuel into any tank or other container in this state from which sales or deliveries not involving transportation are made. A rack operator who receives special fuel is required to pay the tax on the special fuel received, except as provided otherwise in Subsection B of this section. Special fuel is not received when it is shipped from one refinery or pipeline terminal to another refinery or pipeline terminal.

B. When the rack operator first loads special fuel at the refinery or pipeline terminal into tank cars, tank trucks, tank wagons or any other type of transportation equipment for the account of another person who is registered with the department as a supplier and is taxable under the Special Fuels Supplier Tax Act, that person receives the special fuel and is required to pay the tax.

C. Special fuel imported into New Mexico by any means other than in the supply tank of a motor vehicle or by pipeline is received at the time and place it is imported into this state. The person who owns the special fuel at the time of importation receives the special fuel and is required to pay the tax.

D. If special fuel is received within the exterior boundaries of an Indian reservation or pueblo grant and the person required to pay the tax is immune from state taxation, the special fuel is also received when the special fuel is transported off the reservation or pueblo grant by any means other than in the fuel supply tank of a motor vehicle or by pipeline. Any person who owns special fuel after the special fuel is transported off the reservation or pueblo grant receives the special fuel and is the person required to pay the tax, unless the tax has been paid by a previous owner.

E. Except as provided in Subsection F of this section, special fuel is used in New Mexico when it is put into the supply tank of any motor vehicle registered, owned or operated by a special fuel user, consumed by a special fuel user in the propulsion of a motor vehicle on the highways of this state or any activity ancillary to that propulsion, or imported into the state in the fuel supply tank of any motor vehicle for the propulsion of the motor vehicle on New Mexico highways.

F. To the extent that a special fuel user whose use of New Mexico highways is limited to that for which the special fuel user holds a valid border crossing special fuel user permit, as provided for in Section 1 of this 2018 act [7-16A-19.1 NMSA 1978], the special fuel user does not use special fuel in this state.

History: 1978 Comp., § 7-16A-2.1, enacted by Laws 1997, ch. 192, § 6; 2018, ch. 77, § 2.

7-16A-3. Imposition and rate of tax; denomination as special fuel excise tax.

A. For the privilege of receiving or using special fuel in this state, there is imposed an excise tax at a rate provided in Subsection B of this section on each gallon of special fuel received in New Mexico.

B. The tax imposed by Subsection A of this section shall be twenty-one cents ($.21) per gallon of special fuel received or used in New Mexico.

C. The tax imposed by this section may be called the "special fuel excise tax".

History: Laws 1992, ch. 51, § 3; 1993, ch. 357, § 10; 2003 (1st S.S.), ch. 3, § 9.

7-16A-4. Special fuel inventory tax; imposition of tax; date payment of tax due.

A. A "special fuel inventory tax" is imposed measured by the quantity of gallons of special fuel in the possession of a supplier or bulk storage user on the day in which an increase in the special fuel excise tax rate is effective. The taxable event is the existence of an inventory in the possession of a supplier or bulk storage user on the day prior to the day in which an increase in the special fuel excise tax rate is effective. The rate of the special fuel inventory tax applicable to each gallon of special fuel held in inventory by a supplier or bulk storage use, as provided in Section 5 [7-16A-5 NMSA 1978] of the Special Fuels Supplier Tax Act, shall be the difference between the special fuel excise tax rate imposed on the day prior to the day in which the special fuel excise tax rate is increased, subtracted from the special fuel excise tax rate imposed on the day in which the special fuel excise tax rate increase is effective, expressed in cents per gallon.

B. The special fuel inventory tax is to be paid to the department on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

History: Laws 1992, ch. 51, § 4.

7-16A-5. Special fuel inventories.

A. On the day prior to the day in which the special fuel excise tax rate is increased or decreased, each supplier, dealer and bulk storage user shall take inventory of the gallons of special fuel on hand.

B. Suppliers and bulk storage users shall report total gallons of special fuel in inventory on the day prior to the day in which an increase in the special fuel excise tax rate is effective and pay any special fuel inventory tax due.

History: Laws 1992, ch. 51, § 5; 2005, ch. 109, § 9.

7-16A-5.1. Manifest or bill of lading required when transporting special fuels.

Every person transporting special fuels from a refinery or other facility at which special fuel is produced, refined, manufactured, blended or compounded or from a pipeline terminal in this state, importing special fuels into this state or exporting special fuels from this state, other than by pipeline or in the fuel supply tanks of motor vehicles, shall carry a manifest or bill of lading in form and content as prescribed by or acceptable to the department. The manifest or bill of lading shall be signed by the consignor and by every person accepting the special fuel or any part of it, with a notation as to the amount accepted. If a manifest or bill of lading is not required to be carried by the terms of this section, any person transporting special fuels without such a manifest or bill of lading shall, upon demand, furnish proof acceptable to the department that the special fuels so transported were legally acquired by a registered supplier who assumed liability for payment of the tax imposed by the Special Fuels Supplier Tax Act.

History: Laws 1997, ch. 192, § 14.

7-16A-6. Special fuel inventory tax refund.

A "special fuel inventory tax refund" is established measured by the quantity of gallons of special fuel in the possession of a supplier or bulk storage user on the day in which a decrease in the special fuel excise tax rate is effective. The refund event is the existence of an inventory in the possession of a supplier or bulk storage user on the day prior to the day in which a decrease in the special fuel excise tax rate is effective. The refund is to be calculated by determining the difference between the special fuel excise tax rate imposed on the day prior to the day in which the special fuel excise tax rate is decreased, subtracted from the special fuel excise tax rate imposed on the day in which the special fuel excise tax rate decrease is effective, expressed in cents per gallon. The refund rate so determined is then multiplied by each gallon in inventory as determined under Section 5 [7-16A-5 NMSA 1978] of the Special Fuels Supplier Tax Act.

History: Laws 1992, ch. 51, § 6.

7-16A-7. Repealed.

7-16A-8. Repealed.

History: Laws 1992, ch. 51, § 8; 1993, ch. 272, § 5; 1997, ch. 192, § 7; 2006, ch. 74, § 3.

7-16A-9. Tax returns; payment of tax.

Rack operators and special fuel suppliers shall file tax returns in form and content as prescribed by the secretary on or before the twenty-fifth day of the month following the month in which special fuel is received in New Mexico. Payment of the tax shall be made with or prior to filing of the return. The department may require that the tax returns be provided through electronic means as long as an exception is provided for rack operators with limited amounts of fuel sold and for suppliers with limited amounts of fuel received.

History: Laws 1992, ch. 51, § 9; 1997, ch. 192, § 8; 2005, ch. 109, § 10.

7-16A-9.1. Returns by retailers; requirements.

Retailers shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which special fuel is purchased in New Mexico. The department may require that the information returns be provided through electronic means if the department provides an exception from that requirement for retailers that purchase limited amounts of fuel.

History: Laws 2005, ch. 109, § 12.

7-16A-9.2. Returns by wholesalers.

Wholesalers shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which special fuel is sold in New Mexico. The department may require that the information returns be provided through electronic means as long as an exception is provided for wholesalers with limited amounts of fuel sold.

History: Laws 2005, ch. 109, § 13.

7-16A-9.3. Returns by rack operators; requirements.

Rack operators shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which special fuel is distributed in New Mexico. The department may require that the information returns be provided through electronic means if the department provides an exception from that requirement for rack operators that distribute limited amounts of fuel.

History: Laws 2005, ch. 109, § 14.

7-16A-9.4. Reporting requirements; special fuel deduction; biodiesel.

A. A taxpayer that deducts an amount of special fuel that is biodiesel from the total amount of special fuel received in New Mexico pursuant to Paragraph (2) of Subsection

H of Section 7-16A-10 NMSA 1978 shall report the deducted amount separately with the taxpayer's return in a manner prescribed by the department.

B. The department shall calculate the aggregate amount, in dollars, of the difference between the amount of special fuel excise tax that would have been collected in a fiscal year if not for the deduction allowed pursuant to Paragraph (2) of Subsection H of Section 7-16A-10 NMSA 1978 and the amount of special fuel excise tax actually collected. The department shall compile an annual report that includes the aggregate amount, the number of taxpayers that deducted an amount of special fuel pursuant to Paragraph (2) of Subsection H of Section 7-16A-10 NMSA 1978 and any other information necessary to evaluate the deduction. Beginning in 2017 and every five years thereafter, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the costs and benefits of the deduction to the state.

History: Laws 2013, ch. 109, § 3.

7-16A-10. Deductions; special fuel excise tax; special fuel suppliers.

In computing the tax due, the following amounts of special fuel may be deducted from the total amount of special fuel received in New Mexico during the tax period, provided that satisfactory proof thereof is furnished to the department:

A. special fuel received in New Mexico, but exported from this state by a rack operator, special fuel supplier or dealer, other than in the fuel supply tank of a motor vehicle or sold for export by a rack operator or distributor; provided that, in either case:

(1) the person exporting the special fuel is registered in or licensed by the destination state to pay that state's special fuel or equivalent fuel tax;

(2) proof is submitted that the destination state's special fuel or equivalent fuel tax has been paid or is not due with respect to the special fuel; or

(3) the destination state's special fuel or equivalent fuel tax is paid to New Mexico in accordance with the terms of an agreement entered into pursuant to Section 9-11-12 NMSA 1978 with the destination state;

B. special fuel sold to the United States or any agency or instrumentality thereof for the exclusive use of the United States or any agency or instrumentality thereof. Special fuel sold to the United States includes special fuel delivered into the supply tank of a government-licensed vehicle;

C. special fuel sold to the state of New Mexico or any political subdivision, agency or instrumentality thereof for the exclusive use of the state of New Mexico or any political subdivision, agency or instrumentality thereof. Special fuel sold to the state of

New Mexico includes special fuel delivered into the supply tank of a government-licensed vehicle;

D. special fuel sold to an Indian nation, tribe or pueblo or any agency or instrumentality thereof for the exclusive use of the Indian nation, tribe or pueblo or any agency or instrumentality thereof. Special fuel sold to an Indian nation, tribe or pueblo includes special fuel delivered into the supply tank of a government-licensed vehicle;

E. special fuel dyed in accordance with federal regulations;

F. special fuel that is number 2 diesel fuel sold for the generation of power to propel a vehicle authorized by contract with the public education department as a school bus; provided that the fuel has a distillation temperature of five hundred degrees Fahrenheit at a ten percent recovery point and six hundred forty degrees Fahrenheit at a ninety percent recovery point;

G. special fuel received in New Mexico on which New Mexico special fuel excise tax was paid by the out-of-state terminal at which the special fuel was loaded, provided that documentation that the special fuel was to be imported into New Mexico was provided to the terminal operator by the person receiving the fuel; and

H. special fuel received in New Mexico that:

(1) prior to July 1, 2014, consists of at least ninety-nine percent vegetable oil or animal fat; provided that the use is restricted to an auxiliary fuel system that is subject to a certificate of conformity pursuant to the federal Clean Air Act; or

(2) is biodiesel received or manufactured and delivered to a rack operator that is within the state for blending or resale.

History: Laws 1992, ch. 51, § 10; 1993, ch. 272, § 6; 1997, ch. 192, § 9; 1998, ch. 44, § 4; 2001, ch. 43, § 1; 2005, ch. 232, § 1; 2006, ch. 74, § 1; 2007, ch. 110, § 3; 2009, ch. 99, § 2; 2009, ch. 99, § 3; 2013, ch. 109, § 2.

7-16A-11. Tax returns; payment of tax; special fuel users; exception.

A. Except as otherwise provided in this section, a special fuel user shall file a special fuel excise tax return in form and content as prescribed by the secretary to conform to the due date for the special fuel excise tax return required by an interstate agreement to which the state is a party.

B. A special fuel user may elect to file and pay the special fuel excise tax annually by conforming to the annual filing requirements of an international fuel tax agreement to which the state is a party.

C. A special fuel user shall file a return in accordance with the conditions and terms of the international fuel tax agreement to which the state is a party.

D. To the extent that a special fuel user whose use of New Mexico highways is limited to that for which the special fuel user holds a valid border crossing special fuel user permit, as provided for in Section 1 of this 2018 act [7-16A-19.1 NMSA 1978], the special fuel user is exempt from the requirements of this section.

History: Laws 1992, ch. 51, § 11; 2005, ch. 109, § 11; 2018, ch. 77, § 3.

7-16A-12. Credit; special fuel excise tax; special fuel users.

In computing any special fuel excise tax due, all special fuel excise tax paid on special fuel used during the reporting period may be credited against the calculated special fuel excise tax due for that reporting period, provided that satisfactory proof of the special fuel excise tax paid is furnished to the department.

History: Laws 1992, ch. 51, § 12; 1997, ch. 192, § 10.

7-16A-13. Claim for refund or credit of special fuel excise tax paid; on special fuel destroyed by fire, accident or acts of God before retail sale; on special fuel previously received from a source other than a refiner or pipeline terminal.

A. Upon the submission of proof satisfactory to the department, the department shall allow a claim for refund or credit of any special fuel excise tax or special fuel inventory tax paid on special fuel destroyed by fire, accident or acts of God while in the possession of a supplier, bulk storage user or dealer.

B. Upon the submission of proof satisfactory to the department, a rack operator may submit, and the department may allow, a claim for refund of a New Mexico tax paid on special fuel previously received in New Mexico from a source other than a refiner or pipeline terminal in this state and placed in a terminal from which it will be loaded into tank cars, tank trucks, tank wagons or other types of transportation equipment.

C. No person may submit claims for refund pursuant to the provisions of this section more frequently than quarterly. No claim for refund may be submitted or allowed on less than one hundred gallons.

D. The department may prescribe the documents necessary to support a claim for refund pursuant to the provisions of this section.

History: Laws 1992, ch. 51, § 13; 2015 (1st S.S.), ch. 2, § 21.

7-16A-13.1. Claim for refund of special fuel excise tax paid on special fuel.

A. Upon the submission of proof satisfactory to the department, a user of special fuel may submit and the department may allow a claim for refund of tax paid on special fuel used to propel a vehicle authorized by contract with the public education department or with a public school district as a school bus, to propel a vehicle off-road, to operate auxiliary equipment by a power take-off from the main engine or transmission of a vehicle or to operate a non-automotive apparatus mounted on a vehicle when the special fuel used for such purposes and the special fuel used to propel the vehicle on the highways are drawn from a common supply tank. The vehicle must be registered with the department. The user must be registered with the department for purposes of reporting and paying gross receipts tax.

B. No person may submit claims for refund pursuant to the provisions of this section more frequently than quarterly. No claim for refund may be submitted or allowed on less than one hundred gallons.

C. The department may prescribe the documents necessary to support a claim for refund pursuant to the provisions of this section. The department may prescribe the use of types of monitoring or measuring equipment.

D. This section applies to special fuel purchased on or after July 1, 2001, except for the refund for special fuel used to propel a school bus, which applies to special fuel purchased on or after July 1, 2005.

History: 1978 Comp., § 7-16A-13.1, enacted by Laws 2001, ch. 43, § 2; 2005, ch. 232, § 2; 2006, ch. 73, § 1; 2006, ch. 74, § 2.

7-16A-14. Registration necessary to engage in business as rack operator, special fuel supplier or dealer.

Each person engaged in the business of selling special fuel in New Mexico as a rack operator, special fuel supplier or dealer shall register as such under the provisions of Section 7-1-12 NMSA 1978.

History: Laws 1992, ch. 51, § 14; 1997, ch. 192, § 11.

7-16A-15. Bond required of supplier.

A. Except as provided in Subsection H of this section, every supplier shall file with the department a bond on a form approved by the attorney general with a surety company authorized by the state corporation commission [public regulation commission] to transact business in this state as a surety and upon which bond the supplier is the principal obligor and the state the obligee. The bond shall be conditioned upon the prompt filing of true reports and the payment by the supplier to the department of all taxes levied by the Special Fuels Supplier Tax Act, together with all applicable penalties and interest thereon.

B. In lieu of the bond, the supplier may elect to file with the department cash or bonds of the United States or New Mexico or of any political subdivision of the state.

C. The total amount of the bond, cash or securities required of any supplier shall be fixed by the department and may be increased or reduced by the department at any time, subject to the limitations provided in this section.

D. In fixing the total amount of the bond, cash or securities required of any supplier required to post bond, the department shall require an equivalent in total amount to at least two times the amount of the department's estimate of the supplier's monthly special fuel excise tax, determined in such manner as the secretary may deem proper; provided, however, the total amount of bond, cash or securities required of a supplier shall never be less than one thousand dollars ($1,000).

E. In the event the department decides that the amount of the existing bond, cash or securities is insufficient to insure payment to this state of the amount of the special fuel excise tax and any penalties and interest for which the supplier is or may at any time become liable, then the supplier shall forthwith, upon written demand of the department mailed to the last known address of the supplier as shown on the records of the department, file an additional bond, cash or securities in the manner, form and amount determined by the department to be necessary to secure at all times the payment by the supplier of all taxes, penalties and interest due pursuant to the Special Fuels Supplier Tax Act.

F. Any surety on any bond furnished by any supplier as required by this section shall be released and discharged from all liability accruing on the bond after the expiration of ninety days from the date upon which the surety files with the department a written request to be released and discharged; provided, however, the request shall not operate to release or discharge the surety from any liability already accrued or that shall accrue before the expiration of the ninety-day period, unless a new bond is filed during the ninety-day period, in which case the previous bond may be canceled as of the effective date of the new bond. On receipt of notice of such request, the department shall notify promptly the supplier who furnished the bond that the supplier shall, on or before the expiration of the ninety-day period, file with the department a new bond with a surety satisfactory to the department in the amount and form required in this section.

G. The supplier required to file bond with or provide cash or securities to the department in accordance with this section and who is required by any other state law to file another bond with or provide cash or securities to the department may elect to file a combined bond or provide cash or securities applicable to the provisions of both this section and the other law, with the approval of the secretary. The amount of the combined bond, cash or securities shall be determined by the department, and the form of the combined bond shall be approved by the attorney general.

H. On July 1, 1994, every supplier who, for the twenty-four month period immediately preceding that date, has not been a delinquent taxpayer under the Special Fuels Supplier Tax Act or the Special Fuels Tax Act [repealed] is exempt from the requirement pursuant to this section to file a bond. A supplier required to file a bond pursuant to the provisions of this section who, for a twenty-four consecutive month period ending after July 1, 1994, has not been a delinquent taxpayer pursuant to either the Special Fuels Supplier Tax Act or the Special Fuels Tax Act [repealed] may request to be exempt from the requirement to file a bond beginning with the first day of the first month following the end of the twenty-four month period. If a supplier exempted pursuant to this subsection subsequently becomes a delinquent taxpayer pursuant to the Special Fuels Supplier Tax Act, the department may terminate the exemption and require the filing of a bond in accordance with this section. If the department terminates the exemption, the termination shall not be effective any earlier than ten days after the date the department notifies the supplier in writing of the termination.

History: Laws 1992, ch. 51, § 15; 1994, ch. 7, § 1; 1997, ch. 192, § 12.

7-16A-15.1. Special fuel users; surety bond required; exceptions.

A. Except as required in Subsection H of this section, every special fuel user with a commercial domicile not located in an International Fuel Tax Agreement jurisdiction shall file with the department a bond on a form approved by the attorney general with a surety company authorized by the public regulation commission to transact business in New Mexico as a surety and upon which bond the special fuel user is the principal obligor and the state the obligee. The bond shall be conditioned upon the prompt filing of true reports and the payment by the special fuel user to the department of all taxes levied by the Special Fuels Supplier Tax Act, together with all applicable penalties and interest on the taxes.

B. In lieu of the bond, the special fuel user may elect to file with the department cash or bonds of the United States or New Mexico or of any political subdivision of the state.

C. The total amount of the bond, cash or securities required of a special fuel user shall be fixed by the department and may be increased or reduced by the department at any time, subject to the limitations provided in this section.

D. In fixing the total amount of the bond, cash or securities required of a special fuel user required to post a bond, the department shall require an amount equivalent to the total estimated tax due for two quarters; provided, however, that the total amount of bond, cash or securities required of a special fuel user shall never be less than five hundred dollars ($500).

E. In the event the department determines that the amount of the existing bond, cash or securities is insufficient to ensure payment to New Mexico of the amount of the special fuel excise tax and penalties and interest for which a special fuel user is or may at any time become liable, the special fuel user, upon written demand from the department mailed to the last known address of the special fuel user as shown on the records of the department, shall file an additional bond, cash or securities in the manner, form and amount determined by the department to be necessary to secure at all times the payment by the special fuel user of all taxes, penalties and interest due pursuant to the Special Fuels Supplier Tax Act.

F. A surety on a bond furnished by a special fuel user as required by this section shall be released and discharged from all liability accruing on the bond after the expiration of ninety days from the date upon which the surety files with the department a written request to be released and discharged; provided, however, that the request shall not operate to release or discharge the surety from liability already accrued or that shall accrue before the expiration of the ninety-day period, unless a new bond is filed during the ninety-day period, in which case the previous bond may be canceled as of the effective date of the new bond. On receipt of notice of the request to cancel the bond due to filing of a new bond, the department shall promptly notify the special fuel user who furnished the bond that the special fuel user, on or before the expiration of the ninety-day period, shall file with the department a new bond with a surety satisfactory to the department in the amount and form required in this section.

G. A special fuel user who is required to file a bond with or provide cash or securities to the department in accordance with this section and who is required by another state law to file another bond with or provide cash or securities to the department may elect to file a combined bond or provide cash or securities applicable to the provision of both this section and the other law, with the approval of the secretary. The amount of the combined bond, cash or securities shall be determined by the department, and the form of the combined bond shall be approved by the attorney general.

H. A special fuel user who is required to file a bond pursuant to the provisions of this section and who for the eight consecutive quarters preceding the date of request has not been delinquent filing reports or paying special fuel excise taxes pursuant to the Special Fuels Supplier Tax Act may request to be exempt from the requirement to file a bond beginning with the first day of the first quarter following the end of the eight-quarter period. If a special fuel user exempted pursuant to this subsection subsequently becomes delinquent, the department may terminate the exemption and require the filing of a bond in accordance with this section. If the department terminates the exemption, the termination shall not be effective any earlier than ten days after the date the department notifies the special fuel user in writing of the termination.

History: Laws 2007, ch. 110, § 4.

7-16A-16. Delivery and use of special fuel prohibited in certain cases.

It is a violation of the Special Fuels Supplier Tax Act to do any of the following acts:

A. operate any motor vehicle upon the highways of this state with a connection between a cargo or other tank or container, not considered in the Special Fuels Supplier Tax Act as being the motor vehicle's fuel supply tank, and a carburetor or other fuel supplying device; fuel supply tanks, including auxiliary fuel supply tanks, shall be separate and apart from cargo tanks or other containers, with no connection by pipe, tube, valve or otherwise;

B. sell or deliver to any person or motor vehicle special fuel from any special fuel supply tank or auxiliary special fuel supply tank; or

C. deliver special fuel from a cargo tank into the special fuel supply tank of a motor vehicle; provided, however, delivery of liquefied petroleum gases may be made into the special fuel supply tank of a motor vehicle carrying a valid permit under the Special Fuels Supplier Tax Act by a registered and licensed liquefied petroleum gas dealer who is also a special fuel dealer when made by that dealer from the cargo tank of a vehicle operated by that dealer, which tank is specially designed to make this type of special fuel delivery.

History: Laws 1992, ch. 51, § 16.

7-16A-17. Repealed.

7-16A-18. Repealed.

7-16A-19. Special fuel user permits; violation.

A. A special fuel user whose vehicle is not registered with the department shall acquire from the department of transportation, before operating the vehicle on New Mexico highways:

(1) a temporary special fuel user permit valid for one calendar day only or for one entry into and one exit out of New Mexico; or

(2) a border crossing special fuel user permit, as provided for in Section 7-16A-19.1 NMSA 1978.

B. A special fuel user applying for a temporary special fuel user permit shall apply for the permit on a form approved by the department.

C. The fee for a temporary special fuel user permit is five dollars ($5.00) for each motor vehicle.

D. It is a violation of the Special Fuels Supplier Tax Act for a person to act as a temporary special fuel user without possessing a valid temporary special fuel user permit issued by the department of transportation.

E. It is a violation of the Special Fuels Supplier Tax Act for a person holding a valid border crossing special fuel user permit to travel in the motor carrier vehicle for which the permit was issued on New Mexico highways outside the area in which the permit authorizes travel, unless the person may otherwise under law engage in that travel. In addition to any other penalty that may apply, a person who violates this provision is subject to a fine of three hundred dollars ($300).

History: Laws 1992, ch. 51, § 19; 1993, ch. 272, § 7; 1997, ch. 192, § 13; 2018, ch. 77, § 4; 2021, ch. 59, § 4.

7-16A-19.1. Border crossing special fuel user permit.

A. A special fuel user who operates a commercial motor carrier vehicle registered or titled in Mexico, who is engaged primarily in movement across the New Mexico-Mexico border and into or from an international border commercial zone and whose exclusive use of New Mexico highways is limited to an area within ten miles of the New Mexico-Mexico border may apply for, on a form approved by the department of transportation, a quarterly, semi-annual or annual border crossing special fuel user permit. The department of transportation shall issue the permit if it approves the application and upon payment of the fee for the permit.

B. The department of transportation shall establish by rule the amount, which shall not exceed the following, of fees for border crossing special fuel user permits:

(1) for a quarterly permit, one hundred twenty-five dollars ($125);

(2) for a semi-annual permit, two hundred dollars ($200); and

(3) for an annual permit, three hundred fifty dollars ($350).

C. As used in this section, "international border commercial zone" means that part of a commercial zone established by a law of the United States that extends into New Mexico.

History: Laws 2018, ch. 77, § 1; 2021, ch. 59, § 5.

7-16A-20. Administration and enforcement of act.

The department shall interpret the provisions of the Special Fuels Supplier Tax Act. The department shall administer and enforce the collection of the special fuel excise tax, the special fuel inventory taxes and the tax on liquefied petroleum gas, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of those taxes.

History: Laws 1992, ch. 51, § 20.

7-16A-20.1. Special fuels; authority of secretary to terminate interstate agreements.

The secretary may terminate:

A. a cooperative agreement involving the taxation of special fuels into which the secretary enters with another state, the District of Columbia, the commonwealth of Puerto Rico or any territory or possession of the United States; or

B. a multistate agreement involving the taxation of special fuels into which the secretary enters.

History: Laws 2005, ch. 109, § 15.

7-16A-21. Temporary provision; continuity of actions.

A. All taxes due but not paid on liquefied petroleum gas or natural gas or on motor vehicles propelled by such a fuel under the Special Fuels Supplier Tax Act on the effective date of the Alternative Fuel Tax Act [Chapter 7, Article 16B NMSA 1978] remain due until paid or until a final determination is made that the taxes are not due.

B. Any protests, claims for refund, court proceedings or other actions ongoing with respect to liquefied petroleum gas or natural gas or to motor vehicles propelled by such a fuel pursuant to the provisions of the Special Fuels Supplier Tax Act on the effective date of the Alternative Fuel Tax Act shall be finally determined with respect to the applicable provisions of the Special Fuels Supplier Tax Act.

History: Laws 1995, ch. 16, § 15.

ARTICLE 16B
Alternative Fuel Tax

7-16B-1. Short title.

Chapter 7, Article 16B NMSA 1978 may be cited as the "Alternative Fuel Tax Act".

History: Laws 1995, ch. 16, § 1; 2014, ch. 34, § 1.

7-16B-2. Purpose.

To encourage the use of alternative fuel for the propulsion of motor vehicles on the roads of New Mexico, thereby increasing the market for supplies of New Mexico natural gas and reducing harmful environmental emissions, it is the purpose of the Alternative Fuel Tax Act to provide for fair taxation of alternative fuel used for such purposes.

History: Laws 1995, ch. 16, § 2.

7-16B-3. Definitions.

As used in the Alternative Fuel Tax Act:

A. "alternative fuel" means liquefied petroleum gas, compressed natural gas, liquefied natural gas or a water-phased hydrocarbon fuel emulsion consisting of a hydrocarbon base and water in an amount not less than twenty percent by volume of the total water-phased fuel emulsion, all of which may be used for the generation of power to propel a motor vehicle on the highways;

B. "alternative fuel user" means any user who is a registrant, owner or operator of a motor vehicle propelled by alternative fuel;

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

D. "distributor" means any person who delivers or dispenses alternative fuel into the supply tank of a motor vehicle;

E. "gallon" means:

(1) for liquid alternative fuel, the quantity of liquid necessary to fill a standard United States gallon liquid measure, which is approximately 3.785 liters; provided that:

(a) in the case of a water-phased hydrocarbon fuel emulsion, a gallon shall be measured only with respect to the hydrocarbon base portion of the emulsion and not to the water base portion; and

(b) in the case of liquefied natural gas, a gallon shall be 6.06 pounds of liquefied natural gas; or

(2) for nonliquid alternative fuel, one hundred fourteen cubic feet; provided that in the case of compressed natural gas, a gallon shall be 5.66 pounds or 126.67 standard cubic feet of compressed natural gas;

F. "gross vehicle weight" means the weight of a motor vehicle or a combination motor vehicle without load, plus the weight of any load on the motor vehicle;

G. "highway" means every road, highway, thoroughfare, street or way, including toll roads, generally open to the use of the public as a matter of right for the purpose of motor vehicle travel and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair;

H. "motor vehicle" means any self-propelled vehicle or device subject to registration under Section 66-3-1 NMSA 1978 that is used or may be used on the public highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semitrailer;

I. "person" means an individual or any other legal entity; "person" also means, to the extent permitted by law, any federal, state or other government or any department, agency or instrumentality of the state, county, municipality or any political subdivision thereof;

J. "registrant" means any person who has registered a motor vehicle pursuant to the laws of this state or of another state;

K. "sale" means any delivery, exchange, gift or other disposition;

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

M. "supply tank" means any tank or other receptacle in which or by which fuel may be carried and supplied to the fuel-furnishing device or apparatus of the propulsion mechanism of a motor vehicle when the tank or receptacle either contains alternative fuel or alternative fuel is delivered into it;

N. "use" means:

(1) the receipt or placing of alternative fuel by an alternative fuel user into the fuel supply tank of any motor vehicle registered, owned or operated by the alternative fuel user;

(2) the consumption by an alternative fuel user of alternative fuel in the propulsion of a motor vehicle on the highways of this state and any activity ancillary to that propulsion; or

(3) the importation of alternative fuel in the fuel supply tank of any motor vehicle as fuel for the propulsion of the motor vehicle on the highways;

O. "user" means any person other than the United States government or any of its agencies or instrumentalities; the state of New Mexico or any of its political subdivisions, agencies or instrumentalities; or an Indian nation, tribe or pueblo or any agency or instrumentality of an Indian nation, tribe or pueblo who uses alternative fuel to propel a motor vehicle on the highways; and

P. the definitions of "alternative fuel user" and "distributor" shall be construed so that a person may at the same time be an alternative fuel user and a distributor.

History: Laws 1995, ch. 16, § 3; 1997, ch. 24, § 1; 2014, ch. 34, § 2.

7-16B-4. Imposition and rate of tax; denomination as alternative fuel excise tax.

A. For the privilege of distributing alternative fuel in this state, there is imposed an excise tax at a rate provided in Subsection C of this section on each gallon of alternative fuel distributed in New Mexico.

B. The tax imposed by this section may be called the "alternative fuel excise tax".

C. For each gallon of alternative fuel distributed in New Mexico, the tax imposed by Subsection A of this section shall be:

(1) for the period beginning January 1, 1996 and ending December 31, 1997, three cents ($0.03) per gallon;

(2) for the period beginning January 1, 1998 and ending December 31, 1999, six cents ($0.06) per gallon;

(3) for the period beginning January 1, 2000 and ending December 31, 2001, nine cents ($0.09) per gallon;

(4) for the period beginning January 1, 2002 and ending June 30, 2014, twelve cents ($0.12) per gallon; and

(5) for the period beginning July 1, 2014 and thereafter:

(a) for alternative fuel that is compressed natural gas, thirteen and three-tenths cents ($.133) per gallon;

(b) for alternative fuel that is liquefied natural gas, twenty and six-tenths cents ($.206) per gallon; and

(c) for alternative fuel not described in Subparagraph (a) or (b) of this paragraph, twelve cents ($.12) per gallon.

D. Alternative fuel purchased for distribution shall not be subject to the alternative fuel excise tax at the time of purchase or acquisition, but the tax shall be due on any alternative fuel at the time it is dispensed or delivered into the supply tank of a motor vehicle that is operated on the highways of this state.

History: Laws 1995, ch. 16, § 4; 2014, ch. 34, § 3.

7-16B-5. Exemptions; alternative fuel excise tax.

A. Alternative fuel distributed to or used by the United States or any agency or instrumentality thereof for the exclusive use of the United States or any agency or instrumentality thereof is exempt from the imposition of the alternative fuel excise tax.

B. Alternative fuel distributed to or used by the state of New Mexico or any political subdivision, agency or instrumentality thereof for the exclusive use of the state of New Mexico or any political subdivision, agency or instrumentality thereof is exempt from the imposition of the alternative fuel excise tax.

C. Alternative fuel distributed to or used by an Indian nation, tribe or pueblo or any agency or instrumentality thereof for the exclusive use of the Indian nation, tribe or pueblo or any agency or instrumentality thereof is exempt from the imposition of the alternative fuel excise tax.

History: Laws 1995, ch. 16, § 5.

7-16B-6. Tax returns; payment of tax; alternative fuel distributors.

A. Alternative fuel distributors shall file alternative fuel excise tax returns in form and content as prescribed by the secretary on or before the twenty-fifth day of the month following the month in which alternative fuel is distributed in New Mexico. Payment of the alternative fuel excise tax shall be made with or prior to filing of the return.

B. In computing the alternative fuel excise tax due, amounts of alternative fuel distributed to an alternative fuel user may be deducted from the total amount of alternative fuel distributed in New Mexico during the tax period provided the alternative fuel user can establish proof of compliance with the provisions of Section 7 [7-16B-7 NMSA 1978] of the Alternative Fuel Tax Act.

History: Laws 1995, ch. 16, § 6.

7-16B-7. Tax returns; payment of tax; alternative fuel user permit.

A. Alternative fuel users who elect to be subject to the provisions of Subsection D of Section 4 [7-16B-4 NMSA 1978] of the Alternative Fuel Tax Act shall pay the annual tax concurrent with vehicle registration.

B. The department shall issue an alternative fuel user permit in a form designed by the department valid for one year from the month of issuance to each alternative fuel user upon the filing of an application by the alternative fuel user acceptable to the department.

C. The department may revoke, after due notice and hearing, the alternative fuel user permit of any alternative fuel user found to be in violation of any provision of the Alternative Fuel Tax Act.

History: Laws 1995, ch. 16, § 7.

7-16B-8. Alternative fuel distributor license required.

A. The department shall issue a license valid for up to three years to each alternative fuel distributor upon the filing of an application by the alternative fuel distributor acceptable to the department.

B. To secure an alternative fuel distributor license, an applicant shall:

(1) register as an alternative fuel distributor under the provisions of Section 7-1-12 NMSA 1978;

(2) file with the department on a form furnished by the department an application for an alternative fuel distributor license; and

(3) accompany the application with payment of an alternative fuel distributor fee in the amount of twenty-five dollars ($25.00).

C. The department may revoke, after due notice and hearing, the alternative fuel distributor license of any alternative fuel distributor found to be in violation of any provision of the Alternative Fuel Tax Act.

History: Laws 1995, ch. 16, § 8.

7-16B-9. Delivery and use of alternative fuel; prohibited acts.

It is a violation of the Alternative Fuel Tax Act to:

A. operate a motor vehicle upon the highways of this state with a connection between a cargo or other tank or container, not considered in the Alternative Fuel Tax Act as being the motor vehicle's fuel supply tank, and a carburetor or other fuel supply device. Fuel supply tanks, including auxiliary fuel supply tanks, shall be separate and apart from cargo tanks or other containers, with no connection by pipe, tube, valve or otherwise;

B. sell or deliver to any person alternative fuel from any alternative fuel supply tank or auxiliary alternative fuel supply tank;

C. deliver alternative fuel from a cargo tank into the alternative fuel supply tank of a motor vehicle; provided, however, delivery of liquefied alternative fuels may be made into the alternative fuel supply tank of a motor vehicle by a registered and licensed alternative fuel distributor when made by that distributor from the cargo tank of a vehicle operated by that distributor, which tank is specially designed to make this type of alternative fuel delivery; or

D. engage in the business of distributing alternative fuel in New Mexico without obtaining an alternative fuel distributor license under the provisions of Section 8 [7-16B-8 NMSA 1978] of the Alternative Fuel Tax Act.

History: Laws 1995, ch. 16, § 9.

7-16B-10. Administration and enforcement of act.

The department shall interpret the provisions of the Alternative Fuel Tax Act. The department shall administer and enforce the collection of the alternative fuel excise tax, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of the tax.

History: Laws 1995, ch. 16, § 10.

ARTICLE 17
Liquor Excise Tax

7-17-1. Short title.

Chapter 7, Article 17 NMSA 1978 may be cited as the "Liquor Excise Tax Act".

History: 1953 Comp., § 46-7-15, enacted by Laws 1966, ch. 49, § 1; recompiled as 1953 Comp., § 72-32-1, by Laws 1973, ch. 166, § 2; 1984, ch. 85, § 1.

7-17-2. Definitions.

As used in the Liquor Excise Tax Act:

A. "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin, aromatic bitters or any similar beverage, including blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one percent alcohol by volume, but "alcoholic beverages" does not include medicinal bitters;

B. "beer" means an alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt and hops or other cereals in water and includes porter, beer, ale and stout;

C. "cider" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears that contains not less than one-half of one percent of alcohol by volume and not more than eight and one-half percent of alcohol by volume;

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

E. "fortified wine" means wine containing more than fourteen percent alcohol by volume when bottled or packaged by the manufacturer, but "fortified wine" does not include:

(1) wine that is sealed or capped by cork closure and aged two years or more;

(2) wine that contains more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that has not been produced with the addition of wine spirits, brandy or alcohol; or

(3) vermouth and sherry;

F. "microbrewer" means a person who produces less than two hundred thousand barrels of beer per year;

G. "person" includes, to the extent permitted by law, a federal, state or other governmental unit or subdivision or an agency, department, institution or instrumentality thereof;

H. "small winegrower" means a winegrower who produces less than one million five hundred thousand liters of wine in a year;

I. "spirituous liquors" means alcoholic beverages, except fermented beverages such as wine, beer, cider and ale;

J. "wholesaler" means a person holding a license issued under Section 60-6A-1 NMSA 1978 or a person selling alcoholic beverages that were not purchased from a person holding a license issued under Section 60-6A-1 NMSA 1978;

K. "wine" means an alcoholic beverage other than cider that is obtained by the fermentation of the natural sugar contained in fruit or other agricultural products, with or without the addition of sugar or other products, and that does not contain more than twenty-one percent alcohol by volume; and

L. "winegrower" means a person licensed pursuant to Section 60-6A-11 NMSA 1978.

History: 1953 Comp., § 46-7-16, enacted by Laws 1966, ch. 49, § 2; recompiled as 1953 Comp., § 72-32-2, by Laws 1973, ch. 166, § 2; 1984, ch. 85, § 2; 1986, ch. 20, § 74; 1991, ch. 161, § 1; 1993, ch. 65, § 6; 1994, ch. 52, § 1; 1995, ch. 70, § 18; 1995, ch. 74, § 1; 1996, ch. 49, § 1; 1997, ch. 143, § 1; 2000 (2nd S.S.), ch. 8, § 1; 2008, ch. 82, § 1; 2013, ch. 94, § 1; 2013, ch. 95, § 1; 2019, ch. 229, § 1.

7-17-3. Repealed.

7-17-4. Repealed.

7-17-5. Imposition and rate of liquor excise tax.

A. There is imposed on a wholesaler who sells alcoholic beverages on which the tax imposed by this section has not been paid an excise tax, to be referred to as the "liquor excise tax", at the following rates on alcoholic beverages sold:

(1) on spirituous liquors, except as provided in Paragraph (9) of this subsection, one dollar sixty cents ($1.60) per liter;

(2) on beer, except as provided in Paragraph (5) of this subsection, forty-one cents ($.41) per gallon;

(3) on wine, except as provided in Paragraphs (4) and (6) of this subsection, forty-five cents ($.45) per liter;

(4) on fortified wine, one dollar fifty cents ($1.50) per liter;

(5) on beer manufactured or produced by a microbrewer and sold in this state, provided that proof is furnished to the department that the beer was manufactured or produced by a microbrewer, eight cents ($.08) per gallon on the first thirty thousand barrels sold, twenty-eight cents ($.28) per gallon for all barrels sold over thirty thousand barrels but less than sixty thousand barrels and forty-one cents ($.41) per gallon for sixty thousand or more barrels sold;

(6) on wine manufactured or produced by a small winegrower and sold in this state, provided that proof is furnished to the department that the wine was manufactured or produced by a small winegrower:

(a) ten cents ($.10) per liter on the first eighty thousand liters sold;

(b) twenty cents ($.20) per liter on each liter sold over eighty thousand liters but not over nine hundred fifty thousand liters; and

(c) thirty cents ($.30) per liter on each liter sold over nine hundred fifty thousand liters but not over one million five hundred thousand liters;

(7) on cider, except as provided in Paragraph (8) of this subsection, forty-one cents ($.41) per gallon;

(8) on cider manufactured or produced by a small winegrower and sold in this state, provided that proof is furnished to the department that the cider was manufactured or produced by a small winegrower, eight cents ($.08) per gallon on the first thirty thousand barrels sold, twenty-eight cents ($.28) per gallon for all barrels sold over thirty thousand barrels but less than sixty thousand barrels and forty-one cents ($.41) per gallon for sixty thousand or more barrels sold; and

(9) on spirituous liquors manufactured or produced by a craft distiller licensed pursuant to Section 60-6A-6.1 NMSA 1978, provided that proof is provided to the department that the spirituous liquors were manufactured or produced by a craft distiller, for products up to ten percent alcohol by volume, eight cents ($.08) per liter for the first two hundred fifty thousand liters sold and twenty-eight cents ($.28) per liter for the next two hundred fifty thousand liters sold and for products over ten percent alcohol by volume, thirty-two cents ($.32) per liter on the first one hundred seventy-five thousand liters sold and sixty-five cents ($.65) per liter on the next two hundred thousand liters sold.

B. The volume of wine transferred from one winegrower to another winegrower for processing, bottling or storage and subsequent return to the transferor shall be excluded pursuant to Section 7-17-6 NMSA 1978 from the taxable volume of wine of the transferee. Wine transferred from an initial winegrower to a second winegrower remains a tax liability of the transferor, provided that if the wine is transferred to the transferee for the transferee's use or for resale, the transferee then assumes the liability for the tax due pursuant to this section.

C. A transfer of wine from a winegrower to a wholesaler for distribution of the wine transfers the liability for payment of the liquor excise tax to the wholesaler upon the sale of the wine by the wholesaler.

History: 1978 Comp., § 7-17-5, enacted by Laws 1993, ch. 65, § 8; 1994, ch. 52, § 2; 1995, ch. 74, § 2; 1996, ch. 49, § 2; 1997, ch. 143, § 2; 2000, ch. 43, § 1; 2000 (2nd S.S.), ch. 8, § 2; 2008, ch. 82, § 2; 2013, ch. 94, § 2; 2013, ch. 95, § 2; 2019, ch. 229, § 2.

7-17-5.1. Repealed.

7-17-6. Deduction; interstate sales; winegrower-to-winegrower transfers.

A. A wholesaler may deduct the liters of spirituous liquors, gallons of beer and liters of wine sold and shipped to a person in another state from the units of alcoholic beverages subject to the tax imposed by the Liquor Excise Tax Act; provided that the department may require the wholesaler to submit evidence satisfactory to the department that the units have been sold and shipped to a person in another state.

B. A winegrower may deduct the liters of wine transferred to the winegrower from another winegrower for processing, bottling or storage and subsequent return to the transferor from the units of wine subject to the liquor excise tax on the licensed premises of the winegrower.

History: 1978 Comp., § 7-17-6, enacted by Laws 1984, ch. 85, § 4; 1995, ch. 70, § 19; 2008, ch. 82, § 3.

7-17-7. Repealed.

7-17-8. Repealed.

7-17-9. Exemption; certain sales to or by instrumentalities of armed forces.

Exempted from the tax imposed by Section 7-17-5 NMSA 1978 are alcoholic beverages sold to or by any instrumentality of the armed forces of the United States engaged in resale activities.

History: 1953 Comp., § 46-7-21, enacted by Laws 1966, ch. 49, § 7; recompiled as 1953 Comp., § 72-32-9, by Laws 1973, ch. 166, § 2; 1984, ch. 85, § 5; 1985, ch. 57, § 1.

7-17-10. Date payment due.

The tax imposed by the Liquor Excise Tax Act is to be paid on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

History: 1953 Comp., § 46-7-22, enacted by Laws 1966, ch. 49, § 8; 1971, ch. 22, § 3; recompiled as 1953 Comp., § 72-32-10, by Laws 1973, ch. 166, § 2; 1984, ch. 85, § 6.

7-17-11. Refund or credit of tax.

The department shall allow a claim for refund or credit as provided in Sections 7-1-26 and 7-1-29 NMSA 1978 for the tax imposed by Section 7-17-5 NMSA 1978 and paid on alcoholic beverages destroyed in shipment, spoiled or otherwise damaged as to be unfit for sale or consumption upon submission of proof satisfactory to the department of such destruction, spoilage or damage.

History: Laws 1968, ch. 22, § 1; 1953 Comp., § 46-7-23; reenacted by Laws 1969, ch. 80, § 1; 1971, ch. 22, § 4; recompiled as 1953 Comp., § 72-32-11 and amended by Laws 1973, ch. 166, § 1; 1977, ch. 249, § 62; 1984, ch. 85, § 7; 1995, ch. 70, § 20.

7-17-12. Interpretation of act; administration and enforcement of tax.

A. The department shall interpret the provisions of the Liquor Excise Tax Act.

B. The department shall administer and enforce the collection of the liquor excise tax, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of the tax.

History: 1978 Comp., § 71-7-12, enacted by Laws 1984, ch. 85, § 8; 1995, ch. 70, § 21.

ARTICLE 18
Electrical Energy Tax (Repealed.)

7-18-1. Repealed.

7-18-2. Repealed.

7-18-3. Repealed.

7-18-4. Repealed.

7-18-5. Repealed.

7-18-6. Repealed.

ARTICLE 18A
Controlled Substance Tax (Repealed.)

7-18A-1. Repealed.

7-18A-2. Repealed.

7-18A-3. Repealed.

7-18A-4. Repealed.

7-18A-5. Repealed.

7-18A-6. Repealed.

7-18A-7. Repealed.

ARTICLE 19
Supplemental Municipal Gross Receipts Tax

7-19-1. Repealed.

7-19-2. Repealed.

7-19-3. Repealed.

7-19-4. Recompiled.

7-19-4.1. Repealed.

7-19-5. Repealed.

7-19-6. Repealed.

7-19-7. Repealed.

7-19-8. Repealed.

7-19-9. Repealed.

7-19-10. Short title.

Sections 7-19-10 through 7-19-18 NMSA 1978 may be cited as the "Supplemental Municipal Gross Receipts Tax Act".

History: Laws 1979, ch. 397, § 1; 1983, ch. 211, § 32.

7-19-11. Definitions.

As used in the Supplemental Municipal Gross Receipts Tax Act:

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

B. "governing body" means the city council or city commission of a municipality;

C. "municipality" means any incorporated city, town or village having previously qualified to impose and did impose the tax pursuant to the provisions of the Supplemental Municipal Gross Receipts Tax Act in effect prior to this 1997 act;

D. "person" means an individual or any other legal entity;

E. "refunding bonds" means bonds issued pursuant to the provisions of the Supplemental Municipal Gross Receipts Tax Act to refund supplemental municipal gross receipts tax bonds issued pursuant to the provisions of that act;

F. "state gross receipts tax" means the gross receipts tax imposed under the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978]; and

G. "supplemental municipal gross receipts tax" means the tax authorized to be imposed under the Supplemental Municipal Gross Receipts Tax Act.

History: Laws 1979, ch. 397, § 2; 1980, ch. 106, § 1; 1986, ch. 20, § 79; 1997, ch. 219, § 1.

7-19-12. Authorization to impose supplemental municipal gross receipts tax; authorization for issuance of supplemental municipal gross receipts bonds; election required.

A. The majority of the members elected to the governing body of a municipality may enact an ordinance imposing an excise tax on any person engaging in business in the municipality for the privilege of engaging in business in the municipality. This tax is to be referred to as the "supplemental municipal gross receipts tax". The rate of the tax shall not exceed one percent of the gross receipts of the person engaging in business and shall be imposed in one-fourth percent increments if less than one percent.

B. The governing body of a municipality enacting an ordinance imposing the tax authorized in Subsection A of this section shall submit the question of imposing such tax and the question of the issuance of supplemental municipal gross receipts bonds in an amount not to exceed nine million dollars ($9,000,000), for which the revenue from the supplemental municipal gross receipts tax is dedicated, to the qualified electors of the municipality at a regular or special election.

C. The questions referred to in Subsection B of this section shall be submitted to a vote of the qualified electors of the municipality as two separate ballot questions which shall be substantially in the following form:

(1) "Shall the municipality be authorized to issue supplemental municipal gross receipts bonds in an amount of not exceeding __________________ dollars for the purpose of constructing and equipping and otherwise acquiring a municipal water supply system?

For ____________ Against ____________"; and

(2) "Shall the municipality impose an excise tax for the privilege of engaging in business in the municipality which shall be known as the "supplemental municipal gross receipts tax" and which shall be imposed at a rate of ____________ percent of the gross receipts of the person engaging in business, the proceeds of which are dedicated to the payment of supplemental municipal gross receipts bonds?

For ____________ Against ____________".

D. Only those voters who are registered electors who reside within the municipality shall be permitted to vote on these two questions. The procedures for conducting the election shall be substantially the same as the applicable provisions in Sections 3-30-1, 3-30-6 and 3-30-7 NMSA 1978 relating to municipal debt.

E. If at an election called pursuant to this section a majority of the voters voting on each of the two questions vote in the affirmative on each such question, then the ordinance imposing the supplemental municipal gross receipts tax shall be approved. If at such election a majority of the voters voting on such questions fail to approve any of the questions, then the ordinance imposing the tax shall be disapproved and the questions required to be submitted by Subsection B of this section shall not be submitted to the voters for a period of one year from the date of the election.

F. Any ordinance enacted under the provisions of this section shall include an effective date of either July 1 or January 1, whichever date occurs first after the expiration of at least five months from the date of the election. A certified copy of any ordinance imposing a supplemental municipal gross receipts tax shall be mailed to the division within five days after the ordinance is adopted by the approval by the electorate. Any ordinance repealing the imposition of a tax under the provisions of the Supplemental Municipal Gross Receipts Tax Act shall become effective on either July 1 or January 1, after the expiration of at least five months from the date the ordinance is repealed by the governing body.

G. Nothing in this section is intended to or does alter the effectiveness or validity of any actions taken in accordance with Subsection G of Section 80 of Chapter 20 of Laws 1986.

History: Laws 1979, ch. 397, § 3; 1980, ch. 106, § 2; 1986, ch. 6, § 1; 1986, ch. 20, § 80; 1997, ch. 219, § 2.

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. prior to July 1, 2021, transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the municipality to another point outside the municipality; or

B. a business located outside the boundaries of a municipality on land owned by that municipality for which a gross receipts tax distribution is made pursuant to Section 7-1-6.4 NMSA 1978.

History: Laws 1979, ch. 397, § 5; 1983, ch. 211, § 33; 1994, ch. 101, § 1; 2019, ch. 270, § 46.

7-19-15. Collection by department; transfer of proceeds; deductions.

A. The department shall collect the supplemental municipal gross receipts tax in the same manner and at the same time it collects the state gross receipts tax.

B. The department shall withhold an administrative fee pursuant to Section 1 [7-1-6.41 NMSA 1978] of this 1997 act. The department shall transfer to each municipality for which it is collecting a supplemental municipal gross receipts tax the amount of the tax collected less the administrative fee withheld and less any disbursements for tax credits, refunds and the payment of interest applicable to the supplemental municipal gross receipts tax. Transfer of the tax to a municipality shall be made within the month following the month in which the tax is collected.

History: Laws 1979, ch. 397, § 6; 1983, ch. 211, § 34; 1997, ch. 125, § 6.

7-19-16. Interpretation of act; administration and enforcement of tax.

A. The division shall interpret the provisions of the Supplemental Municipal Gross Receipts Tax Act.

B. The division shall administer and enforce the collection of the supplemental municipal gross receipts tax, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of the tax.

History: Laws 1979, ch. 397, § 7.

7-19-17. Issuance of bonds; purposes.

A. If the ordinance imposing the supplemental municipal gross receipts tax is approved as provided in Subsection E of Section 7-19-12 NMSA 1978, the governing body of a municipality may issue bonds pursuant to the Supplemental Municipal Gross Receipts Tax Act in an amount not to exceed nine million dollars ($9,000,000). The supplemental municipal gross receipts bonds shall be issued for the purpose of constructing and equipping and otherwise acquiring a municipal water supply system, including the purchase of water rights and easements, equipment and professional fees related thereto, to be paid back from the proceeds of the supplemental municipal gross receipts tax imposed.

B. Supplemental municipal gross receipts bonds shall be issued and sold as provided in the Supplemental Municipal Gross Receipts Tax Act. The governing body of the municipality shall determine at its discretion the terms, covenants and conditions of the supplemental municipal gross receipts bonds, including but not limited to, date of issuance, denomination, maturity, coupon rates, call features, premium, registration, refundability and other matters covering the general and technical aspects of their issuance. These bonds may be either serial or term and may be sold by the governing body of the municipality at the time and in the manner as the governing body may elect, at either public or private sale. The supplemental municipal gross receipts bonds shall not be considered or held to be general obligations of the municipality issuing them and are payable solely from the revenue accruing from the revenue of the supplemental municipal gross receipts tax. The ordinance authorizing the tax shall be irrepealable until these bonds are fully paid.

History: Laws 1979, ch. 397, § 8; 1980, ch. 106, § 3; 1986, ch. 6, § 2.

7-19-17.1. Refunding bonds; authorization.

A. Any municipality may issue refunding bonds for the purpose of refinancing, paying and discharging all or any part of outstanding supplemental municipal gross receipts tax bonds of any one or more or all outstanding issues:

(1) for the acceleration, deceleration or other modification of the payment of such obligations, including without limitation any capitalization of any interest thereon in

arrears or about to become due for any period not exceeding one year from the date of the refunding bonds;

(2) for the purpose of reducing interest costs or affecting other economies;

(3) for the purpose of modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds, otherwise concerning the outstanding bonds or to any facilities relating thereto; or

(4) for any combination of such purposes.

B. The municipality may pledge irrevocably for the payment of interest and principal on refunding bonds the appropriate pledged revenues, which may be pledged to an original issue of bonds as provided in the Supplemental Municipal Gross Receipts Tax Act. Nothing in this section shall permit the pledge of the gross receipts tax revenue to the payment of bonds that refund bonds issued under any other provision of law.

C. Refunding bonds may be issued separately or issued in combination in one series or more.

D. Refunding bonds issued pursuant to the Supplemental Municipal Gross Receipts Tax Act shall be authorized by ordinance. Any bonds that are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of the refunded bonds, or otherwise appertaining thereto, except for any such bond that is voluntarily surrendered for exchange or payment by the holder or owner.

E. Provision shall be made for paying the bonds refunded at the time or places provided in Subsection D of this section. The principal amount of the refunding bonds shall not exceed, but may be less than or be the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds.

F. The proceeds of refunding bonds, including any accrued interest and premium appertaining to the sale of refunding bonds, shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company that possesses and is exercising trust powers and that is a member of the federal deposit insurance corporation, to be applied to the payment of the principal of, interest on and any prior redemption premium due in connection with the bonds being refunded; provided that such refunding bond proceeds, including any accrued interest and any premium appertaining to a sale of refunding bonds, may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest on the refunding bonds and the principal of the refunding bonds or both interest and principal as the municipality may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other money available for its escrow purpose. Any proceeds in escrow pending such use may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of or the principal and interest of which obligations are unconditionally guaranteed by the United States or in certificates of deposit of banks that are members of the federal deposit insurance corporation, the par value of which certificates of deposit is collateralized by a pledge of obligations of or the payment of which is unconditionally guaranteed by the United States, the par value of which obligations is [at] least seventy-five percent of the par value of the certificates of deposit. Such proceeds and investments in escrow together with any interest or other income to be derived from any such investment shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date in connection with which the municipality shall exercise a prior redemption option. Any purchaser of any refunding bond issued pursuant to the provisions of the Supplemental Municipal Gross Receipts Tax Act is in no manner responsible for the application of the proceeds thereof by the municipality or any of its officers, agents or employees.

G. Refunding bonds may be sold at a public or negotiated sale and may bear such additional terms and provisions as may be determined by the municipality subject to limitations in the Supplemental Municipal Gross Receipts Tax Act. The terms, provisions and authorization of the refunding bonds are not subject to the provisions of any other statute, provided that the Public Securities Limitation of Action Act [6-14-4 to 6-14-7 NMSA 1978] shall be fully applicable to the issuance of refunding bonds.

H. The municipality shall receive from the department of finance and administration written approval of any refunding bonds issued pursuant to the provisions of this section.

History: Laws 1997, ch. 219, § 4.

7-19-18. Supplemental municipal gross receipts tax; use of proceeds; restriction.

A. The proceeds from the supplemental municipal gross receipts tax shall be deposited in a special improvement account of the municipality and shall be used only for:

(1) the payment of the principal of, interest on, any prior redemption premiums due in connection with and other expenses related to the supplemental

municipal gross receipts bonds issued pursuant to the Supplemental Municipal Gross Receipts Tax Act;

(2) the funding of any reserves and other accounts in connection with such bonds;

(3) refunding bonds; and

(4) to the extent not needed for those purposes, the improvement of the municipality's water system.

B. When any issue of supplemental municipal gross receipts bonds is fully paid, the supplemental municipal gross receipts tax shall cease to be imposed for that issue, but may continue to be imposed for bonds enacted and approved pursuant to Section 7-19-12 NMSA 1978 and thereafter issued, or for refunding bonds issued pursuant to Section 4 [7-19-17.1 NMSA 1978] of this 1997 act. Any money remaining in a special improvement account after the obligations for supplemental municipal gross receipts bonds and refunding bonds, are fully paid may be transferred to any other fund of the municipality.

History: Laws 1979, ch. 397, § 9; 1980, ch. 106, § 4; 1986, ch. 6, § 3; 1997, ch. 219, § 3.

ARTICLE 19A
Special Municipal Gross Receipts Tax (Repealed.)

7-19A-1. Repealed.

7-19A-2. Repealed.

7-19A-3. Repealed.

7-19A-4. Repealed.

7-19A-5. Repealed.

7-19A-6. Repealed.

7-19A-7. Repealed.

ARTICLE 19B
Municipal Environmental Services Gross Receipts Tax (Repealed.)

7-19B-1. Repealed.

7-19B-2. Repealed.

7-19B-3. Recompiled.

7-19B-4. Repealed.

7-19B-5. Repealed.

7-19B-6. Repealed.

7-19B-7. Repealed.

ARTICLE 19C
Municipal Infrastructure Gross Receipts Tax (Repealed, Recompiled.)

7-19C-1. Repealed.

7-19C-2. Repealed.

7-19C-3. Recompiled.

7-19C-4. Repealed.

7-19C-5. Repealed.

7-19C-6. Repealed.

7-19C-7. Repealed.

ARTICLE 19D
Municipal Local Option Gross Receipts and Compensating Taxes

7-19D-1. Short title.

Chapter 7, Article 19D NMSA 1978 may be cited as the "Municipal Local Option Gross Receipts and Compensating Taxes Act".

History: 1978 Comp., § 7-19D-1, enacted by Laws 1993, ch. 346, § 1; 2019, ch. 270, § 47.

7-19D-2. Definitions.

As used in the Municipal Local Option Gross Receipts Taxes Act:

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

B. "governing body" means the city council or city commission of a city, the board of trustees of a town or village and the board of county commissioners of H-class counties;

C. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, and an H-class county;

D. "person" means an individual or any other legal entity; and

E. "state gross receipts tax" means the gross receipts tax imposed under the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978].

History: 1978 Comp., § 7-19D-2, enacted by Laws 1993, ch. 346, § 2.

7-19D-3. Effective date of ordinance.

An ordinance imposing, amending or repealing a tax or an increment of tax authorized by the Municipal Local Option Gross Receipts Taxes Act shall be effective on July 1 or January 1, whichever date occurs first after the expiration of at least three months from the date the adopted ordinance is mailed or delivered to the department. The ordinance shall include that effective date.

History: 1978 Comp., § 7-19D-3, enacted by Laws 1993, ch. 346, § 3.

7-19D-4. Ordinance shall conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the department.

A. An ordinance imposing a tax under the provisions of the Municipal Local Option Gross Receipts Taxes Act shall adopt by reference the same definitions and the same provisions relating to exemptions and deductions as are contained in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] then in effect and as it may be amended from time to time.

B. The governing body of any municipality imposing a tax under the Municipal Local Option Gross Receipts Taxes Act shall impose the tax by adopting the model ordinance with respect to the tax furnished to the municipality by the department. An ordinance that does not conform substantially to the model ordinance of the department is not valid.

History: 1978 Comp., § 7-19D-4, enacted by Laws 1993, ch. 346, § 4.

7-19D-5. Specific exemptions.

No tax authorized by the provisions of the Municipal Local Option Gross Receipts and Compensating Taxes Act shall be imposed on the gross receipts arising from:

A. prior to July 1, 2021, transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the municipality to another point outside the municipality; or

B. a business located outside the boundaries of a municipality on land owned by that municipality for which a state gross receipts tax distribution is made pursuant to Section 7-1-6.4 NMSA 1978.

History: 1978 Comp., § 7-19D-5, enacted by Laws 1993, ch. 346, § 5; 1994, ch. 101, § 3; 2019, ch. 270, § 48.

7-19D-6. Copy of ordinance to be submitted to department.

A certified copy of the ordinance imposing or repealing a tax authorized under the Municipal Local Option Gross Receipts Taxes Act or changing the tax rate imposed shall be mailed or delivered to the department within five days after the later of the date the ordinance is adopted or the date the results of any election held with respect to the ordinance are certified to be in favor of the ordinance.

History: 1978 Comp., § 7-19D-6, enacted by Laws 1993, ch. 346, § 6.

7-19D-7. Collection by department.

The department shall collect each tax imposed pursuant to the provisions of the Municipal Local Option Gross Receipts and Compensating Taxes Act in the same manner and at the same time it collects the state gross receipts and compensating taxes.

History: 1978 Comp., § 7-19D-7, enacted by Laws 1993, ch. 346, § 7; 1997, ch. 125, § 7; 2019, ch. 270, § 49.

7-19D-8. Interpretation of act; administration and enforcement of act.

A. The department shall interpret the provisions of the Municipal Local Option Gross Receipts Taxes Act.

B. The department shall administer and enforce the collection of each tax authorized under the provisions of the Municipal Local Option Gross Receipts Taxes Act, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of each tax.

History: 1978 Comp., § 7-19D-8, enacted by Laws 1993, ch. 346, § 8.

7-19D-9. Municipal gross receipts tax; authority to impose rate.

A. The majority of the members of the governing body of any municipality may impose by ordinance an excise tax on the gross receipts of any person engaging in business in the municipality for the privilege of engaging in business in the municipality. A tax imposed pursuant to this section shall be imposed by the enactment of one or more ordinances enacting any number of increments of one-hundredth percent; provided that the total increments do not exceed the maximum rate provided in Subsection C of this section; and provided further that, if at the time of enacting the ordinance the total municipal gross receipts tax rate is not an even multiple of one-hundredth percent, the municipality may impose an increment in an amount sufficient to bring the total rate to an even multiple of one-hundredth percent. The governing body of a municipality may, at the time of enacting the ordinance, dedicate the revenue for any municipal purpose. 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.

B. The tax imposed pursuant to Subsection A of this section may be referred to as the "municipal gross receipts tax".

C. The maximum rate of the municipal gross receipts tax on the gross receipts of any person engaging in business in the municipality shall not exceed two and one-half percent. Of that two and one-half percent:

(1) a governing body may choose to require an election to impose increments up to a total of two and five-hundredths percent; and

(2) the remaining increments, up to a total of forty-five hundredths percent, shall not go into effect until after an election is held and a majority of the voters in the municipality voting in the election votes in favor of the tax. Increments approved by voters prior to July 1, 2019 shall be included in the increments approved by the voters, as provided in this paragraph.

D. An election shall be called on the questions of disapproval or approval of any ordinance enacted pursuant to Subsection C 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 the Local Election Act [Chapter 1, Article 22 NMSA 1978]; or

(2) if the ordinance does not contain a mandatory election provision as provided in Paragraph (1) of this subsection, upon the filing of a petition requesting such an election if the petition is filed:

(a) pursuant to the requirements of a referendum provision contained in a municipal home-rule charter and signed by the number of registered voters in the municipality equal to the number of registered voters required in its charter to seek a referendum; or

(b) in all other municipalities, with the municipal clerk within thirty days after the adoption of such ordinance and the petition has been signed by a number of registered voters in the municipality equal to at least five percent of the number of the voters in the municipality who were registered to vote in the most recent regular municipal election.

E. The signatures on the petition filed in accordance with Subsection D of this section shall be verified by the municipal clerk. If the petition is verified by the municipal clerk as containing the required number of signatures of registered voters, the governing body shall adopt an election resolution calling for the holding of a special election on the question of approving or disapproving the ordinance unless the ordinance is repealed before the adoption of the election resolution. An election held pursuant to Subparagraph (a) or (b) of Paragraph (2) of Subsection D of this section shall be called, conducted and canvassed as provided in the Local Election Act, 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 local election if such election occurs within seventy-five days after the date of verification by the municipal clerk.

F. If at an election called pursuant to Subsection D of this section a majority of the registered voters voting on the question approves the ordinance imposing the tax, the ordinance shall become effective in accordance with the provisions of the Municipal

Local Option Gross Receipts and Compensating Taxes Act. If at such an election a majority of the registered voters voting on the question disapproves the ordinance, the ordinance imposing the tax shall be deemed repealed and the question of imposing any increment of the municipal gross receipts tax authorized in this section shall not be considered again by the governing body for a period of one year from the date of the election.

G. Any law that imposes or authorizes the imposition of a municipal gross receipts tax or that affects the municipal gross receipts tax, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any outstanding revenue bonds that may be secured by a pledge of such municipal gross receipts tax unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor.

History: Laws 1978, ch. 151, § 1; 1979, ch. 155, § 1; 1981, ch. 37, § 11; 1982, ch. 3, § 2; 1983, ch. 213, § 18; 1985, ch. 208, § 121; 1986, ch. 20, § 76; 1987, ch. 323, § 26; 1988, ch. 120, § 1; 1978, Comp., § 7-19-4, amended and recompiled as 1978 Comp., § 7-19D-9 by Laws 1993, ch. 346, § 9; 2007, ch. 331, § 5; 2018, ch. 79, § 76; 2019, ch. 274, § 13; 2020, ch. 80, § 11.

7-19D-9.1. Municipal compensating tax.

A. Beginning July 1, 2021, for the privilege of using tangible personal property in a municipality, there is imposed on the person using the property an excise tax at a rate equal to the combined gross receipts tax rates imposed and in effect pursuant to the Supplemental Municipal Gross Receipts Tax Act [7-19-10 to 7-19-18 NMSA 1978] and the Municipal Local Option Gross Receipts and Compensating Taxes Act of the value of tangible personal property that was:

(1) manufactured by the person using the property in the state; or

(2) acquired inside or outside this state as the result of a transaction with a person located outside this state that would have been subject to the state gross receipts tax had the tangible personal property been acquired from a person with nexus with New Mexico.

B. For the purpose of Subsection A of this section, the value of tangible personal property shall be the adjusted basis of the property for federal income tax purposes determined as of the time of acquisition or introduction into this state or of conversion to use, whichever is later. If no adjusted basis for federal income tax purposes is established for the property, a reasonable value of the property shall be used.

C. For the privilege of using a license or franchise in a municipality, there is imposed on the person using the license or franchise an excise tax equal to the tax rate provided in Subsection A of this section against the value of the license or franchise as determined pursuant to Section 7-9-7 NMSA 1978. The department by rule, ruling or instruction shall fairly apportion, where appropriate, the value of a license or franchise to its value in use in the municipality. For use of a license or franchise to be taxable under this subsection, the value of the license or franchise shall be acquired inside or outside this state as the result of a transaction with a person located outside this state that would have been subject to the gross receipts tax had the license or franchise been acquired from a person with nexus with this state.

D. For the privilege of using services in a municipality, there is imposed on the person using the services an excise tax at the rate provided in Subsection A of this section of the value of the services at the time the product of the service was acquired. For use of services to be taxable under this subsection, the services shall have been performed by a person outside this state and the product of which was acquired inside or outside this state as the result of a transaction with a person located outside this state that would have been subject to the gross receipts tax had the service or product of the service been acquired from a person with nexus with this state.

E. The governing body of a municipality may dedicate the revenue from the tax imposed pursuant to this section for any municipal purpose. If the governing body proposes to dedicate revenue for a specific purpose, the dedicated revenue shall be used by the municipality for that purpose unless a subsequent ordinance is adopted to change the purpose to which the revenue is dedicated or to place the revenue in the general fund of the municipality.

F. Any law that affects the municipal compensating tax, or any law supplemental or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any outstanding revenue bonds that may be secured by a pledge of such municipal compensating tax unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor.

G. The tax imposed by this section may be cited as the "municipal compensating tax".

History: 1978 Comp., § 7-19D-9.1, enacted by Laws 2019, ch. 270, § 50.

7-19D-10. Repealed.

History: Laws 1990, ch. 99, § 51; 1978 Comp., § 7-19B-3, amended and recompiled as 1978 Comp., § 7-19D-10 by Laws 1993, ch. 346, § 10; 2009, ch. 284, § 1; 2019, ch. 17, § 1; repealed by Laws 2019, ch. 274, § 16.

7-19D-11. Repealed.

History: Laws 1991, ch. 9, § 3; 1992, ch. 98, § 2; 1978 Comp., § 7-19C-3, amended and recompiled as 1978 Comp., § 7-19D-11 by Laws 1993, ch. 346, § 11; 1998, ch. 90, § 6; 2003, ch. 349, § 18; 2018, ch. 79, § 77; repealed by Laws 2019, ch. 274, § 16.

7-19D-12. Repealed.

History: Laws 2001, ch. 172, § 1; 2005, ch. 129, § 1; 2010, ch. 44, § 1; repealed by Laws 2019, ch. 274, § 16.

7-19D-13. Repealed.

History: Laws 2004, ch. 17, § 1; repealed by Laws 2007, ch. 199, § 2.

7-19D-14. Quality of life gross receipts tax; authority to impose; ordinance requirements; use of revenue; election.

A. Prior to January 1, 2016, the majority of the members of the governing body of a municipality may enact an ordinance imposing an excise tax at a rate not to exceed one-fourth percent of the gross receipts of a person engaging in business in the municipality for the privilege of engaging in business. The tax may be imposed in one or more increments of one-sixteenth percent not to exceed an aggregate rate of one-fourth percent. The tax shall be imposed for a period of not more than ten years from the effective date of the ordinance imposing the tax. Having enacted an ordinance imposing the tax prior to January 1, 2016 pursuant to the provisions of this section, the governing body may enact subsequent ordinances for succeeding periods of not more than ten years; provided that each ordinance meets the requirements of this section and of the Municipal Local Option Gross Receipts Taxes Act. The tax imposed pursuant to the provisions of this section may be referred to as the "quality of life gross receipts tax".

B. The governing body, at the time of enacting an ordinance imposing the quality of life gross receipts tax, shall dedicate the revenue to cultural programs and activities provided by a local government and to cultural programs, events and activities provided by contract or operating agreement with nonprofit or publicly owned cultural organizations and institutions.

C. An ordinance imposing any increment of the quality of life gross receipts tax shall not go into effect until after an election is held and a majority of the voters in the municipality voting in the election votes in favor of imposing the tax. The governing body shall adopt a resolution calling for an election within ninety days of the date the ordinance is adopted on the question of imposing the tax. The question may be submitted to the voters as a separate question at a general election or at a special election called for that purpose by the governing body. A special election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. In any election held, the ballot shall clearly state the purpose to which the revenue will be dedicated pursuant to this section. If a majority of the voters voting on the question approves the ordinance imposing the quality of life gross receipts tax, the ordinance shall become effective in accordance with the provisions of the Municipal Local Option Gross Receipts Taxes Act. If the question of imposing the quality of life gross receipts tax fails, the governing body shall not again propose the imposition of the tax for a period of one year from the date of the election.

D. The quality of life gross receipts tax revenue shall be used to meet the following goals: promoting and preserving cultural diversity; enhancing the quality of cultural programs and activities; fostering greater access to cultural opportunities; promoting culture in order to further economic development within the municipality; and supporting programs, events and organizations with direct, identifiable and measurable public benefit to residents of the municipality. It is the objective of the quality of life gross receipts tax that the revenue from the tax be used to expand and sustain existing programs and to develop new programs, events and activities, rather than to replace other funding sources for existing programs, events and activities.

E. The governing body of a municipality that imposes the quality of life gross receipts tax shall, within sixty days of the election approving the imposition of the tax, appoint a municipal cultural advisory board consisting of between nine and fifteen members. Persons appointed to the board shall be residents of the municipality who are knowledgeable about the activities eligible for quality of life tax funding. The members of the board shall be appointed for fixed terms and shall not be removed during their terms except for malfeasance. The terms of the initial board members shall be staggered so that one-third of the members are appointed for one-year terms, one-third are appointed for two-year terms and one-third are appointed for three-year terms. Subsequent appointments to the board shall be for three-year terms. If a vacancy on the board occurs, the governing body shall appoint a replacement member for the remainder of the unexpired term. A board member shall not serve for more than two consecutive terms.

F. The municipal cultural advisory board shall have the responsibility of overseeing the distribution of the quality of life gross receipts tax revenue for the goals listed in Subsection D of this section. The board shall:

(1) biennially submit recommendations to the governing body for expenditures of revenue from the quality of life gross receipts tax that are allocated pursuant to this section through contracts for services with appropriate organizations and institutions;

(2) establish and publicize the necessary qualifications for organizations and institutions to receive quality of life gross receipts tax funding; and

(3) develop guidelines and procedures for applying for funding through a request for proposals process and the criteria by which contracts will be awarded. The evaluation process shall include a public review component.

G. The municipal cultural advisory board shall establish reporting requirements for recipients of the quality of life gross receipts tax revenue. The board shall provide to the governing body an annual evaluation of the use of revenue from the quality of life gross receipts tax to ensure that it is meeting the goals listed in Subsection D of this section.

H. Every four years, the municipal cultural advisory board shall review and revise as necessary:

(1) the guidelines and procedures for applying for funding; and

(2) the criteria by which applications for funding will be evaluated.

I. As used in this section:

(1) "cultural organizations and institutions" means organizations or institutions that have as a primary purpose the advancement or preservation of zoology, museums, library sciences, art, music, theater, dance, literature or the humanities; and

(2) "municipality" means an incorporated municipality except for an incorporated municipality with a population in excess of two hundred fifty thousand according to the most recent federal decennial census.

History: Laws 2005, ch. 212, § 2.

7-19D-15. Municipal regional spaceport gross receipts tax; authority to impose; rate; election required.

A. A majority of the members of the governing body of a municipality that desires to become a member of a regional spaceport district pursuant to the Regional Spaceport District Act [5-16-1 to 5-16-13 NMSA 1978] shall impose by ordinance an excise tax at a rate not to exceed one-half percent of the gross receipts of a person engaging in business in the municipality for the privilege of engaging in business. A tax imposed pursuant to this section may be imposed by one or more ordinances, each imposing any number of tax rate increments, but an increment shall not be less than one-sixteenth percent of the gross receipts of a person engaging in business in the municipality, and the aggregate of all rates shall not exceed one-half percent of the gross receipts of a person engaging in business in the municipality. The tax may be referred to as the "municipal regional spaceport gross receipts tax".

B. A governing body, at the time of enacting an ordinance imposing a tax authorized in Subsection A of this section, shall dedicate a minimum of seventy-five percent of the revenue to a regional spaceport district for the financing, planning, designing, engineering and construction of a regional spaceport pursuant to the Regional Spaceport District Act and may dedicate no more than twenty-five percent of the revenue for spaceport-related projects as approved by resolution of the governing body of the municipality.

C. An ordinance imposing a municipal regional spaceport gross receipts tax shall not go into effect until after an election is held and a majority of the voters of the municipality voting in the election votes in favor of imposing the tax. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax. The question shall be submitted to the voters of the municipality as a separate question at a regular local election or at a special election called for that purpose by the governing body. An election shall be called, conducted and canvassed as provided in the Local Election Act [Chapter 1, Article 22 NMSA 1978]. If a majority of the voters voting on the question approves the ordinance imposing the municipal regional spaceport gross receipts tax, the ordinance shall become effective in accordance with the provisions of the Municipal Local Option Gross Receipts Taxes Act. If the question of imposing the municipal regional spaceport gross receipts tax fails, the governing body shall not again propose the imposition of an increment of the tax for a period of one year from the date of the election.

D. The governing body of a municipality imposing the municipal regional spaceport gross receipts tax shall transfer a minimum of seventy-five percent of all proceeds from the tax to the regional spaceport district of which it is a member for regional spaceport purposes in accordance with the provisions of the Regional Spaceport District Act. The governing body of a municipality imposing the municipal regional spaceport gross receipts tax may retain no more than twenty-five percent of the municipal regional spaceport gross receipts tax for spaceport-related projects as approved by resolution of the governing body.

History: Laws 2006, ch. 15, § 14; 2018, ch. 79, § 78.

7-19D-16. Municipal higher education facilities gross receipts tax.

A. The majority of the members of the governing body of an eligible municipality may impose by ordinance an excise tax at a rate not to exceed one-fourth of one percent of the gross receipts of a person engaging in business in the municipality for the privilege of engaging in business. The tax may be imposed in increments of one-sixteenth of one percent not to exceed an aggregate rate of one-fourth of one percent. The tax shall be imposed for a period of not more than twenty years from the effective date of the ordinance imposing the tax.

B. The tax imposed pursuant to this section may be referred to as the "municipal higher education facilities gross receipts tax".

C. The governing body, at the time of enacting an ordinance imposing a rate of tax authorized in Subsection A of this section, shall dedicate the revenue only for:

(1) acquisition, construction, renovation or improvement of facilities of a four-year post-secondary public educational institution located in the municipality and acquisition of or improvements to land for those facilities; or

(2) payment of municipal higher education facilities gross receipts tax revenue bonds issued pursuant to Chapter 3, Article 31 NMSA 1978.

D. An ordinance imposing any increment of the municipal higher education facilities gross receipts tax shall not go into effect until after an election is held and a majority of the voters of the municipality voting in the election votes in favor of imposing the tax. The governing body shall adopt a resolution calling for an election on the question of imposing the tax at the next regular municipal election. The question shall be submitted to the voters of the municipality as a separate question. If a majority of the voters voting on the question approves the ordinance imposing the municipal higher education facilities gross receipts tax, the ordinance shall become effective in accordance with the provisions of the Municipal Local Option Gross Receipts Taxes Act. If the question of imposing the municipal higher education facilities gross receipts tax fails, the governing body shall not again propose the imposition of any increment of the tax for a period of one year from the date of the election.

E. For the purposes of this section, "eligible municipality" means a municipality that has a population greater than fifty thousand according to the most recent federal decennial census and that is located in a class B county having a net taxable value for rate-setting purposes for the 2006 property tax year or any subsequent year of more than two billion dollars ($2,000,000,000).

History: Laws 2007, ch. 148, § 1.

7-19D-17. Federal water project gross receipts tax; authorization; use of revenue; referendum.

A. A majority of the members of the governing body of a municipality may enact an ordinance imposing an excise tax on any person engaging in business in the municipality for the privilege of engaging in business. The rate of the tax shall not exceed one-fourth percent of the gross receipts of the person engaging in business. An ordinance enacting the tax authorized by this section is subject to a positive referendum.

B. The tax imposed pursuant to this section may be referred to as the "federal water project gross receipts tax".

C. The governing body of a municipality, at the time of enacting an ordinance imposing the rate of the tax authorized in this section, shall dedicate the revenue for the repayment of loan obligations to the federal government for the construction, expansion, operation and maintenance of a water delivery system and for the expansion, operation and maintenance of that water delivery system after the loan obligation to the federal government is retired or repaid. The revenue from the federal water project gross receipts tax shall not be dedicated to repay revenue bonds or any other form of bonds.

D. An ordinance imposing the federal water project gross receipts tax shall not go into effect until an election is held and a majority of the voters of the municipality voting in the election votes in favor of imposing the tax. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax. The question shall be submitted to the voters of the municipality as a separate question at a regular local election or at a special election called for that purpose by the governing body. An election shall be called, conducted and canvassed as provided in the Local Election Act [Chapter 1, Article 22 NMSA 1978]. If a majority of the voters voting on the question approves the ordinance imposing the federal water project gross receipts tax, then the ordinance shall become effective on January 1 or July 1 in accordance with the provisions of the Municipal Local Option Gross Receipts Taxes Act. If the question of imposing the federal water project gross receipts tax fails, the governing body shall not again propose the imposition of the tax for a period of one year from the date of the election.

E. A municipality that imposed a federal water project gross receipts tax pursuant to this section shall not also impose a municipal capital outlay gross receipts tax.

F. As used in this section, "municipality" means an incorporated municipality that has a population pursuant to the most recent federal decennial census of greater than twenty thousand but less than twenty-five thousand and is located in a class B county.

History: Laws 2012, ch. 58, § 1; 2018, ch. 79, § 79.

7-19D-18. Repealed.

History: Laws 2013, ch. 160, § 11; repealed by Laws 2019, ch. 274, § 16.

7-19D-19. Municipal flood recovery gross receipts tax.

A. The majority of the members of the governing body of a municipality may impose by ordinance an excise tax at a rate not to exceed three-eighths percent of the gross receipts of a person engaging in business in the municipality for the privilege of engaging in business. The tax may be imposed in increments of one-thousandth percent not to exceed an aggregate rate of three-eighths percent. The tax shall be imposed until the flood recovery revenue bonds issued pursuant to Section 3-31-1 NMSA 1978 are fully discharged or otherwise provided for in full.

B. The tax imposed pursuant to this section may be referred to as the "municipal flood recovery gross receipts tax".

C. A governing body, at the time of enacting an ordinance imposing a rate of tax authorized in Subsection A of this section, shall dedicate the revenue only for payment of flood recovery revenue bonds issued pursuant to Section 3-31-1 NMSA 1978.

History: Laws 2025, ch. 24, § 3.

ARTICLE 20
County Gross Receipts Tax (Repealed, Recompiled.)

7-20-1. Repealed.

7-20-2. Repealed.

7-20-3. Recompiled.

7-20-3.1. Recompiled.

7-20-4. Repealed.

7-20-5. Recompiled.

7-20-6. Repealed.

7-20-7. Repealed.

7-20-8. Recompiled.

7-20-9. Repealed.

7-20-10 to 7-20-18. Repealed.

7-20-19. Repealed.

7-20-20. Repealed.

7-20-21. Recompiled.

7-20-22. Repealed.

7-20-23. Repealed.

7-20-24. Repealed.

7-20-25. Repealed.

7-20-26. Recompiled.

ARTICLE 20A
County Fire Protection Excise Tax (Repealed, Recompiled.)

7-20A-1. Repealed.

7-20A-2. Repealed.

7-20A-3. Recompiled.

7-20A-4. Repealed.

7-20A-5. Repealed.

7-20A-6. Repealed.

7-20A-7. Repealed.

7-20A-8. Recompiled.

7-20A-9. Repealed.

ARTICLE 20B
County Environmental Services Gross Receipts Tax (Repealed, Recompiled.)

7-20B-1. Repealed.

7-20B-2. Repealed.

7-20B-3. Recompiled.

7-20B-4. Repealed.

7-20B-5. Repealed.

7-20B-6. Repealed.

7-20B-7. Repealed.

ARTICLE 20C
Local Hospital Gross Receipts Tax (Repealed.)

7-20C-1. Repealed.

History: Laws 1991, ch. 176, § 1; repealed by Laws 2019, ch. 274, § 16.

7-20C-2. Repealed.

History: Laws 1991, ch. 176, § 2; 1993, ch. 306, § 1; 1996, ch. 18, § 1; 1996 (1st S.S.), ch. 6, § 1; 1997, ch. 54, § 1; 1997, ch. 129, § 1; 2000, ch. 33, § 6; 2002, ch. 17, § 1; 2003, ch. 50, § 1; 2007, ch. 80, § 1; repealed by Laws 2019, ch. 274, § 16.

7-20C-3. Repealed.

History: Laws 1991, ch. 176, § 3; 1993, ch. 306, § 2; 1994, ch. 14, § 2; 1994, ch. 101, § 4; 1995, ch. 70, § 22; 1996 (1st S.S.), ch. 6, § 2; 1997, ch. 54, § 2; 2002, ch. 17, § 2; 2003, ch. 50, § 2; 2007, ch. 80, § 2; 2009, ch. 16, § 1; repealed by Laws 2019, ch. 274, § 16.

7-20C-4. Repealed.

History: Laws 1991, ch. 176, § 4; repealed by Laws 2019, ch. 274, § 16.

7-20C-5. Repealed.

History: Laws 1991, ch. 176, § 5; 1994, ch. 101, § 5; repealed by Laws 2019, ch. 274, § 16.

7-20C-6. Repealed.

History: Laws 1991, ch. 176, § 6; 1997, ch. 125, § 8; 2003, ch. 205, § 2; 2005, ch. 338, § 2; repealed by Laws 2019, ch. 274, § 16.

7-20C-7. Repealed.

History: Laws 1991, ch. 176, § 7; repealed by Laws 2019, ch. 274, § 16.

7-20C-8. Repealed.

History: Laws 1991, ch. 176, § 8; repealed by Laws 2019, ch. 274, § 16.

7-20C-9. Repealed.

History: Laws 1991, ch. 176, § 9; 1993, ch. 306, § 3; 1996, ch. 18, § 2; 1996 (1st S.S.), ch. 6, § 3; 1997, ch. 54, § 3; repealed by Laws 2019, ch. 274, § 16.

7-20C-9.1. Repealed.

History: 1978 Comp., § 7-20C-9.1, enacted by Laws 1993, ch. 306, § 4; repealed by Laws 2019, ch. 274, § 16.

7-20C-10. Repealed.

History: Laws 1991, ch. 176, § 10; repealed by Laws 2019, ch. 274, § 16.

7-20C-11. Repealed.

History: Laws 1991, ch. 176, § 11; 1994, ch. 4, § 1; 1996 (1st S.S.), ch. 6, § 4; repealed by Laws 2019, ch. 274, § 16.

7-20C-12. Repealed.

History: Laws 1991, ch. 176, § 12; repealed by Laws 2019, ch. 274, § 16.

7-20C-13. Repealed.

History: Laws 1991, ch. 176, § 13; repealed by Laws 2019, ch. 274, § 16.

7-20C-14. Repealed.

History: Laws 1991, ch. 176, § 14; repealed by Laws 2019, ch. 274, § 16.

7-20C-15. Repealed.

History: Laws 1991, ch. 176, § 15; repealed by Laws 2019, ch. 274, § 16.

7-20C-16. Repealed.

History: Laws 1996, ch. 18, § 3; repealed by Laws 2019, ch. 274, § 16

7-20C-17. Repealed.

History: Laws 1996, ch. 18, § 4; repealed by Laws 2019, ch. 274, § 16.

ARTICLE 20D
County Health Care Gross Receipts Tax (Repealed, Recompiled.)

7-20D-1. Repealed.

7-20D-2. Repealed.

7-20D-3. Recompiled.

7-20D-4. Repealed.

7-20D-5. Repealed.

7-20D-6. Repealed.

7-20D-7. Repealed.

ARTICLE 20E
County Local Option Gross Receipts and Compensating Taxes

7-20E-1. Short title.

Chapter 7, Article 20E NMSA 1978 may be cited as the "County Local Option Gross Receipts and Compensating Taxes Act".

History: 1978 Comp., § 7-20E-1, enacted by Laws 1993, ch. 354, § 1; 2019, ch. 270, § 51.

7-20E-2. Definitions.

As used in the County Local Option Gross Receipts Taxes Act:

A. "county" means, unless specifically defined otherwise in the County Local Option Gross Receipts Taxes Act, a county, including an H class county;

B. "county area" means that portion of a county located outside the boundaries of any municipality, except that for H class counties, "county area" means the entire county;

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

D. "governing body" means the county commission of the county or the county council of an H class county;

E. "person" means an individual or any other legal entity; and

F. "state gross receipts tax" means the gross receipts tax imposed under the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978].

History: 1978 Comp., § 7-20E-2, enacted by Laws 1993, ch. 354, § 2; 1994, ch. 93, § 1; 1994, ch. 97, § 1.

7-20E-3. Optional referendum selection; effective date of ordinance.

A. The governing body of a county imposing a tax or an increment of tax authorized by the County Local Option Gross Receipts Taxes Act or any other county local option gross receipts tax act that is subject to optional referendum selection shall select, when enacting the ordinance imposing the tax, one of the following referendum options:

(1) the ordinance imposing the tax or increment of tax shall go into effect on July 1 or January 1 in accordance with the provisions of the County Local Option Gross Receipts Taxes Act, but an election may be called in the county on the question of approving or disapproving that ordinance as follows:

(a) an election shall be called when: 1) in a county having a referendum provision in its charter, a petition requesting such an election is filed pursuant to the requirements of that provision in the charter and signed by the number of registered voters in the county equal to the number of registered voters required in its charter to seek a referendum; and 2) in all other counties, a petition requesting such an election is filed with the county clerk within sixty days of enactment of the ordinance by the governing body and the petition has been signed by a number of registered voters in the county equal to at least five percent of the number of the voters in the county who were registered to vote in the most recent general election;

(b) the signatures on the petition requesting an election shall be verified by the county clerk. If the petition is verified by the county clerk as containing the required number of signatures of registered voters, the governing body shall adopt a resolution calling an election on the question of approving or disapproving the ordinance. The election shall be held within sixty days after the date the petition is verified by the county clerk, or it may be held in conjunction with a general election if that election occurs within sixty days after the date of the verification. The election shall be called, held, conducted and canvassed in substantially the same manner as provided by law for general elections; and

(c) if a majority of the registered voters voting on the question approves the ordinance, the ordinance shall go into effect on July 1 or January 1 in accordance with the provisions of the County Local Option Gross Receipts Taxes Act. If at such an election a majority of the registered voters voting on the question disapproves the ordinance, the ordinance imposing the tax shall be deemed repealed and the question of imposing the tax or increment of tax shall not be considered again by the governing body for a period of one year from the date of the election; or

(2) the ordinance imposing the tax or increment of tax shall not go into effect until after an election is held and a simple majority of the registered voters of the county voting on the question votes in favor of imposing the tax or increment of tax. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax or increment of tax. Such question may be submitted to the voters and voted upon as a separate question at any general election or at any special election called for that purpose by the governing body. The election upon the question shall be called, held, conducted and canvassed in substantially the same manner as may be provided by law for general elections. If the question of imposing the tax or increment of tax fails, the governing body shall not again propose the tax or increment of tax for a period of one year after the election.

B. An ordinance imposing, amending or repealing a tax or an increment of tax authorized by the County Local Option Gross Receipts Taxes Act shall be effective on July 1 or January 1, whichever date occurs first after the expiration of at least three months from the date the adopted ordinance is mailed or delivered to the department. The ordinance shall include that effective date.

History: 1978 Comp., § 7-20E-3, enacted by Laws 1993, ch. 354, § 3; 2004, ch. 110, § 1.

7-20E-4. Ordinance shall conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the department.

A. An ordinance imposing a tax under the provisions of the County Local Option Gross Receipts Taxes Act shall adopt by reference the same definitions and the same provisions relating to exemptions and deductions as are contained in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] then in effect and as it may be amended from time to time.

B. The governing body of any county imposing a tax under the County Local Option Gross Receipts Taxes Act shall impose the tax by adopting the model ordinance with respect to the tax furnished to the county by the department. An ordinance that does not conform substantially to the model ordinance of the department is not valid.

History: 1978 Comp., § 7-20E-4, enacted by Laws 1993, ch. 354, § 4.

7-20E-5. Repealed.

History: 1978 Comp., § 7-20E-5, enacted by Laws 1993, ch. 354, § 5; 1994, ch. 101, § 6; repealed by Laws 2019, ch. 270, § 57.

7-20E-6. Copy of ordinance to be submitted to department.

A certified copy of any ordinance imposing or repealing a tax or an increment of a tax authorized under the County Local Option Gross Receipts Taxes Act or changing the tax rate imposed shall be mailed or delivered to the department within five days after the later of the date the ordinance is adopted or the date the results of any election held with respect to the ordinance are certified to be in favor of the ordinance.

History: 1978 Comp., § 7-20E-6, enacted by Laws 1993, ch. 354, § 6.

7-20E-7. Collection by department.

The department shall collect each tax imposed pursuant to the provisions of the County Local Option Gross Receipts and Compensating Taxes Act in the same manner and at the same time it collects the state gross receipts and compensating taxes.

History: 1978 Comp., § 7-20E-7, enacted by Laws 1993, ch. 354, § 7; 1997, ch. 125, § 9; 2008, ch. 51, § 2; 2014, ch. 79, § 2; 2019, ch. 270, § 52.

7-20E-8. Interpretation of act; administration and enforcement of act.

A. The department shall interpret the provisions of the County Local Option Gross Receipts Taxes Act.

B. The department shall administer and enforce the collection of each tax authorized under the provisions of the County Local Option Gross Receipts Taxes Act, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of each tax.

History: 1978 Comp., § 7-20E-8, enacted by Laws 1993, ch. 354, § 8.

7-20E-9. County gross receipts tax; authority to impose rate; county health care assistance fund requirements.

A. A majority of the members of the governing body of a county may impose by ordinance an excise tax on the gross receipts of a person engaging in business in the county or the county area. A tax imposed pursuant to this section shall be imposed by the enactment of one or more ordinances enacting any number of increments of one-hundredth percent; provided that the total increments do not exceed the maximum rate provided in Subsections C and D of this section; and provided further that, if at the time of enacting the ordinance the total county gross receipts tax rate is not an even multiple of one-hundredth percent, the county may impose an increment in an amount sufficient to bring the total rate to an even multiple of one-hundredth percent. The governing body may, at the time of enacting the ordinance, dedicate the revenue for any county purpose.

B. The tax authorized by this section is to be referred to as the "county gross receipts tax".

C. The maximum rate of the county gross receipts tax that may be imposed on the gross receipts of any person engaging in business in a county shall not exceed one and twenty-five hundredths percent. Of that one and twenty-five hundredths percent:

(1) a governing body may choose to require an election to impose increments up to a total of one percent; and

(2) the remaining increments, up to a total of twenty-five hundredths percent, shall not go into effect until after an election is held and a majority of the voters in the county voting in the election votes in favor of the tax. Increments approved by voters prior to July 1, 2019 shall be included in the increments approved by the voters, as provided in this paragraph.

D. In addition to the maximum rate that may be imposed on the gross receipts of any person engaging in business in a county, the maximum rate of the county gross receipts tax that may be imposed on the gross receipts of any person engaging in business in a county area shall not exceed one-half percent. Of that one-half percent:

(1) a governing body may choose to require an election to impose increments that total twelve hundredths percent; but

(2) the remaining increments, up to a total of thirty-eight hundredths percent, shall not go into effect until after an election is held and a majority of the voters in the county area voting in the election votes in favor of the tax. Increments approved by voters prior to July 1, 2019 shall be included in the increments approved by the voters, as provided in this paragraph.

E. A class A county with a county hospital operated and maintained pursuant to a lease or operating agreement with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico shall provide not less than one million dollars ($1,000,000) in funds, and that amount shall be dedicated to the support of indigent patients who are residents of that county. Funds for indigent care shall be made available each month of each year the tax is in effect in an amount not less than eighty-three thousand three hundred thirty-three dollars thirty-three cents ($83,333.33). The interest from the investment of county funds for indigent care may be used for other assistance to indigent persons, not to exceed twenty thousand dollars ($20,000) for all other assistance in any year.

F. A county, except a class A county with a county hospital operated and maintained pursuant to a lease or operating agreement with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico, shall be required to dedicate revenue produced by the imposition of a one-eighth percent gross receipts tax increment for the support of indigent patients who are residents of that county. A county that imposed up to two one-eighth percent increments on January 1, 1996 for support of indigent patients in the county or, after January 1, 1996, imposes a one-eighth percent increment and dedicates one-half of that increment for county indigent patient purposes shall deposit the revenue dedicated for county indigent purposes that is transferred to the county in the county health care assistance fund, and such revenues shall be expended pursuant to the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978].

History: Laws 1983, ch. 213, § 30; 1986, ch. 20, § 84; 1989, ch. 169, § 1; 1991, ch. 212, § 16; 1978 Comp., § 7-20-3, amended and recompiled as 1978 Comp., § 7-20E-9 by Laws 1993, ch. 354, § 9; 1996, ch. 29, § 1; 1998, ch. 90, § 8; 2004, ch. 110, § 2; 2008, ch. 51, § 3; 2014, ch. 79, § 3; 2019, ch. 274, § 14; 2020, ch. 80, § 12.

7-20E-9.1. County compensating tax.

A. Beginning July 1, 2021, for the privilege of using tangible personal property in a county, there is imposed on the person using the property an excise tax at a rate equal to the combined gross receipts tax rates imposed and in effect pursuant to the Local Hospital Gross Receipts Tax Act [repealed], the County Local Option Gross Receipts and Compensating Taxes Act [Chapter 7, Article 20E NMSA 1978] and the County Correctional Facility Gross Receipts Tax Act [7-20F-3 to 7-20F-12 NMSA 1978] of the value of tangible personal property that was:

(1) manufactured by the person using the property in the state; or

(2) acquired inside or outside this state as the result of a transaction with a person located outside this state that would have been subject to the state gross receipts tax had the tangible personal property been acquired from a person with nexus with New Mexico.

B. For the purpose of Subsection A of this section, the value of tangible personal property shall be the adjusted basis of the property for federal income tax purposes determined as of the time of acquisition or introduction into this state or of conversion to use, whichever is later. If no adjusted basis for federal income tax purposes is established for the property, a reasonable value of the property shall be used.

C. For the privilege of using a license or franchise in a county, there is imposed on the person using the license or franchise an excise tax equal to the tax rate provided in

Subsection A of this section against the value of the license or franchise as determined pursuant to Section 7-9-7 NMSA 1978. The department by rule, ruling or instruction shall fairly apportion, where appropriate, the value of a license or franchise to its value in use in the county. For use of a license or franchise to be taxable under this subsection, the value of the license or franchise shall be acquired inside or outside this state as the result of a transaction with a person located outside this state that would have been subject to the gross receipts tax had the license or franchise been acquired from a person with nexus with this state.

D. For the privilege of using services in a county, there is imposed on the person using the services an excise tax at the rate provided in Subsection A of this section of the value of the services at the time the product of the service was acquired. For use of services to be taxable under this subsection, the services shall have been performed by a person outside this state and the product of which was acquired inside or outside this state as the result of a transaction with a person located outside this state that would have been subject to the gross receipts tax had the service or product of the service been acquired from a person with nexus with this state.

E. The governing body of a county may dedicate the revenue from the tax imposed pursuant to this section for any county purpose. If the governing body proposes to dedicate revenue for a specific purpose, the dedicated revenue shall be used by the county for that purpose unless a subsequent ordinance is adopted to change the purpose to which the revenue is dedicated or to place the revenue in the general fund of the county.

F. Any law that affects the county compensating tax, or any law supplemental or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any outstanding revenue bonds that may be secured by a pledge of such county compensating tax unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor.

G. The tax imposed by this section may be cited as the "county compensating tax".

History: 1978 Comp., § 7-20E-9.1, enacted by Laws 2019, ch. 270, § 53.

7-20E-10. Repealed.

History: Laws 1983, ch. 213, § 32; 1986, ch. 20, § 85; 1978 Comp., § 7-20-5, amended and recompiled as 1978 Comp., § 7-20E-10 by Laws 1993, ch. 354, § 10; 1994, ch. 101, § 7; 2004, ch. 110, § 3; repealed by Laws 2019, ch. 274, § 16.

7-20E-11. Repealed.

History: Laws 1983, ch. 213, § 35; 1986, ch. 20, § 87; 1978 Comp., § 7-20-8, amended and recompiled as 1978 Comp., § 7-20E-11 by Laws 1993, ch. 354, § 11; repealed by Laws 2019, ch. 274, § 16.

7-20E-12. Repealed.

History: 1978 Comp., § 7-20-3.1, enacted by Laws 1989, ch. 239, § 1; 1978 Comp., § 7-20-3.1, amended and recompiled as 1978 Comp., § 7-20E-12 by Laws 1993, ch. 354, § 12; repealed by Laws 2019, ch. 274, § 16.

7-20E-12.1. County hospital emergency gross receipts tax; authority to impose; use of proceeds.

A. A majority of the members of a governing body may enact an ordinance imposing an excise tax on a person engaging in business in the county for the privilege of engaging in business. The rate of the tax shall be one-fourth of one percent of the gross receipts of the person engaging in business. The tax shall be imposed for a period of not more than two years from the effective date of the ordinance imposing the tax. The tax may be imposed for an additional period not to exceed three years from the date of the ordinance imposing the tax for that period. On or after July 1, 1997:

(1) in a county described in Paragraph (1) of Subsection D of this section, the tax may be imposed for the period necessary for payment of bonds or a loan for acquisition of land or buildings for and the design, construction, equipping, remodeling or improvement of a county hospital facility, but the period shall not exceed twenty years from the effective date of the ordinance imposing the tax for that period; provided, however, that a majority of the members of a governing body that has enacted an ordinance imposing the tax pursuant to the provisions of this paragraph may, prior to the date of the delayed repeal of the ordinance, enact an ordinance to extend the period of imposition of the previously imposed tax for an additional twenty years and modify the purposes for which the revenue from the tax is dedicated, consistent with one or more of the purposes permitted pursuant to this paragraph; and

(2) in a county described in Paragraph (2) of Subsection D of this section, the tax may be imposed for the period necessary for payment of bonds or a loan for acquisition, equipping, remodeling or improvement of a county health facility, but the period shall not exceed twenty years from the effective date of the ordinance imposing the tax for that period.

B. The tax imposed by this section may be referred to as the "county hospital emergency gross receipts tax".

C. At the time of enacting the ordinance imposing the tax authorized in this section:

(1) if the effective date of the tax is prior to July 1, 1997, the governing body shall dedicate the revenue for current operations and maintenance of a hospital owned

by the county or a hospital with which the county has entered into a health care facilities contract; provided that a majority of the members of a governing body may enact an ordinance to change the purposes for which the revenue from a previously imposed tax is dedicated and to dedicate that revenue during the remainder of the tax imposition period to payment of bonds or a loan for acquisition of land or buildings for, and the design, construction, equipping, remodeling or improvement of, a county hospital facility; and

(2) if the effective date of the tax is on or after July 1, 1997:

(a) the governing body of a county described in Paragraph (1) of Subsection D of this section shall dedicate the revenue for the period of time the tax is imposed to payment of a bond or loan for acquisition, equipping, remodeling and improvement of a county hospital facility; provided, however, that a majority of the members of a governing body that has imposed the tax and dedicated the revenue from that imposition pursuant to the provisions of this paragraph may, prior to the date of the delayed repeal of the ordinance imposing the tax, enact an ordinance to extend the period of imposition of the tax as provided in Paragraph (1) of Subsection A of this section and modify the purposes for which the revenue from the previously imposed tax is dedicated, and dedicate that revenue to payment of bonds or a loan for acquisition of land or buildings for, and the design, construction, equipping, remodeling or improvement of, a county hospital facility; and

(b) the governing body of a county described in Paragraph (2) of Subsection D of this section shall dedicate the revenue for the period of time the tax is imposed to payment of a bond or loan for acquisition, equipping, remodeling and improvement of a county health facility.

D. As used in this section, "county" means:

(1) a class B county with a population of less than ten thousand according to the 1990 federal decennial census and with a net taxable value for rate-setting purposes for the 1993 property tax year in excess of one hundred million dollars ($100,000,000); or

(2) a class B county with a population of less than ten thousand according to the 1990 federal decennial census and with a net taxable value for rate-setting purposes for the 1997 property tax year of more than one hundred million dollars ($100,000,000) but less than one hundred twenty million dollars ($120,000,000).

History: Laws 1994, ch. 14, § 1; 1996, ch. 34, § 1; 1997, ch. 20, § 2; 2000, ch. 69, § 2; 2010, ch. 75, § 1.

7-20E-12.2. County hospital gross receipts tax; authority to impose; rate; election; use of revenue.

A. Upon submission of a resolution to the governing body pursuant to Subsection D of this section, the governing body of a county shall enact an ordinance imposing or reimposing an excise tax at a rate of one-half percent on any person engaging in business in the county for the privilege of engaging in business in the county. The tax imposed pursuant to this section may be referred to as the "county hospital gross receipts tax".

B. The governing body, at the time of enacting an ordinance imposing a tax pursuant to this section, shall dedicate:

(1) twenty-five percent of the revenue to support a nursing program administered by a state university or branch of a state university within the boundaries of the county; and

(2) the remainder of the revenue for the payment of gross receipts tax bonds for hospital capital projects in the county. The tax shall be imposed for the period necessary for payment of the principal and interest on the revenue bonds issued to accomplish the purpose for which the revenue is dedicated, but the period shall not exceed ten years from the effective date of the ordinance imposing the tax.

C. The governing body may reimpose a county hospital gross receipts tax to be effective upon termination of a previously imposed county hospital gross receipts tax by following the procedures set forth in this section.

D. An ordinance imposing the county hospital gross receipts tax shall not go into effect until after an election is held and a majority of the voters in the county voting in the election votes in favor of imposing the tax. The governing body shall adopt a resolution calling for an election on the question of imposing the tax. The election shall be held pursuant to the Local Election Act [Chapter 1, Article 22 NMSA 1978]. If a majority of the voters voting on the question approves the ordinance imposing the tax, then the ordinance shall become effective in accordance with the provisions of the County Local Option Gross Receipts and Compensating Taxes Act. If the question of imposing the tax fails, the governing body shall not again propose the imposition of the tax for a period of one year from the date of the election.

E. The proceeds from revenue bonds issued for purposes provided by this section shall be administered by the governing body for the purposes authorized in this section and as set out in the resolution submitted by the boards to the governing body.

F. As used in this section:

(1) "capital projects" means the designing, constructing and equipping of hospital buildings; the remodeling, renovating or making additions to and equipping existing hospital buildings; or the improving or equipping of the grounds of hospital buildings; and

(2) "county" means a class B county with a population of less than thirty-seven thousand according to the most recent federal decennial census and a net taxable value for property tax purposes of more than one billion five hundred ninety million dollars ($1,590,000,000) but less than two billion dollars ($2,000,000,000).

History: Laws 2023, ch. 103, § 1.

7-20E-13. Special county hospital gross receipts tax; authority to impose; ordinance requirements.

A. The majority of the members of the governing body may enact an ordinance imposing an excise tax on any person engaging in business in the county for the privilege of engaging in business. The rate of the tax shall be one-eighth of one percent of the gross receipts of the person engaging in business. The tax shall be imposed for a period of not more than five years from the effective date of the ordinance imposing the tax. Having once enacted an ordinance under this section, the governing body may enact subsequent ordinances for succeeding periods of not more than five years; provided that each such ordinance meets the requirements of the County Local Option Gross Receipts Taxes Act with respect to the tax imposed by this section.

B. The tax imposed by this section may be referred to as the "special county hospital gross receipts tax".

C. For the purposes of this section, "county" means:

(1) a county:

(a) having a population of more than ten thousand but less than ten thousand six hundred, according to the last federal decennial census or any subsequent decennial census, and having a net taxable value for rate-setting purposes for the 1986 property tax year or any subsequent year of more than eighty-two million dollars ($82,000,000) but less than eighty-two million three hundred thousand dollars ($82,300,000);

(b) that has imposed a rate of one dollar fifty cents ($1.50) to each one thousand dollars ($1,000) of net taxable value of property as defined in the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978] for property taxation purposes in the county and to each one thousand dollars ($1,000) of the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978] and the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978] or has made an appropriation of funds or has imposed another tax that produces an amount not less than the revenue that would be produced by applying a rate of one dollar fifty cents ($1.50) to each one thousand dollars ($1,000) of net taxable value of property as defined in the Property Tax Code for property taxation purposes in the school district and to each one thousand dollars ($1,000) of the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act and the Oil and Gas Production Equipment Ad Valorem Tax Act. The proceeds of any tax imposed or appropriation made shall be dedicated for current operations and maintenance of a hospital owned and operated by the county or operated and maintained by another party pursuant to a lease with the county; and

(c) having qualified at any time under this definition shall continue to be qualified as a county and authorized to implement the provisions of this section; and

(2) a class B county having a population of more than seventeen thousand five hundred but less than nineteen thousand according to the 1990 federal decennial census and having a net taxable value for property tax rate-setting purposes of under three hundred million dollars ($300,000,000).

D. The governing body of a county described in Paragraph (1) of Subsection C of this section shall, at the time of enacting an ordinance imposing the rate of the tax authorized in Subsection A of this section, dedicate the revenue for current operations and maintenance of a hospital owned and operated by the county or operated and maintained by another party pursuant to a lease with the county, and the use of these proceeds shall be for the care and maintenance of sick and indigent persons and shall be an expenditure for a public purpose. In any election held, the ballot shall clearly state the purpose to which the revenue will be dedicated, and the revenue shall be used by the county for that purpose.

E. The governing body of a county described in Paragraph (2) of Subsection C of this section shall, at the time of enacting an ordinance imposing the rate of the tax authorized in Subsection A of this section, dedicate the revenue for county ambulance transport costs or for operation of a rural health clinic. In any election held, the ballot shall clearly state the purposes to which the revenue will be dedicated, and the revenue shall be used by the county for those purposes.

F. Any ordinance enacted under the provisions of Subsection A of this section shall include an effective date of either July 1 or January 1 in accordance with the provisions of the County Local Option Gross Receipts Taxes Act.

G. The ordinance shall not go into effect until after an election is held and a simple majority of the qualified electors of the county voting in the election votes in favor of imposing the special county hospital gross receipts tax. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax. The question may be submitted to the qualified electors and voted upon as a separate question in a general election or in any special election called for that purpose by the governing body. A special election upon the question shall be called, held, conducted and canvassed in substantially the same manner as provided by law for general elections. If the question of imposing a special county hospital gross receipts tax fails, the governing body shall not again propose a special county hospital gross receipts tax for a period of one year after the election. A certified copy of any ordinance imposing a special county hospital gross receipts tax shall be mailed to the department within five days after the ordinance is adopted in any election called for that purpose.

H. A single election may be held on the question of imposing a special county hospital gross receipts tax as authorized in this section on the question of imposing a special county hospital gasoline tax as authorized in the Special County Hospital Gasoline Tax Act [Chapter 7, Article 24B NMSA 1978] and on the question of imposing a mill levy pursuant to the Hospital Funding Act [Chapter 4, Article 48B NMSA 1978].

History: Laws 1987, ch. 45, § 3; 1992, ch. 80, § 2; 1978 Comp., § 7-20-21, amended and recompiled as 1978 Comp., § 7-20E-13 by Laws 1993, ch. 354, § 13; 1994, ch. 101, § 8; 2000, ch. 68, § 1.

7-20E-14. Special county hospital gross receipts tax; use of proceeds.

The funds provided through the special county hospital gross receipts tax shall be administered by the governing body of the county. In a county described in Paragraph (1) of Subsection C of Section 7-20E-13 NMSA 1978, the funds shall be disbursed by the county treasurer to a hospital within the county, subject to the approval by the governing body of a budget or plan for use of the funds submitted by that hospital's governing board.

History: Laws 1987, ch. 45, § 8; 1978 Comp., § 7-20-26, amended and recompiled as 1978 Comp., § 7-20E-14 by Laws 1993, ch. 354, § 14; 2000, ch. 68, § 2.

7-20E-15. Repealed.

History: Laws 1979, ch. 398, § 3; 1983, ch. 222, § 2; 1993, ch. 302, § 1; 1978 Comp., § 7-20A-3, amended and recompiled as 1978 Comp., § 7-20E-15 by Laws 1993, ch. 354, § 15; 1994, ch. 101, § 9; 2004, ch. 110, § 4; repealed by Laws 2019, ch. 274, § 16.

7-20E-16. Repealed.

History: Laws 1979, ch. 398, § 8; 1983, ch. 222, § 3; 1978 Comp., § 7-20A-8, amended and recompiled as 1978 Comp., § 7-20E-16 by Laws 1993, ch. 354, § 16; repealed by Laws 2019, ch. 274, § 16.

7-20E-17. Repealed.

History: Laws 1990, ch. 99, § 58; 1978 Comp., § 7-20B-3, amended and recompiled as 1978 Comp., § 7-20E-17 by Laws 1993, ch. 354, § 17; repealed by Laws 2019, ch. 274, § 16.

7-20E-18. County health care gross receipts tax; authority to impose rate.

A. The majority of the members of the governing body of any county may enact an ordinance imposing an excise tax at a rate of one-sixteenth percent of the gross receipts of any person engaging in business in the county for the privilege of engaging in business in the county. Any ordinance imposing an excise tax pursuant to this section shall not be subject to a referendum. The governing body of a county shall, at the time of enacting an ordinance imposing the tax, dedicate the revenue to the county-supported medicaid fund. This tax is to be referred to as the "county health care gross receipts tax".

B. In addition to the imposition of the county health care gross receipts tax authorized by Subsection A of this section, the majority of the members of the governing body of a county having a population of more than five hundred thousand persons according to the most recent federal decennial census may enact an ordinance imposing an additional one-sixteenth percent increment of county health care gross receipts tax; provided that the imposition of the additional increment shall be for a period that ends no later than June 30, 2009. To continue an increment after June 30, 2009 or beyond any five-year period for which the increment has been imposed, the members of the governing body shall review the need for the increment and if the majority of the members vote in favor of continuing the increment imposed pursuant to this subsection, the increment shall be imposed for an additional period of five years. The governing body of the county shall, at the time of enacting an ordinance imposing the additional increment of county health care gross receipts tax, dedicate the revenue to the support of indigent patients.

C. Any ordinance enacted pursuant to the provisions of Subsection A or B of this section shall include an effective date of either July 1 or January 1 in accordance with the provisions of the County Local Option Gross Receipts Taxes Act.

History: Laws 1991, ch. 212, § 7; 1978 Comp., § 7-20D-3, amended and recompiled as 1978 Comp., § 7-20E-18 by Laws 1993, ch. 354, § 18; 2006, ch. 9, § 1.; 2009, ch. 61, § 1.

7-20E-19. Repealed.

History: Laws 1998, ch. 90, § 7; 2003, ch. 349, § 19; repealed by Laws 2019, ch. 274, § 16.

7-20E-20. County education gross receipts tax; authority to impose; rate; election; use of revenue.

A. Upon submission of a resolution to the governing body pursuant to Subsection D of this section, the governing body of a county shall enact an ordinance imposing or reimposing an excise tax at a rate of one-half of one percent on any person engaging in business in the county for the privilege of engaging in business in the county. The tax imposed pursuant to this section may be referred to as the "county education gross receipts tax".

B. The governing body, at the time of enacting an ordinance imposing a county education gross receipts tax pursuant to this section shall dedicate the revenue only for the payment of county education gross receipts tax bonds for public school capital projects and off-campus instruction program capital projects, if any, in the county. The tax shall be imposed for the period necessary for payment of the principal and interest on the county education gross receipts tax revenue bonds issued to accomplish the purpose for which the revenue is dedicated, but the period shall not exceed ten years from the effective date of the ordinance imposing the tax.

C. The governing body may reimpose a county education gross receipts tax to be effective upon termination of a previously imposed county education gross receipts tax by following the procedures set forth in this section.

D. Upon a finding of need, the boards of every school district in a county that is either located wholly within the exterior boundaries of the county or that has a student membership no more than ten percent of whom reside outside the exterior boundaries of the county may enter into a joint agreement to submit a resolution to the governing body of the county requiring the governing body to impose a county education gross receipts tax and to issue county education gross receipts tax revenue bonds for funding public school capital projects and, if applicable, off-campus instruction program capital projects. The boards must agree to provide at least one-fourth of the bond proceeds for capital projects for an off-campus instruction program, if one of the school districts in the county has established such a program. The remaining revenues shall be distributed proportionately to each school district for public school capital outlay projects, including capital projects at charter schools and state-chartered charter schools within the district, based on the ratio that the population of each school district, according to the 2010 federal decennial census, bears to the population of all of the school districts in the county that are parties to the agreement.

E. An ordinance imposing the county education gross receipts tax shall not go into effect until after an election is held and a majority of the voters in the county voting in the election votes in favor of imposing the tax. The governing body shall adopt a resolution calling for an election within sixty days of the date the ordinance is adopted on the question of imposing the tax. The question shall be submitted to the voters of the county as a separate question at a general election or at a special election called for that purpose by the governing body. A special election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. If a majority of the voters voting on the question approves the ordinance imposing the county education gross receipts tax, then the ordinance shall become effective in accordance with the provisions of the County Local Option Gross Receipts Taxes Act. If the question of imposing the county education gross receipts tax fails, a resolution from the boards of school districts in the county may not again be proposed to the governing body requesting imposition of the tax for a period of one year from the date of the election.

F. The proceeds from county education gross receipts tax revenue bonds shall be administered by the governing body and disbursed by the county treasurer to the respective school districts in the amounts and for the purposes authorized in this section and as set out in the resolution submitted by the boards to the governing body.

G. As used in this section:

(1) "board" means the governing body of a school district;

(2) "capital projects" means the designing, constructing and equipping of new buildings; the remodeling, renovating or making additions to and equipping existing buildings; or the improving or equipping of the grounds surrounding buildings;

(3) "county" means:

(a) a class B county with a population of less than twenty-five thousand according to the 1990 federal decennial census and a net taxable value for property tax purposes for the 1999 property tax year of more than five hundred million dollars ($500,000,000);

(b) a county that has imposed a local hospital gross receipts tax pursuant to the Local Hospital Gross Receipts Tax Act [Chapter 7, Article 20C NMSA 1978], which tax will expire on December 31, 2001; and

(c) a county that has previously imposed a county education gross receipts tax; and

(4) "off-campus instruction program" means a program established by a school district pursuant to the Off-Campus Instruction Act [21-14A-1 to 21-14A-10 NMSA 1978].

History: 1978 Comp., § 7-20E-20, enacted by Laws 2001, ch. 328, § 1; 2012, ch. 39, § 1.

7-20E-21. Repealed.

History: Laws 2001, ch. 172, § 2; 2005, ch. 129, § 2; 2010, ch. 44, § 2; repealed by Laws 2019, ch. 274, § 16.

7-20E-22. County emergency communications and emergency medical and behavioral health services tax; authority to impose

countywide or only in the county area; ordinance requirements; use of revenue; election.

A. The majority of the members of the governing body of an eligible county that does not have in effect a tax imposed pursuant to Subsection B of this section may enact an ordinance imposing an excise tax at a rate not to exceed one-fourth percent of the gross receipts of a person engaging in business in the county for the privilege of engaging in business. The tax imposed by this subsection may be referred to as the "countywide emergency communications and emergency medical and behavioral health services tax".

B. The majority of the members of the governing body of an eligible county that does not have in effect a tax imposed pursuant to Subsection A of this section may enact an ordinance imposing an excise tax at a rate not to exceed one-fourth percent of the gross receipts of a person engaging in business in the county area for the privilege of engaging in business. The tax imposed by this subsection may be referred to as the "county area emergency communications and emergency medical and behavioral health services tax".

C. The taxes authorized in Subsections A and B of this section may be imposed in one or more increments of one-sixteenth percent not to exceed an aggregate rate of one-fourth percent.

D. The governing body, at the time of enacting an ordinance imposing a rate of tax authorized in Subsection A or B of this section, shall dedicate the revenue to one or more of the following purposes:

(1) operation of an emergency communications center that has been determined by the local government division of the department of finance and administration to be a consolidated public safety answering point. That operation may include the construction, improvement, remodel or purchase of one or more buildings to use as an emergency communications center or the purchase of emergency communications equipment for the center;

(2) operation of emergency medical services provided by the county, including the purchase of ambulatory transport vehicles; or

(3) provision of behavioral health services, including alcohol abuse and substance abuse treatment.

E. An ordinance imposing any increment of the countywide emergency communications and emergency medical and behavioral health services tax or the county area emergency communications and emergency medical and behavioral health services tax shall not go into effect until after an election is held and a majority of the voters voting in the election votes in favor of imposing the tax. In the case of an ordinance imposing an increment of the countywide emergency communications and emergency medical and behavioral health services tax, the election shall be conducted countywide. In the case of an ordinance imposing the county area emergency communications and emergency medical and behavioral health services tax, the election shall be conducted only in the county area. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax. The question may be submitted to the voters as a separate question at a general election or at a special election called for that purpose by the governing body. A special election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. In any election held, the ballot shall clearly state the purpose to which the revenue will be dedicated pursuant to Subsection D of this section. If a majority of the voters voting on the question approves the imposition of the countywide emergency communications and emergency medical and behavioral health services tax or the county area emergency communications and emergency medical and behavioral health services tax, the ordinance shall become effective in accordance with the provisions of the County Local Option Gross Receipts Taxes Act. If the question of imposing the tax fails, the governing body shall not again propose the imposition of any increment of either tax for a period of one year from the date of the election.

F. For the purposes of this section, "eligible county" means:

(1) a county that operates or, pursuant to a joint powers agreement, is served by an emergency communications center that has been determined by the local government division of the department of finance and administration to be a consolidated public safety answering point; or

(2) in the case of a county imposing the tax for the purposes provided in Paragraph (3) of Subsection D of this section, a county that operates or contracts for the operation of a behavioral health services facility providing alcohol abuse, substance abuse and inpatient and outpatient behavioral health treatment.

History: Laws 2002, ch. 14, § 1; 2003, ch. 70, § 1; 2004, ch. 110, § 5; 2007, ch. 230, § 1; 2017, ch. 47, § 2; 2019, ch. 210, § 2.

7-20E-23. County regional transit gross receipts tax; authority to impose; rate; election required.

A. Upon a request by resolution of the board of directors of a regional transit district, a majority of the members of the governing body of each county that is within the district shall impose by identical ordinances an excise tax at the rate specified in the resolution, but not to exceed one-half percent of the gross receipts of any person engaging in business in the district for the privilege of engaging in business. A tax imposed pursuant to this section may be imposed by one or more ordinances, each imposing any number of tax rate increments, but an increment shall not be less than one-sixteenth percent of the gross receipts of any person engaging in business in the district and the aggregate of all rates shall not exceed one-half percent of the gross receipts of any person engaging in business in the district. The tax may be referred to as the "county regional transit gross receipts tax".

B. Each governing body, at the time of enacting an ordinance imposing the tax authorized in Subsection A of this section, shall dedicate the revenue for the purposes authorized by the Regional Transit District Act [Chapter 73, Article 25 NMSA 1978].

C. An ordinance imposing a county regional transit gross receipts tax shall not go into effect until after a joint election is held by all counties within the district and a majority of the voters of the district voting in the election votes in favor of imposing the tax. Each governing body shall adopt an ordinance calling for a joint election within seventy-five days of the date the resolution is adopted on the question of imposing the tax. The question shall be submitted to the voters of the district as a separate question at a general election or at a joint special election called for that purpose by each governing body. A joint special election shall be called, conducted and canvassed substantially in the same manner as provided by law for general elections. If a majority of the voters in the district voting on the question approves the ordinance imposing the county regional transit gross receipts tax, the ordinance shall become effective in accordance with the provisions of the County Local Option Gross Receipts Taxes Act. If the question of imposing the county regional transit gross receipts tax fails, the governing bodies shall not again propose the imposition of any increment of the tax for a period of one year from the date of the election.

D. The governing body of a county imposing a county regional transit gross receipts tax shall transfer all proceeds from the tax to the regional transit district for the purposes specified in the ordinance and in accordance with the provisions of the Regional Transit District Act.

E. As used in this section, "county within the district" means a county within which lies any portion of a regional transit district.

History: Laws 2004, ch. 17, § 2; 2007, ch. 199, § 1.

7-20E-24. Repealed.

History: Laws 2005, ch. 212, § 1; repealed by Laws 2019, ch. 274, § 16.

7-20E-25. County regional spaceport gross receipts tax; authority to impose; rate; election required.

A. A majority of the members of the governing body of a county that desires to become a member of a regional spaceport district pursuant to the Regional Spaceport District Act [5-16-1 to 5-16-13 NMSA 1978] shall impose by ordinance an excise tax at a rate not to exceed one-half percent of the gross receipts of a person engaging in business in the district area of the county for the privilege of engaging in business. A tax imposed pursuant to this section may be imposed by one or more ordinances, each imposing any number of tax rate increments, but an increment shall not be less than one-sixteenth percent of the gross receipts of a person engaging in business in the district area of the county, and the aggregate of all rates shall not exceed one-half percent of the gross receipts of a person engaging in business in the district area of the county. The tax may be referred to as the "county regional spaceport gross receipts tax".

B. A governing body, at the time of enacting an ordinance imposing the tax authorized in Subsection A of this section, shall dedicate a minimum of seventy-five percent of the proceeds of the revenue to the regional spaceport district for the financing, planning, designing and engineering and construction of a spaceport or for projects or services of the district pursuant to the Regional Spaceport District Act and may dedicate no more than twenty-five percent of the revenue for spaceport-related projects as approved by resolution of the governing body of the county.

C. An ordinance imposing a county regional spaceport gross receipts tax shall not go into effect until after an election is held and a majority of the voters of the district area of the county voting in the election votes in favor of imposing the tax. The governing body shall adopt an ordinance calling for an election within seventy-five days of the date the resolution is adopted on the question of imposing the tax. The question shall be submitted to the voters of the district area of the county as a separate question at a general election or at a special election called for that purpose by the governing body. A special election shall be called, conducted and canvassed substantially in the same manner as provided by law for general elections. If a majority of the voters voting on the question approves the ordinance imposing the county regional spaceport gross receipts tax, the ordinance shall become effective in accordance with the provisions of the County Local Option Gross Receipts Taxes Act. If the question of imposing the county regional spaceport gross receipts tax fails, the governing body shall not again propose the imposition of an increment of the tax for a period of one year from the date of the election.

D. The governing body of a county imposing a county regional spaceport gross receipts tax shall transfer a minimum of seventy-five percent of all proceeds from the tax to the regional spaceport district of which it is a member for the purposes in accordance with the provisions of the Regional Spaceport District Act. The governing body of a county imposing a county regional spaceport gross receipts tax may retain no more than twenty-five percent of the county regional spaceport gross receipts tax for spaceport-related projects as approved by the resolution of the governing body of the county.

E. As used in this section, "district area of the county" means that portion of a county that is outside the boundaries of a municipality and that is within the boundaries of a regional spaceport district of which the county is a member; provided that if no municipality within the county has imposed a municipal regional spaceport gross receipts tax, "district area of the county" may mean the area within the boundaries of the county that is within the boundaries of a regional spaceport district of which the county is a member.

History: Laws 2006, ch. 15, § 15.

7-20E-26. Water and sanitation gross receipts tax; authority to impose; rate; election; use of revenue.

A. An excise tax imposed by a governing body pursuant to this section may be referred to as the "water and sanitation gross receipts tax". The water and sanitation gross receipts tax shall be imposed by a governing body as set forth in this section, contingent upon a majority of the voters voting in an election on the question of whether to impose a water and sanitation gross receipts tax voting in favor of the imposition.

B. Upon receipt of a resolution adopted and submitted by the board of directors of a water and sanitation district that requests the governing body to impose a water and sanitation gross receipts tax on behalf of the water and sanitation district, a governing body shall enact an ordinance imposing a water and sanitation gross receipts tax in that water and sanitation district. The ordinance shall impose the tax at a rate of one-fourth percent on a person engaging in business within the area of the county located within the water and sanitation district for the privilege of engaging in business within that water and sanitation district within the county.

C. The governing body, at the time of enacting an ordinance imposing a water and sanitation gross receipts tax authorized pursuant to Subsection A of this section, shall dedicate the revenue only for the operation of the water and sanitation district for which the tax is imposed. The tax shall be imposed for six years from the date on which the water and sanitation gross receipts tax goes into effect.

D. Within sixty days of the date the ordinance is adopted by the governing body, the governing body shall adopt a resolution calling for an election on the question of whether to impose a water and sanitation gross receipts tax. The question shall be submitted to the voters of the water and sanitation district requesting the county to impose the tax. A special election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. If a majority of the voters voting on the question approves the ordinance imposing the water and sanitation gross receipts tax, then the ordinance shall become effective in accordance with the provisions of the County Local Option Gross Receipts Taxes Act on either January 1 or July 1 following the election approving the imposition of the tax. If the question of imposing the water and sanitation gross receipts tax fails, a resolution from the board of directors of the water and sanitation district initiating the request to the county to impose a water and sanitation gross receipts tax may not again be submitted to the governing body for a period of one year from the date of the election.

E. The proceeds from the water and sanitation gross receipts tax shall be administered by the governing body and disbursed by the county treasurer to the appropriate water and sanitation district in amounts and for the purposes authorized in this section and as set out in the resolution submitted by the board of directors to the governing body. An agreement shall be entered into between the water and sanitation district and the governing body that sets out the responsibilities of both parties regarding administration, distribution and use of the revenue from the water and sanitation gross receipts tax.

History: Laws 2007, ch. 346, § 1.

7-20E-27. Repealed.

History: Laws 2010, ch. 31, § 1; repealed by Laws 2019, ch 274, 16.

7-20E-28. Repealed.

History: Laws 2013, ch. 160, § 12; repealed by Laws 2019, ch. 274, § 16.

7-20E-29. Electric generating facility economic district gross receipts tax; authority to impose; rate; use of revenue.

A. A majority of the members of the governing body of a county within which a county electric generating facility economic district is located and a bordering county within twenty miles of a qualifying electric generating facility may enact an ordinance imposing an excise tax of up to one-fourth percent of the gross receipts of any person engaging in business in the county or county area for the privilege of engaging in business in the county or county area. The tax authorized by this section may be referred to as the "county electric generating facility economic district gross receipts tax".

B. An ordinance imposing a county electric generating facility economic district gross receipts tax shall impose the tax in any number of increments of one-thousandth percent; provided that the aggregate amount of increments shall not exceed one-fourth percent.

C. The governing body, at the time of enacting an ordinance imposing a county electric generating facility economic district gross receipts tax, shall dedicate the revenue only for the payment of the interest on and principal of revenue bonds issued pursuant to the Electric Generating Facility Economic District Act [71-10-1 to 71-10-11 NMSA 1978]. Revenue from a county electric generating facility economic district gross receipts tax shall not be used for any other purpose.

History: Laws 2020, ch. 78, § 12.

ARTICLE 20F
County Correctional Facility Gross Receipts Tax (Repealed.)

7-20F-1. Repealed.

History: Laws 1993, ch. 303, § 1; repealed by Laws 2019, ch. 274, § 16.

7-20F-2. Repealed.

History: Laws 1993, ch. 303, § 2; 1998, ch. 65, § 2; 2004, ch. 110, § 6; repealed by Laws 2019, ch. 274, § 16.

7-20F-3. Repealed.

History: Laws 1993, ch. 303, § 3; 1994, ch. 101, § 10; 1998, ch. 65, § 3; 2004, ch. 110, § 7; repealed by Laws 2019, ch. 274, § 16.

7-20F-4. Repealed.

History: Laws 1993, ch. 303, § 4; repealed by Laws 2019, ch. 274, § 16.

7-20F-5. Repealed.

History: Laws 1993, ch. 303, § 5; repealed by Laws 2019, ch. 274, § 16.

7-20F-6. Repealed.

History: Laws 1993, ch. 303, § 6; 1994, ch. 101, § 11; 2019, ch. 270, § 57; repealed by Laws 2019, ch. 274, § 16.

7-20F-7. Repealed.

History: Laws 1993, ch. 303, § 7; repealed by Laws 2019, ch. 274, § 16.

7-20F-8. Repealed.

History: Laws 1993, ch. 303, § 8; repealed by Laws 2019, ch. 274, § 16.

7-20F-9. Repealed.

History: Laws 1993, ch. 303, § 9; repealed by Laws 2019, ch. 274, § 16.

7-20F-10. Repealed.

History: Laws 1993, ch. 303, § 10; 2006, ch. 66, § 1; repealed by Laws 2019, ch. 274, § 16.

7-20F-11. Repealed.

History: Laws 1993, ch. 303, § 11; repealed by Laws 2019, ch. 274, § 16.

7-20F-12. Repealed.

History: Laws 1993, ch. 303, § 12; repealed by Laws 2019, ch. 274, § 16.

ARTICLE 21
County Sales Tax (Repealed.)

7-21-1 to 7-21-7. Repealed.

ARTICLE 22
Occupational Licenses (Repealed.)

7-22-1 to 7-22-14. Repealed.

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.

7-23-2. [Penalty for violation.]

The penalty for the violation of this act [7-23-1, 7-23-2 NMSA 1978] shall be a fine of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00), or not more than six (6) months in jail, or both such fine and imprisonment in the discretion of the court.

History: Laws 1927, ch. 58, § 2; C.S. 1929, § 81-117; 1941 Comp., § 62-302; 1953 Comp., § 60-3-2.

ARTICLE 24
Municipal and County Gross Receipts Tax on Liquor

7-24-1. License tax imposed by municipalities.

Municipalities within or composing local option districts may, by duly adopted ordinance, impose an annual, nonprohibitive municipal license tax upon the privilege of persons holding state licenses under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978 et seq.] to operate within such municipalities as retailers, dispensers, canopy licensees, restaurant licensees or club licensees. The amount of the license tax, which shall not exceed two hundred fifty dollars ($250), and the dates and manner of payment shall be fixed on or before June 1 of each year by the ordinance imposing the tax. In case any municipality permits the payment in installments, no bond shall be required to secure the payment of the deferred installments, but the remedy for the collection shall be that provided in Section 7-24-3 NMSA 1978.

History: Laws 1939, ch. 236, § 1103; 1941 Comp., § 61-402; 1953 Comp., § 46-4-2; Laws 1969, ch. 163; 1981, ch. 39, § 124; 1990, ch. 76, § 1; 1993, ch. 68, § 1.

7-24-2. License tax imposed by boards of county commissioners.

The boards of county commissioners of counties composing local option districts are empowered, by resolution duly adopted, on or before the first day of June of each year to impose an annual, nonprohibitive license tax upon the privileges of persons holding state licenses under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978 et seq.] to operate within such counties, outside of the municipalities that are local option districts, as retailers, dispensers, canopy licensees, restaurant licensees or club licensees. The amount of the license tax, which shall not exceed two hundred fifty dollars ($250), and the dates and manner of the payment shall be fixed by the resolution imposing the tax; provided, that in case the county permits the payment in installments, no bond shall be required to secure the payment of the deferred installments, but the remedy for the collection shall be that provided in Section 7-24-3 NMSA 1978.

History: Laws 1939, ch. 236, § 1104; 1941 Comp., § 61-403; 1953 Comp., § 46-4-3; Laws 1981, ch. 39, § 125; 1994, ch. 46, § 1.

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.

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.

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.

7-24-6. Repealed.

7-24-7. Repealed.

7-24-8. Short title.

Sections 7-24-8 through 7-24-16 NMSA 1978 may be cited as the "Local Liquor Excise Tax Act".

History: Laws 1989, ch. 326, § 1; 1993, ch. 30, § 23.

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.

7-24-10. Authorization to impose local liquor excise tax; rate; use of proceeds; election required.

A. The majority of the members elected to the governing body may enact an ordinance imposing on any retailer an excise tax on the price paid by the retailer for alcoholic beverages purchased by the retailer upon which the tax imposed by this section has not been paid. The tax may be imposed at a rate not to exceed six percent, provided that any lower rate shall be an even multiple of one percent. The tax imposed under this section may be referred to as the "local liquor excise tax". Any tax imposed under this section shall be for a period of not more than three years from the effective date of the ordinance imposing the tax.

B. The governing body at the time of enacting an ordinance imposing the tax authorized in Subsection A of this section shall dedicate the revenue to fund educational programs and prevention and treatment, including social detoxification, of alcoholism and drug abuse within the county and for no other purpose. After approval of the imposition of a local liquor excise tax by the voters but before the effective date of the ordinance, the governing body shall hold a public meeting for the purpose of inviting comment on and suggestions for the most appropriate programs on which to expend the revenue produced by the tax. The governing body shall invite representatives from the appropriate Indian tribes, nations and pueblos to the meeting. If the governing body awards any contract using funds derived from the local liquor excise tax, it shall do so only through a selection process requiring submission of sealed bids or proposals after public notice of the opportunity to submit the sealed bids or proposals.

C. The governing body enacting an ordinance imposing the local liquor excise tax shall submit the question of imposing the tax to the qualified voters of the county at a regular or special election.

D. Only those voters who are registered within the county shall be permitted to vote. The election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections.

E. If at an election called pursuant to this section the majority of the voters voting on the question vote in the affirmative on the question, then the ordinance imposing the local liquor excise tax shall be approved. If at such an election the majority of the voters voting on the question fail to approve the question, then the ordinance shall be disapproved and the question required to be submitted by Subsection B of this section shall not be submitted to the voters for a period of at least one year from the date of the election.

F. Any ordinance enacted under the provisions of this section that imposes a local liquor excise tax or changes the rate of tax imposed shall include an effective date that is the first day of any month that begins no earlier than ninety days after the date of the election. A certified copy of any ordinance imposing a local liquor excise tax shall be mailed or personally delivered to the department within five days after the ordinance is certified to have been approved by the voters.

G. Any ordinance repealing the imposition of a tax under the provisions of this section shall contain an effective date that is the first day of any month beginning no earlier than sixty days from the date the ordinance repealing the tax is adopted by the governing body. A certified copy of any ordinance repealing a local liquor excise tax shall be mailed or personally delivered to the department within five days of the date the ordinance is adopted.

History: Laws 1989, ch. 326, § 3; 2013, ch. 218, § 1.

7-24-10.1. Use of tax proceeds; local liquor excise tax committee; joint powers agreement; community participation.

A. Prior to an election on the question of imposing a local liquor excise tax pursuant to the provisions of the Local Liquor Excise Tax Act [7-24-8 to 7-24-16 NMSA 1978], the governing body of a county shall enter into a joint powers agreement with the governing body of the most populated municipality and the governing bodies of any other municipalities in the county that choose to be parties to the agreement to provide for the use and administration of the tax proceeds. The agreement shall provide for the establishment and appointment of a local liquor excise tax committee to provide advice, assist in preventing duplication and supplanting of program funding and make recommendations to the governing body of the county and the municipal governing bodies that are parties to the agreement on the use of the tax proceeds. The agreement shall:

(1) clearly specify the use of the proceeds of the proposed local liquor excise tax, including the identification of specific local programs, agencies or entities that will be funded from the tax proceeds;

(2) determine the allocation of election expenses among the parties to the agreement;

(3) clearly specify that the detoxification center located within a municipality with a population of not less than fifteen thousand and not more than thirty-five thousand according to the most recent federal decennial census providing social

detoxification treatment with the greatest numbers of adult clients shall receive the funding necessary to provide social detoxification of alcohol and drug treatment for adults;

(4) provide that the remaining proceeds of the proposed local liquor excise tax shall be used to fund social detoxification of alcohol and drugs for juveniles and other prevention and treatment programs as recommended by the local liquor excise tax committee; and

(5) clearly specify that each specific local program, agency or entity that is funded from the tax proceeds shall be audited at its own expense and provide accountability reports to the governing body of the county and municipal governing bodies that are parties to the agreement within thirty days of the end of each quarter of the calendar year, including an itemized breakdown of program services and expenditures.

B. Prior to the agreement by the governing body of a county and the municipal governing bodies for use of the proposed local liquor excise tax proceeds, the local liquor excise tax committee established pursuant to the provisions of Subsection A of this section shall conduct a public hearing for the purpose of inviting public comment on use of the proposed local liquor excise tax proceeds. The committee shall make every effort to provide public notice of the hearing and to invite a broad cross-section of community representatives and groups to comment on community needs. Following the hearing, the committee shall make its funding recommendations to the governing body of the county and the municipal governing bodies.

C. On or before April 1 of each calendar year, the governing body of a county or municipality that has entered into an agreement pursuant to Subsection A of this section shall submit to the department of finance and administration a report itemizing the receipts, expenditures and number of clients served pursuant to any such agreement for the preceding calendar year. On or before July 1 of each year, the department of finance and administration shall complete an audit of the county's report submitted pursuant to this section and shall report its findings to the appropriate interim legislative committee before September 1 of that year.

D. If a local program, agency or entity receiving funds from local liquor excise tax proceeds fails to timely submit an accountability report pursuant to Paragraph (5) of Subsection A of this section, the county or municipality shall be immediately prohibited from disbursing any further funds to such local program, agency or entity until the delinquent accountability report has been submitted to and accepted by the governing board of the county and the municipal governing bodies.

History: 1978 Comp., § 7-24-10.1, enacted by Laws 1992, ch. 35, § 1; 2013, ch. 218, § 2.

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.

7-24-12. Exemption.

Exempted from the local liquor excise tax is the purchase of alcoholic beverages by any instrumentality of the armed forces of the United States engaged in resale activities.

History: Laws 1989, ch. 326, § 5.

7-24-13. Exemption; purchases for resale.

Exempted from any local liquor excise tax are purchases for sale to retailers for resale.

History: Laws 1989, ch. 326, § 6.

7-24-14. Refund or credit of tax.

An ordinance imposing a local liquor excise tax shall provide for and the department shall allow a claim for refund, in accordance with the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978], for the local liquor excise tax paid on alcoholic beverages destroyed in shipment, or otherwise damaged so as to be unfit for sale or consumption, or shipped out of the county, upon submission of proof satisfactory to the department of such destruction, damage or out-of-county shipment.

History: Laws 1989, ch. 326, § 7.

7-24-15. Administrative charge.

The department may deduct an amount not to exceed five percent of the proceeds of a local liquor excise tax as a charge for the administrative costs of collection, which amount shall be retained by the department for use in administration of the Local Liquor Excise Tax Act [7-24-8 to 7-24-16 NMSA 1978].

History: Laws 1989, ch. 326, § 8.

7-24-16. Interpretation of act; administration and enforcement of the tax.

A. The department shall interpret the provisions of the Local Liquor Excise Tax Act [7-24-8 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.

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.

7-24A-2. Definitions.

As used in the County and Municipal Gasoline Tax Act:

A. "county" means a class A county or an H class county;

B. "governing body" means the city council or city commission of a city, the board of trustees of a town or village or the board of county commissioners of a class A county or an H class county;

C. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter located within a class A county or an H class county;

D. "person" means:

(1) any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity, including any utility owned or operated by a county, municipality or other political subdivision of the state; or

(2) to the extent permitted by law, the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof;

E. "transit route" means a road, highway or street normally used in the operation of a public transportation system; and

F. "vehicle emission inspection program" means a vehicle emission inspection program designed to reduce pollutants emitted by motor vehicles of less than ten thousand pounds pursuant to a county or municipal ordinance.

History: 1978 Comp., § 7-24A-2, enacted by Laws 1991, ch. 156, § 2.

7-24A-3. Use of proceeds.

A. The proceeds of a county or municipal gasoline tax shall be used for bridge and road projects or public transportation related trails and for expenses of purchasing, maintaining and operating transit operations and facilities, for the operation of a transit authority established by the Municipal Transit Law [3-52-1 to 3-52-13 NMSA 1978] or as provided in the County and Municipal Gasoline Tax Act, for operation of a vehicle emission inspection program or for road, street or highway construction, repair or maintenance in the county or municipality. The proceeds of a county or municipal gasoline tax may be pledged for the payment of bonds issued pursuant to the County and Municipal Gasoline Tax Act. A county or municipality may engage in the business of transportation of passengers and property within the political subdivision by whatever means it may decide and may acquire cars, motor buses and other equipment necessary for carrying on the business. It may acquire land and erect buildings and equip them with all necessary machinery and facilities for operation, maintenance, modification, repair and storage of any buses, cars, trucks or other equipment needed. It may do all things necessary for the acquisition and conduct of the business of public transportation.

B. A governing body may enact ordinances and resolutions and promulgate rules as it may deem necessary and proper for the conduct of the business of transportation and for fixing and collecting all fares, rates and charges for services rendered.

C. Any county or municipality engaging in the business of transportation may extend any system of transportation to points outside its boundaries where necessary and incidental to furnishing efficient transportation to points within the county or municipality.

D. A governing body may lease any system of transportation in whole or in part to any person who will contract to operate it according to the rules, time tables and other requirements established by the governing body.

E. Any county or municipality may furnish transportation service to areas located outside its boundaries, provided that prior contracts have been entered into with the county or municipality in which the areas are located covering the schedules, rates, service and other pertinent matters before initiation of such service.

F. The power of eminent domain is granted to a participating county or municipality for the purpose of acquiring lands and buildings necessary to provide efficient public transit or a vehicle emission inspection program to be exercised in the manner provided by law.

G. A county or municipality, as an operating entity, may enter into contracts for special transportation service, charter buses, advertising and any other function that a private enterprise operating a public transit facility could do or perform for revenue.

H. A governing body may spend any public funds to pay the costs of operation of public transit or a vehicle emission inspection program if revenues of the system prove to be insufficient.

I. A county or municipality is authorized to enter into binding agreements with the United States or any of its officers or agencies or the state or any of its officers or agencies or any combination of agencies, departments or officers of both the United States and the state for planning, developing, modernizing, studying, improving, financing, operating or otherwise affecting public transit; to accept any loans, grants or payments from any of these agencies; and to make any commitments or assume any obligations required by any of these agencies as a condition of receiving the benefits thereof.

History: 1978 Comp., § 7-24A-3, enacted by Laws 1978, ch. 182, § 3; 1985, ch. 196, § 2; 1993, ch. 190, § 1; 1999, ch. 226, § 1.

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 department of transportation and other regulatory bodies having jurisdiction in the matter.

History: 1978 Comp., § 7-24A-4, enacted by Laws 1978, ch. 182, § 4; 2023, ch. 100, § 7.

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.

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.

7-24A-6.1. County-wide gasoline tax; authorization; imposition; rate; election.

A. A county-wide gasoline tax may be imposed on each gallon of gasoline sold at retail within the county in increments of one cent ($.01) per gallon up to a maximum of two cents ($.02) per gallon for the purpose of funding a vehicle emissions inspection program and other programs as specified in Subsection D of this section when the governing bodies of a county and a municipality adopt identical ordinances submitting the question to the qualified electors in the county in a joint election.

B. The procedures of the County and Municipal Gasoline Tax Act shall apply unless otherwise provided in this section.

C. The ordinance shall not go into effect until after a joint election is held pursuant to Section 7-24A-21 NMSA 1978 and a simple majority of the qualified electors of the county voting on the issue vote in favor of imposing a county-wide gasoline tax. If the ordinance is approved by a majority of the qualified electors of the county voting on the issue, the gasoline tax shall be imposed county-wide, both within and outside the boundaries of any municipality within the county.

D. If the qualified electors of the county vote in favor of an ordinance imposing a county-wide gasoline tax pursuant to Subsection C of Section 7-24A-21 NMSA 1978 and any proceeds of the tax are dedicated by the ordinance to a vehicle emissions inspection program, then the proceeds of the tax imposed shall be used first for the vehicle emissions inspection program and the balance shall be used for other environmental programs such as water quality or air quality programs. That balance shall be distributed to the municipality and the county based on the proportions that the population of the municipality and the population of the county outside the boundaries of the municipality bear to the total population of the county. The municipality and county shall reimburse the motor vehicle division of the taxation and revenue department for actual costs incurred in administering any plan that involves the motor vehicle division in the enforcement of denial of motor vehicle registration for noncompliance with a vehicle emissions inspection program. The costs reimbursed are appropriated to the motor vehicle division for that purpose.

History: 1978 Comp., § 7-24A-6.1, enacted by Laws 1986, ch. 74, § 1; 1990, ch. 88, § 6.

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.

7-24A-7.1. Registration required.

Each person selling gasoline at retail in a county which imposes a county or county-wide gasoline tax or in a municipality which imposes a municipal gasoline tax shall register with the county or the municipality, as appropriate, as a seller of gasoline at retail.

History: 1978 Comp., § 7-24A-7.1, enacted by Laws 1990, ch. 88, § 8.

7-24A-8. Collection of county gasoline tax.

The county shall collect the county gasoline tax imposed by the County and Municipal Gasoline Tax Act. Every person subject to the imposition of the county gasoline tax shall file a return on forms provided by and with the information required by the county and shall pay the tax due on or before the twenty-fifth day of the month following the month in which the gasoline is sold at retail within the boundaries of the county.

History: 1978 Comp., § 7-24A-8, enacted by Laws 1978, ch. 182, § 8; 1983, ch. 211, § 36; 1990, ch. 88, § 9.

7-24A-9. Repealed.

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.

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 votes 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 elections as provided in the Local Election Act [Chapter 1, Article 22 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; 2018, ch. 79, § 80.

7-24A-12. Collection of municipal gasoline tax.

The municipality shall collect the municipal gasoline tax imposed by the County and Municipal Gasoline Tax Act. Every person subject to the imposition of the municipal gasoline tax shall file a return on forms provided by and with the information required by the municipality and shall pay the tax due on or before the twenty-fifth day of the month following the month in which the gasoline is sold at retail within the boundaries of the municipality.

History: 1978 Comp., § 7-24A-12, enacted by Laws 1978, ch 182, § 12; 1983, ch. 211, § 37; 1990, ch. 88, § 12.

7-24A-13. Repealed.

7-24A-14. Bond ordinance.

A. The governing body may adopt an ordinance providing for issuance of bonds to enable the county or municipality to acquire land, buildings, buses or other equipment required for public transit, a vehicle emission inspection program or for road, street or highway construction, repair or maintenance or for refunding bonds previously issued for such purpose or any such purposes.

B. The bonds are payable solely from a pledge of:

(1) gross income derived by the county or municipality from the transit facilities or vehicle emission inspection facilities financed with the proceeds and other transit facilities not so financed; provided that when gross revenues are so pledged, the county or municipality may apply to the payment of the expense of maintaining and operating the transit facilities, the gross revenues of which are so pledged, the county's or municipality's revenues derived from sources other than the proceeds of ad valorem taxes and may, in the proceedings authorizing the issue of bonds, covenant and agree to apply to the payment of the maintenance and operation expenses so much of the revenues as may be necessary for such purposes or as may be specified in the proceedings;

(2) income derived from franchises granted by the governing body of a county or municipality;

(3) contributions, grants or other financial assistance from the state or federal government or any other source;

(4) county or municipal gasoline tax revenue; or

(5) any one or a combination of these sources.

C. The ordinance is irrepealable as long as any indebtedness on the bonds is unpaid by the county or municipality.

History: 1978 Comp., § 7-24A-14, enacted by Laws 1978, ch. 182, § 14; 1985, ch. 196, § 7; 1999, ch. 226, § 2.

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 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.

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 (Repealed.)

7-24B-1. Repealed.

History: Laws 1987, ch. 45, § 10; 1990, ch. 88, § 13; repealed by Laws 2019, ch. 274, § 16.

7-24B-2. Repealed.

History: Laws 1987, ch. 45, § 11; 1990, ch. 88, § 14; repealed by Laws 2019, ch. 274, §16.

7-24B-3. Repealed.

History: Laws 1987, ch. 45, § 12; 2003, ch. 205, § 3; 2005, ch. 338, § 3; repealed by Laws 2019, ch. 274, § 16.

7-24B-4. Repealed.

History: Laws 1987, ch. 45, § 13; 1990, ch. 88, § 15; repealed by Laws 2019, ch. 274, § 16.

7-24B-5. Repealed.

7-24B-5.1. Repealed.

History: 1978 Comp., § 7-24B-5.1, enacted by Laws 1990, ch. 88, § 16; repealed by Laws 2019, ch. 274, § 16.

7-24B-6. Repealed.

History: Laws 1987, ch. 45, § 15; 1990, ch. 88, § 17; repealed by Laws 2019, ch. 274, § 16.

7-24B-7. Repealed.

History: Laws 1987, ch. 45, § 16; 1990, ch. 88, § 18; 1993, ch. 30, § 24; repealed by Laws 2019, ch. 274, § 16.

7-24B-8. Repealed.

History: Laws 1987, ch. 45, § 17; 1990, ch. 88, § 19; repealed by Laws 2019, ch. 274, § 16.

7-24B-9. Repealed.

History: Laws 1987, ch. 45, § 18; 1990, ch. 88, § 20; repealed by Laws 2019, ch. 274, § 16.

7-24B-10. Repealed.

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.

7-25-2. Purpose.

The purpose of the Resources Excise Tax Act is to provide revenue for public purposes by levying a tax on the privilege of severing and processing natural resources within New Mexico.

History: 1953 Comp., § 72-16A-21, enacted by Laws 1966, ch. 48, § 2.

7-25-3. Definitions.

As used in the Resources Excise Tax Act:

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

B. "natural resource" means timber and any product thereof and any metalliferous or nonmetalliferous mineral product, combination or compound thereof, severed in New Mexico but does not include oil, natural gas, liquid hydrocarbon individually or any combination thereof, carbon dioxide, helium or nonhydrocarbon gas;

C. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity;

D. "processing" means smelting, leaching, refining, reducing, compounding or otherwise preparing for sale or commercial use any natural resource so that its character or condition is materially changed in mills or plants located in New Mexico;

E. "processor" means any person engaging in the business of processing natural resources that the person owns, or any person who is the owner of natural resources and who has another person perform the processing of such natural resources;

F. "service charge" means the total amount of money or the reasonable value of other consideration received for severing or processing any natural resource by any person who is not the owner of the natural resource. However, if the money received does not represent the value of the severing or processing performed, "service charge" means the reasonable value of the severing or processing performed;

G. "severer" means any person engaging in the business of severing natural resources that the person owns, or any person who is the owner of natural resources and who has another person perform the severing of such natural resources;

H. "severing" means mining, quarrying, extracting, felling or producing any natural resource in New Mexico for sale, profit or commercial use; and

I. "taxable value" means the value after severing or processing, without deduction of any kind other than specified in this subsection, of any natural resource severed or processed in New Mexico. It is presumed, in the absence of preponderant evidence of another value, that the taxable value means the total amount of money or the reasonable value of other consideration received for the severed or processed natural resource. However, if the amount of money received does not represent the value of the severed or processed natural resource or if the severed or processed natural resource is not sold, the taxable value shall be the reasonable value of the severed or processed natural resource. All natural resources severed or processed in New Mexico shall be included in determining taxable value, regardless of the place of sale or the fact that delivery may be made to points outside of New Mexico. If any person shall ship, transmit or transport natural resources out of New Mexico without making sale of them or shall ship, transmit or transport natural resources out of New Mexico in an unfinished condition, the value of the natural resources in the condition in which they existed when shipped, transmitted or transported out of New Mexico and before they enter interstate commerce, without deduction of any kind other than specified in this subsection, shall be the basis for determining the taxable value. Amounts received from selling natural resources, other than metalliferous mineral ores, whether processed or unprocessed, to the United States or any agency or instrumentality thereof, the state of New Mexico or any political subdivision thereof, or to organizations that have demonstrated to the department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501 (c) (3) of the United States Internal Revenue Code of 1954, as amended or renumbered, which employ the natural resource in the conduct of functions described in Section 501 (c) (3) and not in the conduct of an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1954, as amended or renumbered, may be deducted from taxable value. Any royalty or other similar interest, whether payable in cash or in kind, paid to the United States or any agency or instrumentality thereof, or the state of New Mexico or any political subdivision thereof, or any Indian tribe, Indian pueblo or Indian that is a ward of the United States may be deducted from taxable value. In computing taxable value, any owner of natural resources may deduct any service charge on which the service tax imposed by Section 7-25-6 NMSA 1978 is payable.

History: 1953, Comp., § 72-16A-22, enacted by Laws 1966, ch. 48, § 3; 1968, ch. 58, § 1; 1969, ch. 267, § 1; 1970, ch. 14, § 1; 1971, ch. 23, § 1; 1972, ch. 37, § 1; 1977, ch. 249, § 50; 1979, ch. 255, § 1; 1985, ch. 65, § 22; 1986, ch. 20, § 91; 2007, ch. 275, § 3.

7-25-4. Rate and measure of tax; denomination as "resources tax".

A. For the privilege of severing natural resources, there is imposed on any severer of natural resources in New Mexico an excise tax at the following rates on the taxable value of the natural resources:

(1) all natural resources except potash and molybdenum, three-fourths of one percent;

(2) potash, one-half of one percent; and

(3) molybdenum, one-eighth of one percent.

B. The tax imposed by this section shall be referred to as the "resources tax".

History: 1953 Comp., § 72-16A-23, enacted by Laws 1966, ch. 48, § 4; 1970, ch. 8, § 3; 1973, ch. 144, § 1; 1999, ch. 177, § 1; repealed and reenacted by 1999, ch. 177, § 2.

7-25-5. Rate and measure of tax; denomination as "processors tax".

A. For the privilege of processing natural resources, there is imposed on any processor of natural resources in New Mexico an excise tax at the following rates on the taxable value of the natural resources:

(1) all natural resources except timber, potash and molybdenum, three-fourths of one percent;

(2) timber, three-eighths of one percent;

(3) potash, one-eighth of one percent; and

(4) molybdenum, one-eighth of one percent.

B. The tax imposed by this section shall be referred to as the "processors tax".

History: 1978 Comp., § 7-25-5, enacted by Laws 1985, (1st S.S.), ch. 3, §§ 1, 2; 1999, ch, 177, § 3; repealed and reenacted by Laws 1999, ch. 177, § 4.

7-25-6. Rate and measure of tax; denomination as "service tax".

A. For the privilege of severing or processing in New Mexico natural resources that are owned by another person and are not otherwise taxed by Sections 7-25-4 and 7-25-5 NMSA 1978, there is imposed on the service charge of any person severing or processing natural resources that are owned by another person an excise tax at the same rate that would be imposed on an owner of natural resources for performing the same function.

B. The tax imposed by this section shall be referred to as the "service tax".

History: 1953 Comp., § 72-16A-25, enacted by Laws 1966, ch. 48, § 6; 1993, ch. 30, § 25.

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.

7-25-8. Sales of natural resources subject to Gross Receipts and Compensating Tax Act.

In addition to being subject to the Resources Excise Tax Act, any person who sells nonfissionable natural resources other than for subsequent sale in the ordinary course of business or for use as an ingredient or component part of a manufactured product is also subject to the provisions of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] on such sales.

History: 1953 Comp., § 72-16A-27, enacted by Laws 1966, ch. 48, § 8; 1984, ch. 2, § 8.

7-25-9. Date payment due.

The taxes imposed by the Resources Excise Tax Act are to be paid on or before the twenty-fifth day of the month following the month in which the first of the following occurs: sale, transportation out of New Mexico or consumption.

History: 1953 Comp., § 72-16A-28, enacted by Laws 1966, ch. 48, § 9; 1970, ch. 43, § 1; 1977, ch. 235, § 1.

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.

7-26-2. Definitions.

As used in the Severance Tax Act:

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

B. "natural resource" means timber and any metalliferous or nonmetalliferous mineral product, combination or compound thereof but does not include oil, natural gas, liquid hydrocarbon, individually or any combination thereof, or carbon dioxide;

C. "severer" means any person engaging in the business of severing natural resources that the person owns or any person who is the owner of natural resources and has another person perform the severing of such natural resources;

D. "severing" means mining, quarrying, extracting, felling or producing any natural resources in New Mexico;

E. "owner", when used in connection with the severing of any of the natural resources covered by the Severance Tax Act under any lease or contract with the state or United States, includes any person having the right to sever those resources; and

F. "director" or "secretary" means the secretary of taxation and revenue.

History: Laws 1937, ch. 103, § 2; C.S. 1929, § 97-4A-102; 1941 Comp., § 76-1302; Laws 1949, ch. 65, § 2; 1951, ch. 24, § 1; 1953 Comp., § 72-18-2; Laws 1957, ch. 79, § 1; 1959, ch. 52, § 27; 1961, ch. 98, § 2; 1970, ch. 8, § 2; 1974, ch. 61, § 1; 1977, ch. 102, § 4; 1985, ch. 65, § 24; 1986, ch. 20, § 92.

7-26-3. Imposition of tax; denomination as "severance tax".

For the privilege of severing natural resources, there is imposed on any severer of natural resources in New Mexico an excise tax on the taxable value or the quantity of natural resources severed and saved by or for him as determined under, and at the rates provided in the Severance Tax Act. The tax imposed by this section shall be known as the "severance tax".

History: 1953 Comp., § 72-18-3, enacted by Laws 1971, ch. 65, § 5; 1977, ch. 102, § 5.

7-26-4. Determination of taxable value of natural resources.

A. Except as otherwise provided in Subsections C, E, F and G of this section, the "taxable event" is the severance of a natural resource whose taxable value is determined under the provisions of this section.

B. For all natural resources except potash or potash products described under Subsection C of this section, molybdenum or molybdenum products described under Subsection D of this section, copper, lead or zinc described in Subsection E of this section, gold described in Subsection F of this section, silver described in Subsection G of this section, coal and uranium, the gross value of the natural resource is the sales value of the severed and saved product at the first marketable point without any deductions, except that:

(1) for those products having a posted field or market price at the point of production, the gross value is its posted field or market price, except that the gross value of potash is forty percent of the posted field or market price, less those expenses of hoisting, crushing and loading necessary to place the severed product in marketable form and at a marketable place, but the allowable deductions for hoisting, loading and crushing shall not exceed fifty percent of the posted field or market price; and

(2) for those products that must be processed or beneficiated before sale, the gross value is the sales value after deducting freight charges from the point of severance to the point of first sale and the cost of processing or beneficiation.

C. The gross value for each type of potash and potash product requiring processing or beneficiation (other than sizing), regardless of the form in which the product is actually sold, shall be thirty-three and one-third percent of the proceeds realized from the sale of muriate of potash and sulphate of potash magnesia, as standard grades, and thirty-three and one-third percent of the value of such products consumed in the production of other potash products, less fifty percent of such reported value as a deduction for expenses of hoisting, loading, crushing, processing and beneficiation. For purposes of this subsection, the taxable event occurs when products are sold or consumed. Any potash or potash products, the value of which is computed under this subsection, shall not also have their value computed by the use of any of the provisions of Subsection B of this section.

D. The gross value for each type of molybdenum and molybdenum product requiring processing or beneficiation, regardless of the form in which the product is actually sold, shall be the value of molybdenum contained in concentrates shipped or sold from a mine site, but in no event a value less than the value that bona fide sales which reflect current market conditions would yield for the same quantity of molybdenum products contained in concentrates at the mine site, less fifty percent of that value as a deduction for the expenses of hoisting, loading, crushing, processing and beneficiation.

E. The gross value for copper, lead and zinc shall be sixty-six and two-thirds percent of the sales value established from published price data, as further described in this subsection, of the quantity of copper, lead or zinc recoverable from the concentrate or other product which is sold or is shipped, transmitted or transported out of New Mexico without sale, less fifty percent of the sales value as a deduction for the expenses of hoisting, loading, crushing, processing and beneficiation. For purposes of this subsection, the taxable event occurs when the severer sells copper, lead or zinc in New Mexico or when the severer ships, transmits or transports copper, lead or zinc out of New Mexico without first making sale of it. The secretary shall designate by regulation which published price index shall be used to establish the sales value for each resource. The sales value for each resource shall be the monthly average price published for each resource for the month in which the taxable event occurs. When the taxable event is sale, the recoverable quantity of copper, lead or zinc shall be reported as the provisional quantity determined by presale assay, and the reported quantity may be adjusted in a report filed after final assay, if necessary. When the taxable event is shipment, transmission or transportation out of New Mexico without sale, the recoverable quantity of copper, lead or zinc shall be reported as the provisional quantity determined after preshipment assay. Copper, lead or zinc shall not be considered saved for the purposes of the Severance Tax Act unless the copper, lead or zinc can economically be separated and saved from the dominant resource, which is the resource subject to sale by the severer. Any copper, lead or zinc the value of which is computed under this subsection shall not also have its value computed by the use of any of the provisions of Subsection B of this section.

F. The gross value for gold shall be the sales value established from published price data, as further described in this subsection, of the quantity of gold recoverable from the concentrate or other product which is sold or is shipped, transmitted or transported out of New Mexico without sale, less fifty percent of the sales value as a deduction for the expenses of hoisting, loading, crushing, processing and beneficiation.

For purposes of this subsection, the taxable event occurs when the severer sells gold in New Mexico or when the severer ships, transmits or transports gold out of New Mexico without first making sale of it. The secretary shall designate by regulation which published price index shall be used to establish the sales value for gold. The sales value for gold shall be the monthly average price published for gold for the month in which the taxable event occurs. When the taxable event is sale, the recoverable quantity of gold shall be reported as the provisional quantity determined by presale assay, and the reported quantity may be adjusted in a report filed after final assay, if necessary. When the taxable event is shipment, transmission or transportation out of New Mexico without sale, the recoverable quantity of gold shall be reported as the provisional quantity determined after preshipment assay. For purposes of the Severance Tax Act, gold shall not be considered saved unless the gold can economically be separated and saved from the dominant resource, which is the resource subject to sale by the severer. Any gold the value of which is computed under this subsection shall not also have its value computed by the use of any of the provisions of Subsection B of this section.

G. The gross value for silver shall be eighty percent of the sales value established from published price data, as further described in this subsection, of the quantity of silver recoverable from the concentrate or other product which is sold or is shipped, transmitted or transported out of New Mexico without sale, less fifty percent of the sales value as a deduction for the expenses of hoisting, loading, crushing, processing and beneficiation. For purposes of this subsection, the taxable event occurs when the severer sells silver in New Mexico or when the severer ships, transmits or transports silver out of New Mexico without first making sale of it. The secretary shall designate by regulation which published price index shall be used to establish the sales value for silver. The sales value for silver shall be the monthly average price published for silver for the month in which the taxable event occurs. When the taxable event is sale, the recoverable quantity of silver shall be reported as the provisional quantity determined by presale assay, and the reported quantity may be adjusted in a report filed after final assay, if necessary. When the taxable event is shipment, transmission or transportation out of New Mexico without sale, the recoverable quantity of silver shall be reported as the provisional quantity determined after preshipment assay. For purposes of the Severance Tax Act, silver shall not be considered saved unless the silver can economically be separated and saved from the dominant resource, which is the resource subject to sale by the severer. Any silver the value of which is computed under this subsection shall not also have its value computed by the use of any of the provisions of Subsection B of this section.

H. The taxable value of all severed natural resources except coal and uranium is the gross value of the severed resource determined under this section less rental or royalty payments belonging to the United States or the state.

I. The taxable value to be reported for severed and saved uranium-bearing material is the sales price per pound of the content of U_3O_8 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 U_3O_8 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.

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.

7-26-6. Severance tax on coal; surtax.

A. The severance tax on coal is measured by the quantity of coal severed and saved. The taxable event is sale, transportation out of New Mexico or consumption of the coal, whichever first occurs. Upon each short ton (two thousand pounds) of coal severed and saved, there shall be imposed on the severer a severance tax. For the period commencing on July 1, 1982, the severance tax rate shall be:

(1) surface coal, fifty-seven cents ($.57); and

(2) underground coal, fifty-five cents ($.55).

B. The severance tax on coal shall be increased by a surtax, hereby imposed. The surtax shall be imposed on the unit of quantity of such product or natural resource at the following rates:

(1) surface coal, sixty cents ($.60); and

(2) underground coal, fifty-eight cents ($.58).

C. The surtax rate on coal shall be increased on July 1, 1994, and on July 1 of each succeeding year by an amount equal to the product of the dollar amount of the severance tax imposed on each ton of coal by a percentage equal to the percentage rise in the producer price index for coal from the calendar year 1992 to the calendar year just prior to the year in which the surtax rates are computed, but in no case shall the surtax rate be decreased. The rates so computed shall be computed by the department in April of 1994 and in April of each year thereafter and published on or before May 1, 1994 and on or before May 1 of each year thereafter.

If the producer price index for coal is substantially revised or if the base year used as an index of one hundred is changed, the department shall make an adjustment in the percentage used to compute the surtax rates that would produce results equivalent, as nearly as possible, to those that would have been obtained if the producer price index for coal had not been so revised or if the base year had not been changed. If this index ceases to become available, then a comparable index based upon changes in the price of coal shall be adopted by the department by regulation.

D. As used in this section:

(1) "producer price index for coal" means the commodity code 05-1 as reported annually by the bureau of labor statistics at the United States department of labor in their annual producer price indexes data;

(2) "surface coal" means coal that is severed using surface mining methods;

(3) "surface mining" means the extraction of coal from the earth by removing the material overlying a coal seam and then removing the coal by common methods, including, but not limited to, contour mining, strip mining, mountain top removal mining, box cut mining, open pit mining and area mining; and

(4) "underground coal" means all coal that is not surface coal.

History: 1978 Comp., § 7-26-6, enacted by Laws 1982, ch. 77, § 1; 1989, ch. 261, § 1; 1993, ch. 89, § 1.

7-26-6.1. Repealed.

7-26-6.2. Coal surtax exemption; qualification requirements.

A. The following coal is exempt from the surtax imposed on coal under the provisions of Section 7-26-6 NMSA 1978:

(1) coal sold and delivered pursuant to coal sales contracts that are entered into on or after July 1, 1990, under which deliveries start after July 1, 1990, if the sales contracts are not the result of:

(a) a producer and purchaser mutually rescinding an existing contract and negotiating a revised contract under substantially similar terms and conditions;

(b) a purchaser establishing an affiliated company to purchase coal on behalf of the purchaser; or

(c) a purchaser independently abrogating a contract that was in effect on July 1, 1990 with a producer for the purpose of securing the benefits of the exemption granted by this section; and

(2) coal sold and delivered pursuant to a contract in effect on July 1, 1990 that exceeds the average calendar year deliveries under the contract during production years 1987, 1988 and 1989 or the highest contract minimum during 1987, 1988 and 1989, whichever is greater.

B. If a contract existing on July 1, 1990 is renegotiated between a producer and a purchaser after May 20, 1992 and if that renegotiated contract requires the purchaser to take annual coal deliveries in excess of the greater of the average calendar year deliveries under the contract during production years 1987, 1988 and 1989 or the highest contract minimum during 1987, 1988 and 1989, the surtax imposed by Subsection B of Section 7-26-6 NMSA 1978 shall not apply to such excess deliveries for the remaining term of the renegotiated contract.

C. For coal exempt under the provisions of Paragraph (2) of Subsection A of this section, if the contract involved was for a lesser term during the production years specified, then actual deliveries shall be annualized to establish average calendar year deliveries, and in the event that coal sold and delivered in a calendar year after June 30, 2009 falls below the average calendar year deliveries during 1987, 1988 and 1989, the exemption shall no longer apply unless the deliveries are reduced due to causes beyond the reasonable control of either party to the contract.

D. The taxpayer, prior to taking the exemption provided by this section, shall register any contract for the sale of coal that qualifies for the exemption from the surtax under the provisions of this section with the department on forms provided by the secretary. If upon examination of the contract or upon audit or inspection of transactions occurring under the contract the secretary or the secretary's delegate determines that a person who is a party to the contract has taken an action to circumvent the intent and purpose of this section, the exemption shall be disallowed.

History: 1978 Comp., § 7-26-6.2, enacted by Laws 1990, ch. 83, § 1 and Laws 1990, ch. 84, § 1; 1992, ch. 65, § 1; 1992, ch. 115, § 1; 1994, ch. 73, § 1; 1995, ch. 53, § 1; 1997, ch. 61, § 1; 1999, ch. 86, § 1.

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.

7-26-7.1. Repealed.

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.

7-26-9. Repealed.

7-26-10. Repealed.

7-26-11. Repealed.

ARTICLE 27
Severance Tax Bonding Act

7-27-1. Short title.

Sections 7-27-1 through 7-27-27 NMSA 1978 may be cited as the "Severance Tax Bonding Act".

History: 1953 Comp., § 72-18-29, enacted by Laws 1961, ch. 5, § 2; 2000, ch. 97, § 1.

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.

7-27-3. Severance tax permanent fund created.

There is created in the state treasury the "severance tax permanent fund".

History: 1953 Comp., § 72-18-30.1, enacted by Laws 1973, ch. 294, § 2; 1996, ch. 3, § 1.

7-27-3.1. Transfer of investment powers.

The functions, powers and duties vested by law relating to the investment or reinvestment of money and the purchase, sale or exchange of investments or securities of the severance tax permanent fund are transferred to the council. The state treasurer shall maintain custody of the severance tax permanent fund but shall at all times render the fund or any part of it available for investment in accordance with the provisions of Sections 7-27-1 through 7-27-48 NMSA 1978.

History: 1978 Comp., § 7-27-3.1, enacted by Laws 1983, ch. 306, § 5.

7-27-3.2. Definition.

As used in Sections 7-27-1 through 7-27-48 NMSA 1978, "council" means the state investment council.

History: 1978 Comp., § 7-27-3.2, enacted by Laws 1983, ch. 306, § 6.

7-27-3.3. Severance tax permanent fund; annual distributions.

The secretary of finance and administration shall make annual distributions from the severance tax permanent fund in the amount authorized by and calculated pursuant to the provisions of Article 8, Section 10 of the constitution of New Mexico. One-twelfth of the amount authorized to be distributed in a fiscal year shall be distributed each month to the general fund.

History: Laws 1999, ch. 88, § 1.

7-27-4. Repealed.

7-27-5. Investment of severance tax permanent fund.

A. The severance tax permanent fund shall be invested in separate differential rate and market rate investment classes. "Differential rate investments" are permitted in Sections 7-27-5.3 through 7-27-5.5, 7-27-5.13 through 7-27-5.17, 7-27-5.22, 7-27-5.24 and 7-27-5.26 NMSA 1978 and are intended to stimulate the economy of New Mexico and to provide income to the severance tax permanent fund. "Market rate investments" are investments that are not differential rate investments and are intended to provide income to the severance tax permanent fund. All market rate investments and differential rate investments shall be invested in accordance with the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978] and shall be accounted for in accordance with generally accepted accounting principles.

B. In addition to the investment classes described in Subsection A of this section, the severance tax permanent fund shall be invested in loans to provide emergency economic relief to local governments as provided by Section 8 [7-27-5.27 NMSA 1978] of this 2020 act.

History: 1978 Comp., § 7-27-5, enacted by Laws 1983, ch. 306, § 7; 1987, ch. 219, § 1; 1988, ch. 133, § 2; 1988, ch. 134, § 6; 1989, ch. 265, § 2; 1990, ch. 126, § 2; 1990, ch. 127, § 9; 1990 (2nd S.S.), ch. 3, § 1; 1991, ch. 83, § 2; 1995, ch. 215, § 1; 1997, ch. 178, § 2; 2000, ch. 5, § 3; 2000 (2nd S.S.), ch. 6, § 1; 2005, ch. 240, § 3; 2020 (1st S.S.), ch. 6, § 9.

7-27-5.1. Repealed.

History: 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; 1992, ch. 101, § 1; 1994, ch. 121, § 1; 1996, ch. 31, § 3; 1997, ch. 45, § 1; 1998, ch. 19, § 2; 2001, ch. 252, § 7; 2004, ch. 14, § 1; repealed by Laws 2005, ch. 240, § 7.

7-27-5.2. Repealed.

History: Laws 1983, ch. 306, § 9; 1991, ch. 83, § 2; repealed by Laws 1993, ch. 267, § 5.

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.

7-27-5.4. New Mexico business investments.

No more than twenty percent of the book value of the severance tax permanent fund may be invested in the following investments and in the following amounts:

A. no more than ten percent of the book value of the severance tax permanent fund may be invested in notes or obligations securing loans to New Mexico businesses made by farm credit entities, banks and savings and loan associations and mortgages approved by the department of housing and urban development pursuant to the act of congress of July 30, 1953 known as the Small Business Act of 1953, as amended, and notes or obligations pursuant to the act of congress of August 14, 1946 known as the Farmers' Home Administration Act of 1946, as amended, only to the extent that both principal and interest are guaranteed by the United States government. The effective yield of these loans shall be a market rate not less than the yield available on the planned amortized class tranche of collateralized mortgage obligations guaranteed by the federal national mortgage association or the federal home loan mortgage corporation with an average life comparable to the maturity of the loan. The state investment officer may enter into conventional agreements for the servicing of the loans and the administration of the receipts therefrom. Any servicing agreement may contain reasonable and customary provisions, including servicing fees not to exceed one hundred fifty basis points, as may be agreed upon; provided, in no event shall the rate paid by the borrower on the loan, together with servicing fees, exceed the maximum rate permitted by the applicable federal guarantee program; and

B. no more than ten percent of the book value of the fund may be invested in bonds, notes, debentures or other evidence of indebtedness, excluding commercial paper rated not less than Baa or BBB or the equivalent by a national rating service of any corporation organized and operating within the United States, excluding regulated public utility corporations, which as a condition of receiving the proceeds of such evidence of indebtedness will use such proceeds to establish or expand business outlets or ventures in New Mexico, provided that:

(1) the investment in the bonds, notes or debentures or other evidence of indebtedness of any one corporation shall not exceed one hundred percent of the cost of the expansion venture or new outlet or twenty million dollars ($20,000,000), whichever is less;

(2) the rate of interest to be paid on the bonds, notes or debentures or other evidence of indebtedness shall be established by the council, but shall not be less than the equivalent yield available on United States treasury issues of a comparable maturity plus one hundred basis points;

(3) the indebtedness shall be approved prior to purchase by the council; and

(4) the guidelines for initiation of the purchase by the council of the bonds, notes, debentures or other evidence of indebtedness and the terms thereof shall be established by the council.

History: 1978 Comp., § 7-27-5.4, enacted by Laws 1983, ch. 306, § 11; 1984, ch. 131, § 3; 1987, ch. 306, § 2; 1988, ch. 132, § 2; 1989, ch. 271, § 1; 1990, ch. 68, § 1; 1994, ch. 78, § 1; 1999, ch. 88, § 2.

7-27-5.5. Educational loan notes.

The severance tax permanent fund may be invested in educational loan notes issued pursuant to the Educational Assistance Act [Chapter 21, Article 21A NMSA 1978]; provided that in no event shall the principal amount of such notes purchased in any twelve-month period exceed ten million dollars ($10,000,000), and in no event shall the total amount of such notes held by the severance tax permanent fund exceed ten percent of the book value of the severance tax permanent fund. If any educational loan note is sold by the severance tax permanent fund, the sale shall be without recourse to the fund or the state.

History: 1978 Comp., § 7-27-5.5, enacted by Laws 1983, ch. 306, § 12.

7-27-5.6. Repealed.

History: Laws 1987, ch. 219, § 2; 1990, ch. 126, § 3; 1997, ch. 45, § 2; 2001, ch. 252, § 8; repealed by Laws 2005, ch. 240, § 7.

7-27-5.7. Repealed.

7-27-5.8. Repealed.

7-27-5.9. Repealed.

7-27-5.10. Repealed.

7-27-5.11. Repealed.

7-27-5.12. Repealed.

7-27-5.13. Educational institution research and development facilities revenue bonds.

No more than ten percent of the book value of the severance tax permanent fund may be invested in educational institution revenue bonds described in this section.

A. The revenue bonds shall have been issued by one of the following educational institutions:

(1) the university of New Mexico;

(2) the New Mexico state university;

(3) the New Mexico highlands university;

(4) the western New Mexico university;

(5) the eastern New Mexico university; and

(6) the New Mexico institute of mining and technology.

B. The revenue bonds shall have been issued under the authority of Chapter 6, Article 17 NMSA 1978.

C. The revenue bonds shall have been issued to provide funds for the construction, furnishing and equipping of a research or development facility, including any infrastructure improvements necessary to the construction of the facility. The facility shall be one that will:

(1) provide space for operations of an already funded research or development project;

(2) be income-producing when completed and occupied; and

(3) provide both the local community in which it is located and the state generally with economic benefits including, but not limited to, employment for students of post-secondary educational institutions.

History: 1978 Comp., § 7-27-5.13, enacted by Laws 1989, ch. 265, § 3.

7-27-5.14. Findings and purpose.

The legislature finds that the health of the New Mexico economy is heavily dependent on the establishment and expansion of small businesses and that the lack of available private equity is an impediment to the start-up and growth of businesses in the state. The legislature further finds that the commercialization of technology conceived in the universities and the federal scientific and engineering laboratories and test facilities in the state is likely to occur elsewhere unless sources of local private equity are developed. The purpose of Section 7-27-5.15 NMSA 1978 is to provide a mechanism whereby the establishment of private equity funds, whose investment policies are supportive of the economic welfare of New Mexico, will be stimulated.

History: 1978 Comp., § 7-27-5.14, enacted by Laws 1990, ch. 126, § 4; 2001, ch. 252, § 9; 2016, ch. 48, § 1.

7-27-5.15. New Mexico private equity funds and New Mexico business investments.

A. In addition to the investments required by Subsections F and G of this section, no more than eleven percent of the market value of the severance tax permanent fund may be invested in New Mexico private equity funds or New Mexico businesses under this section.

B. In making investments pursuant to Subsection A of this section, the council shall make investments in New Mexico private equity funds or New Mexico businesses whose investments or enterprises enhance the economic development objectives of the state.

C. The state investment officer shall make investments pursuant to Subsection A of this section only upon approval of the council and within guidelines and policies established by the council.

D. As used in this section:

(1) "New Mexico business" means, in the case of a corporation or limited liability company, a business with its principal office and a majority of its full-time employees located in New Mexico or, in the case of a limited partnership, a business with its principal place of business and eighty percent of its assets located in New Mexico; and

(2) "New Mexico private equity fund" means an entity that makes, manages or sources potential investments in New Mexico businesses and that:

(a) has as its primary business activity the investment of funds in return for equity in or debt of businesses for the purpose of providing capital for start-up, expansion, product or market development, recapitalization or similar business purposes;

(b) holds out the prospects for capital appreciation from such investments;

(c) has at least one full-time manager with at least three years of professional experience in assessing the growth prospects of businesses or evaluating business plans;

(d) is committed to investing or helps secure investing by others, in an amount at least equal to the total investment made by the state investment officer in that fund pursuant to this section, in businesses with a principal place of business in New Mexico and that hold promise for attracting additional capital from individual or institutional investors nationwide for businesses in New Mexico; and

(e) accepts investments only from accredited investors as that term is defined in Section 2 of the federal Securities Act of 1933, as amended (15 USCA Section 77(b)), and rules and regulations promulgated pursuant to that section, or federally recognized Indian tribes, nations and pueblos with at least five million dollars ($5,000,000) in overall investment assets.

E. The state investment officer is authorized to make investments in New Mexico businesses to create new job opportunities and to support new, emerging or expanding businesses in a manner consistent with the constitution of New Mexico if:

(1) the investments are made:

(a) in conjunction with cooperative investment agreements with parties that have demonstrated abilities and relationships in making investments in new, emerging or expanding businesses;

(b) in a New Mexico aerospace business that has received an award from the United States government or one of its agencies or instrumentalities: 1) in an amount, not less than one hundred million dollars ($100,000,000), that is equal to at least ten times the investment from the severance tax permanent fund; and 2) for the purpose of stimulating commercial enterprises; or

(c) in a New Mexico business that: 1) is established to perform technology transfer, research and development, research commercialization, manufacturing, training, marketing or public relations in any field of science or technology, including but not limited to energy, security, defense, aerospace, automotives, electronics, telecommunications, computer and information science, environmental science, biomedical science, life science, physical science, materials science or nanoscience, using research developed in whole or in part by a state institution of higher education or a prime contractor designated as a national laboratory by an act of congress that is operating a facility in the state, or an affiliated entity; and 2) has an agreement to operate the business on state lands;

(2) an investment in any one business does not exceed ten percent of the amount available for investment pursuant to this section; and

(3) the investments represent no more than fifty-one percent of the total investment capital in a business; provided, however, that nothing in this subsection prohibits the ownership of more than fifty-one percent of the total investment capital in a New Mexico business if the additional ownership interest:

(a) is due to foreclosure or other action by the state investment officer pursuant to agreements with the business or other investors in that business;

(b) is necessary to protect the investment; and

(c) does not require an additional investment of the severance tax permanent fund.

F. In addition to the investments required by Subsections A and G of this section, the state investment officer shall make a commitment to the small business investment corporation pursuant to the Small Business Investment Act [Chapter 6, Article 32 NMSA 1978] to invest two percent of the market value of the severance tax permanent fund to create new job opportunities by providing capital for land, buildings or infrastructure for facilities to support new or expanding businesses and to otherwise make investments to create new job opportunities to support new or expanding businesses in a manner consistent with the constitution of New Mexico. On July 1 of each year, the state investment officer shall determine whether the invested capital in the small business investment corporation is less than two percent of the market value of the severance tax permanent fund. If the invested capital in the small business investment corporation equals less than two percent of the market value of the severance tax permanent fund, further commitments shall be made until the invested capital is equal to two percent of the market value of the fund.

G. In addition to the investments provided for in Subsections A and F of this section, the state investment officer shall make a commitment to the New Mexico finance authority to invest five hundred million dollars ($500,000,000) of the severance tax permanent fund in investments made pursuant to the Small Business Recovery and Stimulus Act; provided that:

(1) investments made pursuant to and in compliance with the Small Business Recovery and Stimulus Act shall be deemed to be in compliance with the prudent investor rule set forth in the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978]; and

(2) the New Mexico finance authority shall not be held liable for investments made pursuant to this subsection that do not provide a return on investment that is comparable to other differential rate investments made pursuant to the Severance Tax Bonding Act.

H. The state investment officer shall report semiannually on the investments made pursuant to this section. Annually, a report shall be submitted to the legislature prior to the beginning of each regular legislative session and a second report no later than October 1 each year to the legislative finance committee, the revenue stabilization and tax policy committee and any other appropriate interim committee. Each report shall provide the amounts invested in each New Mexico private equity fund, as well as information about the objectives of the funds, the companies in which each private equity fund is invested and how each private equity investment enhances the economic development objectives of the state. Each report also shall provide the amounts invested in each New Mexico business.

History: 1978 Comp., § 7-27-5.15, enacted by Laws 1990, ch. 126, § 5; 1997, ch. 70, § 1; 2000, ch. 76, § 1; 2000, ch. 97, § 2; 2001, ch. 238, § 1; 2001, ch. 252, § 10; 2003, ch. 399, § 2; 2003, ch. 401, § 1; 2003, ch. 406, § 1; 2004, ch. 57, § 1; 2005, ch. 63, § 1; 2006, ch. 10, § 1; 2007, ch. 355, § 1; 2007, ch. 359, § 1; 2007, ch. 360, § 1; 2013, ch. 181, § 1; 2015, ch. 95, § 9; 2016, ch. 48, § 2; 2019, ch. 46, § 1; 2020, ch. 75, § 1; 2020 (1st S.S.), ch. 6, § 10; 2021, ch. 5, § 7.

7-27-5.16. Repealed.

History: Laws 1990, ch. 127, § 10; repealed by Laws 2005, ch. 240, § 7.

7-27-5.17. Employers mutual company revenue bonds.

The severance tax permanent fund may be invested in revenue bonds issued by the employers mutual company under the authority of the Employers Mutual Company Act [52-9-1 to 52-9-24 NMSA 1978], provided that the amount invested shall not exceed ten million dollars ($10,000,000) and provided further that the bonds shall bear interest at a market rate not less than the existing rate of return for ten-year United States treasury bonds on the date of the bond sale.

History: 1978 Comp., § 7-27-5.17, enacted by Laws 1990 (2nd S.S.), ch. 3, § 2.

7-27-5.18. Purpose.

It is the purpose of this act to encourage economic development in New Mexico by linking deposit of the severance tax permanent fund in New Mexico financial institutions to an increase in loans to New Mexico businesses and investment in New Mexico government entities and to encourage financial institutions to make the type of loans that meet business needs not addressed by conventional loans and loans guaranteed by federal, state or local agencies.

History: Laws 1993, ch. 267, § 1.

7-27-5.19. Deposits in New Mexico financial institutions; limitations.

A. No more than twenty percent of the book value of the severance tax permanent fund may be invested in deposits in New Mexico financial institutions under terms and conditions set by the council in accordance with the provisions of this section.

B. To be eligible for deposits under this section, a financial institution's loans and investments shall equal in the aggregate at least one hundred thousand dollars ($100,000). If eligible, a financial institution may qualify for deposits as follows:

(1) a financial institution may qualify for deposits in an amount equal to new loans and investments made by that financial institution after July 1, 1993;

(2) the financial institution shall provide the state investment officer with the necessary documentation and information for each new loan or investment and the state investment officer shall verify that each such loan or investment meets the requirements of this section and the regulations, guidelines and investment policies adopted pursuant to this section; and

(3) in any calendar year, the state investment officer may increase the deposits in any financial institution only to the extent new loans and investments made by the financial institution have increased over the same period of the prior year.

C. Notwithstanding any other collateral, interest rate or other provisions of law to the contrary governing deposit of public money in Chapter 6, Article 10 NMSA 1978, deposits of the severance tax permanent fund made pursuant to this section shall be governed by the regulations, guidelines and investment policies established by the council and shall not be made until such regulations, guidelines and policies are adopted. Those policies shall provide:

(1) the terms and conditions for pledging of collateral security and the amount and kind of collateral security to be pledged; provided:

(a) no collateral shall be required for deposits of financial institutions rated "A" by the council pursuant to its risk assessment analysis, unless the council in its sole discretion deems it necessary to protect the severance tax permanent fund;

(b) financial institutions not rated "A" by the council shall secure each severance tax permanent fund deposit with security having an aggregate value equal to seventy-five percent of the amount of money deposited by that institution or any greater percentage determined by the council in its sole discretion to be necessary to protect the severance tax permanent fund;

(c) secured deposits shall be secured by: 1) securities of the United States or its agencies or instrumentalities, the state or its agencies or instrumentalities or political subdivisions of the state; 2) securities guaranteed by agencies or instrumentalities of the United States; or 3) New Mexico residential mortgages;

(d) to be rated "A" by the council, a bank shall at a minimum have: 1) primary capital at least equal to six percent of assets; 2) net income after taxes at least equal to sixty-one hundredths of one percent of the average assets of the bank for the current quarter and for each of the three previous quarters; and 3) an aggregate amount of nonperforming loans, defined as loans that are at least ninety days past due, that does not exceed thirty-four and nine-tenths percent of primary capital; provided the council in its sole discretion may increase any of the requirements of this paragraph to protect the severance tax permanent fund; and

(e) to be rated "A" by the council, a savings and loan association shall have a regulatory net worth equal to at least three percent of total assets and net income after taxes equal to at least thirty hundredths of one percent of average assets for the current quarter and for each of the previous three quarters; provided the council may increase these requirements or add additional criteria for nonperforming loans as a percentage of primary capital or net worth that are similar to the criteria for banks, as necessary to conform to changing applicable federal regulatory requirements or to protect the severance tax permanent fund;

(2) the rate at which severance tax permanent fund deposits shall bear interest, payable monthly, which shall be at a fixed market rate determined by the council, but in no event shall the rate of interest paid be less than the yield available on comparable maturities of obligations of the United States government, its agencies or instrumentalities or obligations guaranteed by the United States government, its agencies or instrumentalities, whichever is higher;

(3) the terms of maturity, renewal or withdrawal; provided that in no event shall the maturity exceed eight years and the council may withdraw any deposit before maturity without penalty if more than seventy-five percent collateral is required by the rules and regulations adopted by the council; and

(4) such other terms, including the financial condition of the financial institution, as the council deems prudent to protect the severance tax permanent fund and to implement efficiently and effectively the deposit program.

D. In making deposits in New Mexico financial institutions pursuant to this section, the state investment officer shall not deposit from the severance tax permanent fund an amount that exceeds two hundred percent of the total equity capital in the case of banks or two hundred percent of the net worth in the case of savings and loan associations or ten percent of the total of that bank's or the savings and loan association's deposits, whichever is less. These limits shall be based on the most recently published statement of financial condition required by federal or state financial authorities as certified by an authorized officer of the financial institution unless the council has more current reliable information from the financial institution. In the event a financial institution exceeds the limitations set forth in this subsection, the state investment officer may withdraw without penalty the deposits that exceed that limitation. The maximum funds on deposit or the deposit limit in this subsection shall not apply to the state fiscal agent bank as to the funds held by the fiscal agent bank or demand deposits held by a state checking depository bank approved by the state board of finance in accordance with the provisions of Section 6-10-35 NMSA 1978.

E. As used in this section:

(1) "financial institution" means a New Mexico bank, a branch of a bank doing business in New Mexico or a savings and loan association that is qualified as an insured public depository;

(2) "investment" means a New Mexico municipal bond or a New Mexico industrial revenue bond; and

(3) "loan" means a loan of any term that is secured or unsecured and is made for business purposes. "Loan" does not include a loan that is a renewal or restructuring of a loan existing on or before July 1, 1993, a loan of more than three million dollars ($3,000,000) to one borrower, a student loan, a consumer loan or a loan to purchase or provide permanent financing on a personal residence, but does include a loan that is made to "persons of low or moderate income" as that term is defined in the Mortgage Finance Authority Act [Chapter 58, Article 18 NMSA 1978], is secured by real estate and is held and serviced by the original lending financial institution in New Mexico. For purposes of this paragraph, "business" includes but is not limited to manufacturing; construction; transportation; communications; publishing; wholesale or retail business; restaurants; entertainment; architectural, engineering and other professional services; medical and health services; food processing; farming or ranching; mining and natural resource exploration and development; and research and technology development.

History: Laws 1993, ch. 267, § 2; 1997, ch. 220, § 1.

7-27-5.20. Deposits in New Mexico credit unions.

The severance tax permanent fund may be invested in deposits in New Mexico credit unions, provided each deposit is insured by an agency of the United States and the credit union offers interest on such deposits at least equal to that offered to its members for similar deposits. Such deposits may be invested for a term of maturity of eight years or less at an interest rate to be set by the council. Such deposits shall be made and administered by the council and state investment officer in accordance with the law governing deposits of public money, including, but not limited to, Sections 6-10-10, 6-10-16, 6-10-24.1 and 6-10-29 NMSA 1978. As used in this section, "deposit" includes share, share certificate and share draft.

History: Laws 1993, ch. 267, § 3.

7-27-5.21. New Mexico lottery revenue bonds.

The severance tax permanent fund may be invested in revenue bonds issued by the New Mexico lottery authority pursuant to the provisions of the New Mexico Lottery Act [Chapter 6, Article 24 NMSA 1978]. The amount invested shall not exceed three million dollars ($3,000,000).

History: Laws 1995, ch. 155, § 36.

7-27-5.22. Severance tax permanent fund; investment in obligations issued under Section 33-1-19 NMSA 1978 for corrections facilities.

Subject to the approval of the state investment council, the severance tax permanent fund may be invested in bonds, certificates of participation or other obligations issued pursuant to Section 33-1-19 NMSA 1978 for corrections related facilities.

History: 1978 Comp., § 7-27-5.22, enacted by Laws 1995, ch. 215, § 2.

7-27-5.23. Repealed.

History: Laws 1997, ch. 45, § 3; 2001, ch. 252, § 11; repealed Laws 2005, ch. 240, § 7.

7-27-5.24. Severance tax permanent fund; investment in obligations issued for state capitol buildings and renovations.

Subject to the approval of the state investment council, the severance tax permanent fund may be invested in revenue bonds issued by the New Mexico finance authority for state capitol buildings and relocation-associated renovations in the state capitol. The amount invested shall not exceed ten million one hundred fifty-five thousand dollars ($10,155,000).

History: 1978 Comp., § 7-27-5.24, enacted by Laws 1997, ch. 178, § 3.

7-27-5.25. Repealed.

History: Laws 2000, ch. 5, § 4; repealed by Laws 2005, ch. 240, § 7.

7-27-5.26. Investment in films to be produced in New Mexico.

A. No more than six percent of the market value of the severance tax permanent fund may be invested in New Mexico film private equity funds or a New Mexico film project under this section.

B. If an investment is made under this section, not more than fifteen million dollars ($15,000,000) of the amount authorized for investment pursuant to Subsection A of this section shall be invested in any one New Mexico film private equity fund or any one New Mexico film project.

C. The state investment officer shall make investments pursuant to this section only upon approval of the council after a review by the New Mexico film division of the economic development department. The state investment officer may make debt or equity investments pursuant to this section only in New Mexico film projects or New Mexico film private equity funds that invest only in film projects that:

(1) are filmed wholly or substantially in New Mexico;

(2) have shown to the satisfaction of the New Mexico film division that a distribution contract is in place with a reputable distribution company;

(3) have agreed that, while filming in New Mexico, a majority of the production crew will be New Mexico residents;

(4) have posted a completion bond that has been approved by the New Mexico film division; provided that a completion bond shall not be required if the fund or project is guaranteed pursuant to Paragraph (5) of this subsection; and

(5) have obtained a full, unconditional and irrevocable guarantee of repayment of the invested amount in favor of the severance tax permanent fund:

(a) from an entity that has a credit rating of not less than Baa or BBB by a national rating agency;

(b) from a substantial subsidiary of an entity that has a credit rating of not less than Baa or BBB by a national rating agency;

(c) by providing a full, unconditional and irrevocable letter of credit from a United States incorporated bank with a credit rating of not less than A by a national rating agency; or

(d) from a substantial and solvent entity as determined by the council in accordance with its standards and practices; or

(6) if not guaranteed pursuant to Paragraph (5) of this subsection, have obtained no less than one-third of the estimated total production costs from other sources as approved by the state investment officer.

D. The state investment officer may loan at a market rate of interest, with respect to an eligible New Mexico film project, up to eighty percent of an expected and estimated film production tax credit available to a film production company pursuant to the provisions of Section 7-2F-1 NMSA 1978; provided that the film production company agrees to name the state investment officer as its agent for the purpose of filing an application for the film production tax credit to which the company is entitled if the company does not apply for the film production tax credit. The New Mexico film division of the economic development department shall determine the estimated amount of a film production tax credit. The council shall establish guidelines for the state investment officer's initiation of a loan and the terms of the loan.

E. As used in this section:

(1) "film project" means a single media or multimedia program, including advertising messages, fixed on film, videotape, computer disc, laser disc or other similar delivery medium from which the program can be viewed or reproduced and that is intended to be exhibited in theaters; licensed for exhibition by individual television stations, groups of stations, networks, cable television stations or other means or licensed for the home viewing market; and

(2) "New Mexico film private equity fund" means any limited partnership, limited liability company or corporation organized and operating in the United States that

(a) has as its primary business activity the investment of funds in return for equity in film projects produced wholly or partly in New Mexico;

(b) holds out the prospects for capital appreciation from such investments; and

(c) accepts investments only from accredited investors as that term is defined in Section 2 of the federal Securities Act of 1933, as amended, and rules promulgated pursuant to that section.

History: 1978 Comp., § 7-27-5.26, enacted by Laws 2000 (2nd S.S.), ch. 6, § 2; 2001, ch. 252, § 12; 2002, ch. 60, § 1; 2003, ch. 56, § 1; 2005, ch. 101, § 2; 2005, ch. 106, § 1; 2007, ch. 340, § 1; 2015, ch. 95, § 10.

7-27-5.27. Local government emergency economic relief.

A. Within thirty days of the effective date of this 2020 act, the state investment officer shall make a commitment to the authority to invest one percent of the average of the year-end market values of the severance tax permanent fund for the immediately preceding five calendar years for the purpose of making loans to local governments pursuant to this section; provided that investments made pursuant to this section are in compliance with the prudent investor rule set forth in the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978]. The authority may expend no more than one percent of the funding made available to it pursuant to this section for administering the provisions of this section.

B. The authority shall receive and review applications for loans from the amount committed pursuant to Subsection A of this section to a local government that can demonstrate that the local government experienced at least a ten percent decline in local option gross receipts tax revenue for the last quarter of fiscal year 2020 due to the economic impacts of the coronavirus disease 2019 pandemic. The authority shall adopt rules to govern the application procedures and requirements for disbursing the loans.

C. The authority shall make loans from the amount committed pursuant to Subsection A of this section in accordance with the following:

(1) an application for a loan shall be received by the authority no later than December 31, 2020;

(2) the authority shall determine the proper amount for a loan in consultation with the local government division of the department of finance and administration and the local government; provided that:

(a) the authority shall take into consideration the local government's actual decline of local gross receipts tax revenue in the determination of a loan amount; and

(b) a loan shall not exceed fifty percent of the local government's actual decline of local gross receipts tax revenue; and

(3) terms of the loan shall include that:

(a) a local government may use loan proceeds for general operating expenses and revenue replacement;

(b) a local government shall dedicate future local option gross receipts tax revenue to secure the loan at a lien level as determined by the authority;

(c) a loan shall bear an annual interest rate equal to two percent;

(d) a loan shall be structured as an interest-only loan for a period of three years, at which time the local government shall begin making monthly payments on the principal and interest of any balance of the loan;

(e) interest on a loan shall not compound until twelve months following the date the loan proceeds are made available to the local government; and

(f) a loan shall be made for a period of no more than five years.

D. Receipts from the repayment of loans made pursuant to this section shall be transferred to the severance tax permanent fund.

E. No provision in a loan or the evidence of indebtedness of a loan shall include a penalty or premium for prepayment of the balance of the indebtedness.

F. On or before October 1 of a year that a loan made pursuant to this section is outstanding, the authority shall audit the loan program and submit a report of the findings to the New Mexico finance authority oversight committee, the legislative finance committee and the office of the governor. The report shall provide details regarding the loans made pursuant to this section, including:

(1) the name of each local government that received a loan, the loan amount, the balance owed and if the loan is in a delinquent status or default; and

(2) the number of jobs saved that can be attributed to receiving the loan, with evidence of how the loan saved each job.

G. The authority may exercise any power provided to the authority in the New Mexico Finance Authority Act [Chapter 6, Article 21 NMSA 1978] to assist in the administration of section; provided that the power is consistent with the provisions of this section.

H. As used in this section:

(1) "authority" means the New Mexico finance authority;

(2) "local government" means a municipality or county; and

(3) "local option gross receipts tax revenue" means:

(a) for a municipality, revenue distributed to the municipality pursuant to Section 7-1-6.4 NMSA 1978 and transferred to the municipality pursuant to Section 7-1-6.12 NMSA 1978; and

(b) for a county, revenue transferred to the county pursuant to Section 7-1-6.13 NMSA 1978.

History: Laws 2020 (1st S.S.), ch. 6, § 8.

7-27-6. Severance tax bonding fund pledged.

A. The money in the severance tax bonding fund is first pledged for the payment of principal and interest on all severance tax bonds issued after the enactment of the Severance Tax Bonding Act.

B. The money in the severance tax bonding fund is second pledged, on a basis subordinate to any severance tax bonds then or thereafter outstanding, for the payment of principal and interest on all supplemental severance tax bonds issued after the enactment of the Severance Tax Bonding Act.

History: 1953 Comp., § 72-18-31, enacted by Laws 1961, ch. 5, § 4; 1999 (1st S.S.), ch. 6, § 1.

7-27-7. Special income to retire bonds.

When a law authorizing a severance tax bond issue or supplemental severance tax bond issue contemplates the income of money for the retirement of the bond issue other than or in addition to the money in the severance tax bonding fund, then the money derived from such income shall be paid to the state treasurer and be credited to the specific bond issue account and deposited in the severance tax bonding fund.

History: 1953 Comp., § 72-18-32, enacted by Laws 1961, ch. 5, § 5; 1999 (1st S.S.), ch. 6, § 2.

7-27-8. Transfer of money to severance tax permanent fund.

On each December 31 and each June 30 the state treasurer shall transfer to the severance tax permanent fund all money in the severance tax bonding fund except the amount necessary to meet all principal and interest payments on bonds payable from the severance tax bonding fund on the next two ensuing semiannual payment dates.

History: 1953 Comp., § 72-18-33, enacted by Laws 1961, ch. 5, § 6; 1973, ch. 294, § 3.

7-27-9. Bonds to be known as severance tax bonds and supplemental severance tax bonds.

A. Prior to July 1, 1999, all bonds issued wherein the money in the severance tax bonding fund is pledged for their retirement shall be known as "New Mexico severance tax bonds".

B. After July 1, 1999, there shall be two categories of bonds issued by the state board of finance wherein the money in the severance tax bonding fund is pledged for their retirement. Those bonds shall be known as "New Mexico severance tax bonds" and as "New Mexico supplemental severance tax bonds".

History: 1953 Comp., § 72-18-34, enacted by Laws 1961, ch. 5, § 7; 1999 (1st S.S.), ch. 6, § 3.

7-27-10. State board of finance shall issue bonds.

A. The state board of finance is authorized to issue and sell severance tax bonds within the provisions of the Severance Tax Bonding Act, and no other agency of the state is authorized to issue or sell severance tax bonds.

B. For fiscal year 2024, the state board of finance is authorized to issue and sell up to five hundred million dollars ($500,000,000) of severance tax bonds or notes in addition to all other authorized issuances. The actual amount shall be determined by the state board of finance after all other authorized issuances are made. Proceeds from the sale of these bonds or notes shall be deposited in the capital development and reserve fund.

C. The state board of finance may issue and sell supplemental severance tax bonds within the provisions of the Severance Tax Bonding Act, and no other agency of the state is authorized to issue or sell supplemental severance tax bonds.

History: 1953 Comp., § 72-18-35, enacted by Laws 1961, ch. 5, § 8; 1999 (1st S.S.), ch. 6, § 4; 2019, ch. 273, § 1; 2023, ch. 124, § 1; 2024, ch. 56, § 1.

7-27-10.1. Transfer to severance tax permanent fund before determining bonding capacity; authorization for severance tax bonds; priority for water projects and tribal infrastructure projects.

A. On December 31 of each year from 2019 through 2028, the division shall transfer twenty-three million six hundred ninety thousand dollars ($23,690,000) from the severance tax bonding fund to the severance tax permanent fund, unless the state board of finance determines that a lesser transfer amount is necessary pursuant to Section 7-27-8 NMSA 1978 to avoid a potential shortfall in debt service obligations.

B. By January 15 of each year, the division shall estimate the amount of bonding capacity available for severance tax bonds to be authorized by the legislature based on the lesser of the following estimates:

(1) an estimate that provides for equal annual issuances over the expected term of bonds with terms greater than one year anticipated to be issued by the state board of finance in the fiscal year in compliance with the requirements of Section 7-27-14 NMSA 1978; and

(2) an estimate that provides that issuances for each year of that term shall be projected to result in stable levels of state tax supported debt relative to the median state debt ratios published by the national municipal bond rating agencies.

C. The division shall allocate nine percent of the estimated bonding capacity each year for water projects, and the legislature authorizes the state board of finance to issue severance tax bonds in the annually allocated amount for use by the water trust board to fund water projects statewide. The water trust board shall certify to the state board of finance the need for issuance of bonds for water projects. The state board of finance may issue and sell the bonds in the same manner as other severance tax bonds in an amount not to exceed the authorized amount provided for in this subsection. If necessary, the state board of finance shall take the appropriate steps to comply with the federal Internal Revenue Code of 1986, as amended. Proceeds from the sale of the bonds are appropriated to the water project fund in the New Mexico finance authority for the purposes certified by the water trust board to the state board of finance.

D. The division shall allocate four and one-half percent of the estimated bonding capacity for tribal infrastructure projects.

E. The legislature authorizes the state board of finance to issue severance tax bonds in the amount provided for in this section for use by the tribal infrastructure board to fund tribal infrastructure projects. The tribal infrastructure board shall certify to the state board of finance the need for issuance of bonds for tribal infrastructure projects. The state board of finance may issue and sell the bonds in the same manner as other severance tax bonds in an amount not to exceed the authorized amount provided for in this section. If necessary, the state board of finance shall take the appropriate steps to comply with the federal Internal Revenue Code of 1986, as amended. Proceeds from the sale of the bonds are appropriated to the tribal infrastructure project fund for the purposes certified by the tribal infrastructure board to the state board of finance.

F. Money from the severance tax bonds provided for in this section shall not be used to pay indirect project costs. Any unexpended balance from proceeds of severance tax bonds issued for a water project or a tribal infrastructure project shall revert to the severance tax bonding fund within six months of completion of the project. The New Mexico finance authority shall monitor and ensure proper reversions of the bond proceeds appropriated for water projects, and the department of finance and administration shall monitor and ensure proper reversions of the bond proceeds appropriated for tribal infrastructure projects.

G. As used in this section:

(1) "division" means the board of finance division of the department of finance and administration;

(2) "tribal infrastructure project" means a qualified project under the Tribal Infrastructure Act [6-29-1 to 6-29-9 NMSA 1978]; and

(3) "water project" means a capital outlay project for:

(a) the storage, conveyance or delivery of water to end users;

(b) the implementation of federal Endangered Species Act of 1973 collaborative programs;

(c) the restoration and management of watersheds;

(d) flood prevention; or

(e) conservation, recycling, treatment or reuse of water.

History: Laws 2003, ch. 134, § 1; 2009, ch. 22, § 1; 2010, ch. 37, § 1; 2015, ch. 63, § 1; 2016 (2nd S.S.), ch. 5, § 9; 2017 (1st S.S.), ch. 1, § 4; 2019, ch. 273, § 2; 2024, ch. 56, § 2.

7-27-10.2. Transfer to severance tax permanent fund before determining bonding capacity.

On December 31 of each year from 2023 through 2033, the board of finance division of the department of finance and administration shall transfer ninety-two million dollars ($92,000,000) from the severance tax bonding fund to the severance tax permanent fund, unless the state board of finance determines that a lesser transfer amount is necessary pursuant to Section 7-27-8 NMSA 1978 to avoid a potential shortfall in debt service obligations.

History: 1978 Comp., § 7-27-10.2, enacted by Laws 2023, ch. 124, § 2.

7-27-11. Authority to refund bonds.

A. The state board of finance may issue and sell at public or private sale severance tax bonds to refund outstanding severance tax bonds by exchange, immediate or prospective redemption, cancellation or escrow, including the escrow of debt service funds accumulated for payment of outstanding bonds, or any combination thereof when, in its opinion, such action will be beneficial to the state.

B. The state board of finance may issue and sell at public or private sale supplemental severance tax bonds to refund outstanding supplemental severance tax bonds by exchange, immediate or prospective redemption, cancellation or escrow, including the escrow of debt service funds accumulated for payment of outstanding supplemental severance tax bonds, or any combination thereof when, in its opinion, such action will be beneficial to the state.

History: 1953 Comp., § 72-18-36, enacted by Laws 1961, ch. 5, § 9; 1985 (1st S.S.), ch. 15, § 13; 1999 (1st S.S.), ch. 6, § 5.

7-27-11.1. Repealed.

7-27-12. When severance tax bonds to be issued.

A. The state board of finance shall issue and sell all severance tax bonds when authorized to do so by any law that sets out the amount of the issue and the recipient of the money.

B. The state board of finance shall also issue and sell severance tax bonds authorized by Sections 72-14-36 through 72-14-42 NMSA 1978, and such authority as has been given to the interstate stream commission to issue and sell such bonds is transferred to the state board of finance. The state board of finance shall issue and sell all severance tax bonds only when so instructed by resolution of the governing body or by written direction from an authorized officer of the recipient of the bond money.

C. Except as provided in Subsection D of this section, proceeds from supplemental severance tax bonds shall be used only for public school capital outlay projects pursuant to the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978] or the Public School Capital Improvements Act [Chapter 22, Article 25 NMSA 1978].

D. Proceeds from supplemental severance tax bonds issued pursuant to Paragraph (2) of Subsection A of Section 19 of Chapter 6 of Laws 1999 (1st S.S.) and Section 1 of this 2017 act shall be used for the purposes specified in those provisions.

E. Except as provided in Subsection F of this section, the state board of finance shall issue and sell all supplemental severance tax bonds when so instructed by resolution of the public school capital outlay council pursuant to Section 7-27-12.2 NMSA 1978.

F. The state board of finance shall issue and sell the supplemental severance tax bonds authorized by:

(1) Paragraph (2) of Subsection A of Section 19 of Chapter 6 of Laws 1999 (1st S.S.) when so instructed by resolution of the commission on higher education; and

(2) Section 1 of this 2017 act upon certification by the secretary of finance and administration of the need to use proceeds from those bonds as outlined in that section.

History: 1953 Comp., § 72-18-37, enacted by Laws 1961, ch. 5, § 10; 1984, ch. 4, § 2; 1999 (1st S.S.), ch. 6, § 6; 2001, ch. 37, § 1; 2001, ch. 338, § 1; 2017 (1st S.S.), ch. 1, § 5.

7-27-12.1. Severance tax bonds; purpose for which issued; appropriation of proceeds.

The state board of finance may issue and sell severance tax bonds in fiscal years 2001 through 2010 in compliance with the Severance Tax Bonding Act in an amount not exceeding a total of twenty million dollars ($20,000,000) when the local government division of the department of finance and administration certifies the need for the issuance of the bonds; provided that no more than four million dollars ($4,000,000) may be issued in fiscal year 2001 and no more than two million dollars ($2,000,000) may be issued in any one fiscal year thereafter. The state board of finance shall schedule the issuance and sale of the bonds in the most expeditious and economical manner possible upon a finding by the board that the project has been developed sufficiently to justify the issuance and that the project can proceed to contract within a reasonable time. The state board of finance shall further take the appropriate steps necessary to comply with the Internal Revenue Code of 1986, as amended. The proceeds from the sale of the bonds are appropriated to the local government division of the department of finance and administration for the purpose of financing water and sewer distribution and collection systems in the developed and underserved areas of Bernalillo county, including areas in the city of Albuquerque. The certification and issuance of bonds for any fiscal year is contingent upon the secretary of finance and administration receiving certification from the governing body of the city of Albuquerque and the board of county commissioners of Bernalillo county that funding in an amount equal to one and one-half times the amount of bonds issued pursuant to this section, including the amount of bonds proposed to be issued for that fiscal year, has been secured from federal, city and county sources to construct the water and sewer distribution and collection systems. Any funding from federal, city and county sources in excess of the amount required for certification in any fiscal year may be carried forward and credited against the amount required in subsequent fiscal years. Any unexpended or unencumbered balance remaining at the end of fiscal year 2012 shall revert to the severance tax bonding fund. If the local government division of the department of finance and administration has not certified the need for the issuance of the bonds by the end of fiscal year 2010, the authorization provided in this section shall expire.

History: Laws 1999 (1st S.S.), ch. 5, § 1; 2000 (2nd S.S.), ch. 18, § 1; 2002, ch. 66, § 1.

7-27-12.2. Supplemental severance tax bonds; public school capital outlay and other projects.

A. The public school capital outlay council is authorized to certify by resolution that proceeds of supplemental severance tax bonds are needed for expenditures relating to public school capital outlay projects pursuant to the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978] or for the state distribution for public school capital improvements pursuant to the Public School Capital Improvements Act [Chapter 22, Article 25 NMSA 1978]. The resolution shall specify the total amount needed.

B. The state board of finance may issue and sell supplemental severance tax bonds in compliance with the Severance Tax Bonding Act when the public school capital outlay council certifies by resolution the need for the issuance of the bonds or when the secretary of public education certifies the need for the issuance of the bonds pursuant to Section 22-24-4 NMSA 1978 or Section 3 of this 2016 act. The amount of the bonds sold at each sale shall not exceed the lesser of:

(1) the total of the amounts certified by the council and the secretary of public education; or

(2) the amount that may be issued pursuant to the restrictions of Section 7-27-14 NMSA 1978.

C. The state board of finance shall schedule the issuance and sale of the bonds in the most expeditious and economical manner possible.

D. The proceeds from the sale of the bonds are appropriated as follows:

(1) the amount certified by the secretary of public education as necessary to make the distribution pursuant to Section 22-25-9 NMSA 1978 is appropriated to the public school capital improvements fund for the purpose of carrying out the provisions of the Public School Capital Improvements Act; and

(2) the remainder of the proceeds is appropriated to the public school capital outlay fund for the purpose of carrying out the provisions of the Public School Capital Outlay Act.

History: 1978 Comp., § 7-27-12.2, enacted by Laws 2001, ch. 338, § 2; 2004, ch. 125, § 1; 2016 (2nd S.S.), ch. 2, § 1.

7-27-12.3. Administration of certain bond proceeds appropriated to the public school capital outlay fund.

Proceeds of severance tax bonds and supplemental severance tax bonds previously or hereafter issued by the state board of finance that are appropriated to the public school capital outlay fund for the purpose of carrying out the provisions of the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978] shall, except to the extent that the proceeds are derived from any bonds the interest on which is excluded from federal income tax, be transferred by the state board of finance immediately upon receipt to the public school capital outlay fund. All money so transferred shall be administered for disbursement purposes by the public school capital outlay council consistent with the requirements of the Public School Capital Outlay Act.

History: Laws 2005, ch. 274, § 1.

7-27-12.4. Authorization for severance tax bonds for severance tax transportation fund; appropriation of proceeds.

A. The state board of finance may issue and sell severance tax bonds in fiscal years 2007 through 2009 in compliance with the Severance Tax Bonding Act in an amount not exceeding a total of one hundred fifty million dollars ($150,000,000) when the department of transportation certifies the need for the issuance of the bonds; provided that:

(1) in fiscal year 2007, no more than fifty million dollars ($50,000,000) in bonds shall be issued; and

(2) in each of fiscal years 2008 and 2009, no more than the lesser of fifty million dollars ($50,000,000) or twelve and one-half percent of severance tax bonding capacity, as determined pursuant to Section 7-27-10.1 NMSA 1978, shall be issued.

B. The state board of finance shall schedule the issuance and sale of the bonds in the most expeditious and economical manner possible upon a finding by the board that, based upon a certification from the department of transportation, the proceeds of the bonds are needed and that the projects can proceed to contract within a reasonable time. The state board of finance shall further take the appropriate steps necessary to comply with the federal Internal Revenue Code of 1986, as amended. The state board of finance may issue and sell the bonds in the same manner as other severance tax bonds in an amount not to exceed the authorized amount provided for in this subsection.

C. The proceeds from the sale of the bonds are appropriated as follows:

(1) proceeds of the bonds issued in fiscal year 2007 are appropriated to the local government transportation fund for distribution as directed by the department of transportation for projects pursuant to Section 6-21-6.12 NMSA 1978;

(2) twenty percent of the proceeds of the bonds issued in fiscal years 2008 and 2009 are appropriated to the department of transportation to perform routine maintenance on state highways;

(3) forty percent of the proceeds of the bonds issued in fiscal years 2008 and 2009 are appropriated to the local government transportation fund for distribution as directed by the department of transportation for projects pursuant to Section 6-21-6.12 NMSA 1978; and

(4) forty percent of the proceeds of the bonds issued in fiscal years 2008 and 2009 are appropriated to the department of transportation for the purpose of completing those projects authorized in Paragraphs (1) and (3) through (38) of Subsection A of Laws 2003 (1st S.S.), Chapter 3, Section 27, provided that the department shall comply with the requirements of Subsections C, D and E of Section 67-3-59.4 NMSA 1978.

D. Money from the severance tax bonds provided for in this section shall not be used to pay indirect costs. If the department of transportation has not certified the need for the issuance of the bonds by July 1, 2009, the authorization provided in this section shall expire.

History: Laws 2007 (1st S.S.), ch. 3, § 1.

7-27-12.5. Authorization for severance tax bonds; priority for infrastructure projects for colonias.

A. After the annual estimate of severance tax bonding capacity pursuant to Subsection A of Section 7-27-10.1 NMSA 1978, the board of finance division of the department of finance and administration shall allocate the following percentages of the estimated bonding capacity for colonias infrastructure projects:

(1) in 2016, six and one-half percent; and

(2) in 2017 and each subsequent year, four and one-half percent.

B. The legislature authorizes the state board of finance to issue severance tax bonds in the amount allocated pursuant to this section for use by the colonias infrastructure board to fund the projects. The colonias infrastructure board shall certify to the state board of finance the need for issuance of bonds for colonias infrastructure projects. The state board of finance may issue and sell the bonds in the same manner as other severance tax bonds in an amount not to exceed the authorized amount provided for in this subsection. If necessary, the state board of finance shall take the appropriate steps to comply with the federal Internal Revenue Code of 1986, as amended. Proceeds from the sale of the bonds are appropriated to the colonias infrastructure project fund for the purposes certified by the colonias infrastructure board to the state board of finance.

C. Money from the severance tax bonds provided for in this section shall not be used to pay indirect project costs. Any unexpended balance from proceeds of severance tax bonds issued for a colonias infrastructure project shall revert to the severance tax bonding fund within six months of completion of the project. The colonias infrastructure board shall monitor and ensure proper reversions of the bond proceeds appropriated for the projects.

D. As used in this section, "colonias infrastructure project" means a qualified project under the Colonias Infrastructure Act [Chapter 6, Article 30 NMSA 1978].

History: Laws 2010, ch. 10 § 9; 2015, ch. 63, § 2; 2016 (2nd S.S.), ch. 5, § 10.

7-27-13. Reserved.

7-27-14. Amount of tax; security for bonds.

A. The legislature shall provide for the continued assessment, levy, collection and deposit into the severance tax bonding fund of the tax or taxes upon natural resource products severed and saved from the soil of the state that, together with such other income as may be deposited to the fund, will be sufficient to produce an amount that is at least the amount necessary to meet annual debt service charges on all outstanding severance tax bonds and supplemental severance tax bonds.

B. Except as otherwise specifically provided by law, the state board of finance shall issue no severance tax bonds unless the aggregate amount of severance tax bonds outstanding, and including the issue proposed, can be serviced with not more than the following percentages of the annual deposits into the severance tax bonding fund, as determined by the lesser of the deposits during the preceding fiscal year or the deposits during the current fiscal year as estimated by the division:

(1) for fiscal year 2016, forty-nine and four-tenths percent;

(2) for fiscal year 2017, forty-eight and eight-tenths percent;

(3) for fiscal year 2018, forty-eight and two-tenths percent; and

(4) for fiscal year 2019 and subsequent fiscal years, forty-seven and six-tenths percent.

C. The state board of finance shall issue no supplemental severance tax bonds with a term that extends beyond the fiscal year in which the bonds are issued unless the aggregate amount of severance tax bonds and supplemental severance tax bonds outstanding, and including the issue proposed, can be serviced with not more than the following percentages of the annual deposits into the severance tax bonding fund, as determined by the lesser of the deposits during the preceding fiscal year or the deposits during the current fiscal year as estimated by the division:

(1) for fiscal year 2016, sixty-one and nine-tenths percent;

(2) for fiscal year 2017, sixty-one and three-tenths percent;

(3) for fiscal year 2018, sixty and seven-tenths percent; and

(4) for fiscal year 2019 and subsequent fiscal years, sixty and one-tenth percent.

D. Except as otherwise specifically provided by law, the state board of finance may issue supplemental severance tax bonds with a term that does not extend beyond the fiscal year in which they are issued if the debt service on such supplemental severance tax bonds when added to the debt service previously paid or scheduled to be paid during that fiscal year on severance tax bonds and supplemental severance tax bonds does not exceed the following percentages of the lesser of the deposits into the severance tax bonding fund during the preceding fiscal year or the deposits into the severance tax bonding fund during the current fiscal year as estimated by the division:

(1) for fiscal year 2016, ninety-four and four-tenths percent;

(2) for fiscal year 2017, ninety-three and eight-tenths percent;

(3) for fiscal year 2018, ninety-three and two-tenths percent;

(4) for fiscal year 2019, ninety-one percent;

(5) for fiscal year 2020, eighty-nine and four-tenths percent;

(6) for fiscal year 2021, eighty-seven and eight-tenths percent; and

(7) for fiscal year 2022 and subsequent fiscal years, eighty-six and two-tenths percent.

E. The provisions of this section shall not be modified by the terms of any severance tax bonds or supplemental severance tax bonds hereafter issued.

F. For the purposes of this section, "division" means the board of finance division of the department of finance and administration.

History: 1953 Comp., § 72-18-38, enacted by Laws 1961, ch. 5, § 11; 1999 (1st S.S.), ch. 6, § 7; 2000, ch. 95, § 1; 2000 (2nd S.S.), ch. 11, § 2; 2003, ch. 238, § 1; 2004, ch. 125, § 2; 2015, ch. 63, § 3.

7-27-15. Majority approval necessary for board action.

Any action taken hereunder by the state board of finance must be approved by a majority of its members.

History: 1953 Comp., § 72-18-39, enacted by Laws 1961, ch. 5, § 12.

7-27-16. Form of bonds.

A. The state board of finance, except as otherwise specifically provided in the Severance Tax Bonding Act, shall determine at its discretion the terms, covenants and conditions of severance tax bonds and supplemental severance tax bonds, including but not limited to: date of issue, denominations, maturities, rate or rates of interest, call features, call premiums, registration, refundability and other covenants covering the general and technical aspects of the issuance of the bonds.

B. The bonds shall be in such form as the state board of finance may determine, and successive issues shall be identified by alphabetical, numerical or other proper series designation.

History: 1953, Comp., § 72-18-40, enacted by Laws 1961, ch. 5, § 13; 1983, ch. 265, § 31; 1999 (1st S.S.), ch. 6, § 8.

7-27-17. Execution of bonds.

Severance tax bonds and supplemental severance tax bonds shall be signed and attested by the state treasurer and shall be executed with the facsimile signature of the governor and the facsimile seal of the state, except for bonds issued in book entry or similar form without the delivery of physical securities. Any interest coupons attached to the bonds shall bear the facsimile signature of the state treasurer, which officer, by the execution of the bonds, shall adopt as his own signature the facsimile thereof appearing on the coupons. Except for bonds issued in book entry or similar form without the delivery of physical securities, the Uniform Facsimile Signature of Public Officials Act [6-9-1 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; 1999 (1st S.S.), ch. 6, § 9.

7-27-18. Procedure for sale of bonds.

A. Severance tax bonds and supplemental severance tax bonds shall be sold by the state board of finance at such times and in such manner as the board may elect, consistent with the need of the board, commission or agency that is the recipient of the bond money, to the highest bidder for cash at not less than par and accrued interest.

B. The state board of finance shall publish a notice of the time and place of sale in a newspaper of general circulation in the state, and also in a recognized financial journal outside the state. Such publication shall be made once at least five business days prior to the date fixed for such sale. Such notice shall specify the amount, denomination, maturity and description of the bonds to be offered for sale and the place, day and hour at which bids therefor shall be received and publicly examined. All bids shall be sealed or sent by facsimile or other electronic transmission to the state board of finance as set forth in the notice. All bids, except that of the state, shall be accompanied by a deposit of two percent of the bid price, either in the form of a financial surety bond or in cash or by cashier's check or treasurer's check of, or by certified check drawn on, a solvent commercial bank or trust company in the United States. The financial surety bond or the long-term debt obligations of the issuer or person guarantying the obligations of the issuer of the financial surety bond shall be rated in one of the top two rating categories of a nationally recognized rating agency, without regard to any modification of the rating, and the financial surety bond shall be issued by an insurance company licensed to issue such a bond in New Mexico. Deposits of unsuccessful bidders shall be returned upon rejection of the bid.

C. At the time and place specified in such notice, bids shall be publicly examined and the bonds, or any part thereof, shall be awarded to the bidder or bidders offering the best price therefor. Before delivering any bonds sold, the state treasurer shall detach therefrom and cancel all interest coupons that may have matured prior to the date of delivery. The state board of finance may reject any or all bids and readvertise. The state board of finance may sell a severance tax bond or supplemental severance tax bond issue, or any part thereof, to the state at private sale.

History: 1953 Comp., § 72-18-42, enacted by Laws 1961, ch. 5, § 15; 1999 (1st S.S.), ch. 6, § 10; 2001, ch. 37, § 2.

7-27-19. Severance tax bonds and supplemental severance tax bonds legal investments.

Severance tax bonds and supplemental severance tax bonds are legal investments for any person or board charged with the investment of any public funds and are acceptable as security for any deposit of public money.

History: 1953 Comp., § 72-18-43, enacted by Laws 1961, ch. 5, § 16; 1999 (1st S.S.), ch. 6, § 11.

7-27-20. Expenses paid from severance tax bonding fund.

The expense incurred in the issuance of severance tax bonds and supplemental severance tax bonds shall be paid from the severance tax bonding fund.

History: 1953 Comp., § 72-18-44, enacted by Laws 1961, ch. 5, § 17; 1999 (1st S.S.), ch. 6, § 12.

7-27-21. Treasurer to make bond payments and keep records.

Severance tax bonds and supplemental severance tax bonds payable from the severance tax bonding fund shall be paid by the state treasurer who shall keep a complete bond register showing severance tax bonds and supplemental severance tax bonds, coupons paid and outstanding on the bonds and such other records as the state board of finance shall require.

History: 1953 Comp., § 72-18-45, enacted by Laws 1961, ch. 5, § 18; 1999 (1st S.S.), ch. 6, § 13.

7-27-22. Severance tax bonding act to be full authority for issuance of bonds.

The Severance Tax Bonding Act shall, without reference to any other act of the legislature, be full authority for the issuance and sale of severance tax bonds and supplemental severance tax bonds, which bonds and the coupons attached thereto shall have all the qualities of investment securities under the Uniform Commercial Code [Chapter 55 NMSA 1978] and shall not be invalid for any irregularity or defect or be contestable in the hands of bona fide purchasers or holders thereof for value.

History: 1953 Comp., § 72-18-46, enacted by Laws 1961, ch. 5, § 19; 1961, ch. 79, § 2; 1984, ch. 4, § 4; 1999 (1st S.S.), ch. 6, § 14.

7-27-23. Suit may be brought to compel performance of officers.

Any holder of severance tax bonds or supplemental severance tax bonds or any person or officer being a party in interest may sue to enforce and compel the performance of the provisions of the Severance Tax Bonding Act.

History: 1953 Comp., § 72-18-47, enacted by Laws 1961, ch. 5, § 20; 1999 (1st S.S.), ch. 6, § 15.

7-27-24. Bonds tax free.

All severance tax bonds and supplemental severance tax bonds shall be exempt from taxation by the state or any of its political subdivisions.

History: 1953 Comp., § 72-18-48, enacted by Laws 1961, ch. 5, § 21; 1999 (1st S.S.), ch. 6, § 16.

7-27-25. No impairment of obligation of contract.

Nothing in this Severance Tax Bonding Act shall be construed as impairing or authorizing the impairment of the contract between the state and the holders of the outstanding Building and Institution Severance Tax Bonds, Series July 1, 1955.

History: 1953 Comp., § 72-18-49, enacted by Laws 1961, ch. 5, § 25.

7-27-26. Severance tax bonding fund continued.

The severance tax bonding fund created by Laws 1959, Chapter 323 is hereby continued as the severance tax bonding fund created by and referred to in the Severance Tax Bonding Act.

History: 1953 Comp., § 72-18-50, enacted by Laws 1961, ch. 5, § 26; 1986, ch. 20, § 95.

7-27-27. Purpose and intent.

The purpose of the Severance Tax Bonding Act is to establish the authority who shall issue and sell all severance tax bonds for financing specific projects authorized by the legislature and all supplemental severance tax bonds pursuant to Section 7-27-12.2 NMSA 1978 and to guarantee redemption of such bonds by revenue derived from the receipts from taxes levied upon natural resource products severed and saved from the soil and such other money as the legislature may from time to time determine. It is intended that projects to be financed from the fund shall include the construction of public school buildings, other buildings for state institutions and water resource projects; and it is further intended that the income from water resource projects in excess of the amount required for operation and maintenance of the project shall be used to repay the severance tax bonding fund.

History: 1953 Comp., § 72-18-51, enacted by Laws 1961, ch. 5, § 27; 1986, ch. 20, § 96; 1999 (1st S.S.), ch. 6, § 17; 2001, ch. 338, § 3.

7-27-28. Repealed.

7-27-29. Repealed.

7-27-30. Repealed.

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.

7-27-33. Repealed.

7-27-34. Repealed.

7-27-35. Repealed.

7-27-36. Repealed.

7-27-37. Repealed.

7-27-38. Repealed.

7-27-39. Repealed.

7-27-40. Repealed.

7-27-41. Repealed.

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.

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.

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.

7-27-49. Authorization for severance tax bonds; New Mexico mortgage finance authority; New Mexico housing trust fund.

A. After the annual estimate of severance tax bonding capacity is made pursuant to Subsection B of Section 7-27-10.1 NMSA 1978, the board of finance division of the department of finance and administration shall allocate two and one-half percent of the estimated bonding capacity for the New Mexico housing trust fund for the purposes of carrying out the provisions of the New Mexico Housing Trust Fund Act [58-18C-1 to 58-18C-9 NMSA 1978].

B. The legislature authorizes the state board of finance to issue severance tax bonds in the amount allocated pursuant to this section for use by the New Mexico mortgage finance authority to fund the New Mexico housing trust fund for the purposes of carrying out the provisions of the New Mexico Housing Trust Fund Act. The New Mexico mortgage finance authority shall certify to the state board of finance the need for issuance of bonds. The state board of finance may issue and sell the bonds in the same manner as other severance tax bonds in an amount not to exceed the authorized amount provided for in this section. If necessary, the state board of finance shall take the appropriate steps to comply with the federal Internal Revenue Code of 1986, as that code may be amended or renumbered. Proceeds from the sale of the bonds are appropriated to the New Mexico housing trust fund for the purposes certified by the New Mexico mortgage finance authority to the state board of finance.

C. Money from the severance tax bonds provided for in this section shall not be used to pay indirect project costs. Any unexpended balance from proceeds of severance tax bonds issued for projects pursuant to the New Mexico Housing Trust Fund Act shall revert to the severance tax bonding fund within one year of completion of the project. Any unencumbered balance from the proceeds of severance tax bonds issued pursuant to this section after three years from the issuance of those bonds shall revert to the severance tax bonding fund. The New Mexico mortgage finance authority shall monitor and ensure proper reversions of the bond proceeds appropriated for the projects.

History: Laws 2022, ch. 38, § 1.

7-27-50. Capital development and reserve fund.

A. The "capital development and reserve fund" is created as a nonreverting fund in the state treasury. The fund consists of distributions, appropriations, gifts, grants and donations. Income from investment of the fund shall be credited to the fund. Money in the fund shall be expended only as provided in Subsections E through F of this section. Money in the fund shall not be pledged against any state debt.

B. The state investment officer, subject to the approval of the council, shall invest money in the fund:

(1) in accordance with the prudent investor rule set forth in the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978]; and

(2) in consultation with the state treasurer.

C. The state investment officer shall report quarterly to the legislative finance committee and the council on the investments made pursuant to this section. Annually, a report shall be submitted no later than October 1 each year to the legislative finance committee, the revenue stabilization and tax policy committee and any other appropriate interim committees.

D. On January 1 of each year, a distribution shall be made from the capital development and reserve fund to the capital development program fund in an amount equal to five percent of the average of the fiscal year-end market values of the capital development and reserve fund for the immediately preceding three fiscal years. If, on January 1 of a year, the capital development and reserve fund has been in effect for less than three fiscal years, the distribution shall be in an amount equal to five percent of the average of the fiscal year-end market values of the capital development and reserve fund for the immediately preceding number of fiscal years that the fund has been in effect.

E. Money in the fund is subject to appropriation by the legislature for capital projects or for transfer to the severance tax permanent fund.

F. Money in the capital development and reserve fund may be expended in the event that the balance of the severance tax bonding fund is insufficient to meet principal and interest payments on outstanding bonds. In that event, the balance in the reserve fund shall be transferred to the severance tax bonding fund only in the amount necessary to meet the principal and interest payments.

History: Laws 2024, ch. 56, § 3.

7-27-51. Capital development program fund.

The "capital development program fund" is created as a nonreverting fund as a subaccount of the severance tax bonding fund. The fund consists of distributions, appropriations, gifts, grants, donations and income from investment of the fund. The department of finance and administration shall administer the fund. Money in the fund is subject to appropriation by the legislature to fund capital projects with a total cost of less than five million dollars ($5,000,000) and only the planning and design of capital projects with a total cost greater than that amount. Expenditures from the fund shall be by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of finance and administration or the secretary's authorized representative. Any unexpended or unencumbered balance of an appropriation for a capital project remaining after two years following the date of the appropriation shall revert to the severance tax permanent fund.

History: Laws 2024, ch. 56, § 4.

7-27-52. Authorization for severance tax bonds; priority for projects funded by the capital development program fund.

A. After the annual estimate of severance tax bonding capacity pursuant to Subsection B of Section 7-27-10.1 NMSA 1978, the board of finance division of the department of finance and administration shall allocate an amount equal to the difference between the estimated average annual principal and interest to be repaid from the amount estimated pursuant to Paragraph (1) of Subsection B of Section 7-27-10.1 NMSA 1978 for the term of an issuance less the estimated average annual principal and interest to be repaid from the amount estimated pursuant to Paragraph (2) of Subsection B of Section 7-27-10.1 NMSA 1978; provided that the difference is greater than zero. The division shall not issue debt with a term greater than one year for the allocated amount.

B. The legislature authorizes the state board of finance to issue severance tax bonds in the amount allocated pursuant to Subsection A of this section for projects funded by the capital development program fund. The state board of finance may issue and sell the bonds in the same manner as other severance tax bonds in an amount not to exceed the authorized amount provided for in this subsection. If necessary, the state board of finance shall take the appropriate steps to comply with the federal Internal Revenue Code of 1986, as amended. Proceeds from the sale of the bonds are appropriated to the capital development and reserve fund.

C. Money from the severance tax bonds provided for in this section shall not be used to pay indirect project costs.

History: Laws 2024, ch. 56, § 5.

ARTICLE 28
Oil and Gas Accounting (Repealed.)

7-28-1 to 7-28-13. Repealed.

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.

7-29-2. Definitions.

As used in the Oil and Gas Severance Tax Act:

A. "commission", "department", "division" or "oil and gas accounting division" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

C. "severance" means the taking from the soil of any product in any manner whatsoever;

D. "value" means the actual price received for products at the production unit, except as otherwise provided in the Oil and Gas Severance Tax Act;

E. "product" or "products" means oil, including crude, slop or skim oil and condensate; natural gas; liquid hydrocarbon, including ethane, propane, isobutene, normal butane and pentanes plus, individually or any combination thereof; and non-hydrocarbon gases, including carbon dioxide and helium;

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 the person's interest;

G. "primary recovery" means the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool as classified by the oil conservation division of the energy, minerals and natural resources department pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978 into the wellbore by means of the natural pressure of the oil well or pool, including but not limited to artificial lift;

H. "purchaser" means a person who is the first purchaser of a product after severance from a production unit, except as otherwise provided in the Oil and Gas Severance Tax Act;

I. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, co-partnership, cooperative, joint venture, association or other group or combination acting as a unit, and the plural as well as the singular number;

J. "interest owner" means a person owning an entire or fractional interest of whatsoever kind or nature in the products at the time of severance from a production unit, or who has a right to a monetary payment that is determined by the value of such products;

K. "new production natural gas well" means a producing crude oil or natural gas well proration unit that begins its initial natural gas production on or after May 1, 1987 as determined by the oil conservation division of the energy, minerals and natural resources department;

L. "qualified enhanced recovery project", prior to January 1, 1994, means the use or the expanded use of carbon dioxide, when approved by the oil conservation division of the energy, minerals and natural resources department pursuant to the Enhanced Oil Recovery Act [Chapter 7, Article 29A NMSA 1978], for the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool classified by the oil conservation division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978;

M. "qualified enhanced recovery project", on and after January 1, 1994, means the use or the expanded use of any process approved by the oil conservation division of the energy, minerals and natural resources department pursuant to the Enhanced Oil Recovery Act for the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool classified by the oil conservation division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978, other than a primary recovery process; the term includes but is not limited to the use of a pressure maintenance process, a water flooding process and immiscible, miscible, chemical, thermal or biological process or any other related process;

N. "production restoration project" means the use of any process for returning to production a natural gas or oil well that had thirty days or less of production in any period of twenty-four consecutive months beginning on or after January 1, 1993, as approved and certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act [7-29B-1 to 7-29B-6 NMSA 1978];

O. "well workover project" means any procedure undertaken by the operator of a natural gas or crude oil well that is intended to increase the production from the well and that has been approved and certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act;

P. "stripper well property" means a crude oil or natural gas producing property that is assigned a single production unit number by the department and is certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act to have produced in the preceding calendar year:

(1) if a crude oil producing property, an average daily production of less than ten barrels of oil per eligible well per day;

(2) if a natural gas producing property, an average daily production of less than sixty thousand cubic feet of natural gas per eligible well per day; or

(3) if a property with wells that produce both crude oil and natural gas, an average daily production of less than ten barrels of oil per eligible well per day, as determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil;

Q. "average annual taxable value" means as applicable:

(1) the average of the taxable value per one thousand cubic feet, determined pursuant to Section 7-31-5 NMSA 1978, of all natural gas produced in New Mexico for the specified calendar year as determined by the department; or

(2) the average of the taxable value per barrel, determined pursuant to Section 7-31-5 NMSA 1978, of all oil produced in New Mexico for the specified calendar year as determined by the department;

R. "tax" means the oil and gas severance tax; and

S. "volume" means the quantity of product severed reported using:

(1) oil, condensate and slop oil in barrels; and

(2) natural gas, liquid hydrocarbons, helium and carbon dioxide in thousand cubic feet at a pressure base of fifteen and twenty-five thousandths pounds per square inch.

History: 1953 Comp., § 72-29-2, enacted by Laws 1959, ch. 52, § 2; 1977, ch. 249, § 53; 1980, ch. 97, § 1; 1986, ch. 20, § 98; 1987, ch. 315, § 2; 1992, ch. 38, § 6; 1995, ch. 15, § 7; 1999, ch. 7, § 1; 1999, ch. 256, § 1; 2005, ch. 130, § 1; 2021, ch. 65, § 30.

7-29-3. Repealed.

7-29-4. Oil and gas severance tax imposed; collection; interest owner's liability to state; Indian liability.

A. There is imposed and shall be collected by the department a tax on all products that are severed and sold, except as provided in Subsection B of this section. The measure of the tax and the rates are:

(1) on natural gas severed and sold, except as provided in Paragraphs (4), (6) and (7) of this subsection, three and three-fourths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978;

(2) on oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead, except as provided in Paragraphs (3), (5), (8) and (9) of this subsection, three and three-fourths percent of taxable value determined pursuant to Section 7-29-4.1 NMSA 1978;

(3) on oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead produced from a qualified enhanced recovery project, one and seven-eighths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to the fiscal year in which the tax rate is to be imposed, was less than twenty-eight dollars ($28.00) per barrel;

(4) on the natural gas from a well workover project that is certified by the oil conservation division of the energy, minerals and natural resources department in its approval of the well workover project, two and forty-five hundredths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to the fiscal year in which the tax rate is to be imposed, was less than twenty-four dollars ($24.00) per barrel;

(5) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a well workover project that is certified by the oil conservation division of the energy, minerals and natural resources department in its approval of the well workover project, two and forty-five hundredths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to the fiscal year in which the tax rate is to be imposed, was less than twenty-four dollars ($24.00) per barrel;

(6) on the natural gas from a stripper well property, one and seven-eighths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided the average annual taxable value of natural gas was equal to or less than one dollar fifteen cents ($1.15) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(7) on the natural gas from a stripper well property, two and thirteen-sixteenths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the average annual taxable value of natural gas was greater than one dollar fifteen cents ($1.15) per thousand cubic feet but not more than one dollar thirty-five cents ($1.35) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(8) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, one and seven-eighths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the average annual taxable value of oil was equal to or less than fifteen dollars ($15.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(9) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, two and thirteen-sixteenths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the average annual taxable value of oil was greater than fifteen dollars ($15.00) per barrel but not more than eighteen dollars ($18.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed; and

(10) on carbon dioxide, helium and non-hydrocarbon gases, three and three-fourths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978.

B. The tax imposed in Subsection A of this section shall not be imposed on:

(1) natural gas severed and sold from a production restoration project during the first ten years of production following the restoration of production, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to each fiscal year in which the tax exemption is to be effective, was less than twenty-four dollars ($24.00) per barrel; and

(2) oil and other liquid hydrocarbons removed from natural gas at or near the wellhead from a production restoration project during the first ten years of production following the restoration of production, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May

31 prior to each fiscal year in which the tax exemption is to be effective, was less than twenty-four dollars ($24.00) per barrel.

C. Every interest owner shall be liable for the tax to the extent of his interest in such products. Any Indian tribe, Indian pueblo or Indian shall be liable for the tax to the extent authorized or permitted by law.

D. The tax imposed by this section may be referred to as the "oil and gas severance tax".

History: 1978 Comp., § 7-29-4, enacted by Laws 1980, ch. 62, §§ 3, 5; 1987, ch. 315, § 3; 1989, ch. 130, § 2; 1992, ch. 38, § 7; 1995, ch. 15, § 8; 1999, ch. 256, § 2; 2005, ch. 130, § 2.

7-29-4.1. Taxable value; method of determining.

To determine the taxable value of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead, of carbon dioxide, of helium, of non-hydrocarbon gases, of natural gas from new production natural gas wells and of natural gas severed after June 30, 1990, there shall be deducted from the value of products:

A. royalties paid or due the United States or the state of New Mexico;

B. royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States of America; and

C. the reasonable expense of trucking any product from the production unit to the first place of market.

History: 1978 Comp., § 7-29-4.1, enacted by Laws 1980, ch. 62, § 6; 1989, ch. 130, § 3; 2005, ch. 130, § 3.

7-29-4.2. Value may be determined by department; standard.

The department may determine the value of products severed from a production unit when:

A. the operator and purchaser are affiliated persons;

B. the sale and purchase of products is not an arm's length transaction; or when

C. products are severed and removed from a production unit and a value as defined in the Oil and Gas Severance Tax Act is not established for such products.

The value determined by the department shall be commensurate with the actual price received for products of like quality, character and use which are severed in the same field or area. If there are no sales of products of like quality, character and use severed in the same field or area, then the department shall establish a reasonable value.

History: 1978 Comp., § 7-29-4.2, enacted by Laws 1980, ch. 62, § 7; 1989, ch. 130, § 4.

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. Repealed.

7-29-4.5. Repealed.

7-29-4.6. Repealed.

7-29-4.7. Repealed.

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.

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.

7-29-7. Operator's report; tax remittance; additional information.

Each operator shall, in the form and manner required by the division, make a return to the division showing the total value, volume and kind of products sold from each production unit for each calendar month. All taxes due, or to be remitted, by the operator shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional report or information the division may deem necessary for the proper administration of the Oil and Gas Severance Tax Act may be required.

History: 1953 Comp., § 72-19-10, enacted by Laws 1959, ch. 52, § 10; 1986, ch. 5, § 2.

7-29-8. Purchaser's report; tax remittance; additional information.

Each purchaser shall in the form and manner required by the division make a return to the division showing the total value, volume and kind of products purchased by him from each production unit for each calendar month. All taxes due, or to be remitted, by the purchaser shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional reports or information the division may deem necessary for the proper administration of the Oil and Gas Severance Tax Act may be required.

History: 1953 Comp., § 72-19-11, enacted by Laws 1959, ch. 52, § 11; 1986, ch. 5, § 3.

7-29-9 to 7-29-22. Repealed.

7-29-23. Advance payment required.

A. Any person required to make payment of tax pursuant to Section 7-29-7 or 7-29-8 NMSA 1978 shall make the advance payment required by this section.

B. For the purposes of this section:

(1) "advance payment" means the payment required to be made by this section in addition to any oil and gas severance tax, penalty or interest due; and

(2) "average tax" means the aggregate amount of tax, net of any refunds or credits, paid by a person during the twelve-month period ending March 31 pursuant to the Oil and Gas Severance Tax Act divided by the number of months during that period for which the person made payment.

C. Each year, prior to July 1, each person required to pay tax pursuant to the Oil and Gas Severance Tax Act shall compute the average tax for the period ending March 31 of that year. The average tax calculated for a year shall be used during the twelve-month period beginning with July of that year and ending with June of the following year as the basis for making the advance payments required by Subsection D of this section.

D. Every month, beginning with July 1991, every person required to pay tax in a month pursuant to the Oil and Gas Severance Tax Act shall pay, in addition to any amount of tax, interest or penalty due, an advance payment in an amount equal to the applicable average tax, except:

(1) if the person is making a final return under the Oil and Gas Severance Tax Act, no advance payment pursuant to this subsection is due for that return; and

(2) as provided in Subsection F of this section.

E. Every month, beginning with tax payments due in August 1991, every person required to pay tax pursuant to the Oil and Gas Severance Tax Act may claim a credit equal to the amount of advance payment made in the previous month, except as provided in Subsection F of this section.

F. If, in any month, a person is not required to pay tax pursuant to the Oil and Gas Severance Tax Act, that person is not required to pay the advance payment and may not claim a credit pursuant to Subsection E of this section provided that, in any succeeding month when the person has liability under the Oil and Gas Severance Tax Act, the person may claim a credit for any advance payment made and not credited.

G. In the event that the date by which a person is required to pay the tax pursuant to the Oil and Gas Severance Tax Act is accelerated to a date earlier than the twenty-fifth day of the second month following the month of production, the advance payment provision contained in this section is null and void and any money held as advance payments shall be credited to the taxpayers' accounts.

History: Laws 1991, ch. 9, § 36.

ARTICLE 29A
Enhanced Oil Recovery

7-29A-1. Short title.

Chapter 7, Article 29A NMSA 1978 may be cited as the "Enhanced Oil Recovery Act".

History: Laws 1992, ch. 38, § 1; 1993, ch. 30, § 26.

7-29A-2. Definitions.

As used in the Enhanced Oil Recovery Act:

A. "crude oil" means oil and other liquid hydrocarbons removed from natural gas at or near the wellhead;

B. "division" means the oil conservation division of the energy, minerals and natural resources department;

C. "enhanced recovery project" means the use or the expanded use of any process for the displacement of crude oil from an oil well or pool classified by the division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978 other than a primary recovery process, including but not limited to the use of a pressure maintenance process, a water flooding process, an immiscible, miscible, chemical, thermal or biological process or any other related process;

D. "expansion or expanded use" means a significant change or modification, as determined by the oil conservation division in:

(1) the technology or process used for the displacement of crude oil from an oil well or pool classified by the division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978; or

(2) the expansion, extension or increase in size of the geologic area or adjacent geologic area that could reasonably be determined to represent a new or unique area of activity;

E. "operator" means the person responsible for the actual physical operation of an enhanced recovery project;

F. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association or other group or combination acting as a unit, and the plural as well as the singular number;

G. "positive production response" means that the rate of oil production from the wells or pools affected by an enhanced recovery project is greater than the rate that would have occurred without the project;

H. "primary recovery" means the displacement of crude oil from an oil well or pool classified by the division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978 into the well bore by means of the natural pressure of the oil well or pool, including but not limited to artificial lift;

I. "recovered oil tax rate" means that tax rate, as set forth in Paragraph (3) of Subsection A of Section 7-29-4 NMSA 1978, on crude oil produced from an enhanced recovery project;

J. "secondary recovery project" means an enhanced recovery project that:

(1) occurs subsequent to the completion of primary recovery and is not a tertiary recovery project;

(2) involves the application, in accordance with sound engineering principles, of carbon dioxide miscible fluid displacement, pressure maintenance, water flooding or any other secondary recovery method accepted and approved by the division pursuant to the provisions of Paragraph (14) of Subsection B of Section 70-2-12 NMSA 1978 that can reasonably be expected to result in an increase, determined in light of all facts and circumstances, in the amount of crude oil that may ultimately be recovered; and

(3) encompasses a pool or portion of a pool the boundaries of which can be adequately defined and controlled;

K. "severance" means the taking from the soil of any product in any manner whatsoever;

L. "termination" means the discontinuance of an enhanced recovery project by the operator; and

M. "tertiary recovery project" means an enhanced recovery project that:

(1) occurs subsequent to the completion of a secondary recovery project;

(2) involves the application, in accordance with sound engineering principles, of carbon dioxide miscible fluid displacement, pressure maintenance, water flooding or any other tertiary recovery method accepted and approved by the division pursuant to the provisions of Paragraph (14) of Subsection B of Section 70-2-12 NMSA 1978 that

can reasonably be expected to result in an increase, determined in light of all facts and circumstances, in the amount of crude oil that may ultimately be recovered; and

(3) encompasses a pool or portion of a pool the boundaries of which can be adequately defined and controlled.

History: Laws 1992, ch. 38, § 2.

7-29A-3. Procedures for qualifying for the recovered oil tax rate.

A. Crude oil severed and sold from an enhanced recovery project or the expansion of an existing project shall qualify for the recovered oil tax rate if, before the enhanced recovery project or expansion begins operation, the division approves the project or expansion and designates the area to be affected by the project or expansion, but no project or expansion approved by the division prior to the effective date of the Enhanced Oil Recovery Act shall qualify for the recovered oil tax rate.

B. The operator of a proposed enhanced recovery project or expansion shall apply to the division for approval of the proposed enhanced recovery project or expansion and shall provide the division with any relevant information the division requires for that approval.

C. If approval by the division of a unitization agreement as set forth in Chapter 70, Article 7 NMSA 1978 is required for purposes of carrying out the enhanced recovery project or expansion, the division shall not approve the enhanced recovery project or expansion unless it approves the unitization agreement.

D. An operator may apply for approval of a proposed enhanced recovery project or expansion concurrently with an application for approval of a unitization agreement as set forth in Chapter 70, Article 7 NMSA 1978 for the purposes of carrying out the proposed enhanced recovery project or expansion.

E. The division shall only approve a proposed enhanced recovery project or expansion if it determines that the application for approval has not been prematurely filed either for economic or technical reasons and that the area to be affected by the enhanced recovery project or expansion has been so depleted that it is prudent to apply enhanced recovery techniques to maximize the ultimate recovery of crude oil from the well or pool.

F. Upon the approval of the application for an enhanced recovery project or expansion, the division shall issue a certification of approval to the operator and designate the area to be affected by the enhanced recovery project or expansion.

G. The recovered oil tax rate shall apply only to the crude oil produced from the area the division certifies to be affected by the enhanced recovery project or expansion.

H. The operator shall file an application for certification of a positive production response with the division to be eligible to receive the recovered oil tax rate.

I. The recovered oil tax rate shall only apply to crude oil produced from an enhanced recovery project or the expansion of an existing project beginning the first day of the month following the date the division certifies that a positive production response has occurred and if the application for certification of positive production response is filed:

(1) not later than five years from the date the division issues the certification of approval of the enhanced recovery project or expansion if the enhanced recovery project or expansion is designated a secondary recovery project; or

(2) not later than seven years from the date the division issues the certification of approval of the enhanced recovery project or expansion if the enhanced recovery project or expansion is designated a tertiary recovery project.

J. Qualification for the recovered oil tax rate ends on the first day of the first calendar month that begins on or after the ninety-first day following the termination of the enhanced recovery project or expansion.

K. If the active operation of an approved enhanced recovery project or expansion is terminated, the operator shall notify the division and the secretary of taxation and revenue in writing, not later than the thirtieth day after the termination of the enhanced recovery project or expansion.

L. In addition to the powers enumerated in Section 70-2-12 NMSA 1978, the division shall adopt, promulgate and enforce rules and regulations concerning the approval of the applications, the designation of the affected areas and the operation, expansion and termination of the enhanced recovery projects as provided for in the Enhanced Oil Recovery Act.

History: Laws 1992, ch. 38, § 3.

7-29A-4. Notification to the secretary of taxation and revenue; duties of the secretary.

A. The division shall immediately notify the secretary of taxation and revenue upon:

(1) certifying that a positive production response has occurred for an enhanced oil recovery project, in which case the notice shall contain the date certification was made and the date positive production response occurred;

(2) receiving notification of termination of an enhanced recovery project, in which case the notice shall contain the date of termination; and

(3) adopting and promulgating rules and regulations pursuant to the provisions of the Enhanced Oil Recovery Act.

B. The secretary of taxation and revenue shall adopt and promulgate rules and regulations to enforce the provisions of the Enhanced Oil Recovery Act.

History: Laws 1992, ch. 38, § 4.

7-29A-5. Secretary of taxation and revenue approval; refund.

A. The person responsible for paying the oil and gas severance tax on production from the enhanced recovery project shall not qualify to receive the recovered oil tax rate unless that person:

(1) applies to the secretary of taxation and revenue in the form and manner prescribed by the secretary for approval to pay the oil and gas severance tax on crude oil severed and saved from the enhanced recovery project at the recovered oil tax rate;

(2) includes the certifications from the division of approval and designation of the affected areas of the enhanced recovery project and of a positive production response from the enhanced recovery project; and

(3) provides all relevant material that the secretary of taxation and revenue considers necessary to administer the applicable provisions of the Enhanced Oil Recovery Act.

B. An approval of the secretary of taxation and revenue in accordance with Subsection A of this section shall be applicable to crude oil severed and sold from the enhanced recovery project on and after the first day of the month following the month in which the division certifies that a positive production response with respect to the enhanced recovery project has occurred. If the oil and gas severance tax is paid at a rate imposed in Paragraph (2) of Subsection A of Section 7-29-4 NMSA 1978 on crude oil severed and saved from the enhanced recovery project after the month in which the division certifies that a positive production response with respect to the enhanced recovery project has occurred, a claim for refund may be filed in accordance with Section 7-1-26 NMSA 1978 for the excess in tax over the amount due using the recovered oil tax rate. Notwithstanding the provisions of Subsection E [Subsection F] of Section 7-1-26 NMSA 1978 any such refund granted shall be made in the form of a credit against future oil and gas severance tax liabilities.

History: Laws 1992, ch. 38, § 5.

ARTICLE 29B
Natural Gas and Crude Oil Production Incentives

7-29B-1. Short title.

Sections 1 through 6 [7-29B-1 to 7-29B-6 NMSA 1978] of this act may be cited as the "Natural Gas and Crude Oil Production Incentive Act".

History: Laws 1995, ch. 15, § 1.

7-29B-2. Definitions.

As used in the Natural Gas and Crude Oil Production Incentive Act:

A. "average annual taxable value" means the average of the taxable value per barrel, determined pursuant to Section 7-31-5 NMSA 1978, of all oil produced in New Mexico for the specified calendar year as determined by the department;

B. "average daily production" means, for any crude oil or natural gas property assigned a single production number by the department, the number derived by dividing the total volume of crude oil or natural gas production from the property reported to the division during a calendar year by the sum of the number of days each eligible well within the property produced or injected during that calendar year;

C. "department" means the taxation and revenue department;

D. "division" means the oil conservation division of the energy, minerals and natural resources department;

E. "eligible well" means a crude oil or natural gas well that produces or an injection well that injects and is integral to production for any period of time during the preceding calendar year;

F. "natural gas" means any combustible vapor composed chiefly of hydrocarbons occurring naturally;

G. "operator" means the person responsible for the actual physical operation of a natural gas or oil well;

H. "person" means any individual or other legal entity, including any group or combination of individuals or other legal entities acting as a unit;

I. "production restoration incentive tax exemption" means the tax exemption set forth in Subsection B of Section 7-29-4 NMSA 1978 for natural gas or oil produced from a production restoration project;

J. "production restoration project" means the use of any process for returning to production a natural gas or oil well that had thirty days or less of production in any period of twenty-four consecutive months beginning on or after January 1, 1993 as approved and certified by the division;

K. "severance" means the taking from the soil of any product in any manner whatsoever;

L. "stripper well property" means a crude oil or natural gas producing property that is assigned a single production unit number by the department and:

(1) if a crude oil producing property, produced an average daily production of less than ten barrels of oil per eligible well per day for the preceding calendar year;

(2) if a natural gas producing property, produced an average daily production of less than sixty thousand cubic feet of natural gas per eligible well per day during the preceding calendar year; or

(3) if a property with wells that produce both crude oil and natural gas, produced an average daily production of less than ten barrels of oil per eligible well per day for the preceding calendar year, as determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil;

M. "stripper well incentive tax rates" means the tax rates set forth in Paragraphs (6) through (9) of Subsection A of Section 7-29-4 NMSA 1978 and in Paragraphs (4) through (7) of Subsection A of Section 7-31-4 NMSA 1978 for natural gas or oil produced from a well within a stripper well property;

N. "well workover incentive tax rate" means the tax rate set forth in Paragraphs (4) and (5) of Subsection A of Section 7-29-4 NMSA 1978 on the natural gas or oil produced from a well workover project; and

O. "well workover project" means any procedure undertaken by the operator of a natural gas or oil well that is intended to increase the production from the well and that has been approved and certified by the division.

History: Laws 1995, ch. 15, § 2; 1999, ch. 7, § 2; 1999, ch. 256, § 3.

7-29B-3. Approval of production restoration projects, well workover projects and stripper well properties.

A. A natural gas or oil well shall be approved by the division as a production restoration project if:

(1) the operator of the well makes application to the division in accordance with the provisions of the Natural Gas and Crude Oil Production Incentive Act and rules adopted pursuant to that act for approval of a production restoration project and the

application is made within twelve months of the completion of the production restoration project; and

(2) the division records show that the well had thirty days or less of production in any period of twenty-four consecutive months beginning on or after January 1, 1993.

B. A natural gas or oil well shall be approved by the division as a well workover project if:

(1) the operator of the well makes application to the division in accordance with the provisions of the Natural Gas and Crude Oil Production Incentive Act and rules adopted pursuant to that act for approval of a well workover project;

(2) the division determines that the procedure performed by the operator of the well is a procedure to increase the production from the well, but is not routine maintenance performed by a prudent operator to maintain the well in operation. Such procedures may include, but are not limited to:

(a) re-entry into the well to drill deeper, to sidetrack to a different location or to recomplete for production;

(b) recompletion by reperforation of a zone from which natural gas or oil has been produced or by perforation of a different zone;

(c) repair or replacement of faulty or damaged casing or related downhole equipment;

(d) fracturing, acidizing or installing compression equipment; or

(e) squeezing, cementing or installing equipment necessary for removal of excessive water, brine or condensate from the well bore in order to establish, continue or increase production from the well; and

(3) the operator of the well submits to the division evidence of a positive production increase over the production rate of the well prior to the workover. The operator must submit a production curve or tabulation made up of at least twelve months' production prior to the workover and at least three months' production following the workover that reflects a positive production increase from the workover. The production curve or tabulation must be certified by the operator as that of the well on which a workover was performed.

C. A natural gas or crude oil producing property shall be approved and certified by the division as a stripper well property if the division records show that the property is assigned a single production unit number by the department and:

(1) if a crude oil producing property, produced an average daily production of less than ten barrels of oil per eligible well per day for the preceding calendar year;

(2) if a natural gas producing property, produced an average daily production of less than sixty thousand cubic feet of natural gas per eligible well per day during the preceding calendar year; or

(3) if a property with wells that produce both crude oil and natural gas, produced an average daily production of less than ten barrels of oil per eligible well per day for the preceding calendar year, as determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil.

History: Laws 1995, ch. 15, § 3; 1999, ch. 7, § 3; 1999, ch. 256, § 4.

7-29B-4. Application procedures; certification of approval; rules; administration.

A. The operator of a proposed production restoration project or well workover project shall apply to the division for approval of a production restoration project or a well workover project in the form and manner prescribed by the division and shall provide any relevant material and information the division requires for that approval.

B. Upon a determination that the project complies with the provisions of the Natural Gas and Crude Oil Production Incentive Act and rules adopted pursuant to that act, the division shall approve the application and shall issue a certification of approval to the operator and designate the natural gas or oil well as a production restoration project or well workover project, as applicable.

C. In addition to the powers enumerated in Section 70-2-12 NMSA 1978, the division shall adopt, promulgate and enforce rules to carry out the provisions of the Natural Gas and Crude Oil Production Incentive Act.

D. The division shall consider and approve applications for approval of a production restoration project or well workover project without holding hearings on the applications. If the division denies approval of an application pursuant to such a process, the division, upon the request of the applicant, shall set a hearing of the application before an examiner appointed by the division to conduct the hearing. The hearing shall be conducted in accordance with the provisions of the Oil and Gas Act [Chapter 70, Article 2 NMSA 1978] for such hearings.

History: Laws 1995, ch. 15, § 4; 1999, ch. 256, § 5.

7-29B-5. Notice to secretary of taxation and revenue.

The division shall notify immediately the secretary of taxation and revenue upon:

A. adoption of rules pursuant to the provisions of the Natural Gas and Crude Oil Production Incentive Act;

B. certification of the date that production has been restored on a production restoration project;

C. certification of the date that a well workover project has been completed; and

D. certification of the stripper well properties for the fiscal year.

History: Laws 1995, ch. 15, § 5; 1999, ch. 256, § 6.

7-29B-6. Qualification for production restoration incentive tax exemption and well workover and stripper well property incentive tax rate; secretary of taxation and revenue approval; refund.

A. The person responsible for paying the oil and gas severance tax on natural gas or oil produced from a production restoration project shall qualify to receive a ten-year production restoration incentive tax exemption upon:

(1) application to the department in the form and manner prescribed by the department for approval for the ten-year production restoration incentive tax exemption;

(2) submission of the certification of approval from the division and designation of the natural gas or oil well as a production restoration project; and

(3) submission of any other relevant material that the secretary of taxation and revenue deems necessary to administer the applicable provisions of the Natural Gas and Crude Oil Production Incentive Act.

B. The person responsible for payment of the oil and gas severance tax on natural gas or oil produced from a well workover project shall qualify for the well workover incentive tax rate on all the natural gas or oil produced by that project upon:

(1) application to the department in the form and manner prescribed by the department for approval to apply the well workover incentive tax rate to the natural gas or oil produced from a well workover project;

(2) submission of the certification from the division of approval and designation of the natural gas or oil well as a well workover project; and

(3) any other relevant material that the department considers necessary to administer the applicable provisions of the Natural Gas and Crude Oil Production Incentive Act.

C. The person responsible for paying the oil and gas severance tax and the oil and gas emergency school tax on natural gas and crude oil produced from a stripper well property shall qualify to receive the stripper well property incentive tax rate for the fiscal year following certification by the division in the form and manner agreed to by the division and the department designating the property as a stripper well property. The division shall certify stripper well properties for calendar year 1998 no later than June 30, 1999 and no later than June 1 of each succeeding year for the preceding calendar year.

D. The production restoration incentive tax exemption shall apply to natural gas or oil produced from a production restoration project beginning the first day of the month following the date the division certifies that production has been restored and ending the last day of the tenth year of production following that date. The well workover incentive tax rate applies to the natural gas or oil produced from a well workover project beginning the first day of the month following the date the division certifies that the well workover project has been completed. The stripper well property incentive tax rates apply to the natural gas or oil produced from a stripper well property in the twelve months beginning May 1 prior to July 1 of the fiscal year to which the certification of the property as a stripper well property applies.

E. The person responsible for payment of the oil and gas severance tax on natural gas or oil production from an approved well workover project may file a claim for credit against current tax liability or for refund in accordance with Section 7-1-26 NMSA 1978 for taxes paid in excess of the amount due using the well workover incentive tax rate. Notwithstanding the provisions of Subsection E [F] of Section 7-1-26 NMSA 1978, any such refund granted shall be made in the form of a credit against any future oil and gas severance tax liabilities incurred by the taxpayer.

F. Well workover projects certified prior to July 1, 1999 shall be deemed to be approved and certified in accordance with the provisions of this 1999 act and natural gas or oil produced from those projects shall be eligible for the well workover incentive tax rate effective beginning July 1, 1999.

G. The secretary of taxation and revenue may adopt and promulgate rules to enforce the provisions of this section.

History: Laws 1995, ch. 15, § 6; 1999, ch. 256, § 7.

ARTICLE 29C
Intergovernmental Tax Credits

7-29C-1. Intergovernmental tax credits.

A. Any person who is liable for the payment of the oil and gas severance tax, the oil and gas conservation tax, the oil and gas emergency school tax or the oil and gas ad valorem production tax imposed on products severed from Indian tribal land or imposed on the privilege of severing products from Indian tribal land shall be entitled to a credit to be computed under this section and to be deducted from the payment of the indicated taxes with respect to products from qualifying wells. The credit provided by this subsection may be referred to as the "intergovernmental production tax credit".

B. Any person who is liable for the payment of the oil and gas production equipment ad valorem tax imposed on equipment located on Indian tribal land shall be entitled to a credit to be computed under this section and to be deducted from the payment of the indicated taxes with respect to equipment at qualifying wells. The credit provided by this subsection may be referred to as the "intergovernmental production equipment tax credit".

C. For the purposes of this section:

(1) "equipment" means wells and nonmobile equipment used at a well in connection with severance, treatment or storage of well products;

(2) "Indian tribal land" means all land that on March 1, 1995 was within the exterior boundaries of an Indian reservation or pueblo grant or held in trust by the United States for an Indian person, nation, tribe or pueblo;

(3) "product" means oil, natural gas or liquid hydrocarbon, individually or in combination, or carbon dioxide; and

(4) "qualifying well" means a well on Indian tribal land, the actual drilling of which commenced on or after July 1, 1995.

D. The intergovernmental production tax credit shall be determined separately for each calendar month and shall be equal to seventy-five percent of the lesser of:

(1) the aggregate amount of severance, privilege, ad valorem or similar tax in effect on March 1, 1995 that is imposed by the Indian nation, tribe or pueblo upon the products severed from qualifying wells or upon the privilege of severing products from qualifying wells; or

(2) the aggregate amount of the oil and gas severance tax, the oil and gas conservation tax, the oil and gas emergency school tax and the oil and gas ad valorem production tax imposed by this state upon the products severed from qualifying wells or upon the privilege of severing products from qualifying wells.

E. The intergovernmental production equipment tax credit shall be determined annually for the equipment at qualifying wells and shall be equal to seventy-five percent of the lesser of:

(1) the amount of ad valorem or similar tax in effect on March 1, 1995 that is imposed by the Indian nation, tribe or pueblo upon the equipment for the calendar year; or

(2) the amount of the oil and gas production equipment ad valorem tax imposed by this state upon the equipment for the calendar year.

F. If, after March 1, 1995, an Indian nation, tribe or pueblo increases any severance, privilege, ad valorem or similar tax applicable to products or equipment to which the tax credits provided by this section apply, the amount of the intergovernmental production tax credit for any month to which the increase applies shall be reduced by the difference between the aggregate amount of tax due to the Indian nation, tribe or pueblo for the production month and the aggregate amount of tax that would have been imposed by the terms of the tax or taxes in effect on March 1, 1995, and the intergovernmental production equipment tax credit shall be reduced by the difference between the aggregate amount of tax due to the Indian nation, tribe or pueblo for the year and the aggregate amount of tax that would have been imposed for the year by the terms of the tax or taxes in effect on March 1, 1995.

G. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied proportionately against the amount of oil and gas severance tax, oil and gas conservation tax, oil and gas emergency school tax, oil and gas ad valorem production tax and oil and gas production equipment ad valorem tax due with respect to the products, severance of products or equipment taxed.

H. The taxation and revenue department shall administer and interpret the provisions of this section in accordance with the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

I. The burden of showing entitlement to a credit authorized by this section is on the taxpayer claiming it, and he shall furnish to the appropriate tax collecting agency, in the manner determined by the taxation and revenue department, proof of payment of any tribal tax on which the credit is based.

History: Laws 1995, ch. 171, § 1; 1999, ch. 108, § 1.

7-29C-2. Intergovernmental tax credit; severance tax on coal.

A. Any person who is liable pursuant to Section 7-26-6 NMSA 1978 for the payment of the severance tax on coal severed and saved from tribal land is entitled to a credit to be computed under this section and to be deducted from the payment of the indicated tax. The credit provided by this section may be referred to as the "intergovernmental coal severance tax credit".

B. For the purposes of this section, "tribal land" means all land in New Mexico that, on March 1, 2001, was within the exterior boundaries of the reservation or pueblo grant of an Indian nation, tribe or pueblo, was within a dependent Indian community of the Indian nation, tribe or pueblo or was held in trust by the United States for the Indian nation, tribe or pueblo.

C. The intergovernmental coal severance tax credit shall be determined separately for each calendar month and shall be equal to seventy-five percent of the lesser of:

(1) the aggregate amount of tax due under one or more taxes in effect on March 1, 2001 imposed by the Indian nation, tribe or pueblo upon coal severed and saved from the tribal land of that Indian nation, tribe or pueblo, the value of coal severed and saved, the privilege of severing coal or the value of the leasehold interest; or

(2) the aggregate amount of severance tax and surtax due the state pursuant to Section 7-26-6 NMSA 1978 upon coal severed and saved from the tribal land of the Indian nation, tribe or pueblo.

D. If, after March 1, 2001, an Indian nation, tribe or pueblo increases any severance, privilege, possessory interest or similar tax applicable to coal to which the tax credits provided by this section apply, the amount of the intergovernmental coal severance tax credit for any month to which the increase applies shall be reduced by the difference between the aggregate amount of tax due to the Indian nation, tribe or pueblo for the month and the aggregate amount of tax that would have been imposed by the terms of the tax or taxes in effect on March 1, 2001. The expiration of a partial or total waiver from the tribal tax granted prior to March 1, 2001 does not constitute an increase in the tribal tax.

E. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied proportionately against the amount of severance tax and the amount of surtax due.

F. The burden of showing entitlement to a credit authorized by this section is on the taxpayer claiming it, and the taxpayer shall furnish to the appropriate tax collecting agency, in the manner determined by the taxation and revenue department, proof of payment of any tribal tax on which the credit is based.

G. The taxation and revenue department is authorized to promulgate rules or instructions prescribing the method by which a taxpayer may allocate credit for a tax imposed by the Indian nation, tribe or pueblo on a basis other than monthly against the monthly amounts of severance tax and surtax due.

History: 1978 Comp., § 7-29C-2, enacted by Laws 2001, ch. 134, § 2.

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.

7-30-2. Definitions.

As used in the Oil and Gas Conservation Tax Act:

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

B. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

C. "severance" means the taking from the soil of any product in any manner whatsoever;

D. "value" means the actual price received for products at the production unit, except as otherwise provided in the Oil and Gas Conservation Tax Act;

E. "product" or "products" means oil, including crude, slop or skim oil and condensate; natural gas; liquid hydrocarbon, including ethane, propane, isobutene, normal butane and pentanes plus, individually or any combination thereof; and non-hydrocarbon gases, including carbon dioxide and helium;

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 the person's interest;

G. "purchaser" means a person who is the first purchaser of a product after severance from a production unit, except as otherwise provided in the Oil and Gas Conservation Tax Act;

H. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association or other group or combination acting as a unit, and the plural as well as the singular number;

I. "interest owner" means a person owning an entire or fractional interest of whatsoever kind or nature in the products at the time of severance from a production unit or who has a right to a monetary payment that is determined by the value of such products;

J. "tax" means the oil and gas conservation tax; and

K. "volume" means the quantity of product severed reported using:

(1) oil, condensate and slop oil in barrels; and

(2) natural gas, liquid hydrocarbons, helium and carbon dioxide in thousand cubic feet at a pressure base of fifteen and twenty-five thousandths pounds per square inch.

History: 1953 Comp., § 72-20-2, enacted by Laws 1959, ch. 53, § 2; 1975, ch. 289, § 14; 1977, ch. 249, § 54; 1980, ch. 97, § 4; 1986, ch. 20, § 99; 1989, ch. 130, § 5; 2005, ch. 130, § 4; 2021, ch. 65, § 31.

7-30-3. Repealed.

7-30-4. Oil and gas conservation tax levied; collected by department; rate; interest owner's liability to state; Indian liability.

A. There is levied and shall be collected by the department a tax on all products that are severed and sold. The measure and rate of the tax shall be nineteen-hundredths percent of the taxable value of sold products. Every interest owner shall be liable for this tax to the extent of the owner's interest in the value of the products or to the extent of the owner's interest as may be measured by the value of the products. An Indian tribe, Indian pueblo or Indian shall be liable for this tax to the extent authorized or permitted by law.

B. When the average price of west Texas intermediate crude in the previous quarter exceeds seventy dollars ($70.00) per barrel, an additional tax to that provided pursuant to Subsection A of this section is levied and shall be collected by the department on oil that is severed and sold in the ensuing quarter. The measure and rate of the total tax on oil shall be twenty-four hundredths percent of the taxable value of the sold product. Every interest owner shall be liable for this tax to the extent of the owner's interest in the value of the products or to the extent of the owner's interest as may be measured by the value of the products. An Indian tribe, Indian pueblo or Indian shall be liable for this tax to the extent authorized or permitted by law.

History: 1953 Comp., § 72-20-4, enacted by Laws 1959, ch. 53, § 4; 1975, ch. 289, § 15; 1977, ch. 237, § 6; 1985, ch. 65, § 31; 1989, ch. 130, § 6; 1996, ch. 72, § 1; 2003, ch. 433, § 2; 2007, ch. 97, § 1; 2010, ch. 98, § 2.

7-30-5. Taxable value; method of determining.

A. To determine the taxable value of oil, natural gas or liquid hydrocarbon, individually or any combination thereof, carbon dioxide, helium or non-hydrocarbon gases, there shall be deducted from the value of products:

(1) royalties paid or due the United States or the state of New Mexico;

(2) royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States; and

(3) the reasonable expense of trucking any product from the production unit to the first place of market.

B. The taxable value of coal shall be the taxable value determined under Section 7-25-3 NMSA 1978, less royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States.

C. The taxable value of uranium shall be twenty-five percent of an amount equal to the difference between:

(1) the taxable value determined under Section 7-25-3 NMSA 1978; and

(2) royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States.

D. The taxable value of geothermal energy shall be the value at the point of first sale, less the cost of transporting it from the point of severance to the point of the first sale, less the royalties paid or due the United States or the state of New Mexico or any Indian tribe, Indian pueblo or Indian that is a ward of the United States.

History: 1953 Comp., § 72-20-5, enacted by Laws 1959, ch. 53, § 5; 1975, ch. 289, § 16; 1977, ch. 102, § 2; 1980, ch. 97, § 5; 1985, ch. 65, § 32; 2005, ch. 130, § 5.

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.

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.

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.

7-30-10. Operator's report; tax remittance; additional information.

Each operator shall, in the form and manner required by the department, make a return to the department showing the total value, volume and kind of products sold from each production unit for each calendar month. All taxes due or to be remitted by the operator shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. A uranium or a coal return shall be filed on or before the twenty-fifth day of the month following the month in which the taxable event occurs pursuant to Section 7-26-6 or 7-26-7 NMSA 1978. Any additional report or information the department may deem necessary for the proper administration of the Oil and Gas Conservation Tax Act may be required.

History: 1953 Comp., § 72-20-10, enacted by Laws 1959, ch. 53, § 10; 1986, ch. 5, § 4; 1989, ch. 130, § 10; 2005, ch. 130, § 6.

7-30-11. Purchaser's report; tax remittance; additional information.

Each purchaser shall, in the form and manner required by the department, make a return to the department showing the total value, volume and kind of products purchased by him from each production unit for each calendar month. All taxes due or to be remitted by the purchaser shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional reports or information the department may deem necessary for the proper administration of the Oil and Gas Conservation Tax Act may be required.

History: 1953 Comp., § 72-20-11, enacted by Laws 1959, ch. 53, § 11; 1986, ch. 5, § 5; 1989, ch. 130, § 11.

7-30-12. Repealed.

7-30-13. Repealed.

7-30-14. Recompiled.

7-30-15. Repealed.

7-30-16. Repealed.

7-30-17. Repealed.

7-30-18. Repealed.

7-30-19. Repealed.

7-30-20. Repealed.

7-30-21. Repealed.

7-30-22. Repealed.

7-30-23. Repealed.

7-30-24. Repealed.

7-30-25. Repealed.

7-30-26. Repealed.

7-30-27. Advance payment required.

A. Any person required to make payment of tax pursuant to Section 7-30-10 or 7-30-11 NMSA 1978 shall make the advance payment required by this section.

B. For the purposes of this section:

(1) "advance payment" means the payment required to be made by this section in addition to any oil and gas conservation tax, penalty or interest due; and

(2) "average tax" means the aggregate amount of tax, net of any refunds or credits, paid by a person during the twelve-month period ending March 31 pursuant to the Oil and Gas Conservation Tax Act divided by the number of months during that period for which the person made payment.

C. Each year, prior to July 1, each person required to pay tax pursuant to the Oil and Gas Conservation Tax Act shall compute the average tax for the period ending March 31 of that year. The average tax calculated for a year shall be used during the twelve-month period beginning with July of that year and ending with June of the following year as the basis for making the advance payments required by Subsection D of this section.

D. Every month, beginning with July 1991, every person required to pay tax in a month pursuant to the Oil and Gas Conservation Tax Act shall pay, in addition to any amount of tax, interest or penalty due, an advance payment in an amount equal to the applicable average tax, except:

(1) if the person is making a final return under the Oil and Gas Conservation Tax Act, no advance payment pursuant to this subsection is due for that return; and

(2) as provided in Subsection F of this section.

E. Every month, beginning with tax payments due in August 1991, every person required to pay tax pursuant to the Oil and Gas Conservation Tax Act may claim a credit equal to the amount of advance payment made in the previous month, except as provided in Subsection F of this section.

F. If, in any month, a person is not required to pay tax pursuant to the Oil and Gas Conservation Tax Act, that person is not required to pay the advance payment and may not claim a credit pursuant to Subsection E of this section provided that, in any succeeding month when the person has liability under the Oil and Gas Conservation Tax Act, the person may claim a credit for any advance payment made and not credited.

G. In the event that the date by which a person is required to pay the tax pursuant to the Oil and Gas Conservation Tax Act is accelerated to a date earlier than the twenty-fifth day of the second month following the month of production, the advance payment provision contained in this section is null and void and any money held as advance payments shall be credited to the taxpayers' accounts.

History: Laws 1991, ch. 9, § 37.

ARTICLE 31
Oil and Gas Emergency School Tax

7-31-1. Title.

Chapter 7, Article 31 NMSA 1978 may be cited as the "Oil and Gas Emergency School Tax Act".

History: 1953 Comp., § 72-21-1, enacted by Laws 1959, ch. 54, § 1; 1985, ch. 65, § 34.

7-31-2. Definitions.

As used in the Oil and Gas Emergency School Tax Act:

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

B. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

C. "severance" means the taking from the soil of any product in any manner whatsoever;

D. "value" means the actual price received from products at the production unit, except as otherwise provided in the Oil and Gas Emergency School Tax Act;

E. "product" or "products" means oil, including crude, slop or skim oil and condensate; natural gas; liquid hydrocarbon, including ethane, propane, isobutene, normal butane and pentanes plus, individually or any combination thereof; and non-hydrocarbon gases, including carbon dioxide and helium;

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 the person's interest;

G. "purchaser" means a person who is the first purchaser of a product after severance from a production unit, except as otherwise provided in the Oil and Gas Emergency School Tax Act;

H. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association, limited liability company or other group or combination acting as a unit, and the plural as well as the singular number;

I. "interest owner" means a person owning an entire or fractional interest of whatsoever kind or nature in the products at the time of severance from a production unit or who has a right to a monetary payment that is determined by the value of such products;

J. "stripper well property" means a crude oil or natural gas producing property that is assigned a single production unit number by the department and is certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act [7-29B-1 to 7-29B-6 NMSA 1978] to have produced in the preceding calendar year:

(1) if a crude oil producing property, an average daily production of less than ten barrels of oil per eligible well per day;

(2) if a natural gas producing property, an average daily production of less than sixty thousand cubic feet of natural gas per eligible well per day; or

(3) if a property with wells that produce both crude oil and natural gas, an average daily production of less than ten barrels of oil per eligible well per day, as determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil;

K. "average annual taxable value" means as applicable:

(1) the average of the taxable value per one thousand cubic feet, determined pursuant to Section 7-31-5 NMSA 1978, of all natural gas produced in New Mexico for the specified calendar year as determined by the department; or

(2) the average of the taxable value per barrel, determined pursuant to Section 7-31-5 NMSA 1978, of all oil produced in New Mexico for the specified calendar year as determined by the department;

L. "tax" means the oil and gas emergency school tax; and

M. "volume" means the quantity of product severed reported using:

(1) oil, condensate and slop oil in barrels; and

(2) natural gas, liquid hydrocarbons, helium and carbon dioxide in thousand cubic feet at a pressure base of fifteen and twenty-five thousandths pounds per square inch.

History: 1953 Comp., § 72-21-2, enacted by Laws 1959, ch. 54, § 2; 1977, ch. 249, § 55; 1980, ch. 97, § 6; 1986, ch. 20, § 100; 1993, ch. 360, § 1; 1999, ch. 256, § 8; 2005, ch. 130, § 7; 2021, ch. 65, § 32.

7-31-3. Repealed.

7-31-4. Privilege tax levied; collected by department; rate; interest owner's liability to state; Indian liability.

A. There is levied and shall be collected by the department a privilege tax on the business of every person severing products in this state. The measure of the tax shall be:

(1) on oil and on oil and other liquid hydrocarbons removed from natural gas at or near the wellhead, except as provided in Paragraphs (4) and (5) of this subsection,

three and fifteen hundredths percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978;

(2) on carbon dioxide, helium and non-hydrocarbon gases, three and fifteen hundredths percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978;

(3) on natural gas, except as provided in Paragraphs (6) and (7) of this subsection, four percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978;

(4) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, one and fifty-eight hundredths percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978, provided that the average annual taxable value of oil was equal to or less than fifteen dollars ($15.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(5) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, two and thirty-six hundredths percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978, provided that the average annual taxable value of oil was greater than fifteen dollars ($15.00) per barrel but not more than eighteen dollars ($18.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(6) on the natural gas removed from a stripper well property, two percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978, provided that the average annual taxable value of natural gas was equal to or less than one dollar fifteen cents ($1.15) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed; and

(7) on the natural gas removed from a stripper well property, three percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978, provided that the average annual taxable value of natural gas was greater than one dollar fifteen cents ($1.15) per thousand cubic feet but not more than one dollar thirty-five cents ($1.35) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed.

B. Every interest owner, for the purpose of levying this tax, is deemed to be in the business of severing products and is liable for this tax to the extent of his interest in the value of the products or to the extent of his interest as may be measured by the value of the products.

C. Any Indian tribe, Indian pueblo or Indian is liable for this tax to the extent authorized or permitted by law.

History: 1953 Comp., § 72-21-4, enacted by Laws 1959, ch. 54, § 4; 1963, ch. 179, § 24; 1983, ch. 213, § 21; 1993, ch. 360, § 2; 1999, ch. 256, § 9; 2005, ch. 130, § 8.

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.

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.

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.

7-31-10. Operator's report; tax remittance; additional information.

Each operator shall in the form and manner required by the division make a return to the division showing the total value, volume and kind of products sold from each production unit for each calendar month. All taxes due or to be remitted by the operator shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional report or information the division may deem necessary for the proper administration of the Oil and Gas Emergency School Tax Act may be required.

History: 1953 Comp., § 72-21-10, enacted by Laws 1959, ch. 54, § 10; 1986, ch. 5, § 6.

7-31-10.1. Repealed.

7-31-11. Purchaser's report; tax remittance; additional information.

Each purchaser shall in the form and manner required by the division make a return to the division showing the total value, volume and kind of products purchased by him from each production unit for each calendar month. All taxes due or to be remitted by the purchaser shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional reports or information the division may deem necessary for the proper administration of the Oil and Gas Emergency School Tax Act may be required.

History: 1953 Comp., § 72-21-11, enacted by Laws 1959, ch. 54, § 11; 1986, ch. 5, § 7.

7-31-12. Repealed.

7-31-13. Repealed.

7-31-14. Repealed.

7-31-15. Repealed.

7-31-16. Repealed.

7-31-17. Repealed.

7-31-18. Repealed.

7-31-19. Repealed.

7-31-20. Repealed.

7-31-21. Repealed.

7-31-22. Repealed.

7-31-23. Repealed.

7-31-24. Repealed.

7-31-25. Repealed.

7-31-26. Advance payment required.

A. Any person required to make payment of tax pursuant to Section 7-31-10 or 7-31-11 NMSA 1978 shall make the advance payment required by this section.

B. For the purposes of this section:

(1) "advance payment" means the payment required to be made by this section in addition to any oil and gas emergency school tax, penalty or interest due; and

(2) "average tax" means the aggregate amount of tax, net of any refunds or credits, paid by a person during the twelve-month period ending March 31, pursuant to the Oil and Gas Emergency School Tax Act divided by the number of months during that period for which the person made payment.

C. Each year, prior to July 1, each person required to pay tax pursuant to the Oil and Gas Emergency School Tax Act shall compute the average tax for the period ending March 31 of that year. The average tax calculated for a year shall be used during the twelve-month period beginning with July of that year and ending with June of the following year as the basis for making the advance payments required by Subsection D of this section.

D. Every month, beginning with July 1991, every person required to pay tax in a month pursuant to the Oil and Gas Emergency School Tax Act shall pay, in addition to any amount of tax, interest or penalty due, an advance payment in an amount equal to the applicable average tax, except:

(1) if the person is making a final return under the Oil and Gas Emergency School Tax Act, no advance payment pursuant to this subsection is due for that return; and

(2) as provided in Subsection F of this section.

E. Every month, beginning with tax payments in August 1991, every person required to pay tax pursuant to the Oil and Gas Emergency School Tax Act may claim a credit equal to the amount of advance payment made in the previous month, except as provided in Subsection F of this section.

F. If, in any month, a person is not required to pay tax pursuant to the Oil and Gas Emergency School Tax Act, that person is not required to pay the advance payment and may not claim a credit pursuant to Subsection E of this section provided that, in any succeeding month when the person has liability under the Oil and Gas Emergency

School Tax Act, the person may claim a credit for any advance payment made and not credited.

G. In the event that the date by which a person is required to pay the tax pursuant to the Oil and Gas Emergency School Tax Act is accelerated to a date earlier than the twenty-fifth day of the second month following the month of production, the advance payment provision contained in this section is null and void and any money held as advance payments shall be credited to the taxpayers' accounts.

History: Laws 1991, ch. 9, § 38.

7-31-27. Jicarilla Apache tribal capital improvements tax credit.

A. A person who is liable for the payment of the oil and gas emergency school tax imposed on products severed from Jicarilla Apache tribal land or imposed on the privilege of severing products from Jicarilla Apache tribal land shall be entitled to a credit to be computed pursuant to this section and to be deducted from the payment of those taxes with respect to products from qualifying wells. The credit provided by this section may be referred to as the "Jicarilla Apache tribal capital improvements tax credit".

B. As used in this section:

(1) "Jicarilla Apache tribal land" means land within the state of New Mexico that on March 1, 2002 was within the exterior boundaries of a Jicarilla Apache reservation or was held in trust by the United States for the Jicarilla Apache Nation;

(2) "product" means oil, natural gas or liquid hydrocarbon, individually or in combination, or carbon dioxide;

(3) "qualifying well" means a well on Jicarilla Apache tribal land; and

(4) "Jicarilla Apache tribal capital improvements tax" means a tax imposed after the effective date of this section by the Jicarilla Apache Nation that is exclusively dedicated to fund capital improvement projects on Jicarilla Apache tribal land and that is not available to finance the construction of buildings used for commercial activity.

C. The Jicarilla Apache tribal capital improvements tax credit shall be determined separately for each calendar month and shall be equal to the lesser of:

(1) the amount of the Jicarilla Apache tribal capital improvements tax imposed by the Jicarilla Apache Nation upon the products severed from qualifying wells or upon the privilege of severing products from qualifying wells; or

(2) seven-tenths of one percent of the taxable value of the products severed from qualifying wells as determined by applicable state law.

D. A credit pursuant to this section shall be allowed by the taxation and revenue department only if the Jicarilla Apache Nation has entered into a cooperative agreement with the secretary of taxation and revenue for the exchange of information necessary for the administration of the Jicarilla Apache tribal capital improvements tax credit.

E. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied against the amount of the oil and gas emergency school tax due with respect to the products or severance of products taxed.

F. The credit provided by this section shall be in addition to any credit claimed by the taxpayer or allowed by the taxation and revenue department pursuant to Section 7-29C-1 NMSA 1978 with respect to the same products or the severance of the same products. A Jicarilla Apache tribal capital improvements tax that qualifies for the credit provided by this section shall constitute an increase in tribal taxes for purposes of Subsection F of Section 7-29C-1 NMSA 1978 only to the extent that it exceeds the amount identified in Paragraph (2) of Subsection C of this section.

G. The taxation and revenue department shall administer and interpret the provisions of this section in accordance with the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

H. The burden of showing entitlement to a credit authorized by this section is on the taxpayer claiming it, and the taxpayer shall furnish to the appropriate tax collecting agency, in a manner determined by the taxation and revenue department, proof of payment of the Jicarilla Apache tribal capital improvements tax on which the credit is based.

History: Laws 2002, ch. 15, § 1.

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.

7-32-2. Definitions.

As used in the Oil and Gas Ad Valorem Production Tax Act:

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

B. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

C. "severance" means the taking from the soil any product in any manner whatsoever;

D. "value" means the actual price received for products at the production unit, except as otherwise provided in the Oil and Gas Ad Valorem Production Tax Act;

E. "product" or "products" means oil, including crude, slop or skim oil and condensate; natural gas; liquid hydrocarbon, including ethane, propane, isobutene, normal butane and pentanes plus, individually or any combination thereof; and non-hydrocarbon gases, including carbon dioxide and helium;

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 the person's interest;

G. "purchaser" means a person who is the first purchaser of a product after severance from a production unit, except as otherwise provided in the Oil and Gas Ad Valorem Production Tax Act;

H. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association or other group or combination acting as a unit, and the plural as well as the singular number;

I. "interest owner" means a person owning an entire or fractional interest of whatsoever kind or nature in the products at the time of severance from a production unit or who has a right to a monetary payment that is determined by the value of such products;

J. "assessed value" means the value against which tax rates are applied;

K. "tax" means the oil and gas ad valorem production tax; and

L. "volume" means the quantity of product severed reported using:

(1) oil, condensate and slop oil in barrels; and

(2) natural gas, liquid hydrocarbons, helium and carbon dioxide in thousand cubic feet at a pressure base of fifteen and twenty-five thousandths pounds per square inch.

History: 1953 Comp., § 72-22-2, enacted by Laws 1959, ch. 55, § 2; 1977, ch. 249, § 56; 1980, ch. 97, § 7; 1986, ch. 20, § 101; 2005, ch. 130, § 9; 2021, ch. 65, § 33.

7-32-3. Repealed.

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.

7-32-5. Assessed value; method of determining.

A. The taxable value of products is an amount equal to one hundred fifty percent of the value of products after deducting:

(1) royalties paid or due the United States or the state of New Mexico;

(2) royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States; and

(3) the reasonable expense of trucking any product from the production unit to the first place of market.

B. The assessed value of products shall be determined by applying the uniform assessment ratio to the taxable value of products. The method prescribed by this section shall be the exclusive method for determining the assessed value of products. The tax imposed by Section 7-32-4 NMSA 1978 of the Oil and Gas Ad Valorem Production Tax Act, together with the tax imposed by Section 7-34-4 NMSA 1978 of the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978], shall be the full and exclusive measure of ad valorem tax liability on the interests of all persons, including the operator and interest owners, in the production unit. Any other ad valorem tax on the production unit or on products severed therefrom is void.

History: 1953 Comp., § 72-22-5, enacted by Laws 1959, ch. 55, § 5; 1972, ch. 59, § 1.

7-32-6. Value may be determined by commission; standard.

The commission may determine the value of products severed from a production unit when:

A. the operator and purchaser are affiliated persons; or when

B. the sale and purchase of products is not an arm's length transaction; or when

C. products are severed and removed from a production unit and a value as defined in this act is not established for such products.

The value determined by the commission shall be commensurate with the actual price received for products of like quality, character and use which are severed in the same field or area.

History: 1953 Comp., § 72-22-6, enacted by Laws 1959, ch. 55, § 6.

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.

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.

7-32-10. Operator's report; tax remittance; additional information.

Each operator shall in the form and manner required by the division make a return to the division showing the total value, volume and kind of products sold from each production unit for each calendar month. All taxes due or to be remitted by the operator shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional report or information the division may deem necessary for the proper administration of the Oil and Gas Ad Valorem Production Tax Act may be required.

History: 1953 Comp., § 72-22-10, enacted by Laws 1959, ch. 55, § 10; 1986, ch. 5, § 8.

7-32-11. Purchaser's report; tax remittance; additional information.

Each purchaser shall in the form and manner required by the division make a return to the division showing the total value, volume and kind of products purchased by him from each production unit for each calendar month. All taxes due or to be remitted by the purchaser shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional reports or information the division may deem necessary for the proper administration of the Oil and Gas Ad Valorem Production Tax Act may be required.

History: 1953 Comp., § 72-22-11, enacted by Laws 1959, ch. 55, § 11; 1986, ch. 5, § 9.

7-32-12. Repealed.

7-32-13. Division shall prepare schedules and forward to assessors; assessor shall deliver schedule to treasurer.

By the last day of each month, the division shall prepare and certify a schedule to the respective counties in which production units are located. The schedules shall reflect the accounting of the preceding month and shall list each production unit, and by production unit show the assessed value, taxing district, extension of tax levies, tax payments and other information as the director of the division deems appropriate. The schedules shall be forwarded to the assessors of the respective counties who upon receipt thereof shall accept them as the assessment of property as required in the Oil and Gas Ad Valorem Production Tax Act and shall deliver them to the county treasurer as the oil and gas ad valorem schedule for the county.

History: 1953 Comp., § 72-22-13, enacted by Laws 1959, ch. 55, § 13; 1985, ch. 65, § 38.

7-32-14. Monthly report to department of finance and administration; remittance to state and county treasurers; state and county treasurers may distribute funds.

A. By the last day of each month, the department shall prepare and certify a report to the secretary of finance and administration. The report shall be for the preceding month and shall show the amount of taxes collected and distributed to the oil and gas production tax fund, the amount due the state and each taxing district imposing a tax as reflected by the schedules prepared pursuant to Section 7-32-13 NMSA 1978 and any other information required by the secretary of finance and administration. The secretary of finance and administration shall forthwith remit the appropriate amounts from the oil and gas production tax fund to the state treasurer and the respective county treasurers. The state treasurer and the county treasurers shall, upon receipt of such remittance, make appropriate distribution of the proceeds thereof, except as provided in Subsection B of this section.

B. If the board of county commissioners notifies the secretary of finance and administration that the county elects not to distribute the proceeds of the oil and gas ad valorem production tax due the municipalities, community college districts and school districts within the county, the secretary of finance and administration shall pay amounts due directly to municipalities, community college districts and school districts within the county.

History: 1953 Comp., § 72-22-14, enacted by Laws 1959, ch. 55, § 14; 1963, ch. 88, § 1; 1977, ch. 247, § 186; 1983, ch. 221, § 1; 1985, ch. 65, § 39; 1993, ch. 131, § 1.

7-32-15. Determination of assessed values for taxing districts.

To determine for any purpose the total assessed value of property required to be assessed under the Oil and Gas Ad Valorem Production Tax Act for any taxing district, the assessed value of the taxing district as is reflected by the oil and gas ad valorem production tax schedules of the twelve months of the calendar year preceding the determination shall be used.

History: 1953 Comp., § 72-22-15, enacted by Laws 1959, ch. 55, § 15; 1985, ch. 65, § 40.

7-32-16. Repealed.

7-32-17. Repealed.

7-32-18. Repealed.

7-32-19. Repealed.

7-32-20. Repealed.

7-32-21. Repealed.

7-32-22. Repealed.

7-32-23. Repealed.

7-32-24. Repealed.

7-32-25. Repealed.

7-32-26. Repealed.

7-32-27. Repealed.

7-32-28. Advance payment required.

A. Any person required to make payment of tax pursuant to Section 7-32-10 or 7-32-11 NMSA 1978 shall make the advance payment required by this section.

B. For the purposes of this section:

(1) "advance payment" means the payment required to be made by this section in addition to any oil and gas ad valorem production tax, penalty or interest due; and

(2) "average tax" means the aggregate amount of tax, net of any refunds or credits, paid by a person during the twelve-month period ending March 31 pursuant to the Oil and Gas Ad Valorem Production Tax Act divided by the number of months during that period for which the person made payment.

C. Each year, prior to July 1, each person required to pay tax pursuant to the Oil and Gas Ad Valorem Production Tax Act shall compute the average tax for the period ending March 31 of that year. The average tax calculated for a year shall be used during the twelve-month period beginning with July of that year and ending with June of the following year as the basis for making the advance payments required by Subsection D of this section.

D. Every month, beginning with July 1991, every person required to pay tax in a month pursuant to the Oil and Gas Ad Valorem Production Tax Act shall pay, in addition to any amount of tax, interest or penalty due, an advance payment in an amount equal to the applicable average tax, except:

(1) if the person is making a final return under the Oil and Gas Ad Valorem Production Tax Act, no advance payment pursuant to this subsection is due for that return; and

(2) as provided in Subsection F of this section.

E. Every month, beginning with tax payments due in August 1991, every person required to pay tax pursuant to the Oil and Gas Ad Valorem Production Tax Act may claim a credit equal to the amount of advance payment made in the previous month, except as provided in Subsection F of this section.

F. If, in any month, a person is not required to pay tax pursuant to the Oil and Gas Ad Valorem Production Tax Act, that person is not required to pay the advance payment and may not claim a credit pursuant to Subsection E of this section provided that, in any succeeding month when the person has liability under the Oil and Gas Ad Valorem Production Tax Act, the person may claim a credit for any advance payment made and not credited.

G. In the event that the date by which a person is required to pay the tax pursuant to the Oil and Gas Ad Valorem Production Tax Act is accelerated to a date earlier than the twenty-fifth day of the second month following the month of production, the advance payment provision contained in this section is null and void and any money held as advance payments shall be credited to the taxpayers' accounts.

History: Laws 1991, ch. 9, § 39.

ARTICLE 33
Natural Gas Processors Tax

7-33-1. Short title.

Chapter 7, Article 33 NMSA 1978 may be cited as the "Natural Gas Processors Tax Act".

History: 1953 Comp., § 72-23-1, enacted by Laws 1963, ch. 179, § 1; 1970, ch. 13, § 2; 1985, ch. 65, § 41.

7-33-2. Definitions.

As used in the Natural Gas Processors Tax Act:

A. "average annual taxable value" means the average of the taxable value per mcf, determined pursuant to Section 7-31-5 NMSA 1978, of all natural gas produced in New Mexico for the specified calendar year as determined by the department;

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

C. "fiscal year" means the period starting July 1 and ending June 30 of the succeeding calendar year;

D. "mcf" means one thousand cubic feet;

E. "mmbtu" means one million British thermal units;

F. "natural gas" means any hydrocarbon that at atmospheric conditions of temperature and pressure is in a gaseous state, and includes non-hydrocarbon gases that are in combination with hydrocarbon gases;

G. "natural gas processing plant" means a facility used to extract liquid hydrocarbons and non-hydrocarbon gaseous or liquid substances, individually or in any combination, from natural gas, but does not include a facility that refines or processes oil, natural gas or liquid hydrocarbons or that extracts substances from natural gas through a field or lease operation;

H. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association or other group or combination acting as a unit;

I. "processor" means a person who operates a natural gas processing plant; and

J. "tax" means the natural gas processors tax.

History: 1953 Comp., § 72-23-2, enacted by Laws 1963, ch. 179, § 2; 1970, ch. 13, § 3; 1977, ch. 249, § 57; 1986, ch. 20, § 102; 1998, ch. 102, § 1.

7-33-3. Repealed.

7-33-4. Privilege tax levied; collected by department; rate.

A. There is levied and shall be collected by the department a privilege tax on processors for the privilege of operating a natural gas processing plant in New Mexico. This tax may be referred to as the "natural gas processors tax".

B. The tax shall be imposed on the amount of mmbtus of natural gas delivered to the processor at the inlet of the natural gas processing plant after subtracting the mmbtu deductions authorized in Subsection E of this section. The tax shall be imposed at the rate per mmbtu determined in Subsection C or D of this section, as applicable.

C. The tax rate for the six-month period beginning on January 1, 1999 shall be determined by multiplying the rate of sixty-five hundredths of one cent ($.0065) per mmbtu by a fraction, the numerator of which is the annual average taxable value per mcf of natural gas produced in New Mexico during the 1997 calendar year and the denominator of which is one dollar thirty-three cents ($1.33) per mcf. The resulting tax rate shall be rounded to the nearest one-hundredth of one cent per mmbtu.

D. The tax rate for each fiscal year beginning on or after July 1, 1999 shall be determined by multiplying the rate of sixty-five hundredths of one cent ($.0065) per mmbtu by a fraction, the numerator of which is the annual average taxable value per mcf of natural gas produced in New Mexico during the preceding calendar year and the denominator of which is one dollar thirty-three cents ($1.33) per mcf. The resulting tax rate shall be rounded to the nearest one-hundredth of one cent per mmbtu.

E. A processor may deduct from the amount of mmbtus of natural gas subject to the tax the mmbtus of natural gas that are:

(1) used for natural gas processing by the processor;

(2) returned to the lease from which it is produced;

(3) legally flared by the processor; or

(4) lost as a result of natural gas processing plant malfunctions or other incidences of force majeur.

F. On or before June 15, 1999 and June 15 of each succeeding year, the department shall inform each processor in writing of the tax rate applicable for the succeeding fiscal year.

G. Any Indian nation, tribe or pueblo or Indian is liable for the tax to the extent authorized or permitted by law.

History: 1953 Comp., § 72-23-4, enacted by Laws 1963, ch. 179, § 4; 1970, ch. 13, § 5; 1984, ch. 2, § 9; 1998, ch. 102, § 2.

7-33-5. Repealed.

7-33-6. Refund.

Any person who has overpaid the tax may apply for a refund of that overpayment in accordance with the provisions of Section 7-1-26 NMSA 1978.

History: 1953 Comp., § 72-23-6, enacted by Laws 1963, ch. 179, § 6; 1985, ch. 65, § 42; 1998, ch. 102, § 3.

7-33-7. Natural gas on which tax has been levied; regulation by department.

The tax shall not be levied more than once on the same natural gas. Reporting of natural gas on which the tax has been paid is subject to the regulation of the department.

History: 1953 Comp., § 72-23-7, enacted by Laws 1963, ch. 179, § 7; 1998, ch. 102, § 4.

7-33-8. Tax return; tax remittance; additional information.

A. Each processor shall submit a return monthly to the department in the form and manner required by the department showing for the month the total mmbtus of natural gas received by the processor at the inlet of the natural gas processing plant and the total mmbtus of natural gas deducted pursuant to the Natural Gas Processors Tax Act. All tax due or to be remitted by the processor shall accompany the return.

B. The return required by this section shall be filed on or before the twenty-fifth day of the month after the calendar month for which the return is required.

C. The department may require additional reports or information as necessary for the proper administration of the Natural Gas Processors Tax Act.

History: 1953 Comp., § 72-23-8, enacted by Laws 1963, ch. 179, § 8; 1970, ch. 13, § 7; 1998, ch. 102, § 5.

7-33-9. Repealed.

7-33-10. Repealed.

7-33-11. Repealed.

7-33-12. Repealed.

7-33-13. Repealed.

7-33-14. Repealed.

7-33-15. Repealed.

7-33-16. Repealed.

7-33-17. Repealed.

7-33-18. Repealed.

7-33-19. Repealed.

7-33-20. Repealed.

7-33-21. Repealed.

7-33-22. Repealed.

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.

7-34-2. Definitions.

As used in the Oil and Gas Production Equipment Ad Valorem Tax Act:

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

B. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association or other group or combination acting as a unit;

C. "operator" means any person engaged in the severance of products from a production unit;

D. "product" means oil, natural gas or liquid hydrocarbon, individually or any combination thereof, carbon dioxide, helium or a non-hydrocarbon gas;

E. "severance" means taking any product from the soil in any manner;

F. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

G. "equipment" means wells and nonmobile equipment used at a production unit in connection with severance, treatment or storage of production unit products;

H. "value" means the actual price received for products at the production unit as established under the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978];

I. "assessed value" means the value against which tax rates are applied; and

J. "tax" means the oil and gas production equipment ad valorem tax.

History: 1953 Comp., § 72-24-2, enacted by Laws 1969, ch. 119, § 2; 1977, ch. 249, § 58; 1980, ch. 97, § 8; 1986, ch. 20, § 103; 2005, ch. 130, § 10.

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.

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.

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.

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.

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.

7-34-8. Repealed.

7-34-9. Monthly report to department of finance and administration; remittances to state and county treasurers; state and county treasurers may distribute funds.

A. By the last day of each month, the department shall prepare and certify a report to the secretary of finance and administration. The report shall be for the preceding month and shall show the amount of taxes distributed to the oil and gas equipment tax fund, the amount due the state and each taxing district imposing a tax and any other information required by the secretary of finance and administration. The secretary of finance and administration shall forthwith remit the appropriate amounts from the oil and gas equipment tax fund to the state treasurer and the county treasurers who shall make the appropriate distribution, except as provided in Subsection B of this section.

B. If the board of county commissioners notifies the secretary of finance and administration that the county elects not to distribute the proceeds of the oil and gas ad valorem production equipment tax due the municipalities, community college districts and school districts in the county, the secretary of finance and administration shall pay amounts due directly to municipalities, community college districts and school districts within the county.

History: 1953 Comp., § 72-24-9, enacted by Laws 1969, ch. 119, § 9; 1977, ch. 247, § 188; 1983, ch. 221, § 2; 1985, ch. 65, § 45; 1993, ch. 131, § 2.

7-34-10. Repealed.

7-34-11. Repealed.

7-34-12. Repealed.

7-34-13. Repealed.

7-34-14. Repealed.

7-34-15. Repealed.

7-34-16. Repealed.

7-34-17. Repealed.

7-34-18. Repealed.

7-34-19. Repealed.

7-34-20. Repealed.

ARTICLE 35
Property Tax

7-35-1. Short title.

Articles 35 through 38 of Chapter 7 NMSA 1978 may be cited as the "Property Tax Code".

History: 1953 Comp., § 72-28-1, enacted by Laws 1973, ch. 258, § 1; 1982, ch. 28, § 1.

7-35-2. Definitions.

As used in the Property Tax Code:

A. "abandoned real property" means real property:

(1) that is part of a subdivision where the subdivision has a minimum of five thousand lots in delinquency on the department's delinquent property tax list as prepared by the appropriate county treasurer pursuant to Section 7-38-61 NMSA 1978 as of January 1, 2019;

(2) of which the subdivided lots are vacant;

(3) that is part of a subdivision plotted on or before 1980;

(4) the property taxes, penalties and interest of which are delinquent for at least ten years; and

(5) that does not include property with existing homes, businesses or other habitable structures;

B. "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;

C. "director" means the secretary;

D. "livestock" means cattle, buffalo, horses, mules, sheep, goats, swine, ratites and other domestic animals useful to humans;

E. "manufactured home" means a manufactured home as that term is defined in Section 66-1-4.11 NMSA 1978;

F. "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;

G. "nonresidential property" means property that is not residential property;

H. "owner" means the person in whom is vested any title to property;

I. "person" means an individual or any other legal entity;

J. "property" means tangible property, real or personal;

K. "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;

L. "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 9-11-6.2 NMSA 1978, also includes the deputy secretary or a division director or deputy division director delegated by the secretary;

M. "tax" means the property tax imposed under the Property Tax Code;

N. "taxable value" means the value of property determined by applying the tax ratio to the value of the property determined for property taxation purposes;

O. "tax rate" means the rate of the tax expressed in terms of dollars per thousand dollars of net taxable value of property;

P. "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

Q. "tax year" means the calendar year.

History: 1953 Comp., § 72-28-2, enacted by Laws 1973, ch. 258, § 2; 1977, ch. 249, § 60; 1981, ch. 37, § 60; 1985, ch. 109, § 1; 1986, ch. 20, § 104; 1991, ch. 166, § 1; 1993, ch. 39, § 1; 1994, ch. 9, § 1; 1994, ch. 9, § 2; 2018, ch. 50, § 1.

7-35-2.1. Additional definition.

As used in the Property Tax Code, "costs" means the expenses incurred by the department in connection with collecting delinquent taxes. As applied to a particular property, "costs" may be, in the discretion of the department, either the sum of the expenses incurred specifically in connection with that property or the uniform charge applied to the class of delinquent properties of which the property is a member.

History: Laws 1995, ch. 12, § 5.

7-35-3. Director's supervisory power over county assessors; duty to evaluate performance and provide technical assistance; property valuation fund created.

A. The director has general supervisory authority over county assessors for the purposes of assuring implementation of and compliance with the provisions of the Property Tax Code and applicable regulations, orders, rulings and instructions of the department. He shall implement procedures for evaluation of the performance of county assessors' functions on a regular basis and shall also provide, subject to the availability of resources within the department and from the property valuation fund created in Subsection B of this section, appropriate technical assistance to county assessors.

B. A revolving fund, to be called the "property valuation fund", is created.

(1) The fund shall consist of:

(a) all money which on January 1, 1975 remained in the special reappraisal fund which was created pursuant to Section 72-2-21.1 NMSA 1953 [repealed] and the reappraisal loan fund which was created pursuant to Section 72-2-21.11 NMSA 1953 [repealed];

(b) all repayments of outstanding loans made or committed to be made from the special reappraisal fund and the reappraisal loan fund; and

(c) all money appropriated to the fund.

(2) The fund shall not be used to supplement the general operating budget of the department. The fund may be used by the department for:

(a) providing a county with technical assistance services pursuant to Section 7-36-19 NMSA 1978 in the valuation of major industrial or commercial properties subject to valuation by the assessor;

(b) providing a county with technical assistance services in keeping appraised values current for valuation purposes;

(c) providing other major technical assistance to a county;

(d) installing necessary maps and other increments of the property description system in a county pursuant to Section 7-38-10 NMSA 1978; and

(e) meeting prior commitments for loans of money in the reappraisal loan fund for assistance to a county in which reappraisal has not been completed.

(3) Amounts from the property valuation fund may be expended by the director only after approval by the state board of finance. Approval by the state board of finance, fully setting forth the reasons for the expenditure, must be requested in writing by either the director or the county assessor of the county requesting department assistance. A request by the county assessor must be concurred in by the board of county commissioners and the director.

(4) Any amount in the property valuation fund not currently needed for the purpose of the fund shall be invested by the state treasurer in such manner and for such times as will make the funds available when needed for the purposes of the fund.

(5) Any amount expended from the property valuation fund shall be reimbursed in full to the fund by the county requesting assistance or to which assistance has been provided; the reimbursement shall not be reduced by the director pursuant to Section 7-35-8 NMSA 1978; and the reimbursement shall be upon terms and conditions prescribed by the director and approved by the state board of finance.

(6) In any county which has not completed reappraisal by June 30, 1977, no political subdivision shall be eligible to receive any funds distributed from the following unless specific appropriations are made by the legislature:

(a) public school fund, supplemental distributions pursuant to Section 22-8-30 NMSA 1978; or

(b) any discretionary distributions made by the board of finance.

(7) There is appropriated to the property valuation fund all money which on January 1, 1975 remained in the special reappraisal fund and the reappraisal loan fund and all repayments of outstanding loans made or committed to be made from the special reappraisal fund and the reappraisal loan fund.

History: 1953 Comp., § 72-28-6, enacted by Laws 1973, ch. 258, § 6; 1975, ch. 153, § 1; 1989, ch. 324, § 2.

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.

7-35-6. Suspension of county assessor's functions; department's performance of county assessor's functions.

A. If the secretary finds after informal efforts to obtain compliance have failed that a county assessor is not complying with the Property Tax Code or with the regulations, orders, rulings or other administrative directives of the department under the Property Tax Code, the secretary shall notify the county assessor and the board of county commissioners of the county involved by certified mail of the noncompliance and of the action required to remedy the noncompliance.

B. If the failure has not been remedied within sixty days after the notice is mailed, the secretary shall issue an order requiring the county assessor and the board of county commissioners to show cause why the county assessor's functions should not be suspended. The secretary shall set a time and place for a hearing on the order and shall send by certified mail to the county assessor and to the board of county commissioners copies of the order and the notice of hearings.

C. If the secretary determines after a hearing that a county assessor has failed to comply with the Property Tax Code or regulations, orders, rulings or instructions of the department or of the department of finance and administration pursuant to the Property Tax Code, the secretary may suspend in whole or in part any of the county assessor's functions. The suspension shall be by written order of the secretary and shall continue until the secretary finds that the county assessor is both willing and able to comply with the Property Tax Code and the regulations, orders, rulings or instructions of the department or of the department of finance and administration pursuant to the Property Tax Code.

D. During a suspension, the department succeeds to and shall carry out the functions from which the county assessor has been suspended. The county shall reimburse the department for all costs incurred in performing the functions. In the event that the county does not make reimbursement within a reasonable time, the department, notwithstanding any other provision of law, may obtain reimbursement by retaining ten percent of each distribution or transfer required by law to be made to the county from money collected by the department until the total retained equals the amount to be reimbursed. All amounts received or retained by the department under this subsection are appropriated to the department for its use in carrying out its duties under the Property Tax Code.

E. No less than thirty days after the date of any suspension order, the board of county commissioners may make a written request to the secretary to terminate the suspension order on the grounds that it is no longer justified because of the county assessor's willingness and ability to comply with the Property Tax Code or regulations, orders, rulings or instructions of the department or of the department of finance and administration pursuant to the Property Tax Code. Upon receipt of a request to terminate a suspension order, the secretary shall set a time and place for a hearing on the request. The date of the hearing shall be not more than thirty days after the receipt of the request, and the secretary shall notify the board of county commissioners and the county assessor of the time and place of the hearing by certified mail. If the secretary determines after a hearing that the county assessor is both willing and able to comply with the Property Tax Code and the regulations, orders, rulings or instructions of the department or of the department of finance and administration pursuant to the Property Tax Code, the secretary shall terminate the suspension by written order, which order must be made within ten days of the hearing. In the absence of such a finding, the secretary shall deny the request for termination of the suspension, which denial must be made by written order within ten days of the hearing. Nothing in this subsection prohibits the secretary from terminating an order of suspension issued in accordance with Subsection C of this section without a request for a hearing, or a hearing, on the issue of termination of suspension. Repeated requests for the termination of a suspension may be made, but no request may be made less than thirty days after the date of the secretary's denial of a previous request for termination of a suspension.

History: Laws 1981, ch. 37, § 61; 1991, ch. 166, § 3.

7-35-7. Suspension of county treasurer's functions; department of finance and administration's performance of county treasurer's functions.

A. If the secretary of finance and administration finds that a county treasurer has failed to comply with the Property Tax Code or regulations, orders, rulings or instructions of the department or of the department of finance and administration, he shall notify the county treasurer and the board of county commissioners by certified mail of the fact and nature of the failure.

B. If the failure has not been remedied within sixty days after the notice is mailed, the secretary of finance and administration shall issue an order requiring the county treasurer and the board of county commissioners to show cause why the county treasurer's functions should not be suspended. The secretary of finance and administration shall set a time and place for a hearing on the order and shall send by certified mail to the county treasurer and to the board of county commissioners copies of the order and the notice of the hearing.

C. If the secretary of finance and administration determines after a hearing that a county treasurer has failed to comply with the Property Tax Code or regulations, orders, rulings or instructions of the department or of the department of finance and administration, the secretary of finance and administration may suspend in whole or in part any of the county treasurer's functions. The suspension shall be by written order of the secretary of finance and administration and shall continue until he finds that the county treasurer is both willing and able to comply with the Property Tax Code and the regulations, orders, rulings or instructions of the department or of the department of finance and administration.

D. During a suspension, the department of finance and administration succeeds to and shall carry out the functions from which the county treasurer has been suspended. The county shall reimburse the department of finance and administration for all costs incurred in performing the functions. All amounts received by the department of finance and administration under this subsection shall be deposited with the state treasurer for credit to the state general fund.

E. No less than thirty days after the date of any suspension order, the board of county commissioners may make a written request to the secretary of finance and administration to terminate the suspension order on the grounds that it is no longer justified because of the county treasurer's willingness and ability to comply with the Property Tax Code or regulations, orders, rulings or instructions of the department or of the department of finance and administration. Upon receipt of a request to terminate a suspension order, the secretary of finance and administration shall set a time and place for a hearing on the request. The date of the hearing shall be not more than thirty days after the receipt of the request, and the secretary of finance and administration shall notify the board of county commissioners and the county treasurer of the time and place of the hearing by certified mail. If the secretary of finance and administration determines after a hearing that the county treasurer is both willing and able to comply with the Property Tax Code and the regulations, orders, rulings or instructions of the department or of the department of finance and administration, he shall terminate the suspension by written order, which must be made within ten days of the hearing. In the absence of such a finding, he shall deny the request for termination of the suspension, which denial must be made by written order within ten days of the hearing. Nothing in this subsection prohibits the secretary of finance and administration from terminating an order of suspension in accordance with Subsection C of this section without a request for a hearing, or a hearing, on the issue of termination of suspension. Repeated requests for the termination of a suspension may be made, but no request may be made less than thirty days after the date of the secretary of finance and administration's denial of a previous request for termination of a suspension.

F. Copies of suspension orders and orders terminating suspensions shall be sent to the department at the time they are made.

History: 1953 Comp., § 72-28-10, enacted by Laws 1973, ch. 258, § 10; 1974, ch. 92, § 3; 1977, ch. 247, § 189.

7-35-8. Authority for director to reduce amount required to be reimbursed to department by counties for services provided by department.

When any provision of the Property Tax Code requires a county to reimburse the department for the costs of services provided by the department, the director may reduce the amount required to be reimbursed to less than actual costs of the services.

History: 1953 Comp., § 72-28-11, enacted by Laws 1973, ch. 258, § 11.

7-35-9. Repealed.

7-35-10. Division to furnish valuation services to state agencies and political subdivisions of the state.

The division shall provide, subject to the availability of resources within the division, assistance services to state agencies and political subdivisions in the valuation of property owned or being considered for purchase by the state or by political subdivisions. Agencies and political subdivisions that are not funded from the state general fund shall reimburse the division for the actual cost incurred in the valuation of the property.

History: 1953 Comp., § 72-28-13, enacted by Laws 1975, ch. 172, § 1; 1982, ch. 28, § 2.

ARTICLE 36
Valuation of Property

7-36-1. Provisions for valuation of property; applicability.

The provisions of this article apply to and govern the determination of value of all property subject to valuation for property taxation purposes under the Property Tax Code.

History: 1953 Comp., § 72-29-1, enacted by Laws 1973, ch. 258, § 13.

7-36-2. Allocation of responsibility for valuation and determining classification of property for property taxation purposes; county assessor and department.

A. The county assessor is responsible and has the authority for the valuation of all property subject to valuation for property taxation purposes in the county except the property specified by Subsections B and C of this section.

B. The department is responsible and has the authority for the valuation of all property subject to valuation for property taxation purposes and used in the conduct of the following businesses:

(1) railroad;

(2) communications system as that term is defined in Section 7-36-30 NMSA 1978;

(3) pipeline;

(4) public utility; and

(5) airline.

C. The department is responsible and has the authority for the valuation of property subject to valuation for property taxation purposes when that property is:

(1) an electricity generating plant, whether or not owned by a public utility, if all or part of the electricity is generated for ultimate sale to the consuming public;

(2) mineral property and property held or used in connection with mineral property as defined in Sections 7-36-22 through 7-36-25 NMSA 1978; or

(3) machinery, equipment and other personal property of all resident and nonresident persons customarily engaged in construction that involves the use during a tax year of the machinery, equipment and other personal property in more than one county. For the purposes of this paragraph, "construction" means leveling or clearing land, excavating earth, drilling wells of any type, including seismograph shot holes or core drilling, or similar work, or building, altering, repairing or demolishing any:

(a) road, highway, bridge, parking area or related project;

(b) building, fence, stadium or other structure;

(c) airport, subway or similar facility;

(d) park, trail, athletic field, golf course or similar facility;

(e) dam, reservoir, canal, ditch or similar facility;

(f) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station, gas processing plant, coal gasification plant, refinery, distillery or similar facility;

(g) sewerage, water, gas or other pipeline;

(h) transmission line;

(i) radio, television or other tower;

(j) water, oil or other storage tank;

(k) shaft, tunnel or other mining appurtenance; or

(l) similar work.

D. The entity having responsibility and authority for valuing the property described in Subsections A through C of this section shall also have responsibility and authority for classifying that property as either residential or nonresidential under the provisions of Section 7-36-2.1 NMSA 1978.

E. The secretary by regulation may delegate authority to the county assessor for the valuation and classification of property subject to valuation for property taxation purposes for which the department is responsible pursuant to Subsections B through D of this section only if:

(1) the property is held or used in connection with the transmission, storage, measurement or distribution of water and the transmission, storage, measurement and distribution is conducted by a single person entirely within a single county; or

(2) the property is held or used in connection with a communications system as defined in Section 7-36-30 NMSA 1978 and the system operates entirely within a single county.

F. The department is authorized to enter into one or more agreements with each county assessor, subject to approval of each agreement by the appropriate board of county commissioners, under which the county assessor agrees to perform the valuation of property for which the department is responsible under Subsection B of this section but which property is not subject to the special methods of valuation set forth in Sections 7-36-27, 7-36-28 and 7-36-30 through 7-36-32 NMSA 1978.

History: 1953 Comp., § 72-29-2, enacted by Laws 1973, ch. 258, § 14; 1974, ch. 92, § 5; 1975, ch. 156, § 1; 1975, ch. 165, § 1; 1981, ch. 37, § 62; 1985, ch. 109, § 2; 1995, ch. 12, § 6.

7-36-2.1. Classification of property.

A. Property subject to valuation for property taxation purposes shall be classified as either residential property or nonresidential property.

B. The department by regulation, ruling, order or other directive shall provide for the implementation of a classification system and shall include a method for apportioning the value of multiple-use properties between residential and nonresidential components.

History: 1978 Comp., § 7-36-2.1, enacted by Laws 1981, ch. 37, § 63; 1995, ch. 12, § 7.

7-36-3. Industrial revenue bond, pollution control bond, economic development bond and regional air center special economic district bond project property; health-related equipment; tax status.

A. Property interests of a lessee in project property held under a lease from a county or a municipality under authority of an industrial revenue bond or pollution control revenue bond act, the Statewide Economic Development Finance Act [Chapter 6, Article 25 NMSA 1978] or the Regional Air Center Special Economic District Act [5-20-1 to 5-20-10 NMSA 1978] are exempt from property taxation for as long as there is an outstanding bonded indebtedness under the terms of the revenue bonds issued for the acquisition of the project property, but in no event for a period of more than thirty years from the date of execution of the first lease of the project to the lessee by the county or municipality.

B. Property interests of a person, other than a public utility, arising out of the purchase of a project authorized by the Industrial Revenue Bond Act [Chapter 3, Article 32 NMSA 1978], the County Industrial Revenue Bond Act [Chapter 4, Article 59 NMSA 1978], the Pollution Control Revenue Bond Act [3-59-1 to 3-59-14 NMSA 1978], the

Statewide Economic Development Finance Act or the Regional Air Center Special Economic District Act are exempt from property taxation for as long as the project purchaser remains liable to the project seller for any part of the purchase price, but not to exceed thirty years from the date of execution of the sale agreement.

C. Property interests of a participating health facility in health-related equipment purchased, acquired, leased, financed or refinanced with the proceeds of bonds issued under the Hospital Equipment Loan Act [Chapter 58, Article 23 NMSA 1978] are exempt from property taxation for as long as the participating health facility remains liable for any amount under any lease, loan or other agreement securing the bonds, but not to exceed thirty years from the date the bonds were issued for the health-related equipment.

D. The exemptions from property taxation under this section are not cumulative; provided, however, that the exemptions may be applied consecutively if subsequent exemptions relate to the financing of a new project or new health-related equipment.

History: 1953 Comp., § 72-29-2.1, enacted by Laws 1975, ch. 218, § 1; 1977, ch. 137, § 1; 2003, ch. 349, § 20; 2006, ch. 90, § 1; 2006, ch. 92, § 1; 2019, ch. 13, § 11.

7-36-3.1. Metropolitan redevelopment property; tax status of lessee's interests.

Property interests of a lessee in project property held under a lease with respect to a project authorized by the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978] and acquired or held by a municipality prior to January 1, 1986 under the provisions of that code are exempt from property taxation for as long as there is an outstanding bonded indebtedness, but in any event for a period not to exceed ten years from the date of execution of the first lease of the project by the municipality. Property interests of a lessee of or an owner of a substantial beneficial interest in project property acquired or held by a municipality on or after January 1, 1986 with respect to a project authorized by the Metropolitan Redevelopment Code are exempt from property taxation for a period extending from the date of acquisition of the project property by the municipality through December 31 of the year in which the seventh anniversary of that acquisition date occurs.

History: 1978 Comp., § 7-36-3.1, enacted by Laws 1979, ch. 56, § 2; 1985, ch. 225, § 5.

7-36-3.2. Enterprise zone property; tax status of lessee's interests.

Property interests of a lessee in project property held under a lease with respect to a project authorized by the Enterprise Zone Act [5-9-1 to 5-9-15 NMSA 1978] and acquired or held by a local government are exempt from property taxation for a period not to exceed ten years from the date of execution of the first lease of the project by the local government.

History: 1978 Comp., § 7-36-3.2, enacted by Laws 1993, ch. 33, § 16.

7-36-4. Fractional property interests; definitions; taxation and valuation of fractional interests.

A. As used in this section:

(1) "fractional interest" means a tangible interest in real property, except for mineral property as defined in Section 7-36-22 NMSA 1978, that is less than the total of the interests existing in the property, but "fractional interest" does not include those property interests described in Sections 7-36-3, 7-36-3.1 and 7-36-3.2 NMSA 1978 nor does it include the lessee's interest under a lease when the term of the lease is more than seventy-five years;

(2) "exempt entity" means any person whose real property is exempt from taxation under the constitution of New Mexico or the Enabling Act (36 Stat. 557, as amended) by reason of ownership;

(3) "exempt property" means property that is exempt from property taxation pursuant to Article 8, Section 3 of the constitution of New Mexico by reason of use;

(4) "improvements" includes surface and subsurface structures, fixtures, transmission lines, pipelines and other works, but "improvements" does not include:

(a) that property either included or specifically excluded under the terms "property used in connection with mineral property" under Section 7-36-23 NMSA 1978, "property used in connection with potash mineral property" under Section 7-36-24 NMSA 1978 and "property used in connection with uranium mineral property" under Section 7-36-25 NMSA 1978;

(b) a dwelling occupied by a low-income resident in a housing project authorized under the provisions of the Municipal Housing Law [Chapter 3, Article 45 NMSA 1978]; and

(c) those property interests described in Sections 7-36-3, 7-36-3.1 and 7-36-3.2 NMSA 1978;

(5) "nonexempt entity" means any person that is not an exempt entity; and

(6) "nonexempt property" means property that is not exempt property.

B. Fractional interests of nonexempt entities in real property of exempt entities are exempt from property taxation under the Property Tax Code, but this exemption shall not apply to the following property:

(1) improvements of land of an exempt entity if the improvements are owned or leased by a nonexempt entity; these improvements are subject to valuation for property taxation purposes and to property taxation to be paid by the nonexempt entity; and

(2) property interests of nonexempt entities held under equitable title in the property of exempt entities.

C. When fractional interests are created in property:

(1) fractional interests that are nonexempt property shall be reported to the appropriate valuation authority by the fractional interest owners for valuation for property tax purposes if the owner is a nonexempt entity; and

(2) except for fractional interests owned by the United States, an Indian nation, tribe or pueblo, the state of New Mexico or a political subdivision of the state, fractional interests that are owned by a nonexempt entity but are claimed to be exempt property shall be reported by the owner to the appropriate valuation authority for a determination of exemption status and valuation if determined to be nonexempt property.

D. Fractional interests that are nonexempt property shall be valued by the applicable method of valuation pursuant to the Property Tax Code, and if fractional interests that are exempt property have been created, the value of the remaining nonexempt fractional interests shall be determined in the property tax year following the creation of the interests as the value of the property in the property tax year immediately prior to the year in which creation of the fractional interests occurred, increased or decreased by the value directly attributable to the creation of the fractional interests that are exempt property. For subsequent property tax years, the nonexempt fractional interests shall be valued pursuant to the applicable methods of valuation.

History: 1953 Comp., § 72-29-2.2, enacted by Laws 1976, ch. 61, § 1; 1977, ch. 285, § 1; 1985, ch. 109, § 3; 1985, ch. 225, § 6; 1995, ch. 12, § 8; 1998, ch. 49, § 1.

7-36-5. Repealed.

7-36-6. Repealed.

7-36-7. Property subject to valuation for property taxation purposes.

A. Except for the property listed in Subsection B of this section or exempt pursuant to Section 7-36-8 NMSA 1978, all property is subject to valuation for property taxation purposes under the Property Tax Code if it has a taxable situs in the state.

B. The following property is not subject to valuation for property taxation purposes under the Property Tax Code:

(1) property exempt from property taxation under the federal or state constitution, federal law, the Property Tax Code or other laws, but:

(a) this does not include property all or a part of the value of which is exempt because of the application of the veteran, disabled veteran or head-of-family exemption;

(b) this provision does not excuse an owner from obligations to report the owner's property as required by regulation of the department adopted under Section 7-38-8.1 NMSA 1978 or to claim its exempt status under Subsection C of Section 7-38-17 NMSA 1978;

(c) this includes property of a museum that: 1) has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or renumbered; 2) is used to provide educational services; and 3) grants free admission to each student who attends a public school in the county in which the museum is located; and

(d) this includes property that is operated either as a community to which the Continuing Care Act [Chapter 24, Article 17 NMSA 1978] applies or as a facility licensed by the department of health to operate as a nursing facility, a skilled nursing facility, an adult residential care facility, an intermediate care facility or an intermediate care facility for the developmentally disabled; and is owned by a charitable nursing, retirement or long-term care organization that: 1) has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or renumbered; 2) donates or renders gratuitously a portion of its services or facilities; and 3) uses all funds remaining after payment of its usual and necessary expenses of operation, including the payment of liens and encumbrances upon its property, to further its charitable purpose, including the maintenance, improvement or expansion of its facilities;

(2) oil and gas property subject to valuation and taxation under the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978] and the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978]; and

(3) productive copper mineral property subject to valuation and taxation under the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978]; for the purposes of this section, "copper mineral property" means all mineral property and property held in connection with mineral property when seventy-five percent or more, by either weight or value, of the salable mineral extracted from or processed by the mineral property is copper.

History: 1953 Comp., § 72-29-3, enacted by Laws 1973, ch. 258, § 15; 1981, ch. 37, § 53; 1982, ch. 28, § 3; 1990, ch. 125, § 3; 1995, ch. 12, § 9; 2000, ch. 92, § 2; 2000, ch. 94, § 2; 2001, ch. 217, § 1; 2008, ch. 46, § 1.

7-36-8. Tangible personal property exempt from property tax; exceptions.

A. Except as provided in Subsection B of this section, tangible personal property owned by a person is exempt from property taxation.

B. The following tangible personal property owned by a person is subject to valuation and taxation under the Property Tax Code:

(1) livestock;

(2) manufactured homes;

(3) aircraft not registered under the Aircraft Registration Act [64-4-1 to 64-4-15 NMSA 1978];

(4) private railroad cars, the earnings of which are not taxed under the provisions of the Railroad Car Company Tax Act [Chapter 7, Article 11 NMSA 1978];

(5) tangible personal property subject to valuation under Sections 7-36-22 through 7-36-25 and 7-36-27 through 7-36-32 NMSA 1978;

(6) vehicles not registered under the provisions of the Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978] and for which the owner has claimed a deduction for depreciation for federal income tax purposes during any federal income taxable year occurring in whole or in part during the twelve months immediately preceding the first day of the property tax year; and

(7) other tangible personal property not specified in Paragraphs (1) through (6) of this subsection:

(a) that is used, produced, manufactured, held for sale, leased or maintained by a person for purposes of the person's profession, business or occupation; and

(b) for which the owner has claimed a deduction for depreciation for federal income tax purposes during any federal income taxable year occurring in whole or in part during the twelve months immediately preceding the first day of the property tax year.

History: 1953 Comp., § 72-1-21, enacted by Laws 1973, ch. 373, § 1 and recompiled as § 72-29-3.1 by Laws 1974, ch. 92, § 35; 1975, ch. 53, § 1; 1983, ch. 295, § 1; 1991, ch. 166, § 4; 1992, ch. 34, § 1; 1993, ch. 8, § 1; 1995, ch. 12, § 10.

7-36-9. Repealed.

7-36-10. Repealed.

7-36-11. Reserved.

7-36-12. Repealed.

7-36-13. Repealed.

7-36-14. Taxable situs; allocation of value of property.

A. Property has a taxable situs in the state if:

(1) it is real property and is located in the state;

(2) it is an interest in real property and the real property is located in the state;

(3) it is personal property and is physically present in the state on the date when it is required to be valued for property taxation purposes except for:

(a) property being transported in interstate commerce that is physically present in the state only while being transported through or over the state;

(b) property that is consigned to a warehouse or factory in the state from outside the state for the purpose of storage, manufacturing, processing or fabricating and which is in transit to a final destination outside the state, whether the destination is specified before or after the original transportation begins; or

(c) wool, mohair, hides, pelts and farm crops when owned by the person that originally produced them, but only during the tax year in which produced and the following tax year;

(4) it is personal property that is a part of a communications system as that term is defined in Section 7-36-30 NMSA 1978 and, even though not physically present in the state on the date when it is required to be valued for property taxation purposes, it is an integral part of the system and substantial property that is on that date a part of the communications system is physically present in New Mexico; or

(5) it is personal property and, even though not physically present in the state on the date when it is required to be valued for property taxation purposes, it is subject to valuation in accordance with the provisions of Section 7-36-31 or 7-36-32 NMSA 1978.

B. Real property and interests in real property having a taxable situs in the state shall be valued in and have their value allocated to the governmental units in which the real property is located unless a different method of allocation is specified under the Property Tax Code or by regulation of the department.

C. Personal property having a taxable situs in the state shall be valued in and have its value allocated to the governmental units in which the property is located on the date it is required to be valued unless a different method of allocation is specified under the Property Tax Code or by regulation of the department.

History: 1953 Comp., § 72-29-4, enacted by Laws 1973, ch. 258, § 16; 1985, ch. 109, § 4.

7-36-15. Methods of valuation for property taxation purposes; general provisions.

A. Property subject to valuation for property taxation purposes under this article of the Property Tax Code shall be valued by the methods required by this article of the Property Tax Code whether the determination of value is made by the department or the county assessor. The same or similar methods of valuation shall be used for valuation of the same or similar kinds of property for property taxation purposes.

B. Unless a method or methods of valuation are authorized in Sections 7-36-20 through 7-36-33 NMSA 1978, the value of property for property taxation purposes shall be its market value as determined by application of the sales of comparable property, income or cost methods of valuation or any combination of these methods. In using any of the methods of valuation authorized by this subsection, the valuation authority:

(1) shall apply generally accepted appraisal techniques; and

(2) in determining the market value of residential housing, shall consider any decrease in the value that would be realized by the owner in a sale of the property because of the effects of any affordable housing subsidy, covenant or encumbrance imposed pursuant to a federal, state or local affordable housing program that restricts the future use of the property or the resale price of the property or would otherwise prohibit the owner from fully benefitting from any enhanced value of the property. As used in this paragraph:

(a) "subsidy, covenant or encumbrance imposed pursuant to a federal, state or local affordable housing program" includes those imposed by a nonprofit entity approved by a governmental entity as a qualifying grantee pursuant to the Affordable Housing Act [6-27-1 to 6-27-8 NMSA 1978]; and

(b) "residential housing" means any building, structure or portion thereof that is primarily occupied, or designed or intended primarily for occupancy, as a residence by one or more households and any real property that is offered for sale or lease for the construction or location thereon of such a building, structure or portion thereof. "Residential housing" includes congregate housing, manufactured homes, housing intended to provide or providing transitional or temporary housing for homeless persons and common health care, kitchen, dining, recreational and other facilities primarily for use by residents of a residential housing project.

C. Dams, reservoirs, tanks, canals, irrigation wells, installed irrigation pumps, stock-watering wells and pumps, similar structures and equipment used for irrigation or stock-watering purposes, water rights and private roads shall not be valued separately from the land they serve. The foregoing improvements and rights shall be considered as appurtenances to the land they serve, and their value shall be included in the determination of value of the land.

D. The department shall adopt regulations to implement the methods of valuation authorized in this article of the Property Tax Code.

History: Laws 1973, ch. 258, § 17; 1953 Comp., § 72-29-5; reenacted by Laws 1975, ch. 165, § 2; 1995, ch. 12, § 11; 2008, ch. 77, § 1.

7-36-16. Responsibility of county assessors to determine and maintain current and correct values of property.

A. County assessors shall determine values of property for property taxation purposes in accordance with the Property Tax Code and the regulations, orders, rulings and instructions of the department. Except as limited in Section 7-36-21.2 NMSA 1978, they shall also implement a program of updating property values so that current and correct values of property are maintained and shall have sole responsibility and authority at the county level for property valuation maintenance, subject only to the general supervisory powers of the director.

B. The director shall implement a program of regular evaluation of county assessors' valuation activities with particular emphasis on the maintenance of current and correct values.

C. Upon request of the county assessor, the director may contract with a board of county commissioners for the department to assume all or part of the responsibilities, functions and authority of a county assessor to establish or operate a property valuation maintenance program in the county. The contract shall be in writing and shall include provisions for the sharing of the program costs between the county and the department. The contract must include specific descriptions of the objectives to be reached and the tasks to be performed by the contracting parties. The initial term of any contract authorized under this subsection shall not extend beyond the end of the fiscal year following the fiscal year in which it is executed, but contracts may be renewed for additional one-year periods for succeeding years.

D. The department of finance and administration shall not approve the operating budget of any county in which there is not an adequate allocation of funds to the county assessor for the purpose of fulfilling his responsibilities for property valuation maintenance under this section. If the department of finance and administration questions the adequacy of any allocation of funds for this purpose, it shall consult with the department, the board of county commissioners and the county assessor in making its determination of adequacy.

E. To aid the board of county commissioners in determining whether a county assessor is operating an efficient program of property valuation maintenance and in determining the amount to be allocated to him for this function, the county assessor shall present with his annual budget request a written report setting forth improvements of property added to valuation records during the year, additions of new property to valuation records during the year, increases and decreases of valuation during the year, the relationship of sales prices of property sold to values of the property for property taxation purposes and the current status of the overall property valuation maintenance program in the county. The county assessor shall send a copy of this report to the department.

History: 1953 Comp., § 72-29-6, enacted by Laws 1973, ch. 258, § 18; 2000, ch. 10, § 1.

7-36-17. Repealed.

7-36-18. Collection and publication of property valuation data.

To promote uniformity and measure overall compliance by each county with the Property Tax Code and department valuation regulations, orders, rulings, instructions, schedules and other directives, the department shall prepare and publish annually comprehensive sales-ratio studies comparing the values of property determined for property taxation purposes by each county assessor with the values of the same property as established by sales prices.

History: 1953 Comp., § 72-29-7, enacted by Laws 1973, ch. 258, § 19.

7-36-19. Valuation of major industrial and commercial properties; specialists' services furnished to county assessor by department.

At the request of a county assessor, concurred in by the board of county commissioners, the director may provide a county assessor with technical assistance services in the valuation of major industrial or commercial properties subject to valuation by the assessor. The director shall take into account the ability of the county assessor to value the property with the resources at his disposal when deciding whether the requested services should be furnished. The county shall reimburse the department for the costs incurred in the valuation of the property.

History: 1953 Comp., § 72-29-8, enacted by Laws 1973, ch. 258, § 20.

7-36-20. Special method of valuation; land used primarily for agricultural purposes.

A. The value of land used primarily for agricultural purposes shall be determined on the basis of the land's capacity to produce agricultural products. Evidence of bona fide primary agricultural use of land for the tax year preceding the year for which determination is made of eligibility for the land to be valued under this section creates a presumption that the land is used primarily for agricultural purposes during the tax year in which the determination is made. If the land was valued under this section in one or more of the three tax years preceding the year in which the determination is made and the use of the land has not changed since the most recent valuation under this section, a presumption is created that the land continues to be entitled to that valuation.

B. For the purpose of this section:

(1) "agricultural products" means plants, crops, trees, forest products, orchard crops, livestock, poultry, captive deer or elk, or fish; and

(2) "agricultural use" means the:

(a) use of land for the production of agricultural products;

(b) use of land that meets the requirements for payment or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government;

(c) resting of land to maintain its capacity to produce agricultural products; or

(d) resting of land as the direct result of at least moderate drought conditions as designated by the United States department of agriculture, if the drought conditions occurred in the county within which the land is located for at least eight consecutive weeks during the previous tax year; provided that the land was used in the tax year immediately preceding the previous tax year primarily for a purpose identified pursuant to this paragraph.

C. The department shall adopt rules for determining whether land is used primarily for agricultural purposes. The rules shall provide that the use of land for the lawful taking of game shall not be considered in determining whether land is used primarily for agricultural purposes.

D. The department shall adopt rules for determining the value of land used primarily for agricultural purposes. The rules shall:

(1) specify procedures to use in determining the capacity of land to produce agricultural products and the derivation of value of the land based upon its production capacity;

(2) establish carrying capacity as the measurement of the production capacity of land used for grazing purposes, develop a system of determining carrying capacity through the use of an animal unit concept and establish carrying capacities for the land in the state classified as grazing land;

(3) provide that land the bona fide and primary use of which is the production of captive deer or elk shall be valued as grazing land and that captive deer shall be valued and taxed as sheep and captive elk shall be valued and taxed as cattle;

(4) provide for the consideration of determinations of any other governmental agency concerning the capacity of the same or similar lands to produce agricultural products;

(5) assure that land determined under the rules to have the same or similar production capacity shall be valued uniformly throughout the state; and

(6) provide for the periodic review by the department of determined production capacities and capitalization rates used for determining annually the value of land used primarily for agricultural purposes.

E. All improvements, other than those specified in Section 7-36-15 NMSA 1978, on land used primarily for agricultural purposes shall be valued separately for property taxation purposes, and the value of these improvements shall be added to the value of the land determined under this section.

F. The owner of the land shall make application to the county assessor in a tax year in which the valuation method of this section is first claimed to be applicable to the land or in a tax year immediately subsequent to a tax year in which the land was not valued under this section. Application shall be made under oath, shall be in a form and contain the information required by department rules and shall be made no later than thirty days after the date of mailing by the assessor of the notice of valuation. Once land is valued under this section, application need not be made in subsequent tax years as long as there is no change in the use of the land.

G. The owner of land valued under this section shall report to the county assessor whenever the use of the land changes so that it is no longer being used primarily for agricultural purposes. This report shall be made on a form prescribed by department rules and shall be made by the last day of February of the tax year immediately following the year in which the change in the use of the land occurs.

H. Any person who is required to make a report under the provisions of Subsection G of this section and who fails to do so is personally liable for a civil penalty in an amount equal to the greater of twenty-five dollars ($25.00) or twenty-five percent of the difference between the property taxes ultimately determined to be due and the property taxes originally paid for the tax years for which the person failed to make the required report.

History: 1953 Comp., § 72-29-9, enacted by Laws 1973, ch. 258, § 21; 1975, ch. 165, § 3; 1997, ch. 162, § 1; 2005, ch. 231, § 1; 2013, ch. 219, § 1; 2015, ch. 92, § 1.

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 Subsections 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.

7-36-21.1. Repealed.

7-36-21.2. Limitation on increases in valuation of residential property.

A. Residential property shall be valued at its current and correct value in accordance with the provisions of the Property Tax Code; provided that for the 2001 and subsequent tax years, the value of a property in any tax year shall not exceed the higher of one hundred three percent of the value in the tax year prior to the tax year in which the property is being valued or one hundred six and one-tenth percent of the value in the tax year two years prior to the tax year in which the property is being valued. This limitation on increases in value does not apply to:

(1) a residential property in the first tax year that it is valued for property taxation purposes;

(2) any physical improvements, except for solar energy system installations, made to the property during the year immediately prior to the tax year or omitted in a prior tax year; or

(3) valuation of a residential property in any tax year in which:

(a) a change of ownership of the property occurred in the year immediately prior to the tax year for which the value of the property for property taxation purposes is being determined; or

(b) the use or zoning of the property has changed in the year prior to the tax year.

B. If a change of ownership of residential property occurred in the year immediately prior to the tax year for which the value of the property for property taxation purposes is being determined, the value of the property shall be its current and correct value as determined pursuant to the general valuation provisions of the Property Tax Code.

C. To assure that the values of residential property for property taxation purposes are at current and correct values in all counties prior to application of the limitation in Subsection A of this section, the department shall determine for the 2000 tax year the sales ratio pursuant to Section 7-36-18 NMSA 1978 or, if a sales ratio cannot be determined pursuant to that section, conduct a sales-ratio analysis using both independent appraisals by the department and sales. If the sales ratio for a county for the 2000 tax year is less than eighty-five, as measured by the median ratio of value for property taxation purposes to sales price or independent appraisal by the department, the county shall not be subject to the limitations of Subsection A of this section and shall conduct a reassessment of residential property in the county so that by the 2003 tax year, the sales ratio is at least eighty-five. After such reassessment, the limitation on increases in valuation in this section shall apply in those counties in the earlier of the 2004 tax year or the first tax year following the tax year that the county has a sales ratio of eighty-five or higher, as measured by the median ratio of value for property taxation purposes to sales value or independent appraisal by the department. Thereafter, the limitation on increases in valuation of residential property for property taxation purposes in this section shall apply to subsequent tax years in all counties.

D. The provisions of this section do not apply to residential property for any tax year in which the property is subject to the valuation limitation in Section 7-36-21.3 NMSA 1978.

E. As used in this section, "change of ownership" means a transfer to a transferee by a transferor of all or any part of the transferor's legal or equitable ownership interest in residential property except for a transfer:

(1) to a trustee for the beneficial use of the spouse of the transferor or the surviving spouse of a deceased transferor;

(2) to the spouse of the transferor that takes effect upon the death of the transferor;

(3) that creates, transfers or terminates, solely between spouses, any co-owner's interest;

(4) to a child of the transferor, who occupies the property as that person's principal residence at the time of transfer; provided that the first subsequent tax year in which that person does not qualify for the head of household exemption on that property, a change of ownership shall be deemed to have occurred;

(5) that confirms or corrects a previous transfer made by a document that was recorded in the real estate records of the county in which the real property is located;

(6) for the purpose of quieting the title to real property or resolving a disputed location of a real property boundary;

(7) to a revocable trust by the transferor with the transferor, the transferor's spouse or a child of the transferor as beneficiary; or

(8) from a revocable trust described in Paragraph (7) of this subsection back to the settlor or trustor or to the beneficiaries of the trust.

F. As used in this section, "solar energy system installation" means an installation that is used to provide space heat, hot water or electricity to the property in which it is installed and is:

(1) an installation that uses solar panels that are not also windows;

(2) a dark-colored water tank exposed to sunlight; or

(3) a non-vented trombe wall.

History: Laws 2000, ch. 10, § 2; 2001, ch. 321, § 1; 2003, ch. 118, § 1; 2010, ch. 30, § 1.

7-36-21.3. Limitation on increase in value for single-family dwellings occupied by low-income owners who are sixty-five years of age or older or disabled; requirements; penalties.

A. The valuation for property taxation purposes of a single-family dwelling owned and occupied by a person who is sixty-five years of age or older or disabled and whose modified gross income for the prior taxable year did not exceed the greater of thirty-five thousand dollars ($35,000) or the amount calculated pursuant to Subsection F of this section shall not be greater than the assessed valuation of the property for property taxation purposes:

(1) for a person sixty-five years of age or older in the tax year in which the owner qualifies and files an application; or

(2) for a person who is disabled in the tax year in which the owner qualified and files an application for the limitation provided by this section.

B. The limitation provided by this section may be claimed by filing proof of eligibility with the county assessor on an application form furnished by the assessor. The application shall be filed no later than thirty days after the date of mailing by the assessor of the notice of valuation. The application form shall be designed by the department and shall provide for proof of age or disability, occupancy and income eligibility. An owner who applies for the limitation of value specified in this section and files proof of income eligibility for the three consecutive years immediately subsequent to the tax year for which the application is made need not claim the limitation for subsequent tax years if there is no change in eligibility. The county assessor shall apply the limitation automatically in subsequent tax years until a change in eligibility occurs.

C. An owner who has claimed and been allowed the limitation of value specified in this section for the three consecutive tax years immediately prior to the 2020 tax year is not required to claim the limitation for subsequent tax years if there is no change in eligibility, unless the county assessor requests updated information on the owner's modified gross income. The county assessor shall apply the limitation automatically in subsequent tax years until a change in eligibility occurs.

D. A person who has had a limitation applied to a tax year and subsequently becomes ineligible for the limitation because of a change in the person's status or income or a change in the ownership of the property against which the limitation was applied shall notify the county assessor of the loss of eligibility for the limitation by the last day of February of the tax year immediately following the year in which loss of eligibility occurs.

E. A person who knowingly violates the provisions of this section by intentionally claiming and receiving the benefit of a limitation to which the person is not entitled or who fails to comply with the provisions of Subsection D of this section shall be liable for all taxes due, interest and a civil penalty of one thousand dollars ($1,000).

F. For the 2020 tax year and each subsequent tax year, the maximum amount of modified gross income in Subsection A of this section shall be adjusted to account for inflation. The department shall make the adjustment by multiplying thirty-five thousand dollars ($35,000) by a fraction, the numerator of which is the consumer price index ending during the prior tax year and the denominator of which is the consumer price index ending in tax year 2019. The result of the multiplication shall be rounded down to the nearest one hundred dollars ($100), except that if the result would be an amount less than the corresponding amount for the preceding tax year, then no adjustment shall be made.

G. The department shall publish annually the amount determined by the calculation made pursuant to Subsection F of this section and provide the calculated amount to each county assessor no later than December 1 of each tax year.

H. The limitation of value specified in Subsection A of this section does not apply to:

(1) a change in valuation resulting from any physical improvements made to the property during the year immediately prior to the tax year or a change in the permitted use or zoning of the property during the year immediately prior to the tax year; or

(2) a residential property in the first tax year that is valued for property taxation purposes.

I. As used in this section:

(1) "consumer price index" means the consumer price index for all urban consumers published by the United States department of labor for the month ending September 30;

(2) "disabled" means a person who has been determined to be blind or permanently disabled with medical improvement not expected pursuant to 42 USCA 421 for purposes of the federal Social Security Act or is determined to have a permanent total disability pursuant to the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978]; and

(3) "modified gross income" means "modified gross income" as used in the Income Tax Act [Chapter 7, Article 2 NMSA 1978].

History: Laws 2000, ch. 21, § 1; 2001, ch. 321, § 2; 2003, ch. 78, § 1; 2008, ch. 26, § 1; 2013, ch. 161, § 1; 2019, ch. 140, § 1; 2020, ch. 73, § 1.

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.

7-36-23. Special method of valuation; mineral property and property used in connection with mineral property; exception for potash and uranium mineral property and property used in connection with potash and uranium mineral property.

A. The provisions of this section apply to the valuation of all mineral property and property used in connection with mineral property except potash and uranium mineral property and property used in connection with potash and uranium mineral property, the methods of valuation for which are provided in Sections 7-36-24 and 7-36-25 NMSA 1978.

B. The following kinds of property held or used in connection with mineral property shall be valued under the methods of valuation required by the Property Tax Code:

(1) improvements, equipment, materials, supplies and other personal property held or used in connection with all classes of mineral property; "improvements" as used in this section includes surface and subsurface structures, but does not include pits, shafts, drifts and other similar artificial changes in the physical condition of the surface or subsurface of the earth produced solely by the removal or rearrangement of earth or minerals for the purpose of exposing or removing ore from a mine; and

(2) the surface value for agricultural or other purposes of class one productive or nonproductive mineral property when the surface interest is held in the same ownership as the mineral interests.

C. The value for property taxation purposes of class one productive mineral property is an amount equal to three hundred percent of the annual net production value of the mineral property.

D. The value for property taxation purposes of class two and class three mineral property is an amount equal to three hundred percent of the annual net production value.

E. The value for property taxation purposes of class one nonproductive mineral property shall be determined by applying a per acre value to the surface acres of the property being valued. The per acre value of class one nonproductive mineral property shall be determined under regulations adopted by the department, which regulations shall establish a per acre value based upon bonus bids accepted by the commissioner of public lands for the latest one year period in which bonus bids were accepted for the sale of mineral leases, which per acre value may be determined by geographical areas.

F. For purposes of this section, "annual net production value" means either:

(1) the average of five years' net production value from the mineral property for the five years immediately preceding the tax year in which value is being determined, or so much of the period during which the property has been in operation, with each year's net production value being determined by taking the year's market value of production of all minerals, including any bonus or subsidy payments, and deducting from that value:

(a) any royalties paid or due the United States, the state or any Indian tribe, Indian pueblo or Indian who is a ward of the United States;

(b) the direct costs, exclusive of depreciation, determined under generally accepted accounting principles consistently applied by the taxpayer, of extracting, milling, treating, reducing, transporting and selling the minerals; and

(c) the costs of depreciation, determined under generally accepted accounting principles consistently applied by the taxpayer, of property actually used in the extracting, milling, treating, reducing and transporting of the minerals; or

(2) the net production value from the mineral property for the year immediately preceding the tax year in which value is being determined, with that year's net production value being determined by taking the year's market value of production of all minerals, including any bonus or subsidy payments, and deducting from that value:

(a) any royalties paid or due the United States, the state or any Indian tribe, Indian pueblo or Indian who is a ward of the United States;

(b) the direct costs, exclusive of depreciation, determined under generally accepted accounting principles consistently applied by the taxpayer, of extracting, milling, treating, reducing, transporting and selling the minerals; and

(c) the cost of depreciation, determined under generally accepted accounting principles consistently applied by the taxpayer, of property actually used in the extracting, milling, treating, reducing and transporting of the minerals.

G. Annual net production value shall be determined under Paragraph (1) of Subsection F of this section unless the taxpayer elects to have it determined under Paragraph (2) of that subsection. To be effective, an election must be exercised by written notification to the department at the time the mineral property is reported to the department for valuation in a tax year. Once an election is exercised, a taxpayer may not change from the elected method without the prior approval of the department.

H. The department shall adopt regulations specifying procedures to be followed under, and the details of, the method for valuation of mineral property specified in this section.

History: 1953 Comp., § 72-29-12, enacted by Laws 1973, ch. 258, § 24; 1975, ch. 165, § 4.

7-36-24. Special method of valuation; mineral property and property used in connection with mineral property when the primary production from the mineral property is potash.

A. The provisions of this section apply to valuation of all mineral property and property used in connection with mineral property when the primary production from the mineral property is potash.

B. The value for property taxation purposes of improvements, equipment, materials, supplies and other personal property held or used in connection with all classes of potash mineral property is an amount equal to the market value of all mineral production from the potash mineral property for the prior year, less any royalties paid or due the United States, the state or any Indian tribe, Indian pueblo or Indian who is a ward of the United States. "Improvements" as used in this section includes surface and subsurface structures, but does not include pits, shafts, drifts and other similar artificial changes in the physical condition of the surface or subsurface of the earth produced solely by the removal or rearrangement of earth or minerals for the purpose of exposing or removing ore from a mine.

C. The value for property taxation purposes of the surface value for agricultural or other purposes held in connection with class one productive or nonproductive potash mineral property, when the surface interest is held in the same ownership as the mineral interests, shall be determined under the methods of valuation required by the Property Tax Code.

D. The value for property taxation purposes of class one productive potash mineral property is an amount equal to fifty percent of the market value of all mineral production from the potash mineral property for the prior year.

E. The value for property taxation purposes of class two and class three potash mineral property is an amount equal to fifty percent of the amount derived by deducting from the market value of all mineral production from the potash mineral property for the prior year any royalties paid or due the United States, the state or any Indian tribe, Indian pueblo or Indian who is a ward of the United States.

F. The value for property taxation purposes of class one nonproductive potash mineral property shall be determined under Subsection E of Section 7-36-23 NMSA 1978.

G. If a taxpayer severs potash in one or more governmental units and processes the severed potash in another governmental unit, the value of all interests in minerals shall be allocated to the governmental unit or units in which the potash is severed, and the value of improvements, equipment, materials, supplies and personal property shall be allocated among the governmental units in which the property is located on the basis of the original cost of the property.

H. The department shall adopt regulations specifying procedures to be followed under, and the details of, the method for valuation of potash mineral property specified in this section. The department shall also adopt regulations for the allocation of values of potash mineral property among the governmental units.

History: 1953 Comp., § 72-29-13, enacted by Laws 1973, ch. 258, § 25; 1975, ch. 165, § 5.

7-36-25. Special method of valuation; mineral property and property used in connection with mineral property when the primary production from the mineral property is uranium.

A. The provisions of this section apply to the valuation of all mineral property and property used in connection with mineral property when the primary production from the mineral property is uranium.

B. The following kinds of property held or used in connection with uranium mineral property shall be valued under the methods of valuation required by the Property Tax Code:

(1) improvements, equipment, materials, supplies and other personal property held or used in connection with all classes of uranium mineral property; "improvements" as used in this section includes surface and subsurface structures, but does not include pits, shafts, drifts or other similar artificial changes in the physical condition of the surface or subsurface of the earth produced solely by the removal or rearrangement of earth or minerals for the purpose of exposing or removing ore from a mine; and

(2) the surface value for agricultural or other purposes of class one productive or nonproductive uranium mineral property when the surface interest is held in the same ownership as the mineral interests.

C. The value for property taxation purposes of class one productive, class two and class three uranium mineral property is the annual net production value of the uranium mineral property.

D. The value for property taxation purposes of class one nonproductive uranium mineral property shall be determined under Subsection E of Section 7-36-23 NMSA 1978.

E. For the purposes of this section, the "annual net production value" means:

(1) the sales price of uranium-bearing material disposed of as ore or solution, less fifty percent of that sales price as a deduction for the cost of producing and bringing the output to the surface and of transporting and selling it; or

(2) in the case of uranium-bearing material not disposed of as ore or solution but processed or beneficiated (other than by sizing and blending), regardless of the form in which the product is actually disposed of, the value of U_3O_8 contained in ore or solution determined on the basis of the U_3O_8 content of the ore or solution at fifty percent of the taxpayer's average unit sales price during the preceding calendar year of U_3O_8 contained in the concentrate form commonly known as "yellowcake" (or if the uranium concentrate has not been sold in the preceding calendar year, at fifty percent of the representative sales price for U_3O_8 contained in the concentrate form commonly known as "yellowcake" at the place and time of processing or beneficiation into that concentrate), plus fifty percent of the representative sales price of all other minerals produced and saved from such uranium-bearing material, less fifty percent of the value as a deduction for the cost of producing and bringing the output to the surface from an underground mine.

F. In determining annual net production value of class two and class three uranium mineral property, a deduction may be taken for royalties paid or due the United States, the state or any Indian tribe, Indian pueblo or Indian who is a ward of the United States, but the deduction allowed by this subsection must be subtracted from one hundred percent of the applicable sales price before applying any other reductions in or deductions from that sales price.

History: 1953 Comp., § 72-29-14, enacted by Laws 1973, ch. 258, § 26; 1975, ch. 165, § 6; 1982, ch. 29, § 1.

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.

7-36-27. Special method of valuation; pipelines, tanks, sales meters and plants used in the processing, gathering, transmission, storage, measurement or distribution of oil, natural gas, carbon dioxide or liquid hydrocarbons.

A. All pipelines, tanks, sales meters and plants used in the processing, gathering, transmission, storage, measurement or distribution of oil, natural gas, carbon dioxide or liquid hydrocarbons subject to valuation for property taxation purposes shall be valued in accordance with the provisions of this section.

B. As used in this section:

(1) "construction work in progress" means the total of the balances of work orders for pipelines, plants, large industrial sales meters and tanks, in the process of construction on the last day of the preceding calendar year, exclusive of land and land rights and equipment, machinery or devices that are used or are available for use to construct pipelines, plants, large industrial sales meters and tanks but that are not incorporated into the pipelines, plants, large industrial sales meters or tanks;

(2) "depreciation" means straight line depreciation over the useful life of the item of property;

(3) "direct customer distribution pipeline" means a low or intermediate pressure distribution system pipeline of four inches or smaller diameter situated in urban areas;

(4) "economic obsolescence" means, with respect to valuation for property taxation purposes, loss in value of a property caused by unfavorable economic influences or factors outside of the property; "economic obsolescence" is a loss in value in addition to a loss in value attributable to physical depreciation;

(5) "functional obsolescence" means, with respect to valuation for property taxation purposes, loss in value of a property caused by functional inadequacies or deficiencies caused by factors within the property; "functional obsolescence" is a loss in value in addition to a loss in value attributable to physical depreciation;

(6) "large industrial sales meter" means a sales meter having an installed tangible property cost in excess of two thousand five hundred dollars ($2,500);

(7) "other justifiable factors" includes, but is not limited to, functional obsolescence and economic obsolescence;

(8) "pipeline" means all pipe, appurtenances and devices used in systems for gathering, transmission or distribution, but excludes sales meters, a pipeline operated exclusively for and constituting a part of a plant and a direct customer distribution pipeline;

(9) "plant" means any refinery, gasoline plant, extraction plant, purification plant, compressor or pumping station or similar plant, including all structures, equipment, pipes and other related facilities, excluding residential housing, office buildings and warehouses;

(10) "sales meter" means the meter, regulator and all appurtenances and devices used for measuring sales to customers and includes the service pipe to the customer's property line from the point of connection with the pipeline;

(11) "schedule value" means a fixed value of an individual property unit within a mass of similar or like units established by determining the total tangible property cost of a substantial sample of such property and deducting therefrom an average related accumulated provision for depreciation and allocating a proportionate part of the remainder to individual taxable property units;

(12) "tangible property cost" means the actual cost of acquisition or construction of property, excluding construction work in progress, including additions, retirements, adjustments and transfers, but without deduction of related accumulated provision for depreciation, amortization or other purposes and excluding any amount attributable to oil or gas reserves dedicated to such item of property; and

(13) "tank" means any storage tank or container, other than a natural reservoir, for storage that is not a component part of a plant.

C. Sales meters, other than large industrial sales meters, shall be valued as follows:

(1) the department may periodically determine the average tangible property cost of a substantial sample of sales meters in general use in the state;

(2) such average tangible property cost shall then be reduced by the average related accumulated provision for depreciation applicable to the sample of sales meters; and

(3) from the determinations pursuant to Paragraphs (1) and (2) of this subsection, a schedule of value for sales meters for property taxation purposes shall be determined and set forth in a rule adopted by the department.

D. Pipelines, direct customer distribution pipelines, large industrial sales meters, tanks and plants shall be valued as follows:

(1) the valuation authority shall first establish the tangible property cost of each item of property;

(2) from such tangible property cost shall be deducted the related accumulated provision for depreciation and any other justifiable factors that further affect the tangible property value of each item of property; and

(3) notwithstanding the determination of value for property taxation purposes in Paragraphs (1) and (2) of this subsection, the value for property taxation purposes of each item of property valued under this subsection shall not be less than twenty percent of the tangible property cost of such item of property.

E. Construction work in progress shall be valued at fifty percent of the amount expended and entered upon the accounting records of the taxpayer as of December 31 of the preceding year as construction work in progress.

F. Each item of property having a taxable situs in the state and valued under this section shall have its net taxable value allocated to the governmental units in which the property is located.

G. A reduction in value asserted by a taxpayer as attributable to economic obsolescence or functional obsolescence shall contain an obsolescence factor along with a brief statement of the facts that support the reduction, together with supporting documentation. The documentation may include items such as monthly throughput volumes from the prior year; comparisons to a documented industry standard; comparisons to a close competitor; and an engineer's or appraiser's valuation. The department may adopt rules that include other types of objective evidence of functional obsolescence or economic obsolescence.

H. If the department determines that a taxpayer has not established, based on the brief statement of facts and the supporting documentation provided, that the reduction for functional obsolescence or economic obsolescence is in accordance with the law or rules adopted by the department, the department shall notify the taxpayer of the department's determination in writing setting forth the reasons for its determination and specifying the supporting information that the department requires. The department shall provide the notice by April 1 or thirty days after the return is filed but no later than April 15 of the tax year. If the taxpayer does not file the report by March 15 of the property tax year, the department shall not be required to furnish a timely notice of deficiency by April 15 of the property tax year. In the case of properties regulated by the federal energy regulatory commission, the notice of deficiency shall be provided to the taxpayer within fifteen days after the filing of the report and the taxpayer shall then have ten days within which to correct the deficiency.

I. The department shall adopt rules to implement the provisions of this section.

History: Laws 1973, ch. 258, § 28; 1953 Comp., § 72-29-16; Laws 1975, ch. 165, § 8; 1982, ch. 28, § 4; 1985, ch. 109, § 5; 2007, ch. 273, § 1.

7-36-28. Special method of valuation; pipelines, tanks, collection systems, meters, plants and hydrants used in the collection, transmission, storage, treatment, discharge, measurement or distribution of water or wastewater.

A. Except as provided in Subsection F [G] of this section, all pipelines, tanks, meters, lift stations, treatment facilities, plants and hydrants used in the collection, transmission, storage, measurement, treatment, discharge or distribution of water or wastewater subject to valuation for property taxation purposes shall be valued in accordance with the provisions of this section.

B. As used in this section:

(1) "commercial water property" means privately owned pipelines, tanks, meters, plants, hydrants, materials and supplies, whether in service, in stock or under construction, owned and operated as a utility for the purpose of transmitting, storing, measuring or distributing water for sale to the consuming public, excluding general buildings and improvements;

(2) "commercial wastewater property" means privately owned pipelines, collection systems, lift stations, meters, treatment facilities, materials and supplies, whether in service, in stock or under construction, owned and operated as a utility for the purpose of collecting, transmitting, measuring, treating or discharging wastewater used for the purpose of providing wastewater service to the public, excluding general buildings and improvements;

(3) "depreciation" means straight line depreciation over the useful life of the item of property;

(4) "general buildings and improvements" means buildings of the nature of offices, residential housing, warehouses, shops and associated improvements in

general use by the taxpayer but not directly associated with the collection, transmission, storage, measurement, treatment, discharge or distribution of water or wastewater;

(5) "gallons" means the measurement of water sold or the measurement of wastewater discharged to a third party's treatment facility or the measurement of wastewater treated and discharged;

(6) "revenue" means gross utility operating revenue;

(7) "closed system" means a commercial water system in which water is gathered primarily by wells and stored in closed reservoirs and tanks; and

(8) "combination system" means a commercial water system in which water is gathered both in open reservoirs and by wells and is stored both in open reservoirs and closed reservoirs and tanks.

C. The value of commercial water property shall be determined as follows:

(1) a factor of two and forty-nine one hundredths per thousand gallons is to be used for a closed system and three and twenty-five one hundredths is to be used for a combination system;

(2) the department shall determine the type of system into which the taxpayer's commercial water properties should be categorized;

(3) the department shall then ascertain the number of thousand gallons sold to consumers by the taxpayer during each of the three immediately preceding calendar years and the taxpayer's water revenue from the immediately preceding calendar year;

(4) a simple average of the three-year thousand gallon sales shall be computed and compared to the actual thousand gallons sold to consumers during the immediately preceding calendar year. The higher of the average thousand gallons or the immediately preceding year's actual thousand gallons shall be the basis for value calculations;

(5) the thousand gallon figure determined in Paragraph (4) of this subsection shall then be multiplied by the appropriate per thousand gallon factor from Paragraph (1) of this subsection. The result of this calculation is the value of commercial water property for property taxation purposes; and

(6) notwithstanding the calculations provided for in Paragraphs (1) through (5) of this subsection, the value of the taxpayer's commercial water property shall not be greater than four and one-half times the revenue derived during the immediately preceding calendar year from the operation of the commercial water property.

D. The value of commercial wastewater property shall be determined as follows:

(1) a factor of two and forty-nine one hundredths per thousand gallons shall be used;

(2) the department shall then ascertain the number of thousand gallons wastewater discharged to a third party's treatment facility or the number of thousand gallons wastewater treated and discharged during each of the three immediately preceding calendar years and the taxpayer's wastewater revenue from the immediately preceding calendar year;

(3) a simple average of the three-year thousand gallons shall be computed and compared to the actual thousand gallons during the immediately preceding calendar year. The higher of the average thousand gallons or the immediately preceding year's actual thousand gallons shall be the basis for value calculations;

(4) the thousand gallon figure determined in Paragraph (3) of this subsection shall then be multiplied by the factor provided in Paragraph (1) of this subsection. The result of this calculation is the value of commercial wastewater property for property taxation purposes; and

(5) notwithstanding the calculations provided for in this subsection, the value of the taxpayer's commercial wastewater property shall not be greater than four and one-half times the revenue derived during the immediately preceding calendar year from the operation of the commercial wastewater property.

E. Each item of property having a taxable situs in the state and valued pursuant to this section shall have its net taxable value allocated to the governmental units in which the property is located on the basis of the percentage of the taxpayer's total investment in each governmental unit.

F. The department shall adopt regulations to implement the provisions of this section.

G. Commercial water property owned or sold by a nonprofit mutual domestic water association is exempt from valuation for property taxation purposes.

History: Laws 1973, ch. 258, § 29; 1953 Comp., § 72-29-17; Laws 1975, ch. 165, § 9; 1978 Comp., § 7-36-28; 2009, ch. 246, § 1; 2009, ch. 247, § 1.

7-36-29. Special method of valuation; property used for the generation, transmission or distribution of electric power or energy.

A. All property used for the generation, transmission or distribution of electric power or energy subject to valuation for property taxation purposes shall be valued in accordance with the provisions of this section.

B. As used in this section:

(1) "depreciation" means straight line depreciation over the useful life of the item of property;

(2) "electric plant" means all property situated in this state used or useful for the generation, transmission or distribution of electric power or energy, but does not include land, land rights, general buildings and improvements, construction work in progress, materials and supplies and licensed vehicles;

(3) "construction work in progress" means the total of the balances of work orders for an electric plant in process of construction on the last day of the preceding calendar year exclusive of land, land rights and licensed vehicles;

(4) "general buildings and improvements" means buildings of the nature of offices, residential housing, warehouses, shops and associated improvements in general use by the taxpayer and not directly associated with generation, transmission or distribution of electric power or energy;

(5) "materials and supplies" means the cost, including sales, use and excise taxes, and transportation costs to point of delivery in this state, less purchases and trade discounts, of all unapplied material and supplies on hand in this state as of December 31 of the preceding calendar year; and

(6) "tangible property cost" means the actual cost of acquisition or construction of property, including additions, retirements, adjustments and transfers, but without deduction of related accumulated provision for depreciation, amortization or other purposes; "tangible property cost" excludes the cost of property contributed to, or acquired with funds contributed to, a utility by or on behalf of a ratepayer or potential ratepayer for the expansion, improvement or replacement of property used for the transmission or distribution of electric power of the utility.

C. An electric plant shall be valued as follows:

(1) the department shall determine the tangible property cost of the electric plant;

(2) such tangible property cost shall then be reduced by the related accumulated provision for depreciation and any other justifiable factors, including functional and economic obsolescence, such as the limitation on the use of the property based on the available reserves committed to the property; and

(3) notwithstanding the foregoing determination of value for property taxation purposes, the value for property taxation purposes of an electric plant shall not be less than twenty percent of the tangible property cost of the electric plant.

D. The value of construction work in progress shall be fifty percent of the amount expended and entered upon the accounting records of the taxpayer as of December 31 of the preceding calendar year as construction work in progress.

E. The value of materials and supplies shall be the tangible property cost for such property as of December 31 of the preceding calendar year.

F. Each item of property having a taxable situs in the state and valued under this section shall have its net taxable value allocated to the governmental units in which the property is located.

G. The department shall adopt regulations under Section 7-38-88 NMSA 1978 [repealed] to implement the provisions of this section.

History: Laws 1973, ch. 258, § 30; 1953 Comp., § 72-29-18, repealed and reenacted by Laws 1975, ch. 165, § 10; 2016, ch. 49, § 1.

7-36-30. Special methods of valuation; property that is part of a communications system.

A. All property that is part of a communications system and is subject to valuation for property taxation purposes shall be valued in accordance with the provisions of this section.

B. As used in this section:

(1) "communications system" means a system for the transmission and reception of information by the use of electronic, magnetic or optical means or any combination thereof and which system or any portion thereof is available for use by another person for consideration;

(2) "depreciation" means straight line depreciation over the useful life of the item of property;

(3) "other justifiable factors" includes but is not limited to wear and tear of the property not covered by depreciation, inadequacy, changes in demand and requirements of public authorities attributable to the applicable decrease in value and functional or economic obsolescence;

(4) "plant" means all tangible property located in this state and used or useful for the provision of communication service as reflected by the uniform system of accounting in use by the taxpayer, but does not include construction work in progress or materials and supplies;

(5) "construction work in progress" means the total of the balance of work orders for plant in process of construction on the last day of the preceding calendar year, exclusive of land and land rights;

(6) "tangible property cost" means the actual cost of acquisition or construction of property, including additions, retirements, adjustments and transfers, but without deduction of related accumulated provision for depreciation, amortization or other purposes; and

(7) "materials and supplies" means the cost, including sales, use and excise taxes, and transportation costs to point of delivery in this state, less purchases and trade discounts, of all unapplied materials and supplies on hand in this state as of December 31 of the preceding calendar year.

C. Each taxpayer having property subject to valuation under this section shall elect to have that property valued by the department in accordance with either Subsection D or Subsection F of this section. The election shall be effective for subsequent property tax years unless prior permission of the secretary is obtained to change the election for good cause shown. A taxpayer may not seek permission to change an election unless the prior election has been effective for at least three consecutive property tax years. The secretary shall find that good cause exists to change the election upon a showing satisfactory to the secretary by the taxpayer that:

(1) the net result of all amendments to the property tax statutes and regulations with effective dates commencing within the property tax year has a substantial adverse effect on the valuation for property tax purposes under the alternative elected for the property for that year relative to what the valuation for property tax purposes would have been under the other alternative in the absence of the amendments;

(2) the net result of all changes in law or circumstances but excluding acquisition or sale of property subject to valuation under this section, including changes which do not affect property tax liability, occurring within the property tax year has a substantial adverse effect on the valuation for property tax purposes under the alternative elected for the property for that year relative to what the valuation for property tax purposes for the property would have been under the other alternative in the absence of the changes; or

(3) changes in property tax statutes or regulations which are effective prior to the property tax year have a substantial adverse effect on the valuation for property tax purposes under the alternative elected for the property relative to what the valuation for property tax purposes would have been under the other alternative.

D. Communications system property valued under this subsection shall be valued in accordance with Paragraphs (1), (2) and (3) of this subsection:

(1) plant shall be valued in the following manner:

(a) the department shall first establish the tangible property cost of the plant;

(b) from such tangible property cost shall be deducted the related accumulated provision for depreciation and other justifiable factors; and

(c) notwithstanding the foregoing determination of value for property taxation purposes, the value for property taxation purposes of the plant shall not be less than twenty percent of the tangible property cost of the plant;

(2) construction work in progress shall have a value for property taxation purposes equal to fifty percent of the actual amounts expended and entered upon the accounting records of the taxpayer as of December 31 of the preceding calendar year for construction work in progress; and

(3) the value of materials and supplies shall be the tangible property cost for such property as of December 31 of the preceding calendar year.

E. Each item of property having a taxable situs in the state and valued under this section shall have its net taxable value allocated to the governmental units in which the property is located.

F. Communications system property valued under this subsection shall be valued using one or more or a combination of the following methods of valuation and applying the unit rule of appraisal to the property:

(1) capitalization of earnings;

(2) market value of stock and debt; or

(3) cost less depreciation and obsolescence.

G. The department shall adopt regulations under Section 7-38-88 NMSA 1978 [repealed] to implement the provisions of this section.

History: 1978 Comp., § 7-36-30, enacted by Laws 1975, ch. 165, § 11; 1985, ch. 109, § 6; 1987, ch. 206, § 1; 1989, ch. 112, § 1.

7-36-31. Special method of valuation; operating railroad property.

A. All property owned or leased and used by an operating railroad in its operation if the operating railroad has operations in New Mexico is subject to valuation for property taxation purposes and shall be valued in accordance with the provisions of this section, except for land and land rights other than operating railroad rights-of-way, sidings and marshalling yards and general buildings and improvements determined not to be an active part of an operating railroad.

B. The division shall value operating railroad property using the following methods of valuation and applying the unit rule of appraisal to the property:

(1) capitalization of earnings;

(2) market value of stock and debt; or

(3) original cost less depreciation and obsolescence.

C. The division may use one or more, or a combination of, the methods of valuation specified in Paragraphs (1), (2) and (3) of Subsection B of this section in valuing operating railroad property.

D. Land, land rights other than operating railroad rights-of-way, sidings and marshalling yards, general buildings and improvements determined not to be an active part of an operating railroad shall be valued under the provisions of this article of the Property Tax Code applicable to the property.

E. The division shall adopt regulations providing for the allocation of net taxable values of operating railroad property to New Mexico and to the governmental units within the state.

F. The division shall adopt regulations pursuant to Section 7-38-88 NMSA 1978 [repealed] to implement the methods of valuation for operating railroad property specified in this section.

History: Laws 1973, ch. 258, § 32; 1953 Comp., § 72-29-20; Laws 1985, ch. 109, § 7.

7-36-32. Special method of valuation; commercial aircraft.

A. All commercial aircraft used by commercial airline companies in the operation of their businesses and subject to valuation for property taxation purposes shall be valued in accordance with the provisions of this section.

B. The department shall value commercial aircraft as follows:

(1) all gasoline engine propeller driven aircraft shall be valued at ten percent of original cost regardless of age; and

(2) all jet propelled aircraft shall have an assumed life of twelve years and shall be valued by deducting from eighty percent of the original cost of the aircraft depreciation computed on a monthly basis, but no aircraft valued under this paragraph shall have computed a value of less than twenty percent of its original cost.

C. The department shall adopt regulations providing for the allocation of net taxable values of commercial aircraft to New Mexico and to the governmental units in the state, which regulations shall include allocation factors related to ground time in New Mexico compared to total ground time within the airline system and flight time over New Mexico compared to total flight time within the airline system, exclusive of flight time outside the continental limits of the United States.

D. The department shall adopt regulations pursuant to Section 7-38-88 NMSA 1978 [repealed] to implement the method of valuation of commercial aircraft specified in this section.

History: Laws 1973, ch. 258, § 33; 1953 Comp., § 72-29-21; Laws 1975, ch. 165, § 13.

7-36-33. Special method of valuation; certain industrial and commercial personal property.

A. The following kinds of property shall be valued for property taxation purposes in accordance with the provisions of this section;

(1) all property used in connection with mineral property and defined in Paragraph (1) of Subsection B of Section 7-36-23 NMSA 1978 and Paragraph (1) of Subsection B of Section 7-36-25 NMSA 1978;

(2) all industrial, manufacturing, construction and commercial machinery, equipment, furniture, materials and supplies subject to valuation for property taxation purposes and not subject to valuation under the provisions of Sections 7-36-22 through 7-36-32 NMSA 1978;

(3) all other business personal property subject to valuation for property taxation purposes and not subject to valuation under the provisions of Sections 7-36-22 through 7-36-32 NMSA 1978; and

(4) construction work in progress that includes any of the items of property specified in Paragraphs (1), (2) or (3) of this subsection.

B. As used in this section:

(1) "depreciation" means the straight line method of computing the depreciation allowance over the useful life of the item of property;

(2) "useful life of the item of property" means the "class life" for same or similar kinds of property as defined and used in Section 167 of the United States Internal Revenue Code of 1954, as amended or renumbered;

(3) "other justifiable factors" includes, but is not limited to, functional and economic obsolescence;

(4) "schedule value" means a fixed value of an individual property unit within a mass of similar or like units established by determining the average unit tangible property cost of a substantial sample of such property and deducting therefrom an average related accumulated provision for depreciation per unit and an average of other justifiable factors per unit;

(5) "tangible property cost" means the actual cost of acquisition or construction of property including additions, retirements, adjustments and transfers, but without deduction of related accumulated provision for depreciation, amortization or other purposes; and

(6) "construction work in progress" means the total of the balance of work orders for property in process of construction on the last day of the preceding calendar year but does not include the equipment, machinery or devices used or available to construct such property but not incorporated therein.

C. The value of individual items of property subject to valuation under this section, except construction work in progress, shall be determined as follows:

(1) the valuation authority shall first establish the tangible property cost of each item of property;

(2) from the tangible property cost shall be deducted the related accumulated provision for depreciation and any other justifiable factors; and

(3) notwithstanding the foregoing determination of value for property taxation purposes, the value for property taxation purposes of each item of property valued under this subsection shall never be less than twelve and one-half percent of the tangible property cost of such item of property so long as the property is used and useful in a business activity.

D. Construction work in progress shall be valued at fifty percent of the actual amounts expended and entered upon the accounting records of the taxpayer as of December 31 of the preceding calendar year as construction work in progress.

E. The division may establish a schedule value for the same or similar kinds of property to be valued under Subsection C of this section for property taxation purposes. In arriving at a schedule value, the division shall:

(1) determine the average unit tangible property cost of a substantial sample of the same or similar kinds of property;

(2) such unit average tangible property cost shall then be reduced by the average related accumulated provision for depreciation per unit applicable to the sample of the same or similar kinds of property and shall then be further reduced by an

average of other justifiable factors per unit applicable to the same or similar kinds of property; and

(3) from the foregoing determination a schedule value for the same or similar kinds of property shall be determined and set forth in a regulation adopted pursuant to Section 7-38-88 NMSA 1978 [repealed].

F. The division shall adopt a schedule value for the following kinds of property:

(1) drilling rigs; and

(2) large off-the-road highway construction equipment.

G. Each item of property having a taxable situs in the state and valued under this section shall have its net taxable value allocated to the governmental unit in which the property is located.

H. The division shall adopt regulations under Section 7-38-88 NMSA 1978 [repealed] to implement the provisions of this section.

History: 1953 Comp., § 72-29-22, enacted by Laws 1975, ch. 165, § 14; 1982, ch. 28, § 5.

ARTICLE 37
Imposition of Property Tax

7-37-1. Provisions for imposition of tax; applicability.

The provisions of Chapter 7, Article 37 NMSA 1978 apply to and govern the imposition of the property tax. Except for Sections 7-37-7 and 7-37-7.1 NMSA 1978, the provisions of that article do not apply to:

A. impositions or levies of taxes on specific classes of property authorized by laws outside of the Property Tax Code; and

B. special benefit assessments authorized by laws outside of the Property Tax Code.

History: 1953 Comp., § 72-30-1, enacted by Laws 1973, ch. 258, § 34; 1986, ch. 32, § 7.

7-37-2. Imposition of the tax.

A tax is imposed upon all property subject to valuation for property taxation purposes under Article 36 of Chapter 7 NMSA 1978. The tax shall be imposed at the rates authorized and in the manner and for the purposes specified in this article.

History: 1953 Comp., § 72-30-2, enacted by Laws 1973, ch. 258, § 35; 1982, ch. 28, § 6.

7-37-3. Tax ratio established.

The tax ratio is thirty-three and one-third percent.

History: 1953 Comp., § 72-30-3, enacted by Laws 1973, ch. 258, § 36.

7-37-4. Head-of-family exemption.

A. Up to two thousand dollars ($2,000) of the taxable value of residential property subject to the tax is exempt from the imposition of the tax if the property is owned by the head of a family who is a New Mexico resident or if the property is held in a grantor trust established under Sections 671 through 677 of the Internal Revenue Code, as those sections may be amended or renumbered, by a head of a family who is a New Mexico resident. The exemption allowed shall be in the following amounts for the specified property tax years:

(1) for the property tax years 1989 and 1990, the exemption shall be eight hundred dollars ($800);

(2) for the property tax years 1991 and 1992, the exemption shall be one thousand four hundred dollars ($1,400); and

(3) for the 1993 and subsequent tax years, the exemption shall be two thousand dollars ($2,000).

B. The exemption shall be deducted from taxable value of property to determine net taxable value of property.

C. The head-of-family exemption shall be applied only if claimed and allowed in accordance with Section 7-38-17 NMSA 1978 and regulations of the department.

D. As used in this section, "head of a family" means an individual New Mexico resident who is either:

(1) a married person, but only one spouse in a household may qualify as a head of a family;

(2) a widow or a widower;

(3) a head of household furnishing more than one-half the cost of support of any related person;

(4) a single person, but only one person in a household may qualify as a head of family; or

(5) a member of a condominium association or like entity who pays property tax through the association.

E. A head of a family is entitled to the exemption allowed by this section only once in any tax year and may claim the exemption in only one county in any tax year even though the claimant may own property subject to valuation for property taxation purposes in more than one county.

History: 1953 Comp., § 72-30-4, enacted by Laws 1973, ch. 258, § 37; 1983, ch. 219, § 1; 1989, ch. 81, § 1; 1991, ch. 228, § 1; 1993, ch. 343, § 1.

7-37-5. Veteran exemption.

A. An amount as provided in Subsection B of this section of the taxable value of property, including the community or joint property of married individuals, subject to the tax is exempt from the imposition of the tax if the property is owned by a veteran or the veteran's unmarried surviving spouse if the veteran or surviving spouse is a New Mexico resident or if the property is held in a grantor trust established under Sections 671 through 677 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered, by a veteran or the veteran's unmarried surviving spouse if the veteran or surviving spouse is a New Mexico resident. The exemption shall be deducted from the taxable value of the property to determine the net taxable value of the property.

B. The exemption allowed shall be in the following amounts for the specified tax years:

(1) for tax years 2006 through 2024, four thousand dollars ($4,000);

(2) for tax year 2025, ten thousand dollars ($10,000); and

(3) for tax year 2026 and subsequent tax years, the amount provided in Paragraph (2) of this subsection, adjusted for inflation pursuant to Subsection C of this section.

C. For tax year 2026 and subsequent tax years, the amount of exemption shall be adjusted to account for inflation. The department shall make the adjustment by multiplying ten thousand dollars ($10,000) by a fraction, the numerator of which is the consumer price index ending during the prior tax year and the denominator of which is the consumer price index ending in tax year 2025. The result of the multiplication shall be rounded down to the nearest one hundred dollars ($100), except that if the result would be an amount less than the corresponding amount for the preceding tax year, then no adjustment shall be made.

D. The department shall publish annually the amount determined by the calculation made pursuant to Subsection C of this section and provide the calculated amount to each county assessor no later than December 1 of the prior tax year.

E. 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.

F. As used in this section, "veteran" means an individual who:

(1) has been honorably discharged from membership in the armed forces of the United States; and

(2) except as provided in this section, served in the armed forces of the United States on active duty continuously for ninety days.

G. For the purposes of Subsection F of this section, a person who would otherwise be entitled to status as a veteran except for failure to have served in the armed forces continuously for ninety days is considered to have met that qualification if the person served for less than ninety days and the reason for not having served for ninety days was a discharge brought about by service-connected disablement.

H. For the purposes of Subsection F of this section, a person has been "honorably discharged" unless the person received either a dishonorable discharge or a discharge for misconduct.

I. For the purposes of this section, a person whose civilian service has been recognized as service in the armed forces of the United States under federal law and who has been issued a discharge certificate by a branch of the armed forces of the United States shall be considered to have served in the armed forces of the United States.

History: 1953 Comp., § 72-30-5, enacted by Laws 1973, ch. 258, § 38; 1975, ch. 3, § 1; 1975, ch. 77, § 1; 1977, ch. 140, § 1; 1977, ch. 168, § 1; 1981, ch. 187, § 1; 1983, ch. 330, § 1; 1986, ch. 104, § 1; 1989, ch. 236, § 1; 1989, ch. 353, § 1; 1991, ch. 228, § 2; 1992, ch. 68, § 1; 2000, ch. 17, § 1; 2003, ch. 57, § 1; 2005, ch. 230, § 1; 2025, ch. 10, § 1.

7-37-5.1. Disabled veteran exemption.

A. As used in this section:

(1) "disabled veteran" means an individual who:

(a) has been honorably discharged from membership in the armed forces of the United States or has received a discharge certificate from a branch of the armed forces of the United States for civilian service recognized pursuant to federal law as service in the armed forces of the United States; and

(b) has been determined pursuant to federal law to have a permanent service-connected disability; and

(2) "honorably discharged" means discharged from the armed forces pursuant to a discharge other than a dishonorable or bad conduct discharge.

B. The property of a disabled veteran, including joint or community property of the veteran and the veteran's spouse, is exempt from property taxation in an amount equal to the percentage of the veteran's disability as determined by federal law multiplied by the value of the property after the amount that may be exempted pursuant to Section 7-37-5 NMSA 1978 is deducted; provided that the property is occupied by the disabled veteran as the veteran's principal place of residence. Property held in a grantor trust established under Sections 671 through 677 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered, by a disabled veteran or the veteran's surviving spouse is also exempt from property taxation if the property otherwise meets the requirements for exemption in this subsection or Subsection C of this section.

C. The property of the surviving spouse of a disabled veteran is exempt from property taxation if:

(1) the surviving spouse and the disabled veteran were married at the time of the disabled veteran's death; and

(2) the surviving spouse continues to occupy the property continuously after the disabled veteran's death as the spouse's principal place of residence.

D. Upon the transfer of the principal place of residence of a disabled veteran or of a surviving spouse of a disabled veteran entitled to and granted a disabled veteran exemption, the disabled veteran or the surviving spouse may choose to:

(1) maintain the exemption for that residence for the remainder of the year, even if the residence is transferred during the year; or

(2) remove the exemption for that residence and apply it to the disabled veteran's or the disabled veteran's surviving spouse's new principal place of residence, regardless of whether the exemption was applied for and claimed within thirty days of the mailing of the county assessor's notice of valuation made pursuant to the provisions of Section 7-38-20 NMSA 1978.

E. The exemption provided by this section may be referred to as the "disabled veteran exemption".

F. The disabled veteran exemption shall be applied only if claimed and allowed in accordance with Section 7-38-17 NMSA 1978 and the rules of the department. The disabled veteran exemption shall be claimed in proportion to the taxpayer's ownership interest in the property.

G. The veterans' services department shall assist the department and the county assessors in determining which veterans qualify for the disabled veteran exemption.

History: Laws 2000, ch. 92, § 1; 2000, ch. 94, § 1; 2003, ch. 29, § 1; 2003, ch. 57, § 2; 2004, ch. 19, § 21; 2015, ch. 126, § 1; 2025, ch. 10, § 2.

7-37-5.2. Deleted.

7-37-5.3. Veterans' organization exemption.

The property of a veterans' organization chartered by the United States congress and that is used primarily for the benefit of veterans and their families is exempt from property taxation. The exemption provided by this section may be referred to as the "veterans' organization exemption". The veterans' organization exemption shall be applied only if claimed and allowed pursuant to Section 7-38-17 NMSA 1978 and the rules of the department. The veterans' services department shall assist the taxation and revenue department and the county assessors in determining which veterans' organizations qualify for the veterans' organization exemption.

History: Laws 2011, ch. 102, § 1.

7-37-5.4. Property owned by a disabled veteran is exempt from a special benefit assessment.

A. Property owned by a disabled veteran, including joint or community property of the veteran and the veteran's spouse, is exempt from the imposition of a special benefit assessment if the property is occupied by the disabled veteran as the veteran's principal place of residence. Property held in a grantor trust established under Sections 671 through 677 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered, by a disabled veteran or the veteran's surviving spouse is also exempt from the imposition of a special benefit assessment if the property otherwise meets the requirements for exemption in this subsection or Subsection B of this section.

B. The property of the surviving spouse of a disabled veteran is exempt from the imposition of a special benefit assessment if:

(1) the surviving spouse and the disabled veteran were married at the time of the disabled veteran's death;

(2) the surviving spouse continues to occupy the property continuously after the disabled veteran's death as the spouse's principal place of residence; and

(3) the surviving spouse has remained unmarried since the time of the disabled veteran's death.

C. For purposes of this section:

(1) "disabled veteran" means an individual who:

(a) has been honorably discharged from membership in the armed forces of the United States or has received a discharge certificate from a branch of the armed forces of the United States for civilian service recognized pursuant to federal law as service in the armed forces of the United States; and

(b) has been determined pursuant to federal law to have a one hundred percent permanent and total service-connected disability;

(2) "honorably discharged" means discharged from the armed forces pursuant to a discharge other than a dishonorable or bad conduct discharge; and

(3) "special benefit assessment" means an assessment or levy authorized by law for benefits, damages, construction, improvements or maintenance on property that is specially benefited by the benefits, damages, construction, improvements or maintenance; and includes an assessment or levy authorized by The Conservancy Act of New Mexico [73-14-1 NMSA 1978], the Public Improvement District Act [Chapter 5, Article 11 NMSA 1978], the Tax Increment for Development Act [Chapter 5, Article 15 NMSA 1978] and other similar laws outside the Property Tax Code.

History: Laws 2015, ch. 115, § 1.

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.

7-37-7. Tax rates authorized; limitations.

A. The tax rates specified in Subsection B of this section are the maximum rates that may be set by the department of finance and administration for the use of the stated governmental units for the purposes stated in that subsection. The tax rates set for residential property for county, school district or municipal general purposes or for the purposes authorized in Paragraph (2) of Subsection C of this section shall be the same as the tax rates set for nonresidential property for those governmental units for those purposes unless different rates are required because of limitations imposed by Section 7-37-7.1 NMSA 1978. The department of finance and administration may set a rate at less than the maximum in any tax year. In addition to the rates authorized in Subsection B of this section, the department of finance and administration shall also determine and set the necessary rates authorized in Subsection C of this section. The tax rates authorized in Paragraphs (1), (3) and (4) of Subsection C of this section shall be set at the same rate for both residential and nonresidential property. Rates shall be set after the governmental units' budget-making and approval process is completed and shall be set in accordance with Section 7-38-33 NMSA 1978. Orders imposing the rates set for all units of government shall be made by the boards of county commissioners after rates are set and certified to the boards by the department of finance and administration. The department of finance and administration shall also certify the rates set for nonresidential property in governmental units to the department for use in collecting taxes imposed under the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978], the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978] and the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978].

B. The following tax rates for the indicated purposes are authorized:

(1) for the use of each county for general purposes for the 1987 and subsequent property tax years, a rate of eleven dollars eighty-five cents ($11.85) for each one thousand dollars ($1,000) of net taxable value of both residential and nonresidential property allocated to the county;

(2) for the use of each school district for general operating purposes, a rate of fifty cents ($.50) for each one thousand dollars ($1,000) of net taxable value of both residential and nonresidential property allocated to the school district; and

(3) for the use of each municipality for general purposes for the 1987 and subsequent property tax years, a rate of seven dollars sixty-five cents ($7.65) for each one thousand dollars ($1,000) of net taxable value of both residential and nonresidential property allocated to the municipality.

C. In addition to the rates authorized in Subsection B of this section, there are also authorized:

(1) those rates or impositions authorized under provisions of law outside of the Property Tax Code that are for the use of the governmental units indicated in those provisions and are for the stated purpose of paying principal and interest on a public general obligation debt incurred under those provisions of law;

(2) those rates or impositions authorized under provisions of law outside of the Property Tax Code that are for the use of the governmental units indicated in those provisions, are for the stated purposes authorized by those provisions and have been approved by the voters of the governmental unit in the manner required by law;

(3) those rates or impositions necessary for the use of a governmental unit to pay a tort or workers' compensation judgment for which a county, municipality or school district is liable, subject to the limitations in Subsection B of Section 41-4-25 NMSA 1978, but, except as provided in Paragraph (4) of this subsection, no rate or imposition shall be authorized to pay any judgment other than one arising from a tort or workers' compensation claim; and

(4) those rates or impositions ordered by a court pursuant to Section 22-24-5.5 NMSA 1978 and for the use of a school district to pay a judgment pursuant to that section.

D. The rates and impositions authorized under Subsection C of this section shall be on the net taxable value of both residential and nonresidential property allocated to the unit of government specified in the provisions of the other laws or the judgments.

History: 1953 Comp., § 72-30-7, enacted by Laws 1973, ch. 258, § 40; 1974, ch. 92, § 6; 1975, ch. 132, § 1; 1981, ch. 176, § 2; 1986, ch. 20, § 110; 1990, ch. 125, § 5; 2004, ch. 125, § 3.

7-37-7.1. Additional limitations on property tax rates.

A. Except as provided in Subsections D and E of this section, in setting the general property tax rates for residential and nonresidential property authorized in Subsection B of Section 7-37-7 NMSA 1978, the other rates and impositions authorized in Paragraphs (2) and (3) of Subsection C of Section 7-37-7 NMSA 1978, except the portion of the rate authorized in Paragraph (1) of Subsection A of Section 4-48B-12 NMSA 1978 used to meet the requirements of Section 27-10-4 NMSA 1978, and benefit assessments authorized by law to be levied upon net taxable value of property, assessed value or a similar term, neither the department of finance and administration nor any other entity authorized to set or impose a rate or assessment shall set a rate or impose a tax or assessment that will produce revenue from either residential or nonresidential property in a particular governmental unit in excess of the sum of a dollar amount derived by multiplying the appropriate growth control factor by the revenue due from the imposition on residential or nonresidential property, as appropriate, for the prior property tax year in the governmental unit of the rate, imposition or assessment for the specified purpose plus, for the calculation for the rate authorized for county operating purposes by

Subsection B of Section 7-37-7 NMSA 1978 with respect to residential property, any applicable tax rebate adjustment. The calculation described in this subsection shall be separately made for residential and nonresidential property. Except as provided in Subsections D and E of this section, no tax rate or benefit assessment that will produce revenue from either class of property in a particular governmental unit in excess of the dollar amount allowed by the calculation shall be set or imposed. The rates imposed pursuant to Sections 7-32-4 and 7-34-4 NMSA 1978 shall be the rates for nonresidential property that would have been imposed but for the limitations in this section. As used in this section, "growth control factor" is a percentage equal to the sum of "percent change I" plus V where:

(1) $$V = \frac{\textbf{(base year value + net new value),}}{\text{base year value}}$$

expressed as a percentage, but if the percentage calculated is less than one hundred percent, then V shall be set and used as one hundred percent;

(2) "base year value" means the value for property taxation purposes of all residential or nonresidential property, as appropriate, subject to valuation under the Property Tax Code in the governmental unit for the specified purpose in the prior property tax year;

(3) "net new value" means the additional value of residential or nonresidential property, as appropriate, for property taxation purposes placed on the property tax schedule in the current year resulting from the elements in Subparagraphs (a) through (d) of this paragraph reduced by the value of residential or nonresidential property, as appropriate, removed from the property tax schedule in the current year and, if applicable, the reductions described in Subparagraph (e) of this paragraph:

(a) residential or nonresidential property, as appropriate, valued in the current year that was not valued at all in the prior year;

(b) improvements to existing residential or nonresidential property, as appropriate;

(c) additions to residential or nonresidential property, as appropriate, or values that were omitted from previous years' property tax schedules even if part or all of the property was included on the schedule, but no additions of values attributable to valuation maintenance programs or reappraisal programs shall be included;

(d) additions to nonresidential property due to increases in annual net production values of mineral property valued in accordance with Section 7-36-23 or 7-36-25 NMSA 1978 or due to increases in market value of mineral property valued in accordance with Section 7-36-24 NMSA 1978; and

(e) reductions to nonresidential property due to decreases in annual net production values of mineral property valued in accordance with Section 7-36-23 or 7-36-25 NMSA 1978 or due to decreases in market value of mineral property valued in accordance with Section 7-36-24 NMSA 1978; and

(4) "percent change I" means a percent not in excess of five percent that is derived by dividing the annual implicit price deflator index for state and local government purchases of goods and services, as published in the United States department of commerce monthly publication entitled "survey of current business" or any successor publication, for the calendar year next preceding the prior calendar year into the difference between the prior year's comparable annual index and that next preceding year's annual index if that difference is an increase, and if the difference is a decrease, the "percent change I" is zero. In the event that the annual implicit price deflator index for state and local government purchases of goods and services is no longer prepared or published by the United States department of commerce, the department shall adopt by regulation the use of any comparable index prepared by any agency of the United States.

B. If, as a result of the application of the limitation imposed under Subsection A of this section, a property tax rate for residential or nonresidential property, as appropriate, authorized in Subsection B of Section 7-37-7 NMSA 1978 is reduced below the maximum rate authorized in that subsection, no governmental unit or entity authorized to impose a tax rate under Paragraph (2) of Subsection C of Section 7-37-7 NMSA 1978 shall impose any portion of the rate representing the difference between a maximum rate authorized under Subsection B of Section 7-37-7 NMSA 1978 and the reduced rate resulting from the application of the limitation imposed under Subsection A of this section.

C. If the net new values necessary to make the computation required under Subsection A of this section are not available for any governmental unit at the time the calculation must be made, the department of finance and administration shall use a zero amount for net new values when making the computation for the governmental unit.

D. Any part of the maximum tax rate authorized for each governmental unit for residential and nonresidential property by Subsection B of Section 7-37-7 NMSA 1978 that is not imposed for a governmental unit for any property tax year for reasons other than the limitation required under Subsection A of this section may be authorized by the department of finance and administration to be imposed for that governmental unit for residential and nonresidential property for the following tax year subject to the restriction of Subsection D of Section 7-38-33 NMSA 1978.

E. If the base year value necessary to make the computation required under Subsection A of this section is not available for any governmental unit at the time the calculation must be made, the department of finance and administration shall set a rate for residential and nonresidential property that will produce in that governmental unit a dollar amount that is not in excess of the property tax revenue due for all property for the prior property tax year for the specified purpose of that rate in that governmental unit.

F. For the purposes of this section:

(1) "nonresidential property" does not include any property upon which taxes are imposed pursuant to the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978], the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978] or the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978]; and

(2) "tax rebate adjustment" means, for those counties that have an ordinance in effect providing the property tax rebate pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] for the property tax year and that have not imposed for the property tax year either a property tax, the revenue from which is pledged for payment of the income tax revenue reduction resulting from the provision of the property tax rebate, or a property transfer tax, the estimated amount of the property tax rebate to be allowed with respect to the property tax year, and for any other governmental unit or purpose, zero; provided that any estimate of property tax rebate to be allowed is subject to review for appropriateness and approval by the department of finance and administration.

History: 1978 Comp., § 7-37-7.1, enacted by Laws 1979, ch. 268, § 1; 1981, ch. 37, § 66; 1983, ch. 213, § 23; 1985 (1st S.S.), ch. 12, § 1; 1986, ch. 32, § 8; 1989, ch. 198, § 2; 1990, ch. 125, § 6; 1991, ch. 212, § 17; 1994, ch. 111, § 4.

7-37-8. School tax rates.

No later than August 15 of each year, the state department of public education shall submit to the secretary of finance and administration the property tax rates for the succeeding tax year for each school district and the commission on higher education [higher education department] shall submit to the secretary of finance and administration the property tax rates for the succeeding tax year for each technical and vocational district, area vocational school district, junior college district and branch community college district. The rates required to be submitted pursuant to this section shall separately state by county and by school district the rate to be levied for operational purposes and the rate to be levied for payment of principal and interest on general obligation debt issued or entered into by the district.

History: 1978 Comp., § 7-37-8, enacted by Laws 1978, ch. 128, § 1; 1983, ch. 301, § 12; 1988, ch. 64, § 1; 1997, ch. 193, § 17.

ARTICLE 38
Administration and Enforcement of Property Taxes

7-38-1. Applicability.

This article applies to the administration and enforcement of all taxes imposed under the Property Tax Code.

History: 1953 Comp., § 72-31-1, enacted by Laws 1973, ch. 258, § 41.

7-38-2. Investigative authority and powers.

A. The director may issue subpoenas, returnable in not less than ten days, to require the production of any pertinent records or to require any person to appear and testify under oath concerning the subject matter of an inquiry for the purposes of:

(1) determining whether property is subject to property taxation;

(2) establishing or determining the value of any property for property taxation purposes;

(3) determining the extent of liability for and the amount of any property tax due from any person; and

(4) enforcing any statute administered by the department or administered by county officers under the supervision of the department.

B. At any time after the service of a subpoena and prior to its return date, a person to whom a subpoena is issued may file an action in the district court to quash the subpoena on the grounds that it was improperly issued.

C. In order to carry out their respective responsibilities under the Property Tax Code, county assessors and their employees, and the director and employees of the department may at reasonable times and after displaying identity credentials:

(1) with the permission of a property owner or his authorized agent, examine those records that relate to the valuation of the property; and

(2) with the permission of a property owner or his authorized agent, enter or inspect any property that is subject to valuation for property taxation purposes.

D. If a person fails to appear, produce records or refuses to testify in response to a subpoena issued under Subsection A, or if a person refuses permission to allow examination of records, entry or inspection of property authorized under Subsection C, the director, or the county assessor in the case where he or his employees have been refused examination, entry or inspection, may invoke the aid of the district court by filing an action to require appearance or testimony or to allow examination, entry or inspection. The court may, after notice, hearing and good cause shown, require the person to appear and testify, to produce records, to allow examination of records or to allow entry or inspection of property. If the person fails to comply with the court's order, the court may punish him for contempt.

History: 1953 Comp., § 72-31-2, enacted by Laws 1973, ch. 258, § 42.

7-38-3. Information reports.

For the purpose of establishing or determining the value of property for property taxation purposes, the director may promulgate regulations requiring any property owner or his authorized agent to report information concerning the property to the department or the county assessor at the times and in the manner required by the director.

History: 1953 Comp., § 72-31-3, enacted by Laws 1973, ch. 258, § 43.

7-38-4. Confidentiality of information.

A. Except as specifically authorized in this section or as otherwise provided by law, it is unlawful for the secretary, any employee or any former employee of the department to reveal to any person other than the secretary, an employee of the department, a county assessor or an employee of a county assessor any information gained during his employment about a specific property or a property taxpayer gained as a result of a report or information furnished the department or a county assessor by a taxpayer or as a result of an examination of property or records of a taxpayer. Except as specifically authorized in this section or as otherwise provided by law, it is unlawful for any county assessor or any employee or former employee of a county assessor to reveal to any person other than county assessors or their employees or the secretary or an employee of the department any information furnished by the department about a specific property or property owner or any other information gained during that person's employment about a specific property or a property taxpayer gained as a result of a report or information furnished the department or a county assessor by a taxpayer or as a result of an examination of property or records of a taxpayer. Information described in this subsection may be released:

(1) that is limited to the information contained in those valuation records that are public records and the identity of the owner or person in possession of the property;

(2) to an authorized representative of another state; provided that the receiving state has entered into a written agreement with the department to use the information for tax purposes only;

(3) to a state district or appellate court or a federal court or county valuation protests board:

(a) in response to an order made in an action relating to taxation in which the state or a governmental unit is a party and in which the information is material to the inquiry; or

(b) in any action in which the department or a county is attempting to enforce the provisions of the Property Tax Code or to collect a property tax or in any matter in which the taxpayer has put the taxpayer's own property valuation or liability for taxes at issue;

(4) to the property owner or a representative authorized in writing by the owner to obtain the information;

(5) if used for statistical purposes in a way that the information revealed is not identified or identifiable as applicable to any property owner or person in possession of the property;

(6) to a representative of the secretary of the treasury or the secretary's delegate pursuant to the terms of a reciprocal agreement entered into with the federal government for exchange of such information; or

(7) to the multistate tax commission or its authorized representative; provided that the information is used for tax purposes only and is disclosed by the multistate tax commission only to states which have met the requirements of Paragraph (2) of this subsection.

B. The secretary, any employee or any former employee of the department or any other person subject to the provisions of this section who willfully releases information in violation of this section is guilty of a misdemeanor and shall be fined not more than one thousand dollars ($1,000) or imprisoned for a definite term of less than one year or both. Any person convicted of a violation of this section shall not be employed by the state for a period of five years after the date of conviction.

History: 1953 Comp., § 72-31-4, enacted by Laws 1973, ch. 258, § 44; 1977, ch. 249, § 61; 1982, ch. 28, § 7; 1986, ch. 20, § 113; 1990, ch. 22, § 2; 1991, ch. 166, § 7.

7-38-5. Repealed.

7-38-6. Presumption of correctness.

Values of property for property taxation purposes determined by the division or the county assessor are presumed to be correct. Determinations of tax rates, classification, allocations of net taxable values of property to governmental units and the computation and determination of property taxes made by the officer or agency responsible therefor under the Property Tax Code are presumed to be correct.

History: 1953 Comp., § 72-31-6, enacted by Laws 1973, ch. 258, § 46; 1981, ch. 37, § 67.

7-38-7. Valuation date.

All property subject to valuation for property taxation purposes shall be valued as of January 1 of each tax year, except that livestock shall be valued as of the date and in the manner prescribed under Section 7-36-21 NMSA 1978 and tangible personal property of construction contractors shall be valued as of the date and in the manner prescribed under Section 1 [7-38-7.1 NMSA 1978] of this act.

History: 1953 Comp., § 72-31-7, enacted by Laws 1973, ch. 258, § 47; 1997, ch. 68, § 2.

7-38-7.1. Valuation date; tangible personal property; construction contractors.

A. All tangible personal property of construction contractors located in the state shall be valued for property taxation purposes as of January 1, except as provided in Subsection B of this section.

B. All tangible personal property of construction contractors not located in the state on January 1 but brought into the state and located there for more than twenty days subsequent to January 1 shall be valued for property taxation purposes as of the first day of the month following the month in which they have remained in the state for more than twenty days.

C. The construction contractor whose tangible personal property is subject to valuation for property taxation purposes shall report the property for valuation to the entity having responsibility for valuation of the property in accordance with Section 7-36-2 NMSA 1978 on the valuation date specified in Subsection A or B of this section and shall include in the report the actual or estimated time period during which the property has been and will be located in the state. The contractor's report shall be in a form and contain the information required by the department regulations and shall be made no later than:

(1) the last day of February for tangible personal property required to be valued as of the first day of January of the tax year; or

(2) ten days after the valuation date determined under Subsection B of this section for tangible personal property required to be valued as of a date other than that in Paragraph (1) of this subsection.

D. The department shall adopt regulations for the allocation of the value of tangible personal property of construction contractors, which regulations shall provide for:

(1) a basic allocation formula that prorates value on the basis of the amount of time that the tangible personal property is in the state and subject to valuation for property taxation purposes;

(2) determining proration of value under Paragraph (1) of this subsection using estimates of the amount of time that the tangible personal property will be in the state to cover those situations in which tangible personal property is imported for an indeterminate time during a tax year; and

(3) a method of allocating the value of the tangible personal property among different governmental units when the tangible personal property is located in more than one governmental unit.

E. Any person who intentionally refuses to make a report required of him under this section or who knowingly makes a false statement in a report required under this section is guilty of a misdemeanor and shall be punished by imposition of a fine of not more than one thousand dollars ($1,000).

F. Any person who fails to make a report required of him under this section is liable for a civil penalty in an amount equal to five percent of the property taxes ultimately determined to be due on the property for the tax year or years for which he failed to make the required report.

G. Any person who intentionally refuses to make a report required of him under this section with the intent to evade any tax or who fails to make a report required of him under this section with the intent to evade any tax is liable for a civil penalty in an amount equal to twenty-five percent of the property taxes ultimately determined to be due on the property for the tax year or years for which he refused or failed to make the required report.

H. The civil penalties authorized under Subsections F and G of this section shall be imposed and collected at the time and in the manner that the tax is imposed and collected. In order to assist in the imposition and collection of the penalties, the person having responsibility for determining the value of the property shall make an entry in the valuation records indicating the liability for any penalties due under this section.

History: Laws 1997, ch. 68, § 1.

7-38-8. Reporting of property for valuation; penalties for failure to report.

A. All property subject to valuation for property taxation purposes by the department shall be reported annually to the department. The report required by this subsection shall be made by the owner of the property or such other person as may be authorized by rules of the department. The report shall be in a form and contain the information required by rules of the department. It shall be made not later than the last day of

February in the tax year in which the property is subject to valuation. Claims of economic obsolescence or functional obsolescence on properties not regulated by the federal government shall be made at the time the annual report is filed; however, the department shall accept supplements to the annual report containing claims of economic obsolescence or functional obsolescence on properties regulated by the federal energy regulatory commission or its successor agency at the time the annual commission report becomes available, but no later than April 15 of the tax year or at a later time allowed by an extension granted by the department. In the case of the failure or refusal to file the report required under this subsection, the department shall determine the value of the property subject to valuation from the best information available.

B. Except as provided in Subsection D of this section, all property subject to valuation for property taxation purposes by the county assessor shall be reported as follows:

(1) property valued in the 1974 tax year by the county assessor need not be reported for any subsequent tax year unless required to be reported under Paragraph (3) of this subsection;

(2) property not valued in the 1974 tax year by the county assessor but that becomes subject to valuation by the county assessor in any subsequent tax year shall be reported to the county assessor not later than the last day of February of the tax year in which it becomes subject to valuation, but such property need not be reported for any year subsequent to the year in which initially reported unless required to be reported under Paragraph (3) of this subsection;

(3) property once valued by a county assessor in a tax year, but which is not valued for a year subsequent to the year of initial valuation because it is not subject to valuation for that subsequent year by the county assessor, shall be reported to the county assessor not later than the last day of February in a tax year in which it again becomes subject to valuation by the county assessor; and

(4) reports required under Paragraphs (2) and (3) of this subsection shall be in a form and contain the information required by rules of the department.

C. Not later than the last day of February of each tax year, every owner of real property who made, or caused to be made, in the preceding calendar year improvements costing more than ten thousand dollars ($10,000) to that real property shall report to the county assessor the property improved, the improvements made, the cost of the improvements and such other information as the department may require.

D. Manufactured homes, livestock and land used for agricultural purposes shall be reported for valuation for property taxation purposes to the county assessor at the times and in the manner prescribed under Sections 7-36-26, 7-36-21 and 7-36-20 NMSA 1978 and rules promulgated by the department.

E. Property subject to valuation by the county assessor for property taxation purposes and improvements to such property that are required to be reported under Subsection C of this section shall be reported to the county assessor of the county in which the property is required to be valued under Section 7-36-14 NMSA 1978. Reports shall be made either by the owner of the property, the owner's authorized agent or any person having control or management of the property and shall be in a form and contain the information required by rules of the department.

F. Reports required by this section shall be made by the declarant under oath, and the secretary, employees of the department, the assessor and the assessor's employees are empowered to administer oaths for this purpose.

G. A person who intentionally refuses to make a report required under the provisions of Subsection A, B or C of this section or who knowingly makes a false statement in a report required under the provisions of Subsection A, B or C of this section is guilty of a misdemeanor and upon conviction shall be punished by the imposition of a fine of not more than one thousand dollars ($1,000).

H. A person who fails to make a report required under the provisions of Subsection A or B of this section is liable for a civil penalty in an amount equal to five percent of the property taxes ultimately determined to be due on the property for the tax year or years for which the person failed to make the required report.

I. A person who intentionally refuses to make a report required under the provisions of Subsection A or B of this section with the intent to evade any tax or who fails to make a report required under the provisions of Subsection A or B of this section with the intent to evade any tax is liable for a civil penalty in an amount equal to twenty-five percent of the property taxes ultimately determined to be due on the property for the tax year or years for which the person refused or failed to make the required report.

J. A person who is required to make a report under the provisions of Subsection C of this section and who fails to do so is personally liable for a civil penalty in an amount equal to the greater of twenty-five dollars ($25.00) or twenty-five percent of the difference between the property taxes ultimately determined to be due and the property taxes originally paid for the tax year or years for which the person failed to make the required report. This penalty shall not be considered a delinquent property tax, and the provisions of the Property Tax Code for the enforcement and collection of delinquent property taxes through the sale of the property do not apply. However, the county treasurer may use all other methods provided by law to collect the property tax or penalty due. Notwithstanding any other provision of the Property Tax Code, amounts collected pursuant to the penalty provided by this subsection shall be distributed among jurisdictions imposing tax on the property in the same proportion as the amount of tax ultimately determined to be due for the jurisdiction bears to the total due for all such jurisdictions.

K. The civil penalties authorized under Subsections H and I of this section shall be imposed and collected at the time and in the manner that the tax is imposed and collected. In order to assist in the imposition and collection of the penalties, the persons having responsibility for determining the value of the property shall make an entry in the valuation records indicating the liability for any penalties due under this section.

L. For the purposes of this section:

(1) "improvement" means the construction of any new structure permanently affixed to the land or the repair, rehabilitation or alteration of an existing structure permanently affixed to the land that, for property used for any commercial purpose, is required or allowed to be capitalized under the Internal Revenue Code and, for other properties, any similar construction, repair, rehabilitation or alteration; and

(2) "owner of real property" includes every owner of improvements who does not own the land upon which the improvements are made.

History: 1953 Comp., § 72-31-8, enacted by Laws 1973, ch. 258, § 48; 1974, ch. 92, § 7; 1985, ch. 109, § 8; 1991, ch. 213, § 1; 2007, ch. 273, § 2.

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.

7-38-9. Description of property for property taxation purposes.

A. Property shall be described for property taxation purposes by a description sufficiently adequate and accurate to identify it. Real property shall be described under a uniform system of real property description in accordance with regulations of the department. The department shall promulgate regulations establishing a uniform system of real property description to be used by the department and all assessors. The system shall include requirements for a comprehensive mapping or geographic information system, the use of uniform property record documents and uniform coding of real property descriptions.

B. Real property that has been valued for property taxation purposes prior to the effective date of the Property Tax Code by a description consisting of a mere reference to the time and place of filing or recording in the office of the county clerk of any map or other instrument describing the property with sufficient preciseness to permit its identification shall be considered to have been sufficiently described for property taxation purposes. All prior assessments, records and instruments maintained or issued by property taxation officers which describe the property by such a reference are validated and given the same force and effect as if a description of the property had been used that would comply with this section.

History: 1953 Comp., § 72-31-9, enacted by Laws 1973, ch. 258, § 49; 1999, ch. 215, § 1.

7-38-10. Department may insure compliance with mapping and description of real property regulations by departmental installation of required system; reimbursement by county of costs incurred.

Whenever the director determines that it is necessary to insure compliance with departmental regulations relating to comprehensive mapping or geographic information systems and real property description or to correct county deficiencies in this regard, he shall order the installation by the department of the necessary maps and other increments of the property description system in the county. The director may require the county to reimburse the department for costs incurred by the department in the installation or correction of a property description system.

History: 1953 Comp., § 72-31-10, enacted by Laws 1973, ch. 258, § 50; 1999, ch. 215, § 2.

7-38-11. Property reported in the wrong county.

If property is reported for valuation for property taxation purposes in a county different from the county in which it is required to be reported by law and the regulations of the department, the county assessor to whom the erroneous report is made shall send a copy of the report to the county assessor of the county in which the report is required to be made and shall, at the same time, notify the person making the erroneous report of his obligation to make the required report to the appropriate county. A person making a report to the wrong county assessor is not relieved of his responsibility to make the required report to the correct county assessor because of the provisions of this section.

History: 1953 Comp., § 72-31-11, enacted by Laws 1973, ch. 258, § 51.

7-38-12. Property transfers; copies of documents to be furnished to assessor; penalty for violation.

A. Whenever a deed or real estate contract transferring an interest in real property is received by a county clerk for recording, a copy of the deed or real estate contract shall be given to the county assessor by the clerk.

B. A county clerk who willfully fails to comply with this section is guilty of a petty misdemeanor, punishable in accordance with the Criminal Code [Chapter 30 NMSA 1978].

History: Laws 1973, ch. 258, § 52; 1953 Comp., § 72-31-12; Laws 1974, ch. 92, § 8; 1982, ch. 28, § 9.

7-38-12.1. Residential property transfers; affidavit to be filed with assessor.

A. After January 1, 2004, a transferor or the transferor's authorized agent or a transferee or the transferee's authorized agent presenting for recording with a county clerk a deed, real estate contract or memorandum of real estate contract transferring an interest in real property classified as residential property for property taxation purposes shall also file with the county assessor within thirty days of the date of filing with the county clerk an affidavit signed and completed in accordance with the provisions of Subsection B of this section.

B. The affidavit required for submission shall be in a form approved by the department and signed by the transferors or their authorized agents or the transferees or their authorized agents of any interest in residential real property transferred by deed or real estate contract. The affidavit shall contain only the following information to be used only for analytical and statistical purposes in the application of appraisal methods:

(1) the complete names of all transferors and transferees;

(2) the current mailing addresses of all transferors and transferees;

(3) the legal description of the real property interest transferred as it appears in the document of transfer;

(4) the full consideration, including money or any other thing of value, paid or exchanged for the transfer and the terms of the sale including any amount of seller incentives; and

(5) the value and a description of personal property that is included in the sale price.

C. Upon receipt of the affidavit required by Subsection A of this section, the county assessor shall place the date of receipt on the original affidavit and on a copy of the affidavit. The county assessor shall retain the original affidavit as a confidential record and as proof of compliance and shall return the copy marked with the date of receipt to the person presenting the affidavit. The assessor shall index the affidavits in a manner that permits cross-referencing to other records in the assessor's office pertaining to the specific property described in the affidavit. The affidavit and its contents are not part of the valuation record of the assessor.

D. The affidavit required by Subsection A of this section shall not be required for:

(1) a deed transferring nonresidential property;

(2) a deed that results from the payment in full or forfeiture by a transferee under a recorded real estate contract or recorded memorandum of real estate contract;

(3) a lease of or easement on real property, regardless of the length of term;

(4) a deed, patent or contract for sale or transfer of real property in which an agency or representative of the United States, New Mexico or any political subdivision of the state is the named grantor or grantee and authorized transferor or transferee;

(5) a quitclaim deed to quiet title or clear boundary disputes;

(6) a conveyance of real property executed pursuant to court order;

(7) a deed to an unpatented mining claim;

(8) an instrument solely to provide or release security for a debt or obligation;

(9) an instrument that confirms or corrects a deed previously recorded;

(10) an instrument between husband and wife or parent and child with only nominal actual consideration therefor;

(11) an instrument arising out of a sale for delinquent taxes or assessments;

(12) an instrument accomplishing a court-ordered partition;

(13) an instrument arising out of a merger or incorporation;

(14) an instrument by a subsidiary corporation to its parent corporation for no consideration, nominal consideration or in sole consideration of the cancellation or surrender of the subsidiary's stock;

(15) an instrument from a person to a trustee or from a trustee to a trust beneficiary with only nominal actual consideration therefor;

(16) an instrument to or from an intermediary for the purpose of creating a joint tenancy estate or some other form of ownership; or

(17) an instrument delivered to establish a gift or a distribution from an estate of a decedent or trust.

E. The affidavit required by Subsection A of this section shall not be construed to be a valuation record pursuant to Section 7-38-19 NMSA 1978.

F. Prior to November 1, 2003, the department shall print and distribute to each county assessor affidavit forms for distribution to the public upon request.

History: Laws 2003, ch. 118, § 2; 2005, ch. 24, § 1.

7-38-12.2. Penalties.

A. A person who intentionally refuses to make a required report within the time period specified under the provisions of Section 7-38-12.1 NMSA 1978 or who knowingly makes a false statement on an affidavit required under the provisions of Section 7-38-12.1 NMSA 1978 is guilty of a misdemeanor and upon conviction shall be punished by the imposition of a fine of not more than one thousand dollars ($1,000).

B. The secretary, any employee or any former employee of the department or any other person subject to the provisions of Section 7-38-12.1 NMSA 1978 who willfully releases information in violation of that section, except as provided in Section 7-38-4 NMSA 1978 or as part of a protest proceeding as defined in Section 7-38-24 NMSA 1978, is guilty of a misdemeanor and shall be fined not more than one thousand dollars ($1,000).

History: Laws 2003, ch. 118, § 3.

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.

7-38-14. Tabulation of construction permits; information required to be furnished to county assessors.

A. By the tenth day of each month, the trade boards operating under the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978] shall furnish the assessor of each county with a tabulation of all permits which they have issued in the assessor's county in the previous month for all construction projects, the cost of each of which exceeded one thousand dollars ($1,000). The tabulation shall include the name of the owner of the property for which a permit was issued, the construction location and the cost of the construction project for which the permit was issued. A copy of the tabulation shall be sent to the department.

B. By the tenth day of each month, each county or municipality issuing building permits shall furnish the assessor of the county issuing the permit or the county in which the municipality is located with a tabulation of all building permits issued in the previous month for all construction projects, the cost of each of which exceeded one thousand dollars ($1,000). The tabulation shall include the name of the owner of the property for which a permit was issued, the construction location and the cost of the construction project for which the permit was issued. A copy of the tabulation shall be sent to the department.

C. Upon receiving the information required to be furnished under this section, the county assessors and the department shall enter any required changes in their valuation or other records.

History: 1953 Comp., § 72-31-14, enacted by Laws 1973, ch. 258, § 54.

7-38-15. Information on real property sold, purchased, contracted to be sold or purchased, or exchanged by governmental bodies to be sent to or obtained by the department; department to compile and send information to county assessors.

A. By the twentieth day of each month, the department shall obtain from appropriate agencies of the United States the following information relating to real property transactions occurring during the preceding month:

(1) a list by legal description of each parcel of real property in the state that was sold, purchased, contracted to be sold or purchased, or exchanged by agencies of the United States government; and

(2) the names and addresses of each of the transferors and transferees of the property required to be listed under Paragraph (1) of this subsection.

B. By the twentieth day of each month, each state agency and the governing body of each of the state's political subdivisions shall report to the department the following information relating to real property transactions occurring during the preceding month:

(1) a list by legal description of each parcel of real property in the state that was sold, purchased, contracted to be sold or purchased, or exchanged by the state agency or the political subdivisions; and

(2) the names and addresses of each of the transferors and transferees of the property listed under Paragraph (1) of this subsection.

C. The information gathered by the department on real property that is subject to local valuation for property taxation purposes shall be compiled and sent immediately to the county assessors of the counties in which the reported property is located. The county assessor receiving the information shall enter any required changes in the valuation or other records and shall also take any action that is required under the Property Tax Code as a result of the receipt of the information.

D. The information gathered by the department on real property that is subject to valuation for property taxation purposes by the department shall be compiled and retained by the department. The department shall enter any required changes in its valuation or other records and shall also take any action that is required under the Property Tax Code as a result of the receipt of the information.

History: 1953 Comp., § 72-31-15, enacted by Laws 1973, ch. 258, § 55.

7-38-16. Condemnation proceedings; duty of condemning authority to notify county assessor.

A. Upon the issuance of a court order making permanent an order of preliminary entry in any condemnation proceeding brought by any governmental authority in this state exercising the power of eminent domain, or upon the issuance of a final order of condemnation if no order allowing preliminary entry is issued, the condemning authority shall notify the county assessor of the county in which the land subject to condemnation is situated of:

(1) the fact of the issuance of an order making permanent an order of preliminary entry or an order of final condemnation and the date of the order;

(2) the description and ownership of the land subject to the order; and

(3) the date that physical possession of the land was or will be assumed by the condemning authority under a preliminary entry order.

B. Upon receipt of the notification required under Subsection A, the county assessor shall make appropriate changes in his valuation records to indicate as owner of the land for property taxation purposes the condemning authority as of the date of possession or the date of a final order of condemnation. If the land involved is subject to valuation for property taxation purposes by the department, the county assessor shall notify the department of the changes.

C. This section does not authorize the proration of taxes for a tax year in which ownership changes as a result of condemnation proceedings, but a condemning authority may contract or stipulate with an owner of land subject to condemnation for the proration of the owner's tax liability.

History: 1953 Comp., § 72-31-16, enacted by Laws 1973, ch. 258, § 56.

7-38-17. Claiming exemptions; requirements; penalties.

A. Subject to the requirements of Subsection E of this section, head-of-family exemptions, veteran exemptions, disabled veteran exemptions or veterans' organization exemptions claimed and allowed in a tax year need not be claimed for subsequent tax years if there is no change in eligibility for the exemption nor any change in ownership of the property against which the exemption was claimed. Head-of-family, veteran and veterans' organization exemptions allowable under this subsection shall be applied automatically by county assessors in the subsequent tax years.

B. Other exemptions of real property specified under Section 7-36-7 NMSA 1978 for nongovernmental entities shall be claimed in order to be allowed. Once such exemptions are claimed and allowed for a tax year, they need not be claimed for subsequent tax years if there is no change in eligibility. Exemptions allowable under this subsection shall be applied automatically by county assessors in subsequent tax years.

C. Except as set forth in Subsection H of this section, an exemption required to be claimed under this section shall be applied for no later than thirty days after the mailing of the county assessor's notices of valuation pursuant to Section 7-38-20 NMSA 1978 in order for it to be allowed for that tax year.

D. A person who has had an exemption applied to a tax year and subsequently becomes ineligible for the exemption because of a change in the person's status or a change in the ownership of the property against which the exemption was applied shall notify the county assessor of the loss of eligibility for the exemption by the last day of February of the tax year immediately following the year in which loss of eligibility occurs.

E. Exemptions may be claimed by filing proof of eligibility for the exemption with the county assessor. The proof shall be in a form prescribed by regulation of the department. Procedures for determining eligibility of claimants for any exemption shall be prescribed by regulation of the department, and these regulations shall include provisions for requiring the veterans' services department to issue certificates of eligibility for veteran and veterans' organization exemptions in a form and with the information required by the department. The regulations shall also include verification procedures to assure that veteran exemptions in excess of the amount authorized under Section 7-37-5 NMSA 1978 are not allowed as a result of multiple claiming in more than one county or claiming against more than one property in a single tax year.

F. The department shall consult and cooperate with the veterans' services department in the development, adoption and promulgation of regulations under Subsection E of this section. The veterans' services department shall comply with the promulgated regulations. The veterans' services department shall collect a fee of five dollars ($5.00) for the issuance of a duplicate certificate of eligibility to a veteran or to a veterans' organization.

G. A person who violates the provisions of this section by intentionally claiming and receiving the benefit of an exemption to which the person is not entitled or who fails to comply with the provisions of Subsection D of this section is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000). A county assessor or the assessor's employee who knowingly permits a claimant for an exemption to receive the benefit of an exemption to which the claimant is not entitled is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) and shall also be automatically removed from office or dismissed from employment upon conviction under this subsection.

H. When a disabled veteran or the disabled veteran's unmarried surviving spouse provides proof of eligibility pursuant to Subsection E of this section, the disabled veteran or the disabled veteran's unmarried surviving spouse shall be allowed the exemption for the tax year; provided that the exemption shall not be allowed for property tax due for previous tax years.

History: 1953 Comp., § 72-31-17, enacted by Laws 1973, ch. 258, §57; 1974, ch. 92, § 9; 1975, ch. 9, § 1; 1982, ch. 28, § 10; 2000, ch. 92, §3; 2000, ch. 94, § 3; 2003, ch. 26, § 1; 2004, ch. 19, § 22; 2005, ch. 230, § 2; 2011, ch. 102, § 2; 2023, ch. 63, § 1; 2025, ch. 10, § 3.

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.

7-38-18. Publication of notice of certain provisions relating to reporting property for valuation and claiming of exemptions.

A. Each county assessor shall have a notice published in a newspaper of general circulation within the county at least once a week during the first three full weeks in January of each tax year, which notice shall include a brief statement of the provisions of:

(1) Section 7-38-8 NMSA 1978 relating to requirements for reporting property for valuation for property taxation purposes;

(2) Section 7-38-8.1 NMSA 1978 relating to requirements for reporting exempt property;

(3) Section 7-38-13 NMSA 1978 relating to filing statements of decrease in value of property;

(4) Section 7-38-17 NMSA 1978 relating to requirements for claiming veteran, disabled veteran, head-of-family and other exemptions;

(5) Section 7-38-17.1 NMSA 1978 relating to the requirements for declaring residential property and changes in use of property; and

(6) Section 7-36-21.3 NMSA 1978 relating to requirements for claiming eligibility for the limitation on increases in valuation for property taxation purposes of a single-family dwelling owned and occupied by a person who is sixty-five years of age or older.

B. The department shall develop and issue a uniform form of notice to be used by county assessors to fulfill the requirements of this section.

History: 1953 Comp., § 72-31-18, enacted by Laws 1973, ch. 258, § 58; 1981, ch. 37, § 69; 1982, ch. 28, § 11; 2000, ch. 92, § 4; 2000, ch. 94, § 4; 2001, ch. 321, § 3.

7-38-19. Valuation records.

A. The county assessor shall maintain a record of the values determined for property taxation purposes on all property within the county subject to valuation under the Property Tax Code, whether the values are determined by the county assessor or the department.

B. The department shall maintain, in addition to the county assessors' records, a record of the values determined for property taxation purposes on all property subject to department valuation under the Property Tax Code.

C. Valuation records shall contain the information required by the Property Tax Code and regulations of the department.

D. Except as provided otherwise in Subsection E of this section, valuation records are public records.

E. Valuation records that contain information regarding the income, expenses other than depreciation, profits or losses associated with a specific property or a property owner or that contain diagrams or other depictions of the interior arrangement of buildings, alarm systems or electrical or plumbing systems are not public records and may be released only in accordance with Paragraphs (2) through (7) of Subsection A of Section 7-38-4 NMSA 1978.

History: 1953 Comp., § 72-31-19, enacted by Laws 1973, ch. 258, § 59; 1982, ch. 28, § 12; 1991, ch. 166, § 8.

7-38-20. County assessor and department to mail notices of valuation.

A. By April 1 of each year, the county assessor shall mail a notice to each property owner informing the property owner of the net taxable value of the property owner's property that has been valued for property taxation purposes by the assessor and other related information as required by Subsection D of this section.

B. By May 1 of each year, the department shall mail a notice to each property owner informing the property owner of the net taxable value of the property owner's property that has been valued for property taxation purposes by the department and other related information as required by Subsection D of this section.

C. Failure to receive the notice required by this section does not invalidate the value set on the property, any property tax based on that value or any subsequent procedure or proceeding instituted for the collection of the tax.

D. The notice required by this section shall state:

(1) the property owner's name and address;

(2) the description or identification of the property valued;

(3) the classification of the property valued;

(4) the value set on the property for property taxation purposes;

(5) the tax ratio;

(6) the taxable value of the property for the previous and current tax years;

(7) the tax rate from the previous tax year;

(8) the amount of tax from the previous tax year;

(9) with respect to residential property, instructions for calculating an estimated tax for the current tax year, which shall be prominently displayed on the front of the notice, and a disclaimer for such instructions similar to the following:

"The calculation of property tax may be higher or lower than the property tax that will actually be imposed.";

(10) the amount of any exemptions allowed and a statement of the net taxable value of the property after deducting the exemptions;

(11) the allocations of net taxable values to the governmental units;

(12) briefly, the eligibility requirements and application procedures and deadline for claiming eligibility for a limitation on increases in the valuation for property taxation purposes of a single-family dwelling owned and occupied by a person sixty-five years of age or older; and

(13) briefly, the procedures for protesting the value determined for property taxation purposes, classification, allocation of values to governmental units or denial of a claim for an exemption or for the limitation on increases in valuation for property taxation purposes.

E. The county assessor may mail the valuation notice required pursuant to Subsection A of this section to taxpayers with the preceding tax year's property tax bills if the net taxable value of the property has not changed since the preceding taxable year. In this early mailing, the county assessor shall provide clear notice to the taxpayer that the valuation notice is for the succeeding tax year and that the deadlines for protest of the value or classification of the property apply to this mailing date.

History: 1953 Comp., § 72-31-20, enacted by Laws 1973, ch. 258, § 60; 1974, ch. 92, § 10; 1981, ch. 37, § 70; 1996, ch. 39, § 1; 2001, ch. 321, § 4; 2012, ch. 60, § 1.

7-38-20.1. Temporary provision; additional instructions to assessors and treasurers; special requirements for 2004 veteran exemption; newly eligible veterans.

A. A county assessor shall include with the notice of valuation distributed to property owners for the 2005 property tax year, a notice to taxpayers informing them that:

(1) a taxpayer who is a veteran or the unmarried surviving spouse of a veteran who was not previously eligible for a veteran property tax exemption may be

eligible for that exemption due to the change in Article 8, Section 5 of the constitution of New Mexico adopted in November 2004; and

(2) a taxpayer who is eligible for the veteran tax exemption for the 2005 property tax year may also be eligible for the veteran tax exemption for the 2004 property tax year.

B. The taxpayer shall obtain certification from the veterans' services department verifying that the veteran upon whose service the exemption is claimed is eligible for a tax exemption pursuant to Article 8, Section 5 of the constitution of New Mexico for the 2005 property tax year to present to the county assessor. The veterans' services department shall certify the date on which the veteran became honorably discharged from the armed forces of the United States.

C. The county assessor shall determine from the date of discharge from the armed forces of the United States certified by the veterans' services department if the veteran would have been eligible to receive a tax exemption for the 2004 property tax year based on the veteran's date of discharge from the armed forces of the United States and the dates on which the taxpayer took title to the property. A veteran would be eligible if the veteran were discharged on a date prior to the thirtieth day following the date on which the county assessor mailed the notice of valuation in 2004 and had title to the property to which the veteran tax exemption is applied at that time.

D. If a taxpayer, who became eligible for the veteran exemption due to the approval of the amendment to Article 8, Section 5 of the constitution of New Mexico, qualifies for the 2004 and 2005 veteran exemptions and has paid in full the taxpayer's property tax liability for the 2004 property tax year, for the 2005 property tax year only the county assessor shall combine the total of the veteran exemptions for those two property tax years and deduct the combined total from the taxable value of the taxpayer's property to obtain the net taxable value for the 2005 property tax year.

History: Laws 2005, ch. 230, § 3.

7-38-21. Protests; county-assessed property; election of remedies.

A. A property owner may protest the value or classification determined by the county assessor for the property owner's property for property taxation purposes, the allocation of value of the property to a particular governmental unit or a denial of a claim for an exemption or for a limitation on increase in value either by:

(1) filing a petition with the county assessor as provided in the Property Tax Code; or

(2) filing a claim for refund after paying the property owner's taxes as provided in the Property Tax Code.

B. The initiation of a protest under Paragraph (1) of Subsection A of this section is an election to pursue that remedy and is an unconditional and irrevocable waiver of the right to pursue the remedy provided in Paragraph (2) of Subsection A of this section.

C. A property owner may also protest the application to the property owner's property of any administrative fee adopted pursuant to Section 7-38-36.1 NMSA 1978 by filing a claim for refund after paying the property owner's taxes as provided in the Property Tax Code.

History: 1953 Comp., § 72-31-21, enacted by Laws 1973, ch. 258, § 61; 1978 Comp., § 7-38-21; 1981, ch. 37, § 71; 1983, ch. 215, § 1; 2001, ch. 24, § 1; 2015, ch. 73, § 19; 2023, ch. 36, § 5.

7-38-21.1. Protests; state-assessed property; election of remedies.

A. A property owner may protest the value or classification determined by the department for the property owner's property for property taxation purposes, the allocation of value of the property to a particular governmental unit or a denial of a claim for an exemption by:

(1) filing a petition of protest with the administrative hearings office, as provided in the Property Tax Code; or

(2) filing a claim for refund with a district court after paying the property owner's taxes as provided in the Property Tax Code.

B. The initiation of a protest under Paragraph (1) of Subsection A of this section is an election to pursue that remedy and is an unconditional and irrevocable waiver of the right to pursue the alternative remedy provided in Paragraph (2) of Subsection A of this section.

History: 1978 Comp., § 7-38-21.1, enacted by Laws 2023, ch. 36, § 6.

7-38-22. Protesting values, classification, allocation of values and denial of exemption determined by the department.

A. A property owner may protest the value or classification determined by the department for the property owner's property for property taxation purposes or the department's allocation of value of the property owner's property to a particular governmental unit or the denial of a claim for an exemption by filing a petition with the administrative hearings office. Filing a petition in accordance with this section entitles a property owner to a hearing on the property owner's protest.

B. Petitions shall:

(1) be filed no later than thirty days after:

(a) the mailing by the department of the notice of valuation; or

(b) the mailing of a property tax bill on omitted property pursuant to Section 7-38-76 NMSA 1978;

(2) state the property owner's name and address and the description of the property;

(3) state why the property owner believes the value, classification, allocation of value or denial of an exemption is incorrect and what the property owner believes the correct value, classification, allocation of value or exemption to be;

(4) state the value, classification, allocation of value or exemption that is not in controversy; and

(5) contain such other information as the administrative hearings office may by rule require.

C. The administrative hearings office shall notify the secretary and the property owner by certified mail of the date, time and place that the parties may appear before the administrative hearings office to present evidence related to the petition; provided that the parties may request, consent or agree to an alternative service method for the notice of hearing. The notice shall be sent at least fifteen days prior to the hearing date.

D. The secretary 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; 1978 Comp., § 7-38-22; 1981, ch. 37, § 72; 2015, ch. 73, § 20; 2023, ch. 36, § 7.

7-38-23. Protest hearings; verbatim record; action by hearing officer; time limitations.

A. Except for the rules relating to discovery, the technical rules of evidence and the Rules of Civil Procedure for the District Courts do not apply at a protest hearing conducted pursuant to the provisions of the Property Tax Code, but the hearing shall be conducted so that an ample opportunity is provided for the presentation of complaints and defenses. All testimony shall be taken under oath. A verbatim record of the hearings shall be made but need not be transcribed unless required for appeal purposes. A hearing officer shall be designated by the chief hearing officer of the administrative hearings office to conduct the hearing.

B. Final action taken by the hearing officer on a petition shall be by written order. The hearing officer's order shall be made within thirty days after the date of the hearing, but this time limitation may be extended by agreement of the department and the protestant. A copy of the order shall be sent immediately by certified mail to the property owner. A copy of the order shall also be sent to the county assessor.

C. All protests shall be decided within one hundred twenty days of the date the protest is filed unless the parties otherwise agree. The protest shall be denied if the property owner or the property owner's authorized representative fails, without reasonable justification, to appear at the hearing.

D. The hearing officer's order shall be in the name of the chief hearing officer, dated, state the changes to be made in the valuation records, if any, and direct the county assessor to take appropriate action. The department shall make any changes in its valuation records required by the order.

E. Changes in the valuation records shall clearly indicate that the prior entry has been superseded by an order of the hearing officer.

F. The department shall maintain a file of all orders made pursuant to this section. The file shall be open for public inspection.

G. If an order of the hearing officer is appealed under Section 7-38-28 NMSA 1978, the department shall immediately notify the appropriate county assessor of the appeal. Notations shall be made in the valuation records of the assessor and the department indicating the pendency of the appeal.

History: 1953 Comp., § 72-31-23, enacted by Laws 1973, ch. 258, § 63; 1982, ch. 28, § 13; 1986, ch. 20, § 114; 2015, ch. 73, § 21.

7-38-24. Protesting values, classification, allocation of values and denial of exemption or limitation on increase in value determined by the county assessor.

A. A property owner may protest the value or classification determined by the county assessor for his property for property taxation purposes, the assessor's allocation of value of his property to a particular governmental unit or denial of a claim for an exemption or for a limitation on increase in value by filing a petition with the assessor. Filing a petition in accordance with this section entitles the property owner to a hearing on his protest.

B. Petitions shall:

(1) be filed with the county assessor on or before:

(a) the later of April 1 of the property tax year to which the notice applies or thirty days after the mailing by the assessor of the notice of valuation if the notice was mailed with the preceding year's tax bill in accordance with Section 7-38-20 NMSA 1978;

(b) thirty days after the mailing of a property tax bill on omitted property pursuant to Section 7-38-76 NMSA 1978; or

(c) in all other cases, thirty days after the mailing by the assessor of the notice of valuation;

(2) state the property owner's name and address and the description of the property;

(3) state why the property owner believes the value, classification, allocation of value or denial of a claim of an exemption or of a limitation on increase in value is incorrect and what he believes the correct value, classification, allocation of value or exemption to be; and

(4) state the value, classification, allocation of value or exemption that is not in controversy.

C. Upon receipt of the petition, the county assessor shall schedule a hearing before the county valuation protests board and notify the property owner by certified mail of the date, time and place that he may appear to support his petition. The notice shall be mailed at least fifteen days prior to the hearing date.

D. The county assessor may provide for an informal conference on the protest before the hearing.

History: 1953 Comp., § 72-31-24, enacted by Laws 1973, ch. 258, § 64; 1974, ch. 92, § 12; 1981, ch. 37, § 73; 1997, ch. 130, § 1; 2001, ch. 24, § 2; 2003, ch. 95, § 1.

7-38-25. County valuation protests boards; creation; duties; funding.

A. There is created in each county a "county valuation protests board". Each board shall consist of three voting members. Three alternates shall also be appointed to serve as voting members in the absence of a voting member. Voting members and alternates shall be appointed as follows:

(1) one member and one alternate shall be a qualified elector of the county and shall be appointed by the board of county commissioners for a term of two years;

(2) one member and one alternate shall be a qualified elector of the county, shall have demonstrated experience in the field of valuation of property and shall be appointed by the board of county commissioners for a term of two years; and

(3) one member and one alternate shall be a property appraisal officer employed by the department, assigned by the director and shall be the chairman of the board.

B. Members of the board and alternates appointed under Paragraph (1) or (2) of Subsection A of this section shall not hold any elective public office during the term of their appointment nor shall any such member or alternate be employed by the state, a political subdivision or a school district during the term of his appointment.

C. Vacancies occurring on the board shall be filled by the authority making the original appointment and shall be for the unexpired term of the vacated membership.

D. The county valuation protests board shall hear and decide protests of determinations made by county assessors and protested under Section 7-38-24 NMSA 1978.

E. Members of the board and alternates when serving as voting members appointed under Paragraphs (1) and (2) of Subsection A of this section shall be paid as independent contractors at the rate of eighty dollars ($80.00) a day for each day of actual service. The payment of board members and alternates and all other actual and direct expenses incurred in connection with protest hearings shall be paid by the department.

History: 1953 Comp., § 72-31-25, enacted by Laws 1973, ch. 258, § 65; 1977, ch. 129, § 1; 1981, ch. 37, § 74; 1982, ch. 25, § 1; 1997, ch. 159, § 1.

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 hearings; 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.

7-38-28. Appeals from orders of the county valuation protests boards.

A property owner may appeal an order made by a county valuation protests board by filing an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 72-31-28, enacted by Laws 1973, ch. 258, § 68; 1978 Comp., § 7-38-28; 1982, ch. 28, § 15; 1990, ch. 22, § 3; 1998, ch. 55, § 19; 1999, ch. 265, § 19; 2015, ch. 73, § 22; 2023, ch. 36, § 8.

7-38-28.1. Appeals from decisions and orders of the hearing officer of the administrative hearings office.

A. A property owner or the secretary may appeal a decision and order of a hearing officer of the administrative hearings office to the court of appeals for further relief, but only to the same extent and on the same theory as was asserted in the hearing before the hearing officer. All such appeals shall be on the record made at the hearing and shall not be de novo. All such 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 property owner, and, if not so taken, the decision and order are conclusive.

B. The procedure for perfecting an appeal pursuant to this section shall be as provided by the Rules of Appellate Procedure.

C. On appeal, the court shall set aside a decision and order of the hearing officer only if the decision and order is 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 and order of the hearing officer and the court's decision, from which either no appeal is taken or no appeal may be taken, upholds the decision of the hearing officer, the court shall award reasonable attorney fees to the property owner. If the court's decision upholds the hearing officer's decision only in part, the award shall be limited to reasonable attorney fees associated with the portion upheld.

E. The secretary shall notify the appropriate county assessor of any decision and order or appellate court opinion and shall direct the assessor to take appropriate action to comply with the decision and order.

History: Laws 2023, ch. 36, § 9.

7-38-29. Retention of hearing records.

Untranscribed verbatim records of protest hearings shall be retained until after transcription, if transcription is required to support an appeal, or until the time for a protestant to appeal an order under Section 7-38-28 NMSA 1978 has expired and the protestant has not appealed.

History: 1953 Comp., § 72-31-29, enacted by Laws 1973, ch. 258, § 69.

7-38-30. Department to allocate and certify valuations to county assessors.

By June 1 of each year, the department shall certify to each county assessor the value determined by the department for property taxation purposes of all property allocated to governmental units within the county and subject to departmental valuation. In certifying values, the department shall indicate by appropriate notation all property valuations that are the subject of a pending protest and shall include in the notation a statement of the uncontroverted valuation in the pending protests. The certified values shall be entered by the county assessor in his valuation records.

History: 1953 Comp., § 72-31-30, enacted by Laws 1973, ch. 258, § 70.

7-38-31. County assessor to certify net taxable values to the department.

After receiving the values for property taxation purposes certified to him by the department, the county assessor shall determine the net taxable value for all property allocated to governmental units in the county and subject to valuation for property taxation purposes, whether valued by him or by the department. No later than June 15 of each year, the county assessor shall certify to the department the net taxable values for all property allocated to governmental units in the county and subject to property taxation. The net taxable values of property shall be certified according to governmental units within the county. The assessor's certification shall include a statement of all property valuations that are the subject of a pending protest, whether protested locally or to the department, and a statement of the uncontroverted valuation in the pending protests.

History: 1953 Comp., § 72-31-31, enacted by Laws 1973, ch. 258, § 71.

7-38-32. Department to prepare a compilation of net taxable values to be used for budget making and rate setting.

A. No later than June 30 of each year, the department shall prepare a compilation of all net taxable values certified to it by the county assessors and shall include in the compilation the information regarding protested values required to be furnished by the assessors to the department. The compilation shall be prepared in a form appropriate for use and shall be used for the purpose of making budgets. The compilation of net taxable values shall be sent immediately to the secretary of finance and administration.

B. No later than August 1 of each year, the department shall prepare an amended compilation of net taxable values and send it immediately to the secretary of finance and administration. This amended compilation shall include final valuations resulting from completed protests and information on pending protests. It shall be used by the department of finance and administration in setting property tax rates.

C. In the budget-making process for local units of government, including school districts, the net taxable values from the immediately preceding tax year may be considered for the purpose of estimating available revenue from the current tax year when the compilation of net taxable values certified under Subsection A is incomplete or indefinite due to pending protests.

History: 1953 Comp., § 72-31-32, enacted by Laws 1973, ch. 258, § 72; 1977, ch. 247, § 190.

7-38-33. Department of finance and administration to set tax rates.

A. No later than September 1 of each year, the secretary of finance and administration shall by written order set the property tax rates for the governmental units sharing in the tax in accordance with the Property Tax Code and the budget of each as approved by the department of finance and administration.

B. A copy of the property tax rate-setting order shall be sent to each board of county commissioners, each county assessor and the department within five days of the date the order is made.

C. Net taxable values from the immediately preceding tax year may be used by the department of finance and administration for the purpose of estimating current tax year revenue in connection with setting tax rates when final net taxable values for the current tax year are incomplete or indefinite due to pending protests.

D. When a rate is set for a governmental unit that is imposing a newly authorized rate pursuant to Section 7-37-7 NMSA 1978 or a newly authorized or a reauthorized rate after an election in which the imposition of the tax was approved by the voters of the unit, the rate shall be at a level that will produce in the first year of imposition revenue no greater than that which would have been produced if the valuation of property subject to the imposition had been the valuation in the tax year in which the increased rate pursuant to Section 7-37-7 NMSA 1978 was authorized by the taxing district or the year in which the voters approved the imposition.

History: 1953 Comp., § 72-31-33, enacted by Laws 1973, ch. 258, § 73; 1977, ch. 247, § 191; 1989, ch. 198, § 1.

7-38-34. Board of county commissioners to order imposition of the tax.

Within five days of receipt of the property tax rate-setting order from the department of finance and administration, each board of county commissioners shall issue its written order imposing the tax at the rates set on the net taxable value of property allocated to the appropriate governmental units. A copy of this order shall be delivered immediately to the county assessor.

History: 1953 Comp., § 72-31-34, enacted by Laws 1973, ch. 258, § 74.

7-38-35. Preparation of property tax schedule by assessor.

A. After receipt of the rate-setting order and the order imposing the tax, but no later than October 1 of each tax year, the county assessor shall prepare a property tax schedule for all property subject to property taxation in the county. This schedule shall be in a form that shall be made available electronically and contain the information required by regulations of the department and shall contain at least the following information:

(1) the description of the property taxed and, if the property is personal property, its location;

(2) the property owner's name and address and the name and address of any person other than the owner to whom the tax bill is to be sent;

(3) the classification of the property;

(4) the value of the property determined for property taxation purposes;

(5) the tax ratio;

(6) the taxable value of the property;

(7) the amount of any exemption allowed and a statement of the net taxable value of the property after deducting the exemption;

(8) the allocations of net taxable value to the governmental units;

(9) the tax rate in dollars per thousand of net taxable value for all taxes imposed on the property;

(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; 2007, ch. 343, § 1.

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.

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.

7-38-36.2. Procedures to delay the mailing of property tax bills for counties for which a property tax levy is imposed at the November 2019 or 2021 regular local election to put the question of imposing or renewing a levy before the voters.

A. In 2019 and 2021:

(1) if a local government desires to impose or renew a property tax levy, the local government shall file a resolution with the county clerk and the local government

division of the department of finance and administration no later than July 15 calling for the imposition or renewal of a property tax levy and indicate the local government's intent to place the question of imposing or renewing the property tax levy on the regular local election ballot in November;

(2) no later than September 1, and following the procedures provided in Section 7-38-33 NMSA 1978, the local government division of the department of finance and administration shall by written order set two property tax rates for the properties under the jurisdiction of the local governments that submitted a resolution pursuant to Paragraph (1) of this subsection. One set of rates shall assume that the question of the property tax levy will be approved by the voters, and a second set of rates shall assume that the question of the property tax levy will not be approved by the voters. A copy of the property tax rate-setting order with both rates shall be sent to each board of county commissioners and each county assessor of each affected county and the taxation and revenue department within five days of the date the order is made;

(3) within five days of receiving the rate-setting order, the board of county commissioners of each affected county shall issue a written order imposing a tax at the rates set on the net taxable value of property allocated to the appropriate governmental units pursuant to Section 7-38-34 NMSA 1978 for both of the property tax rates set pursuant to Paragraph (2) of this subsection. The order shall provide notice of both rates. A copy of each order shall be delivered immediately to the county assessor;

(4) no later than October 1, and following the procedures provided in Section 7-38-35 NMSA 1978, the county assessor for each affected county shall prepare a property tax schedule for all property subject to property taxation in the county for both of the property tax rates set pursuant to Paragraph (2) of this subsection;

(5) pursuant to Section 7-38-36 NMSA 1978, the county assessor shall deliver a copy of the property tax schedule prepared pursuant to Paragraph (4) of this subsection to the county treasurer on October 1, with a notice that the property tax bill for those properties shall be mailed pursuant to Paragraph (6) of this subsection;

(6) after the regular local election is held in November and the voters have answered the question of the property tax levy, the county treasurer for each affected county shall prepare and mail property tax bills no later than November 24, notwithstanding Section 7-38-36 NMSA 1978, reflecting the appropriate rate and amount due, to either the owner of the property or any person other than the owner to whom the tax bill is to be sent; and

(7) notwithstanding Section 7-38-38 NMSA 1978, the first installment of property taxes is due on December 6, and shall become delinquent if not paid within thirty days pursuant to Section 7-38-49 NMSA 1978.

B. As used in this section:

(1) "affected county" means a county within which a local government is situate that files a resolution indicating the local government's intent to place the question of imposing or renewing a property tax levy on the regular local election ballot in November 2019 or 2021 pursuant to Subsection A of this section; and

(2) "local government" means "local government" as that term is defined in the Local Election Act [Chapter 1, Article 22 NMSA 1978].

History: Laws 2019, ch. 212, § 209.

7-38-37. Contents of property tax bill.

Each property tax bill shall be in a form and contain the information required by regulations of the department and shall contain at least the following:

A. all of the information required to be contained in the property tax schedule;

B. the amount of property taxes due on each installment, the due dates of the installments and the dates on which taxes become delinquent;

C. a brief statement of the option available to make prepayments of the property tax due pursuant to Sections 7-38-38.2 and 7-38-38.3 NMSA 1978;

D. a brief statement of the procedure under Section 7-38-39 NMSA 1978 for protesting values for property taxation purposes, classification, allocation of values to governmental units or a denial of a claim for an exemption;

E. a statement of the interest and penalties imposed by law for delinquency in the payment of property taxes and the remedies available against the taxpayer and the property for nonpayment of the amount due;

F. a statement advising the property owner that the property tax bill is the only notice the property owner will receive for payment of both installments of the tax if no separate notice will be sent with respect to the second installment;

G. the amount of any prepayment of the first installment made pursuant to Section 7-38-38.2 NMSA 1978; and

H. the total amount of any monthly payments made pursuant to Section 7-38-38.3 NMSA 1978 and a statement of the amount of the final monthly payment necessary to pay the balance of the tax due.

History: 1953 Comp., § 72-31-37, enacted by Laws 1973, ch. 258, § 77; 1981, ch. 37, § 76; 1987, ch. 166, § 1; 2008, ch. 33, § 1.

7-38-38. Payment of property taxes; installment due dates; refund in cases of overpayments.

A. Unless otherwise provided in the Property Tax Code, property taxes in the amount of ten dollars ($10.00) or over are payable to the county treasurer in two equal installments due on November 10 of the year in which the tax bill was prepared and mailed and on April 10 of the following year. A board of county commissioners may, by ordinance, provide that property taxes under ten dollars ($10.00) are due and payable in a single payment on November 10 of the year in which the tax bill was prepared and mailed. No demand for payment of property taxes is necessary.

B. If a taxpayer remits an amount in payment of his property taxes that exceeds the total property tax liability shown on the property tax bill, together with any applicable penalty and interest computed to the date payment is received by the county treasurer, a refund of the amount in excess shall be made to the taxpayer if either of the following conditions are met:

(1) a written request for the refund is made by the taxpayer and received by the county treasurer within sixty days of the date the excess payment is received by the county treasurer; or

(2) the county treasurer on his own initiative determines by June 30 of the year following the year for which taxes are imposed that an excess payment has been made.

History: 1953 Comp., § 72-31-38, enacted by Laws 1973, ch. 258, § 78; 1975, ch. 121, § 1; 1977, ch. 77, § 1; 1982, ch. 28, § 16; 1983, ch. 216, § 1; 1987, ch. 166, § 2.

7-38-38.1. Recipients of revenue produced through ad valorem levies required to pay counties administrative charge to offset collection costs.

A. As used in this section:

(1) "revenue" means money for which a county treasurer has the legal responsibility for collection and which is owed to a revenue recipient as a result of an imposition authorized by law of a rate expressed in mills per dollar or dollars per thousands of dollars of net taxable value of property, assessed value of property or a similar term, including but not limited to money resulting from the authorization of rates and impositions under Subsection B and Paragraphs (1) and (2) of Subsection C of Section 7-37-7 NMSA 1978, special levies for special purposes and benefit assessments, but the term does not include any money resulting from the imposition of taxes imposed under the provisions of the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978], the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978] or the Copper Production Ad Valorem Tax

Act [Chapter 7, Article 39 NMSA 1978] or money resulting from impositions under Paragraph (3) of Subsection C of Section 7-37-7 NMSA 1978; and

(2) "revenue recipient" means the state and any of its political subdivisions, including charter schools, but excluding institutions of higher education located in class A counties and class B counties having more than three hundred million dollars ($300,000,000) valuation, that are authorized by law to receive revenue.

B. Prior to the distribution to a revenue recipient of revenue received by a county treasurer, the treasurer shall deduct as an administrative charge an amount equal to one percent of the revenue received.

C. The "county property valuation fund" is created. All administrative charges deducted by the county treasurer shall be distributed to the county property valuation fund.

D. Expenditures from the county property valuation fund shall be made pursuant to a property valuation program presented by the county assessor and approved by the majority of the county commissioners.

History: 1978 Comp., § 7-38-38.1, enacted by Laws 1986, ch. 20, § 116; 1988, ch. 68, § 1; 1990, ch. 125, § 7; 2001, ch. 173, § 1; 2007, ch. 366, § 15.

7-38-38.2. Prepayment of certain property tax installments; resolution by board of county commissioners.

A. Each board of county commissioners, by resolution, may as an option to the taxpayer provide for prepayment of property tax due if the tax due is one hundred dollars ($100) or more.

B. The resolution shall provide for a prepayment of the first installment due pursuant to Section 7-38-38 NMSA 1978 by July 10 in an amount equal to twenty-five percent of the prior year's property tax bill. The amount of prepayment shall be credited against the first installment due.

C. The resolution shall further provide for a prepayment of the second installment due pursuant to Section 7-38-38 NMSA 1978 by January 10 in an amount equal to fifty percent of the second installment due. The amount of the prepayment shall be credited against the second installment due.

D. The resolution shall also provide that persons who are responsible by contract for paying property taxes on behalf of the property owner shall make prepayments as provided in this section if the amount of property tax due for the prior property tax year was at least one hundred dollars ($100).

E. No penalty and interest shall be applied for failure to pay or for late payment of any optional prepayment of property taxes as authorized by this section. For persons required to make prepayments of property taxes under Subsection D of this section, the date of each prepayment installment shall be deemed to be the date the property tax is due for purposes of applying penalties and interest for failure to pay for late payment of any prepayment.

F. The county treasurer may distribute to the units of government, thirty days following receipt of the prepayment amounts collected, an amount equal to fifty percent of the amounts collected. Distribution shall be made in accordance with the law and regulations of the department of finance and administration.

G. The county shall make a concerted effort to apprise taxpayers of the option provided in this section by publication in a newspaper of general circulation in the county or through other media coverage.

History: 1978 Comp., § 7-38-38.2, enacted by Laws 1987, ch. 166, § 3.

7-38-38.3. Optional prepayment of property taxes in monthly payments.

A board of county commissioners may by resolution provide property owners the option of making prepayments of property taxes in ten monthly payments beginning June 1 of the year in which the tax bill is prepared and ending March 1 of the following year. The first nine monthly payments shall each be in an amount equal to ten percent of the prior year's property tax bill and the final payment on March 1 shall be in an amount equal to the balance of the tax due, as indicated on the tax bill prepared and mailed pursuant to Sections 7-38-36 and 7-38-37 NMSA 1978; provided that an option otherwise allowed pursuant to this section may not be exercised if taxes are escrowed for the property owner and included in the property owner's monthly mortgage payment.

History: Laws 2008, ch. 33, § 2.

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.

7-38-40. Claims for refund; civil action.

A. Claims for refund shall be filed by the property owner as a civil action in the district court for the county in which the valuation was determined if the property was locally valued or in the district court for Santa Fe county if valued by the department. Claims shall:

(1) be filed against the director as party defendant if the property was valued by the department or against the county assessor as party defendant if the property was valued by the assessor and shall be filed no later than the sixtieth day after the first installment of the property tax for which a claim for refund is made is due;

(2) state the property owner's name and address and the name and address of any person other than the property owner to whom the tax bill was sent;

(3) state the basis of the claim for refund;

(4) state the amount of the refund to which the property owner believes he is entitled, the amount of property taxes admitted as legally due and the property taxes paid; and

(5) demand the refund to him of the amount to which he claims entitlement.

B. The director shall notify the appropriate county treasurer immediately when a claim for refund is filed against the director.

C. The property owner, the county assessor or the director may appeal to the court of appeals from any final decision or order of the district court in a claim for refund case in which they are parties.

D. Upon the final determination of the property owner's claim filed against the director, the director shall send a copy of the final order to the county treasurer and shall order the county assessor to change the valuation records to clearly reflect the final determination of the property owner's claim. The department shall change its valuation records accordingly.

E. Upon the final determination of the property owner's claim filed against the county assessor, the assessor shall send a copy of the final order to the county treasurer and to the director. The county assessor and the department shall change their respective valuation records to clearly reflect the final determination of the property owner's claim.

History: 1953 Comp., § 72-31-40, enacted by Laws 1973, ch. 258, § 80; 1974, ch. 92, § 14; 1982, ch. 28, § 17; 2003, ch. 292, § 1.

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.

7-38-42. Collection and receipt of and accounting for property taxes; application of receipts to delinquent taxes.

A. The county treasurer has the responsibility and authority for collection of taxes and any penalties or interest due under the Property Tax Code except for the collection of delinquent taxes, penalties and interest authorized to be collected by the department under Section 7-38-62 NMSA 1978.

B. Property taxes, penalties and interest collected shall be receipted and accounted for in accordance with law and regulations of the department of finance and administration.

C. Any payments received by the treasurer or the department as payments for property taxes, penalties or interest shall be first applied to the oldest outstanding unpaid property taxes, penalties or interest accrued in prior property tax years on the property identified and described in the property tax bill for which payment is tendered or, if the payment cannot be identified with a particular year's property tax bill, then the payment shall be applied first to the oldest liability for property taxes, penalties and interest shown in the treasurer's records under the name of the paying taxpayer. In applying the foregoing requirements for applications of payments and in the adoption of any regulations to implement those provisions, the following additional rules shall apply:

(1) applications of payments to a prior year's delinquent taxes, penalties and interest shall not be made for more than ten years prior to the year of payment unless the treasurer's records show that the property for which taxes are delinquent has been deeded to the state of New Mexico and that property has not been sold by the state pursuant to applicable law;

(2) applications of payments to a prior year's delinquent taxes, penalties and interest shall not be made if:

(a) the prior year for which the delinquent taxes, penalties or interest are due is not the immediately preceding tax year;

(b) the delinquent taxes, penalties or interest are the result of real estate improvements that were omitted from property tax schedules in the prior year and listed and billed pursuant to Section 7-38-76 NMSA 1978;

(c) the current owner was not the owner at the time the improvements were omitted and had no actual notice that the improvements were omitted; and

(d) the payments were made by or on behalf of the current owner;

(3) after application of payment received, if all or part of the payment has been applied to a prior year's delinquent taxes, penalties or interest, the receipting authority shall issue a receipt to the paying taxpayer showing the application of the payment and indicating any balance due for taxes, penalties or interest to bring the property tax payment status current; and

(4) the failure of a receipting authority to apply a payment as required under this subsection or the failure to issue a required receipt to the taxpayer of the status of his account shall not relieve the taxpayer of liability for taxes, penalties or interest he would otherwise be required to pay nor does action or inaction by the receipting

authority act to estop the collecting authority from taking any action to collect or enforce the payment of taxes, penalties and interest legally due.

History: Laws 1979, ch. 343, § 1; 2003, ch. 95, § 2.

7-38-43. Distribution of receipts from collected property taxes, penalties and interest.

The county treasurer shall distribute the receipts from collected property taxes to each governmental unit in an amount and in a manner determined in accordance with the law and with the regulations of the department of finance and administration. Penalties and interest collected by the county treasurer, other than as an agent of the department under Section 7-38-62 NMSA 1978 and other than penalties and interest on assessments levied by a conservancy district organized under the provisions of The Conservancy Act of New Mexico [73-14-1 NMSA 1978], created prior to 1930 and embracing land situate in four or more counties, shall be deposited in the county general fund at the times and in the manner required by regulations of the department of finance and administration. Penalties and interest collected by the county treasurer as agent of the department under Section 7-38-62 NMSA 1978 shall be remitted to the department at the times and in the manner required by regulations of the department of finance and administration.

History: 1953 Comp., § 72-31-43, enacted by Laws 1973, ch. 258, § 83; 1990, ch. 22, § 4; 1995, ch. 75, § 1.

7-38-44. Special procedures for administration of taxes on personal property when probable removal of property from state will jeopardize collection of taxes.

A. If the director or a county assessor has reasonable cause to believe that personal property, other than livestock, subject to valuation by him for property taxation purposes in a tax year will be removed from the state or the county, respectively, before the taxes for that year are due and that the removal of the property will jeopardize the collection of the tax, he may, for property subject to valuation by him:

(1) proceed immediately to determine the value of the property and send a notice of valuation to the property owner;

(2) at any time after sending the notice of valuation proceed to determine the taxes due on the property by using the prior year's tax rates if the current year's tax rates have not been set and prepare and mail or deliver a property tax bill to the property owner and proceed to collect the taxes immediately; and

(3) issue a demand warrant and proceed to collect unpaid taxes as delinquent taxes under the provisions of Sections 7-38-53 through 7-38-59 NMSA 1978 if taxes are not paid upon demand.

B. Payment of taxes determined on the basis of the prior year's tax rates under this section constitutes full payment of the taxes on the property involved for the current tax year.

History: 1953 Comp., § 72-31-44, enacted by Laws 1973, ch. 258, § 84; 1974, ch. 92, § 16.

7-38-44.1. Special procedures for administration of taxes on real property divided or combined.

A. For real property subject to valuation for property taxation purposes in a taxable year that is divided or combined, a county shall proceed to determine the taxes due on the property by using the prior year's tax rate, if the current tax rates have not been set, and the prior year's value, if the current year value has not been set, and proceed to immediately collect the taxes, penalties, interest and fees through the taxable year in which the property is divided or combined.

B. A taxpayer shall pay the taxes, penalties, interest and fees due on real property divided or combined through the taxable year in which the property is divided or combined prior to filing a plat.

History: Laws 2013, ch. 119, § 1.

7-38-45. Special provisions relating to administration of taxes on livestock.

A. The New Mexico livestock board shall furnish to the department who shall forward to the county assessor of each county information obtained by it about the number, name and address of owner, description, movement, origin and destination of livestock being moved into or from any county. All such information shall be sent in duplicate to the county assessor into or from whose county livestock are being moved. Upon receipt of the information, the assessor shall send the duplicate to the department with a notation indicating the date on which it was received. The livestock board report made under this section fulfills the livestock owner's responsibility to make a report of the livestock under Section 7-36-21 NMSA 1978.

B. Notwithstanding any other provision in the Property Tax Code to the contrary, either the county assessor or the director may:

(1) determine the value of livestock for property taxation purposes at any time the livestock are subject to valuation under the Property Tax Code whether or not the owner of the livestock or any other person has reported them for valuation;

(2) issue a notice of valuation of livestock at any time after a determination of valuation has been made of livestock for property taxation purposes;

(3) prepare and deliver a tax bill and collect taxes on livestock at any time after a notice of valuation has been issued when there is reasonable cause to believe that it would jeopardize the collection of the taxes if the regular tax collection cycle in the Property Tax Code was followed; and

(4) issue a demand warrant to enforce collection of taxes on livestock as delinquent taxes if there is reasonable cause to believe that the livestock may be moved out of the state prior to the payment of taxes, and proceed to collect the taxes as delinquent taxes by sale of the livestock in accordance with Sections 7-38-53 through 7-38-59 NMSA 1978.

C. In the preparation of a tax bill under this section, the assessor or director may determine the tax due on the basis of the prior year's tax rates if the current year's tax rates have not yet been set. Taxes determined on livestock under this section are due when the tax bill is delivered to the owner or the person in charge of the livestock and are delinquent if not paid upon demand. Payment of taxes determined on the basis of the prior year's tax rates constitutes full payment of the taxes on the livestock for the current tax year.

History: 1953 Comp., § 72-31-45, enacted by Laws 1973, ch. 258, § 85; 1974, ch. 92, § 17.

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.

7-38-48. Property taxes are a lien against real property from January 1; priorities; continuance of taxing process.

A. Except as provided in Subsection B of this section, taxes on real property are a lien against the real property from January 1 of the tax year for which the taxes are imposed. The lien runs in favor of the state and secures the payment of taxes on the real property and any penalty and interest that become due. The lien continues until the taxes and any penalty and interest are paid. The lien created by this section is a first lien and paramount to any other interest in the property, perfected or unperfected. The annual taxing process provided for in the Property Tax Code shall continue as to any particular property regardless of prior tax delinquencies or of pending protests, actions for refunds or other tax controversies involving the property, including a sale for delinquent taxes.

B. No lien is created pursuant to Subsection A of this section if:

(1) the tax otherwise creating the lien is not due for the current tax year or the immediately preceding property tax year;

(2) the tax otherwise creating the lien is the result of real estate improvements that were omitted from property tax schedules in a prior year and listed and billed pursuant to Section 7-38-76 NMSA 1978; and

(3) the current owner was not the owner at the time the improvements were omitted and had no actual notice that the improvements were omitted.

History: 1953 Comp., § 72-31-48, enacted by Laws 1973, ch. 258, § 88; 1974, ch. 92, § 18; 2003, ch. 95, § 3.

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.

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.

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.

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.

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.

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.

7-38-59. Certificates of sale; effect of certificates of sale.

A. Upon receiving payment for the personal property sold, the county treasurer shall execute and deliver a certificate of sale to the purchaser.

B. A certificate of sale:

(1) is prima facie evidence of the treasurer's right to make the sale and conclusive evidence of the regularity of all proceedings relating to the sale;

(2) transfers all of the former property owner's interest in the personal property as of the date of sale. The purchaser takes the personal property free of any unrecorded or unfiled interests unknown to him at the time of sale; and

(3) shall be in a form prescribed by regulation of the department.

History: 1953 Comp., § 72-31-59, enacted by Laws 1973, ch. 258, § 99.

7-38-60. Notification to property owner of delinquent taxes.

By June 10 of each year, the county treasurer shall mail a notice to each property owner of property for which taxes have been delinquent for more than two years. The notice shall be in a form and contain the information prescribed by department regulations and shall include the following:

A. a description of the property upon which the taxes are due;

B. a statement of the amount of property taxes due, the date on which they became delinquent, the rate of accrual of interest and any penalties or costs that may be charged;

C. a statement that the delinquent tax account on real property will be transferred to the department for collection;

D. a statement that if taxes due on real property are not paid within three years from the date of delinquency, the real property will be sold and a deed issued; and

E. a statement that if taxes due on personal property are not paid, the personal property may be seized and sold for taxes under authority of a demand warrant.

History: 1953 Comp., § 72-31-61, enacted by Laws 1973, ch. 258, § 101; 1978 Comp., § 7-38-61, recompiled as 1978 Comp., § 7-38-60 by Laws 1982, ch. 28, § 21; 1997, ch. 124, § 1.

7-38-61. Real property taxes delinquent for more than two years; treasurer to prepare delinquency list; notation on property tax schedule.

A. By July 1 of each year, the county treasurer shall prepare a property tax delinquency list of all real property for which taxes have been delinquent for more than two years. The tax delinquency list shall contain the information and be in a form prescribed and submitted by the date required by department regulations. The county treasurer shall record the tax delinquency list in the office of the county clerk. There shall be no recording fee for recordation of the tax delinquency list. The updated final property tax sale list shall be recorded with the office of the county clerk the day following the sale of the property. There shall be no recording fee for recordation of the final property tax sale list.

B. The county treasurer shall make a notation on the property tax schedule indicating that the account has been transferred to the department for collection at the time the tax delinquency list is mailed to the department.

History: 1953 Comp., § 72-31-60, enacted by Laws 1973, ch. 258, § 100; 1977, ch. 177, § 1; 1980 ch. 100, § 1; 1978 Comp., § 7-38-60, recompiled as 1978 Comp., § 7-38-61 by Laws 1982, ch. 28, § 22; 1997, ch. 124, § 2.

7-38-62. Authority of department to collect delinquent property taxes after receipt of tax delinquency list; allowing an authorized county treasurer to act as an agent of the department; use of penalties, interest and costs.

A. After the receipt of the tax delinquency list, the department has the responsibility and exclusive authority to take all action necessary to collect delinquent taxes shown on the list. This authority includes bringing collection actions in the district courts based upon the personal liability of the property owner for taxes as well as the actions authorized in the Property Tax Code for proceeding against the property subject to the tax for collection of delinquent taxes.

B. Payment of delinquent taxes listed and any penalty, interest or costs due in connection with those taxes shall be made to the department if occurring after the receipt by the department of the tax delinquency list; however, the department may authorize county treasurers to act as its agents in accepting payments of taxes, penalties, interest or costs due to the department, including payments made pursuant to an installment agreement authorized by Section 7-38-68 NMSA 1978.

C. Penalties, interest and costs due received by the department pursuant to Subsection B of this section shall be retained by the department for use, subject to appropriation by the legislature, in the administration of the Property Tax Code.

History: 1953 Comp., § 72-31-62, enacted by Laws 1973, ch. 258, § 102; 1990, ch. 22, § 5; 2015, ch. 44, § 1.

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.

7-38-64. Repealed.

7-38-65. Collection of delinquent taxes on real property; sale of real property.

A. If a lien exists by the operation of Section 7-38-48 NMSA 1978, the department may collect delinquent taxes on real property by selling the real property on which the taxes have become delinquent. The sale of real property for delinquent taxes shall be in accordance with the provisions of the Property Tax Code. Real property may be sold for delinquent taxes at any time after the expiration of three years from the first date shown on the tax delinquency list on which the taxes became delinquent. Real property shall be offered for sale for delinquent taxes either within four years after the first date shown on the tax delinquency list on which the taxes became delinquent or, if the department is barred by operation of law or by order of a court of competent jurisdiction from offering the property for sale for delinquent taxes within four years after the first date shown on the tax delinquency list on which the taxes became delinquent, within one year from the time the department determines that it is no longer barred from selling the property, unless:

(1) all delinquent taxes, penalties, interest and costs due are paid by 5:00 p.m. of the day prior to the date of the sale; or

(2) an installment agreement for payment of all delinquent taxes, penalties, interest and costs due is entered into with the department by 5:00 p.m. of the day prior to the date of the sale pursuant to Section 7-38-68 NMSA 1978.

B. Failure to offer property for sale within the time prescribed by Subsection A of this section shall not impair the validity or effect of any sale that does take place.

C. The time requirements of this section are subject to the provisions of Section 7-38-83 NMSA 1978.

D. After January 1, 2014 and subject to the provisions of Subsection A of this section, the department shall annually offer for sale in each county at least one real property listed on that county's property tax delinquency list, unless the director of the property tax division of the department and the county treasurer enter into an agreement to postpone the delinquent property tax sale. The agreement to postpone the delinquent property tax sale shall be executed in writing, and copies shall be sent to the secretary of taxation and revenue and the secretary of finance and administration. That agreement shall state the reason for the postponement and the proposed remedy that will allow the department to conduct the sale in the future.

History: 1953 Comp., § 72-31-65, enacted by Laws 1973, ch. 258, § 105; 1983, ch. 215, § 3; 1985, ch. 109, § 9; 1985, ch. 226, § 1; 1990, ch. 22, § 7; 2001, ch. 253, § 1; 2001, ch. 254, § 1; 2003, ch. 95, § 4; 2013, ch. 155, § 1.

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, and, for abandoned real property, an additional letter sent by first class mail, to the address as shown on the most recent property tax schedule, each property owner whose real property will be sold that the owner's real property will be sold to satisfy delinquent taxes, unless:

(1) all delinquent taxes, penalties, interest and costs due are paid by 5:00 p.m. of the day prior to the date of the sale, or, for abandoned real property being sold via an online platform as provided in Subsection D of Section 7-38-67.1 NMSA 1978, all delinquent taxes, penalties, interest and costs due are paid by 5:00 p.m. of the day prior to the date the property is offered on the property tax division's website; or

(2) an installment agreement for payment of all delinquent taxes, penalties, interest and costs due is entered into with the department by 5:00 p.m. of the day prior to the date of sale in accordance with Section 7-38-68 NMSA 1978, or, for abandoned real property sold via an online platform as provided in Subsection D of Section 7-38-67.1 NMSA 1978, an installment agreement for payment of all delinquent taxes, penalties, interest and costs due is entered into with the department in accordance with Section 7-38-68 NMSA 1978 by 5:00 p.m. of the day prior to the date the property is offered on the property tax division's website.

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) if online, state the date and time the sale begins and expires and the web address of the property tax division's website where the property being sold will be listed;

(4) describe the real property that will be sold;

(5) inform the property owner of the property owner's right to apply for an installment agreement with the department for payment of delinquent taxes, penalties, interest and costs, in accordance with Section 7-38-68 NMSA 1978;

(6) provide information on the name and phone number of the individual in the department the owner can contact to arrange for an installment agreement in accordance with Section 7-38-68 NMSA 1978; and

(7) contain any other information that the department may require by rule.

C. At the same time a notice required by Subsection A of this section is sent to the owner of the real 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 that all delinquent taxes, penalties, interest and costs had been paid by 5:00 p.m. of the day prior to the date of sale shall prevent or invalidate the sale.

F. For abandoned real property sold via an online platform as provided in Subsection D of Section 7-38-67.1 NMSA 1978, proof that the owner has paid all delinquent taxes, penalties, interest and costs due by 5:00 p.m. of the day prior to the date the property is offered on the property tax division's website shall invalidate the sale.

G. Proof that the owner has, by 5:00 p.m. of the day prior to the date of sale, entered into an installment agreement to pay all delinquent taxes, penalties, interest and costs as provided in Section 7-38-68 NMSA 1978 and that timely payments under such agreement are being made shall prevent or invalidate the sale.

H. For abandoned real property sold via an online platform as provided in Subsection D of Section 7-38-67.1 NMSA 1978, proof that the owner has entered into an installment agreement with the department for payment of all delinquent taxes, penalties, interest and costs due in accordance with Section 7-38-68 NMSA 1978 by 5:00 p.m. of the day prior to the date the property is offered on the property tax division's website shall invalidate the sale.

I. The time requirements of this section are subject to the provisions of Section 7-38-83 NMSA 1978.

History: 1953 Comp., § 72-31-66, enacted by Laws 1973, ch. 258, § 106; 1980, ch. 104, § 1; 1982, ch. 28, § 23; 1983, ch. 215, § 4; 1990, ch. 22, § 8; 2001, ch. 253, § 2; 2001, ch. 254, § 2; 2018, ch. 50, § 2.

7-38-67. Real property sale requirements.

A. Real property shall not be sold for delinquent taxes before the expiration of three years from the first date shown on the tax delinquency list on which the taxes on the real property became delinquent.

B. Notice of the sale shall be published in a local newspaper within the county where the real property is located or, if there is no local county or municipal newspaper, then a newspaper published in a county contiguous to or near the county in which the real property is located, at least once a week for the three weeks immediately preceding the week of the sale. For more generalized notice, the department may choose to publish notice of the sale also in a newspaper not published within the county and of more general circulation. The notice shall state the time and place of the sale and shall include a description of the real property sufficient to permit its identification and location by potential purchasers.

C. Real property shall be sold at public auction either by the department or an auctioneer hired by the department. The auction shall be held in the county where the real property is located at a time and place designated by the department.

D. If the real property can be divided so as to enable the department to sell only part of it and pay all delinquent taxes, penalties, interest and costs, the department may, with the consent of the owner, sell only a part of the real property.

E. Before the sale, the department shall determine a minimum sale price for the real property. In determining the minimum price, the department shall consider the value of the property owner's interest in the real property, the amount of all delinquent taxes, penalties and interest for which it is being sold and the costs. The minimum price shall not be less than the total of all delinquent taxes, penalties, interest and costs. Real property shall not be sold for less than the minimum price unless no offer met the minimum price when it was offered at an earlier public auction or the property is sold in accordance with the provisions of Subsection H of this section. A sale properly made under the authority of and in accordance with the requirements of this section constitutes full payment of all delinquent taxes, penalties and interest that are a lien against the property at the time of sale, and the sale extinguishes the lien.

F. Payment shall be made in full by the close of the public auction before an offer may be deemed accepted by the department.

G. Real property not offered for sale may be offered for sale at a later sale, but the requirements of this section and Section 7-38-66 NMSA 1978 shall be met in connection with each sale.

H. The board of trustees of a community land grant-merced governed pursuant to the provisions of Chapter 49, Article 1 NMSA 1978 or by statutes specific to the named land grant-merced shall be allowed to match the highest bid at a public auction, which shall entitle the board of trustees to purchase the property for the amount bid if:

(1) the property is situated within the boundaries of that land grant-merced as shown in the United States patent to the grant;

(2) the bid covers all past taxes, penalties, interest and costs due on the property; and

(3) the land becomes part of the common lands of the land grant-merced.

History: 1953 Comp., § 72-31-67, enacted by Laws 1973, ch. 258, § 107; 1974, ch. 92, § 24; 1982, ch. 28, § 24; 1983, ch. 215, § 5; 1995, ch. 12, § 12; 2001, ch. 253, § 3; 2001, ch. 254, § 3; 2005, ch. 211, § 1.

7-38-67.1. Sale of abandoned real property; notice of sale; requirements.

A. Abandoned real property may be sold by special sale.

B. Notice of the sale shall be published in a local newspaper within the county where the abandoned real property is located, or in a newspaper published in a county contiguous to or near the county in which the abandoned real property is located, the week immediately preceding the week of the sale. In cases where abandoned real property is offered for sale via an online platform pursuant to Subsection D of this section, the notice of the sale shall be published in a local newspaper within the county where the abandoned real property is located, or in a newspaper published in a county contiguous to or near the county in which the abandoned real property is located, the week immediately preceding the week of the beginning of the continuous online sale. Online sales notices pursuant to this section shall also be published on the property tax division's website. The notice shall:

(1) state the time and place of the sale;

(2) if the sale is made via an online sale pursuant to Subsection D of this section, state the date and time the sale will begin and expire and the property tax division's website where the property being sold will be listed;

(3) include the name of the subdivision in which the abandoned real property is located;

(4) state the total minimum bid; and

(5) provide the phone number of the property tax division and the web address where interested buyers may obtain copies of the list of properties to be sold.

C. Abandoned real property may be sold at public auction either by the department or an auctioneer hired by the department. The auction shall be held in the county where the abandoned real property is located at a time and place designated by the department.

D. Abandoned real property may be offered for sale via an online platform on the property tax division's website, and notice shall be given pursuant to Subsection B of this section. The sales of abandoned real property listed on the property tax division's website may be continuous until December 31 of the tax year in which the abandoned real property is offered for sale. For subsequent tax years, notice shall be given pursuant to Subsection B of this section before the abandoned real property listed on the property tax division's website can be reoffered for sale.

E. Before the sale, the department shall determine a minimum sale price for the abandoned real property. In determining the minimum price, the department shall consider the amount of all delinquent taxes, penalties, interest and costs for which the abandoned real property is being sold. If the department determines the total amount due is in excess of the sale price that could reasonably be made through public auction, the property tax division may offer the abandoned real property for less than the total amount of delinquent taxes, penalties, interest and costs due.

F. 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 pursuant to Section 7-38-48 NMSA 1978 against the abandoned real property at the time of sale, and the sale extinguishes the lien.

G. Payment shall be made in full by the close of the public auction before an offer may be deemed accepted by the department. For abandoned real property sold via an online platform pursuant to Subsection D of this section, payment shall be made in full within one business day of the bid being accepted by the department before an offer may be deemed accepted by the department. Receipt of a bid from a buyer by the department is not acceptance of the bid by the department. The department shall notify the buyer whose bid is accepted by the department, and the one business day payment requirement begins at the time the buyer received notice of acceptance to the buyer whose bid was accepted by the department. Notice of acceptance of a bid sent to a buyer by the department may be sent via email. Failure of a buyer whose bid was accepted by the department and to whom notice was sent by the department to pay the full sales price within one business day invalidates the sale and the property can be reoffered for sale unless the buyer receives an extension to make payment from the department. Requests for time extensions and approvals of time extensions can be made via email.

H. The board of trustees of a community land grant-merced governed pursuant to the provisions of Chapter 49, Article 1 NMSA 1978, or by statutes specific to the named land grant-merced, shall be allowed to exercise the right of first offer to purchase the abandoned real property if:

(1) the abandoned real property offered for sale is situated within the boundaries of that land grant-merced as shown in the United States patent to the grant;

(2) the offer covers all taxes, penalties, interest and costs due on the abandoned real property unless the minimum sales price is reduced below total amounts owed pursuant to Subsection E of this section; and

(3) the land becomes part of the common lands of the land grant-merced.

I. In the event that there is a competing interest in the abandoned real property by prior landholders, such as land grant owners, pueblos or nontaxable entities, the secretary shall determine who has the prevailing right of first offer.

J. The time requirements of this section are subject to the provisions of Section 7-38-83 NMSA 1978.

K. As used in this section, "right of first offer" means the department is obliged to undergo exclusive good faith negotiations with the rights holder before offering abandoned real property for sale to the public.

History: 1978 Comp., § 7-38-67.1, enacted by Laws 2018, ch. 50, § 3.

7-38-68. Installment agreements.

A. The division may enter into an installment agreement for the payment of all delinquent property taxes, penalties, interest and costs due with respect to either real property or a manufactured home with the owner of the real property or manufactured home whose taxes have become delinquent and whose account for all or part of the delinquent taxes has been transferred for collection to the division. Execution of an installment agreement under this section by a property owner is an irrevocable admission of liability for all taxes that are the subject of the agreement. The installment agreement shall be in writing and shall not extend for a period of more than thirty-six months. Interest shall accrue on the unpaid balance during the period of the installment agreement. The rate of interest shall be one percent a month, and no other interest on that portion of the principal representing unpaid taxes shall accrue while an installment agreement is in effect. The division shall not enter into an installment agreement with a property owner on or after the date of the initial sale of real property or manufactured home for delinquent taxes whether or not the real property or manufactured home is sold and a deed issued as a result of that sale. The division shall promulgate regulations establishing requirements for a minimum down payment and substantially equal monthly payments for installment agreements.

B. An installment agreement prevents any further action to collect the delinquent taxes stated in the agreement as long as the terms of the agreement are met.

C. The division may proceed under the Property Tax Code to collect the property taxes, penalties, interest and costs due and unpaid if:

(1) installment payments are not made on or before the dates specified in the agreement;

(2) the property owner fails to pay other property taxes when required; or

(3) any other condition contained in the agreement is not met.

D. For the purpose of computing the time when real property or a manufactured home may be sold for delinquent taxes, the date of original delinquency shall be used when the delinquent taxes have been the subject of an installment agreement that was subsequently breached by the property owner.

E. If an owner of real property or a manufactured home enters into an installment agreement and subsequently breaches the agreement under this section, the division shall not enter into another installment agreement with that property owner for the payment of the delinquent taxes that were the subject of the installment agreement.

F. Alphabetically indexed and serially numbered records of installment agreements must be kept in the office of the director and made available for public inspection.

History: 1953 Comp., § 72-31-68, enacted by Laws 1973, ch. 258, § 108; 1985, ch. 109, § 10.

7-38-69. Distribution of amounts collected under installment agreements.

Amounts collected under installment agreements entered into by the department that represent delinquent taxes shall be remitted to the county treasurer of the county to which the net taxable value of the property is allocated for distribution to the governmental units. Amounts collected that represent penalties, interest and costs shall be retained by the department in accordance with Section 7-38-71 NMSA 1978. Money collected shall be remitted at the times and in the manner required by regulations of the department of finance and administration. When the department has received payment in full of delinquent taxes, penalties, interest and costs paid under an installment agreement, the department shall notify the county treasurer of that fact, and the county treasurer shall make an entry on the property tax schedule indicating that the delinquent property taxes, penalties and interest have been paid.

History: 1953 Comp., § 72-31-69, enacted by Laws 1973, ch. 258, § 109; 1985, ch. 109, § 11; 1990, ch. 22, § 9; 1995, ch. 12, § 13.

7-38-70. Issuance of deeds as result of sale of real property for delinquent taxes; effect of deeds; limitation of action to challenge conveyance.

A. Upon receiving payment for real property sold for delinquent taxes, the division shall execute and deliver a deed to the purchaser.

B. If the real property was sold substantially in accordance with the Property Tax Code, the deed conveys all of the former property owner's interest in the real property as of the date the state's lien for real property taxes arose in accordance with the Property Tax Code, subject only to perfected interests in the real property existing before the date the property tax lien arose.

C. After two years from the date of sale, neither the former real property owner shown on the property tax schedule as the delinquent taxpayer nor anyone claiming through him may bring an action challenging the conveyance.

D. Subject to the limitation of Subsection C of this section, in all controversies and suits involving title to real property held under a deed from the state issued under this section, any person claiming title adverse to that acquired by the deed from the state must prove, in order to defeat the title, that:

(1) the real property was not subject to taxation for the tax years for which the delinquent taxes for which it was sold were imposed;

(2) the division failed to mail the notice required under Section 7-38-66 NMSA 1978 or to receive any required return receipt;

(3) he, or the person through whom he claims, had title to the real property at the time of the sale and had paid all delinquent taxes, penalties, interest and costs prior to the sale as provided in Subsection E of Section 7-38-66 NMSA 1978; or

(4) he, or the person through whom he claims, had entered into an installment agreement to pay all delinquent taxes, penalties, interest and costs prior to the sale as provided in Section 7-38-68 NMSA 1978 and that all payments due were made timely.

History: 1953 Comp., § 72-31-70, enacted by Laws 1973, ch. 258, § 110; 1982, ch. 28, § 25.

7-38-71. Distribution of amounts received from sale of property.

A. Money received by the department from the sale of real or personal property for delinquent property taxes shall be deposited in a suspense fund and distributed as follows:

(1) first, that portion equal to the costs shall be retained by the department for use, subject to appropriation by the legislature, in administration of the Property Tax Code;

(2) second, that portion equal to the penalties and interest due shall be retained by the department for use, subject to appropriation by the legislature, by the department in administration of the Property Tax Code;

(3) third, that portion equal to the delinquent taxes due shall be remitted by the department to the appropriate county treasurer for distribution by the treasurer to the governmental units in accordance with the law and the regulations of the department of finance and administration; and

(4) the balance shall be paid to the former owner of the property sold or to any other person designated by order directed to the department by a court of competent jurisdiction, provided that the department may first apply all or any portion of the balance to be paid against the amount of any property tax, including any penalty and interest related thereto, owed by the person to whom the balance would otherwise be paid.

B. As a condition precedent to payment of the balance of the sale amount received to the former owner of the property, the department may require any person claiming to be entitled to that payment to present sufficient evidence of proof of former ownership of the property to the department. The department shall adopt regulations providing for the procedures to be followed by persons claiming sale proceeds as former owners in those instances where conflicting claims exist or the department requires proof of ownership.

C. If no person claims the balance of sale proceeds, whether the property was sold under the provisions of the Property Tax Code or prior law, as the former owner of the property within two years of the date of the sale and after a reasonable search to determine the former owner is made by the department and no former owner is found, the balance of the sale proceeds shall be considered abandoned property and deposited in accordance with the provisions of the Uniform Unclaimed Property Act [Chapter 7, Article 8A NMSA 1978].

D. If the balance of proceeds from the sale after paying a higher priority claim under Subsection A of this section is insufficient to pay all of the next priority claim, then the complete balance shall be applied to that next priority claim as partial payment.

History: 1953 Comp., § 72-31-71, enacted by Laws 1973, ch. 258, § 111; 1979, ch. 61, § 1; 1982, ch. 28, § 26; 1986, ch. 20, § 117; 1990, ch. 22, § 10; 1995, ch. 12, § 14.

7-38-72. Notation on property tax schedule by county treasurer when property sold for delinquent taxes.

When the county treasurer receives written notification from the division of the sale of property for delinquent taxes, he shall make an entry on the property tax schedule indicating that the delinquent property taxes, penalties and interest are no longer a lien against the property.

History: 1953 Comp., § 72-31-72, enacted by Laws 1973, ch. 258, § 112; 1982, ch. 28, § 27.

7-38-73. Department of finance and administration to promulgate regulations regarding accounting for and distribution of property taxes collected.

The department of finance and administration is authorized and directed to promulgate regulations covering the receipt of, accounting for and distribution of amounts received under the Property Tax Code by county treasurers as taxes. The department of finance and administration may provide in these regulations for the withholding of amounts of taxes to which the state is entitled to distribution in those instances when delinquent property taxes are paid to the department, but the regulations shall require that withheld taxes must be credited and shown as paid by the county treasurer on the property tax schedule.

History: 1953 Comp., § 72-31-73, enacted by Laws 1973, ch. 258, § 113.

7-38-74. Officers and employees engaged in the administration of the property tax prohibited from buying property sold for delinquent property taxes; penalties for violation; sales of real property in violation declared void.

A. Officers or employees of the state or of any of its political subdivisions engaged in the administration of the property tax may not, directly or indirectly, acquire an interest in, buy or profit from any property sold by the department for delinquent taxes except that an officer or employee may purchase property sold for delinquent taxes if he is the owner of the property and was the owner of the property at the time the taxes became delinquent.

B. Any officer or employee violating this section is guilty of a fourth degree felony and shall be fined not more than five thousand dollars ($5,000) or imprisoned for not less than one year nor more than five years, or both. He shall also be automatically removed from office or have his employment terminated upon conviction.

C. A real property sale in violation of this section is void.

History: 1953 Comp., § 72-31-74, enacted by Laws 1973, ch. 258, § 114.

7-38-75. Exception to property tax due date.

When, because of provisions of the Property Tax Code, a property tax bill is required or authorized to be prepared and mailed or delivered on or by a date other than the date specified in Section 7-38-36 NMSA 1978, the due date of the property taxes involved shall be the date the property tax bill was mailed or delivered.

History: 1953 Comp., § 72-31-75, enacted by Laws 1973, ch. 258, § 115; 1974, ch. 92, § 25.

7-38-76. Property subject to property taxation but omitted from property tax schedules in prior years.

A. Subject to the limitations contained in the Property Tax Code and except as provided in Subsection B of this section, county assessors, treasurers and the department have the authority and the duty to enter in the valuation records, list on the property tax schedules, bill for and collect the taxes for all tax years on property that was subject to property taxation but was omitted from property tax schedules and for which taxes have not been paid but would be due except for the omission. Property tax bills shall be prepared and mailed by the county treasurers within thirty days of the date the omitted property is listed on the property tax schedule, and all taxes on omitted property shall be due the date the property tax bill is mailed.

B. Except for taxes due in the current tax year and the immediately preceding tax year, the current owner of the real estate is not liable for a property tax bill mailed pursuant to Subsection A of this section if:

(1) the omitted property is improvements that were placed on the real estate; and

(2) the current owner was not the owner at the time the improvements were omitted and had no actual notice that the improvements were omitted.

C. Nothing in this section relieves the owner of the property at the time the improvements were omitted from being personally liable for the taxes due pursuant to Section 7-38-47 NMSA 1978.

D. The department shall promulgate regulations for the procedures to be followed and the records to be maintained in the administration and collection of taxes on omitted property. The department of finance and administration shall promulgate regulations covering the receipt of, accounting for and distribution of taxes on omitted property.

History: 1953 Comp., § 72-31-76, enacted by Laws 1973, ch. 258, § 116; 1974, ch. 92, § 26; 2003, ch. 95, § 5.

7-38-77. Authority to make changes in property tax schedule after its delivery to the county treasurer.

A. After delivery of the property tax schedule to the county treasurer, the amounts shown on the schedule as taxes due and other information on the schedule shall not be changed except:

(1) by the county treasurer to correct obvious errors in the mathematical computation of taxes;

(2) by the county treasurer to correct obvious errors by the county assessor in:

(a) the name or address of the property owner or other persons shown on the schedule;

(b) the description of the property subject to property taxation, even if the correction results in a change in the amount shown on the schedule as taxes due;

(c) the data entry of the value, classification, allocation of value and limitation on increases in value pursuant to Sections 7-36-21.2 and 7-36-21.3 NMSA 1978 of property subject to property taxation by the county assessor; or

(d) the application of eligible, documented and qualified exemptions;

(3) by the county treasurer to cancel multiple valuations for property taxation purposes of the same property in a single tax year, but only if:

(a) a taxpayer presents tax receipts showing the payment of taxes by the taxpayer for any year in which multiple valuations for property taxation purposes are claimed to have been made;

(b) a taxpayer presents evidence of ownership of the property, satisfactory to the treasurer, as of January 1 of the year in which multiple valuations for property taxation purposes are claimed to have been made; and

(c) there is no dispute concerning ownership of the property called to the attention of the treasurer, and the treasurer has no actual knowledge of any dispute concerning ownership of the property;

(4) by the county treasurer, to correct the tax schedule so that it no longer contains personal property that is deemed to be unlocatable, unidentifiable or uncollectable, after thorough research with verification by the county assessor or appraiser, with notification to the department and the county clerk;

(5) as a result of a protest, including a claim for refund, in accordance with the Property Tax Code, of values, classification, allocations of values determined for property taxation purposes or a denial of a claim for an exemption;

(6) by the department or the order of a court as a result of any proceeding by the department to collect delinquent property taxes under the Property Tax Code;

(7) by a court order entered in an action commenced by a property owner under Section 7-38-78 NMSA 1978;

(8) by the department as authorized under Section 7-38-79 NMSA 1978;

(9) by the department of finance and administration as authorized under Section 7-38-77.1 NMSA 1978; or

(10) as specifically otherwise authorized in the Property Tax Code.

B. As used in this section, "obvious errors" does not include the method used to determine the valuation for, or a difference of opinion in the value of, the property subject to property taxation.

History: 1953 Comp., § 72-31-77, enacted by Laws 1973, ch. 258, § 117; 1974, ch. 92, § 27; 1981, ch. 37, § 79; 1995, ch. 65, § 1; 2000, ch. 32, § 1; 2015, ch. 39, § 1.

7-38-77.1. Changes in property tax schedule ordered by the department of finance and administration.

After the delivery of the property tax schedule to the county treasurer for any tax year, the department of finance and administration may order the county treasurer to make changes in the property tax schedule in connection with any property listed on the schedule if the department of finance and administration determines that an error was made in the certification of the tax rates.

History: 1978 Comp., § 7-38-77.1, enacted by Laws 1995, ch. 65, § 2.

7-38-78. Action by property owner in district court to change property tax schedule.

A. After the delivery of the property tax schedule to the county treasurer for a particular tax year, a property owner may bring an action in the district court requesting a change in the property tax schedule in connection with any property listed on the schedule for property taxation in which the owner claims an interest. The action shall be brought in the district court for the county for which the property tax schedule in question was prepared.

B. Actions brought under this section may not directly challenge the value, classification, allocations of value determined for property taxation purposes, denial of any exemption claimed or method used to determine the valuation for the property subject to property taxation. Actions brought under this section shall be founded on one or more of the following grounds:

(1) errors in the name or address of the property owner or other person shown on the schedule;

(2) errors in the description of the property for property taxation purposes, even if the correction results in a change in the amount shown on the schedule as taxes due;

(3) errors in the computation of taxes;

(4) errors in the property tax schedule relating to the payment or nonpayment of taxes;

(5) multiple valuations for property taxation purposes for a single tax year of the same property on the property tax schedule; or

(6) errors in the rate of tax set for any governmental unit in which the owner's property is located.

C. Actions brought under this section shall name the county treasurer as defendant. An action brought under Paragraph (6) of Subsection B of this section, shall also name the secretary of finance and administration as a defendant.

History: 1953 Comp., § 72-31-78, enacted by Laws 1973, ch. 258, § 118; 1974, ch. 92, § 28; 1981, ch. 37, § 80; 2015, ch. 39, § 2.

7-38-79. Changes in property tax schedule ordered by the division; action by the division in district court to enforce ordered changes.

A. After the delivery of the property tax schedule to the county treasurer but before the tax bill is mailed for a particular tax year, the division may order the county assessor or county treasurer, or both, to make changes in the property tax schedule in connection with any property listed on the schedule if any of the following actions have been taken in a manner that is not in compliance with the provisions of law or applicable regulations of the division:

(1) an unprotested determination of value for property taxation purposes;

(2) an unprotested allocation of values to governmental units;

(3) an unprotested determination of classification; or

(4) the application of the tax rates.

B. After the delivery of the property tax schedule to the county treasurer for a particular tax year, the division may order the county assessor or county treasurer, or both, to make changes in the property tax schedule in connection with any property listed on the schedule:

(1) for any of the reasons for which a county treasurer could change the property tax schedule under Section 7-38-77 NMSA 1978; or

(2) for any of the reasons for which a district court could order changes in the property tax schedule at the request of a property owner under Section 7-38-78 NMSA 1978 except for the reason specified in Paragraph (6) of Subsection B of that section.

C. Any action taken by the division under this section shall be by written order of the director. Copies of the order shall be mailed by certified mail to the property owner, the county assessor and the county treasurer.

D. If the county assessor or county treasurer refuses to make any changes ordered by the division under this section, the division may bring an action to enforce its order in the district court for the county involved.

History: 1953 Comp., § 72-31-79, enacted by Laws 1973, ch. 258, § 119; 1981, ch. 37, § 81.

7-38-80. Changes in property tax schedules as result of treasurer's action, department order or court order; collection of any additional property taxes due as result; refund of property taxes paid erroneously.

A. If, as a result of actions authorized under Sections 7-38-77 through 7-38-79 NMSA 1978, the county assessor or county treasurer makes changes in the property tax schedule that result in an increase in the tax liability of the property owner and, if a tax bill has already been mailed to the property owner for collection of the taxes on the property in question for the tax year involved, then an additional tax bill shall be prepared and mailed by the county treasurer to the property owner. The date the supplemental tax bill is mailed shall be used for determining the due dates for the collection of any additional property taxes.

B. If, as a result of actions authorized under Sections 7-38-77 through 7-38-79 NMSA 1978, the county assessor or county treasurer makes changes in the property tax schedule that result in a decrease in the property tax liability of the property owner and, if the property taxes on the property for the tax year involved have already been paid, then a refund of any excess property taxes paid shall be made to the property owner. Refunds under this section shall be made by the county treasurer in accordance with regulations of the department of finance and administration.

History: 1953 Comp., § 72-31-80, enacted by Laws 1973, ch. 258, § 120.

7-38-81. Limitation on actions for collection of property taxes; presumption of payment of property taxes after ten years.

A. Property may not be sold and proceedings may not be initiated for the collection of property taxes that have been delinquent for more than ten years.

B. Property that has not been included on a property tax schedule may not be subjected to the imposition of property taxes for more than ten tax years immediately preceding the date of its entry on the property tax schedule.

C. Property taxes that have been delinquent for more than ten years, together with any penalties and interest, are presumed to have been paid. The county treasurer shall indicate on the property tax schedule that all such property taxes and any penalties and interest have been "presumed paid by act of the legislature."

History: 1953 Comp., § 72-31-81, enacted by Laws 1973, ch. 258, § 121.

7-38-81.1. Limitation on actions for collection of any levy or assessment in the form of property taxes; presumption of payment after ten years.

A. Property may not be sold and proceedings may not be initiated for the collection of any levy or assessment in the form of property taxes levied or assessed under the provisions of Sections 73-14-1 through 73-18-43 NMSA 1978 that have been delinquent for more than ten years.

B. Property that has not been included on a property tax schedule or a levy or assessment schedule may not be subjected to the imposition of any levy or assessment in the form of property taxes levied or assessed under the provisions of Sections 73-14-1 through 73-18-43 NMSA 1978 for more than ten tax years immediately preceding the date of its entry on the property tax schedule or levy or assessment schedule.

C. Any levy or assessment in the form of property taxes levied or assessed under the provisions of Sections 73-14-1 through 73-18-43 NMSA 1978 that has been delinquent for more than ten years, together with any penalties and interest, is presumed to have been paid. The county treasurer or appropriate conservancy district officer shall indicate on the property tax schedule or levy or assessment schedule that all such levies or assessments in the form of property taxes and any penalties and interest have been "presumed paid by act of the legislature".

D. The county treasurer may correct the tax schedule so that it no longer contains personal property that is deemed to be unlocatable, unidentifiable or uncollectable, after thorough research with verification by the county assessor or appraiser, with notification to the department and the county clerk.

History: Laws 1983, ch. 109, § 1; 2000, ch. 32, § 2.

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.

7-38-83. Timeliness.

A. When the last day for performing an act falls on Saturday, Sunday or a legal state or national holiday, the performance of the act is timely if performed on the next succeeding day which is not a Saturday, Sunday or a legal state or national holiday.

B. All acts required or permitted to be done by mail are timely if postmarked on the required date.

History: 1953 Comp., § 72-31-83, enacted by Laws 1973, ch. 258, § 123.

7-38-84. Notices; mailing.

A. Any notice that is required to be made to a property owner by the Property Tax Code is effective if mailed by regular first class mail to the property owner's last address or to the address of any person other than the owner to whom the tax bill is to be sent as shown by the valuation records unless the provisions of that code require a different method of notification or mailing, in which case the notice is effective if given in accordance with the provisions of that code.

B. If a property owner notifies, in writing or by electronic mail, the county assessor or the county treasurer that the property owner wants to receive notices pursuant to the Property Tax Code by electronic mail rather than by regular first class mail, the county assessor or the county treasurer may thereafter provide such notices to the property owner using an electronic mail address provided by the property owner; provided that the notice is consistent with the requirements of the Electronic Authentication of Documents Act [14-15-1 to 14-15-6 NMSA 1978] and the Uniform Electronic Transactions Act [Chapter 14, Article 16 NMSA 1978]. A property owner's request to receive notices by electronic mail shall be effective until revoked in writing or by electronic mail to the county assessor and the county treasurer. Wherever the Property Tax Code requires a method of notification or mailing done only by the county assessor or county treasurer, other than by regular first class mail, the notice is effective if given in accordance with the provisions of that code.

C. An electronic mail address provided by a property owner pursuant to this section shall not be considered a valuation record pursuant to Section 7-38-19 NMSA 1978 and shall be retained by the county assessor as a confidential record that is not subject to inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

History: 1953 Comp., § 72-31-84, enacted by Laws 1973, ch. 258, § 124; 1974, ch. 92, § 29; 2015, ch. 2, § 1.

7-38-85. Extension of deadlines; general provision.

The director may extend any deadline in the Property Tax Code for a period of time not in excess of six months. However, this section does not permit the extension of deadlines for an individual property owner nor does it permit successive extensions of a deadline for a cumulative period of more than six months. Extensions may be made applicable to one or more counties. Extension of deadlines authorized by this section shall be made by written order of the director and notice of the extension shall be published in a newspaper of general circulation in each county in the state to which the extension applies once each week for a period of three weeks immediately succeeding the week in which the deadline being extended occurs. When more than one deadline is extended under this section, the notice required to be published may include all extensions, and publication need only be made for the three weeks immediately succeeding the week in which the first deadline being extended occurs.

History: 1953 Comp., § 72-31-85, enacted by Laws 1973, ch. 258, § 125; 1979, ch. 59, § 1.

7-38-86. Extension of deadlines at request of property owners.

The director may extend the time by which reports are required to be filed under Subsection A of Section 7-38-8 NMSA 1978 at the written request of the property owner. The request must be received by the department prior to the date by which the required report must be made. Extensions granted under this section shall be by written order of the director and shall be for a period of not more than thirty days. The director shall not grant more than one extension in a tax year for a property owner in respect to the same property.

History: 1953 Comp., § 72-31-86, enacted by Laws 1973, ch. 258, § 126.

7-38-87. Administrative regulations; promulgation; general provisions.

A. Except for regulations promulgated by the department, regulations authorized or directed to be promulgated under the Property Tax Code may be promulgated by the authorized governmental agency without prior notice or hearing and shall become effective when filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

B. All regulations promulgated under the Property Tax Code shall be applied prospectively only unless there is a statement in the regulation that it is to have retroactive effect and a statement of the extent of any retroactive effect.

History: 1953 Comp., § 72-31-87, enacted by Laws 1973, ch. 258, § 127; 1974, ch. 92, § 30; 1982, ch. 28, § 28; 1991, ch. 166, § 10.

7-38-88. Repealed.

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.

7-38-90. Repealed.

7-38-91. Repealed.

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.

7-38-93. Interference with the administration of the Property Tax Code.

Any person who by force, bribe, threat or other corrupt practice obstructs or impedes the administration of the Property Tax Code is guilty of a misdemeanor. He shall be fined not less than two hundred fifty dollars ($250) nor more than ten thousand dollars ($10,000), or imprisoned for not less than three months nor more than one year, or both.

History: 1953 Comp., § 72-31-93, enacted by Laws 1973, ch. 258, § 133.

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.

7-39-2. Definitions.

As used in the Copper Production Ad Valorem Tax Act:

A. "average price" means for any mineral the average price for the appropriate period determined from published price data in the manner specified by regulation;

B. "copper mineral property" means all mineral property and property held in connection with mineral property when seventy-five percent or more, by either weight or value, of the salable mineral produced from or by the mineral property is copper;

C. "copper production ad valorem tax" means the tax imposed by the Copper Production Ad Valorem Tax Act;

D. "department" means, unless the context requires otherwise, the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "new copper mineral property" means either a copper mineral property that began operations on a commercial basis within the three-year period immediately preceding the tax year for which value is being determined or a copper mineral property that was valued and taxed under the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978] for any tax year subsequent to the 1990 property tax year within the three-year period immediately preceding the tax year for which value is being determined;

F. "produced" means the altered form, character or condition of a mineral that is the product of a particular process;

G. "taxable value" means the value of property determined by applying the tax ratio to the valuation of the copper mineral property determined for purposes of the Copper Production Ad Valorem Tax Act;

H. "tax ratio" means the percentage established under the Property Tax Code that is applied to the value of property determined for property taxation purposes to derive taxable value, as that term is defined in the Property Tax Code; and

I. "value of salable copper and other minerals" means:

(1) for new copper mineral properties, the sum, for copper and each other mineral produced, of the product of the salable amount of the mineral produced during the interval beginning with the month in which operations on a commercial basis began or recommenced and ending with the last month of production preceding the tax year for which valuation is being determined; multiplied by the normalization factor which is a fraction, the numerator of which is twelve and the denominator of which is the number of months within the interval beginning with the month in which operations on a commercial basis began or recommenced and ending with the last month of production preceding the tax year for which valuation is being determined; further multiplied by the average price for the interval beginning with the month in which operations on a

commercial basis began or recommenced and ending with the last month of production preceding the tax year for which valuation is being determined; and

(2) for all other copper mineral properties the sum, for copper and each other mineral produced, of the product of the quotient of the salable amount of the mineral produced during the three calendar years immediately preceding the year for which valuation is being determined divided by three; multiplied by the average price for the three-year period.

History: 1978 Comp., § 7-39-2, enacted by Laws 1990, ch. 125, § 9.

7-39-3. Application of act.

The provisions of the Copper Production Ad Valorem Tax Act apply to the valuation of all productive copper mineral property.

History: 1978 Comp., § 7-39-3, enacted by Laws 1990, ch. 125, § 10.

7-39-4. Valuation of copper mineral property.

A. The valuation for purposes of the Copper Production Ad Valorem Tax Act of copper mineral property of the following types shall be determined annually, except as provided otherwise in Subsection B, C or D of this section, as follows:

(1) the value of any mine and all real property and personal property held or used for the mining of ore from the mine:

(a) any part of which is mined for processing in a concentrator shall be thirty percent of the value of salable copper and other minerals contained in concentrate produced from the ore produced from the mine; or

(b) which is mined solely for solvent extraction or electrowinning shall be twenty percent of the value of salable copper and other minerals produced through solvent extraction or electrowinning from the ore produced from the mine;

(2) the value of a concentrator and all real property and personal property held or used in connection with the concentrator shall be twenty-five percent of the value of salable copper and other minerals contained in concentrate produced in the concentrator;

(3) the value of a precipitation plant and all real property and personal property held or used in connection with the precipitation plant shall be twenty-five percent of the value of salable copper and other minerals contained in precipitate produced in the precipitation plant;

(4) the value of the solvent extraction or electrowinning plant and all real property and personal property held or used in connection with the solvent extraction or electrowinning plant shall be one hundred thirty-five percent of the value of salable copper and other minerals produced through the solvent extraction or electrowinning process, less four times the value of property determined for the same tax year under Subparagraph (b) of Paragraph (1) of this subsection; and

(5) the value of a smelter and all real property and personal property held or used in connection with the smelter shall be twenty-one percent of the value of salable copper and other minerals produced in the smelter.

B. A property, which has been valued in accordance with the Copper Production Ad Valorem Tax Act in any preceding year and which is permanently shut down on or before January 1 of any year for which a valuation is to be made under the Copper Production Ad Valorem Tax Act, is no longer subject to the Copper Production Ad Valorem Tax Act and is subject instead to the provisions of the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978].

C. A copper mineral property from which no copper or other minerals were mined or processed during a period of at least twelve months immediately prior to the beginning of the tax year for which valuation is being determined is not subject to the Copper Production Ad Valorem Tax Act and is subject instead to the provisions of the Property Tax Code.

D. This subsection applies only to copper mineral properties with respect to which the owner, as part of the annual report to the department, declares for the tax year for which valuation is being determined or has declared for any prior tax year that a copper mineral property will remain in operation for a period less than four years and will not be replaced or reconstructed:

(1) the valuation of a copper mineral property subject to this subsection shall be the value determined under Subsection A of this section for that property multiplied by:

(a) twenty-five percent for properties with an anticipated operating period of less than one year as of the beginning of the tax year for which valuation is being determined;

(b) forty-five percent for properties with an anticipated operating period of at least one year but less than two years as of the beginning of the tax year for which valuation is being determined;

(c) sixty percent for properties with an anticipated operating period of at least two years but less than three years as of the beginning of the tax year for which valuation is being determined; and

(d) seventy-five percent for properties with an anticipated operating period of at least three years but less than four years as of the beginning of the tax year for which valuation is being determined; and

(2) if the owner declared in a prior annual report that the copper mineral property would remain in operation for a period less than four years and the owner, in the annual report for the tax year for which valuation is being determined, does not declare that the property will remain in operation for a period less than four years, declares that permanent shutdown is not anticipated within four years or declares that permanent shutdown is anticipated in a year subsequent to the year declared in the prior tax year, there shall be added to the property's valuation determined under Subsection A of this section or Paragraph (1) of this subsection, as appropriate, one hundred percent of:

(a) if the owner fails to make a declaration or declares that the property will remain in operation for a period of at least four years, the difference between the valuation for the property determined solely under Subsection A of this section for each prior tax year in which the owner had declared the property would remain in operation for a period less than four years and the respective valuations in those prior tax years determined under this subsection; or

(b) if the year of anticipated permanent shutdown declared in the prior tax year annual report is earlier than that in the subsequent annual report, the difference between the valuation for the prior tax year determined under this subsection using the later date of anticipated permanent shutdown and the valuation for that prior tax year determined under this subsection in that prior tax year; and

(3) when value is added pursuant to Paragraph (2) of this subsection to the valuation otherwise determined for the copper mineral property, the property owner shall pay interest at the rate determined under Section 7-1-67 NMSA 1978 on the additional taxes due and penalty at the rate determined under Subsection A of Section 7-1-69 NMSA 1978. The interest and penalty shall be measured from the dates that the taxes were due to have been paid for the tax year from which the additional valuation derived.

History: 1978 Comp., § 7-39-4, enacted by Laws 1990, ch. 125, § 11.

7-39-5. Annual report of value.

Each tax year the owner of a copper mineral property shall report to the department on the forms and in the manner prescribed by the department the value, for purposes of the Copper Production Ad Valorem Tax Act, of each copper mineral property owned and the taxing jurisdictions in which each property is located. The report shall also contain a declaration of the year in which the owner expects the copper mineral property to be permanently shut down if permanent shutdown is expected within four years. A declaration shall be made in each annual report subsequent to an annual report in which such a declaration is first made for the copper mineral property. The report shall be submitted on or before March 31 of the tax year for which value is being determined. The report required by this subsection may be referred to as the "annual report".

History: 1978 Comp., § 7-39-5, enacted by Laws 1990, ch. 125, § 12.

7-39-6. Notification to department of finance and administration and counties.

By August 1 of each year, the department shall prepare and send to the department of finance and administration schedules of the taxable value and taxing jurisdictions of each copper mineral property. The taxable values shown on the schedules shall be used by the department of finance and administration in setting property tax rates. A copy of the schedule for the county shall be sent to the assessors of the respective counties in which copper mineral property is located, who shall accept the schedules as the assessment of copper mineral property required under the Copper Production Ad Valorem Tax Act.

History: 1978 Comp., § 7-39-6, enacted by Laws 1990, ch. 125, § 13.

7-39-7. Determination of taxable values for taxing districts.

To determine for any purpose the total taxable value of property required to be taxed under the Copper Production Ad Valorem Tax Act for any taxing jurisdiction for any year after 1990, the taxable value of copper mineral property for the taxing jurisdiction entered upon the schedules prepared under the Copper Production Ad Valorem Tax Act for the tax year preceding the determination shall be used.

History: 1978 Comp., § 7-39-7, enacted by Laws 1990, ch. 125, § 14.

7-39-8. Ad valorem tax levied.

An ad valorem tax is levied upon the owner of each copper mineral property that is not subject to valuation and taxation under the provisions of the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978]. The amount of the tax shall be equal to the product of the taxable value determined for each copper mineral property owned multiplied by the rate certified to the department by the department of finance and administration for nonresidential property under the provisions of Sections 7-37-7 and 7-37-7.1 NMSA 1978 for the taxing jurisdictions in which the copper mineral property is located.

History: 1978 Comp., § 7-39-8, enacted by Laws 1990, ch. 125, § 15.

7-39-9. Notification of tax rate; due date.

A. On or before November 1 of each tax year the department shall notify the owner or operator of each copper mineral property, to which the Copper Production Ad Valorem Tax Act applies, of the tax rates that have been established for the taxing jurisdictions in which the copper mineral property is located, the taxable value of the copper mineral property and the amount of the copper production ad valorem tax due.

B. The copper production ad valorem tax is payable in two equal installments due on December 10 of the year for which tax is assessed and on May 10 of the following year. Payment shall be made to the department. No demand for payment of the copper production ad valorem tax is necessary.

History: 1978 Comp., § 7-39-9, enacted by Laws 1990, ch. 125, § 16.

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.

ARTICLE 40
Insurance Premium Tax

7-40-1. Short title.

Sections 1 through 10 [7-40-1 to 7-40-10 NMSA 1978] of this act may be cited as the "Insurance Premium Tax Act".

History: Laws 2018, ch. 57, § 1.

7-40-2. Definitions.

As used in the Insurance Premium Tax Act:

A. "authorized insurer" means an insurer holding a valid and subsisting certificate of authority to transact insurance in this state;

B. "certificate of authority" means the certificate of authority required to transact insurance in this state pursuant to Section 59A-5-10 NMSA 1978;

C. "department" means the taxation and revenue department;

D. "health maintenance organization" means "health maintenance organization" as that term is used in Chapter 59A, Article 46 NMSA 1978;

E. "home state" means "home state" as that term is used in Chapter 59A, Article 14 NMSA 1978;

F. "insurance" means a contract whereby a person undertakes to pay or indemnify another as to loss from certain specified contingencies or perils, or to pay or grant a specified amount or determinable benefit in connection with ascertainable risk contingencies, or to act as surety;

G. "insurer" includes every person engaged as principal and as indemnitor, surety or contractor in the business of entering into contracts of insurance;

H. "nonprofit health care plan" means "health care plan" as that term is used in Chapter 59A, Article 47 NMSA 1978;

I. "secretary" means the secretary of taxation and revenue or the secretary's authorized designee;

J. "self-insured group" means "group" as that term is used in Chapter 52, Article 6 NMSA 1978;

K. "state" means, when used in context indicating a jurisdiction other than New Mexico, any state, district, commonwealth, territory or possession of the United States of America;

L. "superintendent" means the superintendent of insurance or the superintendent's duly authorized representative acting in official capacity;

M. "surplus lines broker" means "surplus lines broker" as that term is used in Section 59A, Article 14 NMSA 1978;

N. "taxpayer" means:

(1) an authorized insurer;

(2) an insurer formerly authorized to transact insurance in New Mexico and receiving premiums on policies remaining in force in New Mexico, except an insurer that withdrew from New Mexico prior to March 26, 1955;

(3) a plan operating under provisions of Chapter 59A, Articles 46 through 49 NMSA 1978;

(4) a property bondsman, as that person is defined in Section 59A-51-2 NMSA 1978;

(5) an unauthorized insurer that has assumed a contract or policy of insurance, directly or indirectly, from an authorized or formerly authorized insurer and is receiving premiums on such policies remaining in force in New Mexico; provided that the ceding insurer does not continue to pay the taxes imposed pursuant to the Insurance Premium Tax Act as to such policy or contract;

(6) an insured who in this state procures, continues or renews insurance with a nonadmitted insurer pursuant to Section 59A-15-4 NMSA 1978; or

(7) members of the same bone fide trade or professional association that has been in existence for five years or more and that have entered into agreements to pool the members' liabilities for workers' compensation benefits; provided that an employer that is a public hospital shall segregate the employer's accounting records and investment accounts from those of the other members, in accordance with applicable law; and

O. "transact insurance" with respect to an insurance contract or a business of insurance includes any of the following, by mail or otherwise or whether or not for profit:

(1) solicitation or inducement;

(2) negotiation;

(3) effectuation of an insurance contract;

(4) transaction of matters subsequent to effectuation and arising out of such a contract;

(5) maintenance in this state of an office or personnel performing any function in furtherance of an insurer's business of insurance; or

(6) maintenance by an insurer of assets in trust in this state for the benefit, security or protection of its policyholders or its policyholders and creditors.

History: Laws 2018, ch. 57, § 2; 2021, ch. 65, § 34.

7-40-3. Imposition and rate of tax; denomination of "premium tax", "health insurance premium surtax" and "self-insured group tax".

A. The tax imposed pursuant to this subsection may be referred to as the "premium tax". The premium tax is imposed at a rate of three and three-thousandths percent of the gross premiums and membership and policy fees received or written by a taxpayer or, with respect to a taxpayer that is an insured that procures, continues or renews insurance with a nonadmitted insurer, paid by the taxpayer, on insurance or contracts covering risks within the state during the preceding calendar year. The premium tax shall not be imposed on self-insured groups or on return premiums, dividends paid or credited to policyholders or contract holders and premiums received for reinsurance on New Mexico risks.

B. For a taxpayer that is an insurer lawfully organized pursuant to the laws of the Republic of Mexico, the premium tax shall apply solely to the taxpayer's gross premium receipts from insurance policies issued by the taxpayer in New Mexico that cover residents of New Mexico or property or risks principally domiciled or located in New Mexico.

C. With respect to a taxpayer that is a property bondsman, "gross premiums" shall be considered any consideration received as security or surety for a bail bond in connection with a judicial proceeding.

D. The premium tax provided in Subsection A of this section is imposed on the gross premiums received of a surplus lines broker, less return premiums, on surplus lines insurance where New Mexico is the home state of the insured transacted under the surplus lines broker's license, as reported by the surplus lines broker to the department on forms and in the manner prescribed by the department. For purposes of this subsection, "gross premiums" shall include any additional amount charged the insured, including policy fees, risk purchasing group fees and inspection fees; but "premiums" shall not include any additional amount charged the insured for local, state or federal taxes; regulatory authority fees; or examination fees, if any. For a surplus lines policy issued to an insured whose home state is New Mexico and where only a portion of the risk is located in New Mexico, the entire premium tax shall be paid in accordance with this section.

E. In addition to the premium tax, except as provided in Subsection F of this section, a health insurance premium surtax is imposed at a rate of three and seventy-five hundredths percent of the gross health insurance premiums and membership and policy fees received by the taxpayer on hospital and medical expense incurred insurance or contracts; nonprofit health care plan contracts, excluding dental or vision only contracts; and health maintenance organization subscriber contracts covering health risks within this state during the preceding calendar year. The surtax shall not apply to return health insurance premiums, dividends paid or credited to policyholders or contract holders and health insurance premiums received for reinsurance on New Mexico risks. The surtax imposed pursuant to this subsection may be referred to as the "health insurance premium surtax".

F. If an act of the United States congress is signed into law that imposes the annual fee on health insurance providers pursuant to Section 9010 of the federal Patient Protection and Affordable Care Act, or that imposes a substantially similar fee on the same class of taxpayers, the rate of the health insurance premium surtax shall be decreased at a rate equal to the rate of the annual fee imposed; provided that the rate of the health insurance premium surtax shall not be less than one percent. A reduction in the health insurance premium surtax pursuant to this subsection shall go into effect on the later of the effective date of the imposition of the federal annual fee or ninety days after the congressional act imposing the federal annual fee is signed into law.

G. A tax is imposed at a rate of nine-tenths percent on the net premiums, as defined in the Group Self-Insurance Act, received or written by a self-insured group within the state during the preceding calendar year. The tax imposed pursuant to this subsection may be referred to as the "self-insured group tax".

History: Laws 2018, ch. 57, § 3; 2021, ch. 65, § 35; 2021, ch. 136, § 2; 2023, ch. 85, § 21.

7-40-4. Reciprocity provision.

A. When by or pursuant to the laws of any other state or foreign country or province, any taxes, in the aggregate, are or would be imposed upon New Mexico insurers doing business or that might seek to do business in such state, country or province, or upon the agents or representatives of such insurers or upon brokers or adjusters, which are in excess of such taxes, in the aggregate, directly imposed upon similar insurers, or upon the agents or representatives of such insurers, or upon brokers, or upon adjusters, of such other state, country or province under the statutes of this state, so long as such laws of such other state, country or province continue in force or are so applied, the same taxes, in the aggregate, may be imposed by the secretary upon the insurers, or upon the agents or representatives of such insurers, or upon brokers of such other state, country or province, doing business or seeking to do business in New Mexico. Any tax imposed by any city, county or other political subdivision or agency of such other state, country or province on New Mexico insurers or their agents, representatives, brokers or adjusters shall be deemed to be imposed by such state, country or province within the meaning of this section.

B. This section does not apply as to:

(1) personal income taxes;

(2) ad valorem taxes on real or personal property; or

(3) special purpose obligations or assessments, or assessments under insurance guaranty fund laws, imposed by another state in connection with particular kinds of insurance, except that assessment of insurers for financing of public safety, health and protection purposes is not exempt under this subsection. Except that deductions from premium taxes or other taxes otherwise payable, allowed on account of real or personal property taxes paid shall be taken into consideration by the secretary in determining propriety and extent of reciprocity action under this section.

C. For purposes of this section, domicile of an alien insurer, other than Canadian insurer, shall be that state designated by the insurer in writing filed with the secretary at time of authorization in this state or within six months after the effective date of the New Mexico Insurance Code [Chapter 59A NMSA 1978, except for Articles 30A and 42A], whichever date is the later, and may be any one of the following states:

(1) that in which the insurer was first authorized to transact insurance;

(2) that in which is located the insurer's principal place of business in the United States; or

(3) that in which is held the largest deposit of trusteed assets of the insurer for protection of its policyholders in the United States.

D. If the insurer makes no such designation, its domicile shall be deemed to be that state in which is located its principal place of business in the United States.

E. The domicile of a Canadian insurer shall be Canada and the province of Canada in which its head office is located.

History: Laws 2018, ch. 57, § 4.

7-40-5. Exemptions.

Exempted from the taxes imposed pursuant to the Insurance Premium Tax Act are:

A. premiums attributable to insurance or contracts purchased by the state or a political subdivision for the state's or political subdivision's active or retired employees;

B. payments received by a health maintenance organization from the federal secretary of health and human services pursuant to a risk-sharing contract issued under the provisions of 42 U.S.C. Section 1395mm(g);

C. any business transacted pursuant to the provisions of the Service Contract Regulation Act [Chapter 59A, Article 58 NMSA 1978];

D. the premiums from each policy or plan issued or offered pursuant to the Minimum Healthcare Protection Act [Chapter 59A, Article 23B NMSA 1978] during the first three years of the issuance of the master policy or individual policy; and

E. the money collected and placed in trust pursuant to Section 59A-49-6 NMSA 1978.

History: Laws 2018, ch. 57, § 5.

7-40-6. Credit; medical insurance pool assessments.

The assessment for any New Mexico medical insurance pool member pursuant to Section 59A-54-10 NMSA 1978 shall be allowed as a fifty percent credit on the tax return for that member and a seventy-five percent credit on the tax return for that member for the assessments attributable to pool policyholders that receive premiums, in whole or in part, through the federal Ryan White Comprehensive AIDS Resources Emergency Act of 1990, the Ted R. Montoya hemophilia program at the university of New Mexico health sciences center, the children's medical services bureau of the public health division of the department of health or other program receiving state funding or assistance. That portion of credit that exceeds a member's premium tax liability in the taxable period in which the credit is claimed shall not be refunded and shall not be carried forward to subsequent taxable periods.

History: Laws 2018, ch. 57, § 6; 2023, ch. 85, § 22.

7-40-7. Date payment due.

A. Except as provided in Subsections B and C of this section, for each calendar quarter, an estimated payment of the premium tax and the health insurance premium surtax shall be made on April 15, July 15, October 15 and the following January 15. The estimated payments shall be equal to at least one-fourth of the payment made during the previous calendar year or one-fifth of the actual payment due for the current calendar year, whichever is greater. The final adjustment for payments due for the prior year shall be made with the return filed on April 15, at which time all taxes for that year are due.

B. Within sixty days after expiration of a calendar quarter, a surplus lines broker shall pay the premium tax due on surplus lines insurance where New Mexico is the home state of the insured transacted under the surplus lines broker's license during such calendar quarter, as reported to the department.

C. For each calendar quarter, an estimated payment of the self-insured group tax shall be made on April 15, July 15, October 15 and the following January 15. The estimated payments shall be equal to at least one-fourth of the payment made during the previous calendar year. The final adjustment for payments due for the prior year shall be made with the return filed on April 15, at which time all taxes for that year are due.

History: Laws 2018, ch. 57, § 7; 2021, ch. 65, § 36.

7-40-8. Repealed.

History: Laws 2018, ch. 57, § 8; repealed by Laws 2019, ch. 47, § 4.

7-40-9. Repealed.

History: Laws 2018, ch. 57, § 9; repealed by Laws 2019, ch, 47, § 4.

7-40-10. Department shall promulgate rules.

The department shall promulgate rules to carry out the provisions of the Insurance Premium Tax Act.

History: Laws 2018, ch. 57, § 10.

ARTICLE 41
Health Care Quality Surcharge

7-41-1. Short title.

Sections 1 through 8 [7-41-1 to 7-41-8 NMSA 1978] of this act may be referred to as the "Health Care Quality Surcharge Act".

History: Laws 2019, ch. 53, § 1.

7-41-2. Purpose.

The purpose of the Health Care Quality Surcharge Act is to enhance federal financial participation in medicaid to increase medicaid provider reimbursement rates and support facility quality improvement efforts in skilled nursing facilities, intermediate care facilities and intermediate care facilities for individuals with intellectual disabilities.

History: Laws 2019, ch. 53, § 2.

7-41-3. Definitions.

As used in the Health Care Quality Surcharge Act:

A. "department" means the taxation and revenue department;

B. "health care facility" means a skilled nursing facility, intermediate care facility or intermediate care facility for individuals with intellectual disabilities;

C. "intermediate care facility" means a facility with greater than sixty beds and is licensed by the department of health to provide intermediate nursing care. "Intermediate care facility" does not include an intermediate care facility for individuals with intellectual disabilities;

D. "intermediate care facility for individuals with intellectual disabilities" means a facility licensed by the department of health to provide food, shelter, health or rehabilitative and active treatment for individuals with intellectual disabilities or persons with related conditions;

E. "medicaid" means the medical assistance program established pursuant to Title 19 of the federal Social Security Act and regulations promulgated pursuant to that act;

F. "medicare" means coverage provided pursuant to part A or part B of Title 18 of the federal Social Security Act, as amended;

G. "medicare advantage" means insurance that expands a medicare beneficiary's options for participation in private sector health plans with networks of participating providers;

H. "medicare part A" means insurance provided through medicare for inpatient hospital, home health, skilled nursing facility and hospice care;

I. "net revenue" means gross inpatient revenue reported by a health care facility for routine nursing and ancillary inpatient services provided to residents by the facility, less applicable contractual allowances and bad debt;

J. "non-medicare bed day" means a day for which the primary payer is not medicare part A, medicare advantage or a special needs plan. A non-medicare bed day excludes any day on which a resident is not in the facility or the facility is paid to hold the bed while the resident is on leave;

K. "resident day" means a calendar day of care provided to a resident in a health care facility, including the day of admission and not including the day of discharge; provided that admission and discharge occurring on the same day shall constitute one resident day;

L. "skilled nursing facility" means a facility with greater than sixty beds and is licensed by the department of health to provide skilled nursing services; and

M. "special needs plan" means a specific type of medicare advantage plan that limits membership to individuals with specific diseases or characteristics.

History: Laws 2019, ch. 53, § 3.

7-41-4. Health care quality surcharge; rate calculation; date payment due.

A. A surcharge is imposed on each health care facility. The surcharge shall be per day for each non-medicare bed day. The rate of the surcharge shall be annually calculated by the human services department [health care authority department] pursuant to Subsection B of this section.

B. No later than sixty days following the effective date of the Health Care Quality Surcharge Act and by June 1 of each year thereafter, the human services department [health care authority department] shall calculate the rate of the surcharge to be paid by each health care facility during the subsequent fiscal year and shall notify the taxation and revenue department and each such health care facility of the applicable rates. In calculating the rates, the human services department [health care authority department] shall:

(1) set a uniform rate per non-medicare day in health care facilities not to exceed the maximum allowed by federal law governing the approval of the state medicaid plan or any waiver from that plan;

(2) structure the rates for each skilled nursing facility and intermediate care facility so that the total estimated revenue received in the subsequent fiscal year from all those facilities will equal six percent of the net revenue received in the aggregate by those health care facilities in the previous calendar year; and

(3) structure the rates for each intermediate care facility for individuals with intellectual disabilities so that the total estimated revenue received in the subsequent fiscal year from all those facilities will equal six percent of the net revenue received in the aggregate by all those facilities in the previous calendar year.

C. If the rate of net revenue provided in Paragraph (2) or (3) of Subsection B of this section exceeds the maximum percentage of net revenue for all health care facilities allowed by Section 1903(w)(4) of the federal Social Security Act, as that section may be amended or renumbered, the rate of the health care quality surcharge shall be reduced to a percentage that will equal, but not exceed, the maximum percentage allowed by that federal law.

D. If the rate of net revenue provided in Paragraph (3) of Subsection B of this section results in medicaid fee-for-service and medicaid managed care reimbursement rates that exceed the upper payment limits allowed by Section 1902(a)(30)(A) of the federal Social Security Act, as that section may be amended or renumbered, the rate of the health care quality surcharge shall be reduced to a percentage that will result in reimbursement rates that equal, but do not exceed, those limits.

E. No later than thirty days following the effective date of the Health Care Quality Surcharge Act, a health care facility shall report to the human services department [health care authority department] the number of resident days provided by the health care facility, broken down by payer, and the net revenue earned by the health care facility for each of the most recent four calendar quarters available. On each January 1, April 1, July 1 and October 1 thereafter, a health care facility shall report to the human services department [health care authority department] the number of resident days provided by the health care facility, broken down by payer, and the net revenue earned by the health care facility for the calendar quarter prior to the previous quarter.

F. The surcharge imposed pursuant to this section may be referred to as the "health care quality surcharge". Health care quality surcharge payments are due quarterly by the twenty-fifth day of the month subsequent to the end of each calendar quarter based upon the non-medicare bed days reported on the most recently filed calendar quarter report required pursuant to Subsection E of this section. Initial health care quality surcharge payments shall be based upon the non-medicare bed days reported on the most recently filed calendar quarter report required pursuant to Subsection E of this section closest to the effective date of the Health Care Quality Surcharge Act.

History: Laws 2019, ch. 53, § 4.

7-41-5. Exemption.

A health care facility with more than ninety thousand annual medicaid-financed bed days may claim an exemption in an amount equal to sixty-five percent of the health care quality surcharge due in a reporting period. The percentage and annual medicaid-financed bed days threshold may be modified by rule promulgated by the human services department [health care authority department], if necessary, for approval of the surcharge program by the federal centers for medicare and medicaid services.

History: Laws 2019, ch. 53, § 5.

7-41-6. Health care facility fund; disability health care facility fund.

A. The "health care facility fund" and the "disability health care facility fund" are created in the state treasury. The funds consist of appropriations, distributions, transfers, gifts, grants, donations and bequests made to the funds and income from the investment of the funds. The funds shall be administered by the human services department [health care authority department], and money in the funds is subject to appropriation by the legislature to the human services department [health care authority department] to carry out the purposes provided in this section. Money in the funds shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the secretary of human services or the secretary's authorized representative. Any balance remaining in the funds at the end of a fiscal year shall not revert to the general fund.

B. At least eighty percent of the money in the health care facility fund shall be used for the following purposes and in the following order of priority for skilled nursing facilities and intermediate care facilities:

(1) to increase per diem rates to those facilities for the medicaid share of the health care quality surcharge as a pass-through, medicaid-allowable cost;

(2) to annually increase, on a per diem basis, as provided by rule promulgated by the human services department [health care authority department], each facility's respective medicaid fee-for-service and medicaid managed care reimbursement rates above those in effect upon the effective date of the Health Care Quality Surcharge Act and in subsequent years thereafter by at least the rate of nursing home inflation for the rate year as published on behalf of the federal centers for medicare and medicaid services; and

(3) to provide financial incentives in the form of supplemental payments, paid no less frequently than quarterly, based upon performance data to improve the quality of skilled nursing facilities and intermediate care facilities.

C. The disability health care facility fund shall be used for the following purposes and in the following order of priority for intermediate care facilities for individuals with intellectual disabilities:

(1) to increase per diem rates to those facilities for the medicaid share of the health care quality surcharge as a pass-through, medicaid-allowable cost; and

(2) to increase each facility's respective medicaid fee-for-service reimbursement rates above those in effect on the effective date of the Health Care Quality Surcharge Act.

D. No more than twenty percent of the money in the health care facility fund may be used by the human services department [health care authority department] to administer the state medicaid program for purposes other than those provided in Subsection B of this section.

E. The initial health care quality surcharge payment by health care facilities for the first calendar quarter ending after the effective date of the Health Care Quality Surcharge Act shall be made twenty-five days after the date the federal centers for medicare and medicaid services approve the authorization sought by the secretary of human services pursuant to Section 11 of this 2019 act.

F. The initial quarterly supplemental payments to health care facilities made pursuant to Subsection B of this section for the first calendar quarter ending after the effective date of the Health Care Quality Surcharge Act shall be made thirty days after the date the federal centers for medicare and medicaid services approve the authorization sought by the secretary of human services pursuant to Section 11 of this

2019 act. The initial per diem payments to health care facilities made pursuant to Subsections B and C of this section shall be made thirty days after the date the federal centers for medicare and medicaid services approve the authorization sought by the secretary of human services pursuant to Section 11 of this 2019 act.

G. Subsequent health care quality surcharge payments by health care facilities will be made twenty-five days after the end of each calendar quarter for that calendar quarter. Subsequent supplemental payments made to health care facilities pursuant to Subsection B of this section shall be made thirty days after the end of each calendar quarter for that calendar quarter.

History: Laws 2019, ch. 53, § 6.

7-41-7. Administration and enforcement of act.

The department shall interpret the provisions of the Health Care Quality Surcharge Act. The department shall administer and enforce the collection of the health care quality surcharge, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of that surcharge.

History: Laws 2019, ch. 53, § 7.

7-41-8. Departments required to promulgate rules.

The taxation and revenue department and the human services department [health care authority department] shall promulgate rules to carry out the provisions of the Health Care Quality Surcharge Act, as appropriate for each department, including the rate calculations required to be performed by the human services department [health care authority department], and the notification from that department to the taxation and revenue department pursuant to Section 4 [7-41-4 NMSA 1978] of the Health Care Quality Surcharge Act.

History: Laws 2019, ch. 53, § 8.

ARTICLE 42
Cannabis Tax

7-42-1. Short title.

Sections 43 through 47 [7-42-1 to 7-42-5 NMSA 1978] of this act may be cited as the "Cannabis Tax Act".

History: Laws 2021 (1st S.S.), ch. 4, § 43.

7-42-2. Definitions.

As used in the Cannabis Tax Act:

A. "cannabis":

(1) means all parts of the plant genus Cannabis containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and

(2) does not include:

(a) the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; or the sterilized seed of the plant that is incapable of germination; or

(b) the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink or another product;

B. "cannabis extract":

(1) means a product obtained by separating resins from cannabis by solvent extraction using solvents other than vegetable glycerin, such as butane, hexane, isopropyl alcohol, ethanol or carbon dioxide; and

(2) does not include the weight of any other ingredient combined with cannabis extract to prepare topical or oral administrations, food, drink or another product;

C. "cannabis product" means a product that is or that contains cannabis or cannabis extracts, including edible or topical products that may also contain other ingredients; and

D. "cannabis retailer" means a person whose license from the cannabis control division of the regulation and licensing department allows the person to sell cannabis products to a person who purchases, acquires, possesses or uses the cannabis product for a purpose other than resale.

History: Laws 2021 (1st S.S.), ch. 4, § 44.

7-42-3. Cannabis excise tax.

A. An excise tax is imposed on a cannabis retailer that sells cannabis products in this state. The tax imposed by this section may be referred to as the "cannabis excise tax".

B. The rate of the cannabis excise tax shall be at the following rates and shall be applied to the price paid for a cannabis product:

(1) prior to July 1, 2025, twelve percent;

(2) beginning July 1, 2025 and prior to July 1, 2026, thirteen percent;

(3) beginning July 1, 2026 and prior to July 1, 2027, fourteen percent;

(4) beginning July 1, 2027 and prior to July 1, 2028, fifteen percent;

(5) beginning July 1, 2028 and prior to July 1, 2029, sixteen percent;

(6) beginning July 1, 2029 and prior to July 1, 2030, seventeen percent; and

(7) beginning July 1, 2030, eighteen percent.

C. The cannabis excise tax shall not apply to retail sales of medical cannabis products sold to a qualified patient or a primary caregiver who presents a registry identification card issued pursuant to the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978] or a reciprocal participant who presents similar proof from another state, the District of Columbia or a territory or commonwealth of the United States at the time of the sale.

History: Laws 2021 (1st S.S.), ch. 4, § 45.

7-42-4. Date payment due; reporting location instructions.

A. The cannabis excise tax is to be paid on or before the twenty-fifth day of the month following the month in which the taxable sale occurs.

B. The reporting location for reporting the sale of cannabis products shall be at the following locations:

(1) if the cannabis product is received by the purchaser at the New Mexico location of the cannabis retailer, the location of the cannabis retailer;

(2) if the cannabis product is not received by the purchaser at a location of the cannabis retailer, the location indicated by instructions for delivery to the purchaser, or the purchaser's donee, when known to the cannabis retailer;

(3) if Paragraphs (1) and (2) of this subsection do not apply, the location indicated by an address for the purchaser available from the business records of the cannabis retailer that are maintained in the ordinary course of business; provided that use of the address does not constitute bad faith;

(4) if Paragraphs (1) through (3) of this subsection do not apply, the location for the purchaser obtained during consummation of the sale, including the address of a purchaser's payment instrument if no other address is available; provided that use of this address does not constitute bad faith; or

(5) if Paragraphs (1) through (4) of this subsection do not apply, including a circumstance in which the cannabis retailer is without sufficient information to apply those standards, the location from which the cannabis product is shipped or transmitted.

History: Laws 2021 (1st S.S.), ch. 4, § 46; 2023, ch. 85, § 23.

7-42-5. Interpretation of the cannabis tax act; administration and enforcement of tax.

The department shall administer and enforce the collection of the cannabis excise tax pursuant to the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] .

History: Laws 2021 (1st S.S.), ch. 4, § 47.